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Juritraductology and the Right to Translation

JURYSTRADUKTOLOGIA I PRAWO DO TŁUMACZENIA

Summary

In the context of globalization, understood as a long-term historical process, issues of multi-lingualism and multiculturalism are becoming increasingly intertwined with access to justice. Within the European Union (EU), member states must respond to specific challenges related to citizen mobility within the Union and the influx of immigrants and refugees from outside it. Against this background, an analysis of Polish law reveals a clear deficit of regulations concerning the right to translation. From the perspective of legal certainty and transparency standards, this presents a highly undesirable situation. The article addresses issues related to the right to interpreter assistance for non-native speakers in a procedural context. The analyzed issues will be presented in relation to juritraductology (juritraductological approach to the translation of legal texts), a scientific discipline developed at the Centre de recherche interdisciplinaire en juritraductologie (Cerije) in Paris.

Keywords: juritraductology; legal right to translation; linguistic vulnerability; legal vulnerability

Streszczenie

W kontekście globalizacji rozumianej jako długofalowy proces historyczny kwestie wielojęzyczności i wielokulturowości coraz częściej wiążą się z dostępem do wymiaru sprawiedliwości. Państwa członkowskie muszą stawiać czoła szczególnym wyzwaniom związanym z mobilnością obywateli wewnątrz Unii Europejskiej oraz napływem imigrantów i uchodźców spoza jej granic. Na tym tle analiza prawa polskiego ujawnia wyraźny deficyt regulacji dotyczących prawa do tłumaczenia. Z perspektywy pewności prawa oraz standardów przejrzystości jest to sytuacja wysoce niepożądana. Artykuł porusza problematykę prawa do pomocy tłumacza dla osób niewładających w wystarczającym stopniu językiem w kontekście prawnym. Analizowane zagadnienia zostaną przedstawione z perspektywy jurystraduktologii (jurystraduktologicznego podejścia do przekła-

du tekstów prawnych), dyscypliny naukowej rozwijanej w Centre de recherche interdisciplinaire en juritraductologie (Cerije) w Paryżu.

Słowa kluczowe: jurystraduktologia; prawo do tłumaczenia; wrażliwość językowa; wrażliwość prawna

Introduction

A borderless world is emerging before our eyes, one where mobility, speed, and adaptability determine success or failure. The European Union, international and national courts, companies, and individuals increasingly rely on legal translations. While modern AI-based translation devices and technologies effectively eliminate language barriers in everyday communication, the position of the human translator in legal communication remains (so far) unshakable. The right to translator participation in criminal proceedings, as stipulated in Article 204 of the Code of Criminal Procedure,¹ guarantees a fair and reliable trial. After all, general directives of a fair criminal trial dictate that procedural body decisions should be based on accurate factual findings. This, in turn, obliges these bodies to comprehensively familiarize themselves with the factual circumstances of a case.

In this article, the right to translation and its relationship with procedural rules in Poland, will be analyzed. The problem of “linguistic vulnerability” will also be discussed – a term used in jurisprudence to describe a situation where an individual unfamiliar with the country’s language or law suddenly is confronted with them due to an unforeseen event. The issues raised fall within the scope of jurisprudence and concern the need to guarantee the injured party and the accused the ability to fully exercise their procedural rights.

1. Juritraductology: Between the legal right to translate and legal translation

Juritraductology (Latin: gen. *iuris* + *traducere*) addresses two scientific areas. The first focuses on the epistemological and methodological issues related to legal trans-

1 “[Participation of an interpreter]

§ 1. An interpreter should be summoned if there is a need to examine: 1) a deaf or mute person, and it is not sufficient to communicate with them in writing; 2) a person who does not speak Polish.

§ 2. An interpreter should also be summoned if there is a need to translate a document written in a foreign language into Polish or vice versa or to familiarize the party with the content of the evidence being taken.

§ 3. The provisions on experts shall apply accordingly to the interpreter.”

lation, while the second concerns the right to free translator assistance in criminal proceedings. This discipline opens up new perspectives for multidirectional research on the right to translate and the translation of law. Juritraductology advocates for a pluralism of approaches, drawing from numerous scientific disciplines, primarily from the cultural and contextual methodology of comparative law and from translatology.² In this approach, the problem of legal translation is closely related to comparative law – understood broadly as a science, a scientific method, and the outcome of research using the comparative method.

