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# INTERPRETATION IN THE ISRAELI LEGAL SYSTEM

Shira Hefer

This article examines how the Israeli courts deal with the 'translation-dependent.' Since the proper conduct of trials rests, first and foremost, on what is said in courts before judges (Israel has no jury system), language is a vitally important tool. A study conducted in 2005 sought to examine how the Israeli legal system handles interpretation, and what in fact happens to non-Hebrew speakers in the Israeli legal system. Field research indicated a very large number of misunderstandings between witnesses and the court. A deeper examination shows the reasons for