The neologism “juritraductology” was coined by Jacques Pelage³ to describe the science dealing with the problems of translating law. According to J. Pelage, juritraductology is inextricably linked to comparative law, and the interpretation of legal discourse represents the convergence point for the work of a lawyer and a translator. A translator’s acquisition of knowledge in the field of legal sciences definitely contributes to their cultural enrichment, which is why cooperation between representatives of both fields is highly desirable from the perspective of quality and effectiveness.

Maher Abdel Hadi⁴ stated that juritraductology is a new discipline aiming to create a universal methodology for translating law. This assumption implies that the methodology developed within juritraductology can be successfully applied to any language and legal system globally. Translating law into a foreign language poses a dual challenge for translators. On one hand, it is a highly specialized type of translation that requires detailed knowledge of both the source and target legal systems. On the other hand, legal translation raises numerous general and specific questions regarding the methodology used. Juritraductology seeks to address these needs.

Although juritraductology only began to develop in the 1990s, the translation of law has deep historical roots. Its first documented traces appear as early as the 13th century BCE, when the diplomatic aftermath of a battle led to a peace treaty between Pharaoh Ramesses II and the Hittite king Hattusili III. The famous Treaty of Kadesh (1258 BCE) has been preserved in two language versions: in Hattusa (the capital of the Hittite Empire), several fragments of a tablet depicting the Akkadian version of the treaty written in cuneiform were found, while the Egyptian version is known from two inscriptions by Ramesses II (in Karnak and the Ramesseum). Notably, the Akkadian version was given to the pharaoh as a silver tablet with inscriptions. The text, written

2 S. Monjean-Decaudin, *Traité de juritraductologie: Épistémologie et méthodologie de la traduction juridique*, Villeneuve d'Ascq 2022.

3 J. Pelage, *Éléments de traductologie juridique : application aux langues romanes*, Launay 2001, pp. 87–91.

4 M. Abdel Hadi, *La juritraductologie et le problème des équivalences des notions juridiques en droit des pays arabes*, “ILCEA,” 2002, no. 3, pp. 71–78, <https://doi.org/10.4000/ilcea.816>.

in Egyptian hieroglyphs, began with the words: “a copy of the silver tablet which the great prince Hatti Hattusili brought to the Pharaoh.” In this context, the word *mity* (‘copy’) cannot be interpreted as ‘identical reproduction’ because it refers to translation. S. Langdon and Alan H. Gardiner⁵ pointed this out, stating: “The word copy here, of course, means translation.”

While the first translations of law were related to diplomacy, subsequent ones arose from necessity. During the Ptolemaic Period, two traditions – Egyptian and Greek – existed side by side, resulting in the operation of two distinct legal systems. As the gradually imposed Greek became the official language, translation was essential for the state’s functioning. The famous Rosetta Stone, a decree from 196 BC written in three languages (hieroglyphs, demotic script, and Greek), best illustrates the fact. This record enabled Jean-François Champollion to decipher hieroglyphic writing in 1822. As Michel Chauveau states, “it was the bilingualism of at least part of the Ptolemaic society that allowed European philological science to penetrate the secrets of pharaonic Egypt.”⁶

Further evidence of the ancient practice of translating legal texts can be found in slave purchase deeds of those times. Depending on the situation, the deeds were written in Latin or translated into Greek and then officially registered.⁷ Although little written evidence from that period exists, the profession of translation flourished. Egypt, in order to protect its political and economic interests, developed diplomatic relations in the Middle East and Asia Minor. The practice of translation in diplomacy was driven more by the need for contact than by the desire to understand and learn about other cultures. The translated version of a letter was then referred to in Egyptian (confusingly from today’s perspective) as a “copy.” This particular use of the word “copy” may lead to the conclusion that, for the Egyptians, a written translation was in fact a “copy” of the original in a foreign language.

Despite its long-standing practice, the process of theorizing legal translation within the framework of translation studies only dates back to the turn of the 20th and 21st centuries. Juritraductology emerged from the field of law, language, and translation studies, with its roots tracing back to the first works on the language of law (jurilin-

5 S. Langdon, A.H. Gardiner, *The Treaty of Alliance between Hattusili, King of the Hittites, and the Pharaoh Ramesses II of Egypt*, “Journal of Egyptian Archaeology,” 6 (1920), no. 3, p. 186.

6 M. Chauveau, *Bilinguisme et traduction*, in: *Le décret de Memphis Colloque de la Fondation Singer-Polignac à l’occasion de la célébration du bicentenaire de la découverte de la Pierre de Rosette*, eds. D. Valbelle, J. Leclant, Paris 2000, p. 25.

7 I. Biezuńska-Malowist, *Niewolnictwo w Egipcie grecko-rzymskim*, Warszawa 2016 (Klasyki Historiografii Warszawskiej), p. 164.

guistics). Pioneers in this field include J. Pelage,⁸ M. Abdel Haidi,⁹ Claude Bocquet,¹⁰ Jean-Claude G  mar,¹¹ and others. The Anglo-Saxon Legal Translation Studies movement also made an undeniable contribution to the development of juritraductology. Sylvie Monjean-Decaudin's work, *Trait   de juritraductologie*,¹² lays the foundations for the theory of juritraductology and defines it as a new, interdisciplinary research field at the intersection of law, languages, and translation.

On September 30, 2012, Cerije (Centre de recherche interdisciplinaire en juritraductologie¹³) was founded in Paris as the first interdisciplinary research center dedicated to the study of the theory and practice of legal translation. The Center expands its activities through international cooperation in various countries within the European Union (Spain, Belgium, Italy, Germany, Poland, etc.) and beyond (United States, Canada, Switzerland, Hong Kong, etc.). Research is conducted comprehensively and without unnecessary disciplinary divisions, as juritraductology integrates the sciences relevant to its research objectives.

2. The right to translation and legal translation

In Poland, the issue of the right to interpreter assistance for non-native speakers in a procedural context has been highlighted by many Polish researchers, including Piotr Hofma  ski,¹⁴ Celina Nowak,¹⁵ Agnieszka Wiltos,¹⁶ Micha   Toru  ski,¹⁷ and others. Juritraductology offers a broad perspective in which translation can aim to protect languages and individuals. Each country's language policy is supported by the normative

8 J. Pelage, *  l  ments de traductologie juridique*.

9 M. Abdel Hadi, *La juritraductologie*, pp. 71–78.

10 C. Bocquet, *Traduction sp  cialis  e : choix th  orique et choix pragmatique. L'exemple de la traduction juridique dans l'aire francophone*, "Parall  les," 1996, no. 18, pp. 67–76; C. Bocquet, *La traduction juridique : fondement et m  thode*, Bruxelles 2008.

11 J.-C. G  mar, *La traduction juridique : art ou technique d'interpr  tation?*, "Revue g  n  rale de droit," 18 (1990), no. 2, pp. 495–451, <https://doi.org/10.7202/1058712ar>.

12 S. Monjean-Decaudin, *Trait   de juritraductologie*.

13 Centre de recherche interdisciplinaire en juritraductologie (Cerije), <https://www.cerije.eu/>.

14 P. Hofma  ski, *Prawo do udzia   t  macza jako jeden z warunk  w uczciwego procesu*, in: *Przest  pczo   cudzoziemc  w. Nowe wyzwania dla teorii i praktyki*, ed. E.W. P  waczewski, Szczecin 1995, pp. 51–62.

15 C. Nowak, *Prawo do korzystania z pomocy t  macza w europejskim i polskim prawie karnym*, "Prokuratura i Prawo," 1998, no. 10, pp. 89–97.

16 A. Wiltos, *Prawo do korzystania z bezp  latnej pomocy t  macza w post  powaniu karnym. Wybrane zagadnienia*, "Przegl  d Prawa i Administracji," 92 (2013), pp. 129–145.

17 M. Toru  ski, *Prawo do t  maczenia pokrzywdzonego w polskim procesie karnym – wybrane zagadnienia*, "Problemy Prawa Karnego," 5 (2021), no. 1, pp. 1–16, <https://doi.org/10.31261/PPK.2021.05.03>.

framework necessary for its implementation. The most important characteristics of normative logic in this area focus on two key issues: protection of languages and the protection of individuals.

Typically, states establish rules aimed at protecting their language from the unwanted influence of foreign languages. This phenomenon can be termed linguistic protectionism. Provisions related to the protection of the Polish language are included in the Constitution of the Republic of Poland in Articles 27 and, indirectly, 76.¹⁸ Another, though no less important, legal act regulating the protection of the Polish language is the Act of October 7, 1999, on the Polish Language. The importance of this Act is demonstrated by the preamble, which states:

taking into consideration that the Polish language is a constituting element of the Polish national identity and national culture,

having considered the Polish historical experience that foreign rulers and occupants repressed the Polish language and endeavoured to denationalise the Polish nation,

having realised that it is inevitable to safeguard national identity in today's global environment,

having understood that the Polish culture helps create a unified and culturally varied Europe and that it can be preserved and developed only if the Polish language is preserved,

having adopted the idea, that the protection of the language is the responsibility of all Polish bodies and public institutions, as well as all Polish citizens, [...].¹⁹

Article 4 of this Act imposes an obligation to conduct all procedural activities in Polish, includes not only orally performed activities but also maintaining full documentation of proceedings and, in particular, using Polish in the process of translating documents (see the judgment of the Voivodeship Administrative Court in Warsaw of 4 April, 2006, V SA/Wa 1558/05²⁰). The provision is supplemented by Article 5 of the Act on the Polish Language, which states that entities performing public tasks in the Republic of Poland shall conduct all official activities and submit declarations of intent in Polish, unless special provisions dictate otherwise (Section 1). The obligation to use Polish also applies to declarations of intent, applications, and other documents submitted to public authorities (Article 5 section 2 of the Act on the Polish Language).

18 Constitution of the Republic of Poland of 2nd April 1997, Journal of Laws No. 78, item 483, <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> [access: 26.07.2024].

19 Ustawa z dnia 7 października 1999 o języku polskim: Dz. U. z 2021 r., poz. 672, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU19990900999> [access: 3.08.2024].

20 Wyrok Wojewódzkiego Sądu Administracyjnego w Warszawie z 4 kwietnia 2006 r., V SA/Wa 1558/05, LEX 3122023, <https://sip.lex.pl/orzeczenia-i-pisma-urzedowe/orzeczenia-sadow/i-v-sa-wa-899-20-wyrok-wojewodzkiego-sadu-523215719> [access: 12.08.2024].

The legal protection of the Polish language also extends to translation rules. The use of Polish in the performance of public tasks, in trade, or in court de facto means that every document written in a foreign language must be translated into Polish. Article 5 of the Act of 27 July 2001 – The Law on the System of Common Courts addresses the issue of the official language before courts and the right to an interpreter as follows:

§ 1. The Polish language is the official language before courts.

§ 2. A person who has no sufficient command of the Polish language has the right to act before a court using their native language and have a free assistance of an interpreter.

§ 3. A court competent to hear a case in the first instance decides on assigning an interpreter to the person referred to in Article 5(2). A request for assigning an interpreter filed in the course of a case is considered by the court of the instance in which the case is pending.²¹

In any court proceeding, individuals who do not speak Polish may be present. This applies not only to the parties to the proceedings but also to witnesses and experts. This situation justifies calling upon an interpreter. According to Article 256 of the Code of Civil Procedure,²² the court may request that a document in a foreign language be translated by a sworn translator. Article 204 § 1 of the Code of Criminal Procedure states that a [specialist] interpreter should be called if there is a need to question a deaf or mute person, and written communication is insufficient, or a person who does not speak Polish.

Depending on the situation, countries pursue protective policies regarding their language (or languages, in the case of multilingual countries). France, like Belgium and Poland (Article 7 of the Law on the Polish Language Act), requires international companies to conclude employment contracts in French if the work is to be performed in the country. The Toubon Law²³ (fr. *loi Toubon*) of 1994 well illustrates the policy of legal protection for the French language. According to its content, all documents written in a foreign language that are the subject of distribution or publication for commercial or non-commercial purposes must necessarily be translated into French. Thus, translation becomes one of the main tools for language protection. When citing

21 Ustawa z dnia 27 lipca 2001 r. – Prawo o ustroju sądów powszechnych: Dz. U. z 2001 r. Nr 98, poz. 1070, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20010981070/U/D20011070Lj.pdf> [access: 3.08.2024].

22 Ustawa z dnia 6 czerwca 1997 r. – Kodeks postępowania karnego, Dz. U. z 2022 r., poz. 1375, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19970890555/U/D19970555Lj.pdf> [access: 29.08.2024].

23 Loi n° 94–665 du 4 août 1994 relative à l'emploi de la langue française, *Légifrance*, <https://www.legifrance.gouv.fr/loda/id/LEGITEXT000005616341> [access: 12.07.2024].

the example of France, it is also worth mentioning the Académie française (the Polish Language Council was created on its model), one of whose goals for almost four centuries has been to ensure the correct use of the French language.

The importance of protecting the Polish language is emphasized by Articles 7 and 7a of the Polish Language Act, which impose the obligation to use Polish in consumer trade and labor law. Article 8, which requires that documents be prepared in Polish, cannot be analyzed in isolation from the content of Article 7, paragraph 1. The latter states that:

In the territory of the Republic of Poland, in consumer trade and in the implementation of labor law provisions, the Polish language shall be used if: 1) the consumer or the person performing work resides in the territory of the Republic of Poland at the time of contract conclusion, and 2) the contract is to be performed or performed in the territory of the Republic of Poland.²⁴

Thus, for consumers who are not citizens of European Union Member States but reside in the Republic of Poland, and in situations where the contract is to be performed in Poland, this provision prevents the contract from being drafted – at least in its language version forming the basis for interpretation – in a language other than Polish (judgment of the Constitutional Tribunal of September 13, 2005, K 38/04²⁵).

Legal protection of language in the multilingual European Union is a significant issue. Article 3 of the Treaty on European Union (TEU) states that the: “shall respect its rich cultural and linguistic diversity.”²⁶ Article 165(2) of the Treaty on the Functioning of the European Union (TFEU) emphasizes that: “Union action shall be aimed at developing the European dimension in education, particularly through the teaching and dissemination of the languages of the Member States”²⁷ while fully respecting cultural and linguistic diversity (Article 165[1] TFEU). The EU treaties have recognized twenty-four languages as official EU languages, allowing citizens to write to any EU institution and receive a response in the same language as their query (Article 21 of the Treaty on European Union).

24 Ustawa z dnia 7 października 1999 r. o języku polskim, Art. 7, par. 1.

25 Wyrok Trybunału Konstytucyjnego z 13 września 2005 r., K 38/04, <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20051861567> [access: 14.08.2024].

26 Treaty on European Union, “Official Journal of the European Union,” 26.10.2012, C 325/15, https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF [access: 12.07.2024].

27 Treaty on the Functioning of the European Union, “Official Journal of the European Union,” 26.10.2012, C 326/47, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12012E/TXT:en:PDF> [access: 17.08.2024].

Legal protection of language is also legal protection for individuals. Although the right to translation has not been guaranteed *expressis verbis* in the Constitution of the Republic of Poland, it derives from numerous constitutional rights and freedoms. Article 32, section 1 states: "All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities," and further, section 2 of this provision "No one shall be discriminated against in political, social or economic life for any reason whatsoever."²⁸ The absolute prohibition of discrimination therefore obliges public authorities to provide special protection to persons belonging to national minorities and those who do not speak Polish.

The Constitutional Tribunal has stated that the use of the Polish language in consumer transactions and employment relations aims to protect the consumer and the employee. The choice of the language of communication (contract) between the parties is important not only from the perspective of the contract itself but also in establishing the legal consequences related to its performance. It determines all further communication between the parties concerning contract performance and any liability for violation of rights and obligations arising from it (the judgment of the Constitutional Tribunal of 13 September 2005, K 38/04²⁹).

Legal protection of individuals also includes the right to translation, or the right to free interpreter assistance. In France, using the assistance of a court interpreter is a very old practice. The *Ordonnance criminelle*³⁰ [Prescription on Criminal Procedure] issued by Louis XIV in August 1670, already obligated the judge to appoint an interpreter if the accused did not know French. According to Article 11, if the accused did not understand French, the interpreter (or in the absence of one, a person appointed by the judge *ex officio*), after taking an oath, translated the judge's questions to the accused and the accused's answers to the judge. Everything was recorded in French and signed by the judge, the interpreter, and the accused, or the accused's refusal to sign was noted. In this way, all formalities related to the investigation in criminal proceedings were regulated in detail, and the authorities were obliged to prepare all documents with much greater meticulousness, which was extremely important because the verdict was issued almost exclusively based on these documents. This obligation survived the Revolution and was retained in the first Code of Criminal Procedure of 1808.

In Poland, legal scholarship and case law indicate that the right to translation is a necessary condition for the fairness of criminal proceedings and guarantees the

28 Constitution of the Republic of Poland of 2nd April 1997, Art. 32.

29 Wyrok Trybunału Konstytucyjnego z 13 września 2005 r., K 38/04.

30 F.-A. Isambert et al., *Recueil général des anciennes lois françaises, depuis l'an 420 jusqu'à la Révolution de 1789*, vol. 12, Paris 1828, p. 600.

actual participation of the accused in the criminal trial. The basis of the principle of a fair trial is the right to defense at all stages of the proceedings (Article 42, paragraph 2 of the Constitution of the Republic of Poland). According to Article 45, paragraph 1: “Everyone has the right to a fair and public hearing without undue delay by a competent, independent, and impartial court.”³¹

The right to interpreter assistance is an important element of the right to a fair criminal trial and is simultaneously one of the most crucial procedural guarantees for an accused individual who is a foreign national [or is not fully conversant in Polish]. It is of significant importance for the accused to conduct a proper defense and stems from the need to ensure procedural loyalty towards the parties (see the Supreme Court judgment of 27 November 2020, V KK 518/19). This right derives from Article 204 of the Code of Criminal Procedure, and additionally – in the case of the accused – from Article 72 of the Code of Criminal Procedure, and is closely related to the right to defense referred to in Article 6 of the Code of Criminal Procedure.

The right to translation is often indicated in legal scholarship as a necessary condition for the fairness of criminal proceedings. The obligation to provide interpreter assistance (Article 204 of the Code of Criminal Procedure) results primarily from the provision of Article 41, Section 3 of the Constitution of the Republic of Poland, according to which:

Every detained person shall be informed, immediately and in a manner comprehensible to him, of the reasons for such detention. The person shall, within 48 hours of detention, be given over to a court for consideration of the case. The detained person shall be set free unless a warrant of temporary arrest issued by a court, along with specification of the charges laid, has been served on him within 24 hours of the time of being given over to the court's disposal.

The right to translation is also regulated in Article 5 § 2 of the Act on the System of Common Courts.

In international law, the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was the first to recognize the right to translation. Article 6 paragraph 3 letters (a) and (e) provide:

Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

31 Constitution of the Republic of Poland of 2nd April 1997, Art. 45, par. 1.

An almost identical wording is found in Article 14, Paragraph 3, Letter of the International Covenant on Civil and Political Rights (ICCPR).³²

The provisions under review also guarantee that interpreter assistance is to be provided free of charge.

In this light, Directive 2010/64/EU of the European Parliament and of the Council³³ on the right to interpretation and translation in criminal proceedings is also critically important. This directive approximates the criminal procedures of European Union Member States and significantly contributes to creating an area of freedom, security, and justice. It establishes common minimum rules for interpretation and translation in criminal proceedings to enhance mutual trust between Member States.

Another important document, Directive 2012/29/EU of the European Parliament and of the Council, which establishes minimum standards on the rights, support, and protection of victims of crime, states:

(34) Justice cannot be effectively achieved unless victims can properly explain the circumstances of the crime and provide their evidence in a manner understandable to the competent authorities. It is equally important to ensure that victims are treated in a respectful manner and that they are able to access their rights. Interpretation should therefore be made available, free of charge, during questioning of the victim and in order to enable them to participate actively in court hearings, in accordance with the role of the victim in the relevant criminal justice system.³⁴

However, from the perspective of jurisprudence, which advocates for a broad scope of the right to translation for all “linguistically vulnerable” persons, the Polish legislator regulates these issues in a rather general manner. First, it is essential to emphasize the lack of detailed code regulations as a basis for the right to translation. A cursory analysis of the provisions leads to the conclusion that national law regarding the right to translation of the injured party (victim) does not meet all the requirements set by the EU legal order. Therefore, a comprehensive and precise regulation of the right

32 Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 subsequently amended by Protocols No. 3, 5 and 8 and supplemented by Protocol No. 2, https://www.eods.eu/library/CoE_European%20Convention%20for%20the%20Protection%20of%20Human%20Rights%20and%20Fundamental%20Freedoms_1950_EN.pdf [access: 14.08.2024].

33 Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32010L0064> [access: 20.05.2024].

34 Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights support and protection of victims of crime and replacing Council Framework Decision 2001/220/JHA, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32012L0029> [access: 20.05.2024].

to translation in the Code of Criminal Procedure should be advocated, as this is undeniably desirable for legal certainty and transparency.

3. The right to translation and linguistic/legal vulnerability

Linguistic vulnerability³⁵ is a term used in jurisprudence to describe a situation in which an individual is unfamiliar with a country's language or law and confronts them due to a sudden event. Not knowing the language and law of the country one is visiting is not inherently extraordinary and usually poses little risk. However, the situation changes dramatically in the event of a sudden, unexpected incident. A single mistake made while on vacation can be enough to experience the grim reality of foreign legal systems rather than seemingly paradisiacal vistas and culture. Indeed, thousands of Polish citizens have (unknowingly) broken laws in various countries where they have visited, and many are serving sentences in foreign detention centers and prisons.

To illustrate the phenomenon of linguistic vulnerability, consider the case of Carlos Ghosn, former Chief Executive Officer of the Renault-Nissan group, who was arrested in Japan in 2019. Ghosn's case raised questions about the Japanese justice system and the possibility of holding a suspect in prison (initially without charge). Ghosn claimed that his arrest violated his fundamental rights. Among the accusations against the Japanese justice system, he cited problems with communicating in Japanese, asserting that the language assistance provided to him was insufficient. The press repeatedly quoted his son, who stated in an interview that "Japanese prosecutors want to force a confession from his father, consistently claiming that the only condition for release from custody is a confession."³⁶ The documents were written in Japanese, and Ghosn, who did not speak the language, refused to sign them. The case became a serious problem for the prosecution and Japanese authorities, who faced a growing international scandal. Ultimately, public attention shifted to Ghosn's incredible escape from Japan in a musical instrument crate. Almost no one noticed that the most important issue – the lack of effective language assistance – remained the background of this story. No journalist questioned the role of the translator in the justice system, confirming how invisible this problem is to society.

In 2007, in Perugia, Italy, U.S. citizen Amanda Knox was accused of murdering her roommate, Meredith Kercher. The trial was conducted in Italian, a language

35 S. Monjean-Decaudin, *Traité de juritraductologie*.

36 T. Nowicki, *Prezes Renault zmuszany do podpisania przyznania się do winy?*, 6.01.2019, <https://francuskie.pl/japonscy-sledczy-chca-zmusic-prezesa-renault-do-podpisania-przyznania-sie-do-winy> [access: 20.09.2023].

Knox did not speak fluently. During police interrogations, she was not provided with a qualified interpreter. Anna Donnino, described as merely a housewife and a “part-time English interpreter,” arrived approximately about 90 minutes after the questioning had begun. In Italy, court interpreters are not required to have formal qualifications, anyone can perform this role. The absence of a professional interpreter in this case led to serious misunderstandings and almost a miscarriage of justice. After several years of legal wrangling, Amanda Knox and Raffaele Sollecito were acquitted of Meredith Kercher’s murder on October 3, 2011. Situations involving participants who speak different languages are especially susceptible to communication breakdowns or misunderstandings. To fully explore the impact of the language barrier in Amanda Knox’s trial, one must first understand the cultural context in which that language is spoken. In a professional legal setting characterized by complex and emotionally charged language, combined with an unwelcoming attitude toward foreigners and rigid expectations for women’s behavior, it would be exceptionally challenging for anyone (let alone a young American woman with limited knowledge of the local language) to fully understand the proceedings and defend herself effectively. Without skilled and impartial interpreters, these circumstances would have been overwhelming for everyone.³⁷

Another example is Frenchman Michaël Blanc, who was arrested in 1999 at Bali airport for attempting to smuggle 3.8 kg of hashish (hidden in the diving tanks he was bringing into the country). He claimed he was unaware of the presence of the illicit drugs. During interrogations, he was not provided with a French interpreter, which hindered his defense. He was sentenced to life imprisonment and was granted parole after 14 years, in 2014.³⁸

A similar experience happened to American basketball player Brittney Griner, who was arrested in February 2022 at Moscow airport for possessing vape cartridges containing hash oil. During the interrogations, the interpreter conveyed only part of the information to her, and the documents she was asked to sign were not translated. She was sentenced to nine years in prison and was released in December 2022 as part of a prisoner exchange.³⁹

37 A.J. Mascelli, *Impact of the Italian Language and Culture on the Amanda Knox Trials*, Bachelor thesis, The Pennsylvania State University, 2013, https://honors.libraries.psu.edu/files/final_submissions/1675 [access: 20.05.2024].

38 France24, *Man Who Spent 18 Years in Indonesian Jail for Smuggling Hash Returns to France*, <https://www.france24.com/en/20180722-france-indonesia-drug-smuggler-returns-18-years-custody> [access: 1.12.2024].

39 Politico, *WNBA’s Griner says poor translation clouded arrest in Russia*, 28.11.2024, <https://www.politico.com/news/2022/07/27/griner-poor-translation-arrest-russia-00048169> [access: 1.12.2024].

Recently, the media has focused on the fate of Nicklas Hoffgaard, known as rapper “Stanley Most”. This Danish citizen, fascinated by Vladimir Putin, signed a contract with the Russian Ministry of National Defense in 2023. He wanted to become a border guard in Siberia but instead found himself at war with Ukraine. He quickly began complaining about the poor conditions and eventually decided to withdraw from the contract with the Russian army in court. His lawyer claimed that N. Hoffgaard did not know what was written in the document he signed, because he does not know Russian. Initially, the Moscow military court rejected his application, but the second-instance court terminated the contract between the Ministry of Defense and Hoffgaard.⁴⁰

The aforementioned cases show that a direct confrontation with a foreign country’s language and law can be disastrous for a foreigner. Only a few individuals are able to defend their rights in court by communicating in a foreign language. Most do not know the language or law of the country they are in, which leads to a situation of double vulnerability – linguistic and legal. These vulnerabilities often materialize as unexpected, sudden events and can place anyone in a very uncomfortable, stressful situation.

Conclusions

Problems related to translation in the legal context remain largely invisible to the general public and, as a niche topic, still are not subjected to serious discussion. Meanwhile, thousands of Poles are serving sentences in foreign prisons, including those sentenced to life imprisonment or the death penalty. Concurrently, an increasing number of foreigners are encountering Polish justice authorities without sufficient command of the Polish language to ensure clear communication in speech and writing. All of this makes the assistance of a professional interpreter, well-versed in legal language, both necessary and indispensable. The right to translation is a fundamental element of the aforementioned right to a fair criminal trial. It is intrinsically linked to the need to guarantee that both the injured party and the accused can fully exercise their procedural rights. Therefore, it is imperative, at both international and national levels, to develop detailed legal solutions that specify state’s obligations to appoint a professional interpreters fully competent in court procedure and legal nuances.

40 A. Zygiel, *Uciekł do Rosji, bo miał dość “wartości Europy”. Wysłali go na front*, 22.08.2024, <https://wiadomosci.wp.pl/uciekl-do-rosji-bo-mial-dosc-wartosci-europy-wyslali-go-na-front-7062863169493952a> [access: 8.08.2024].

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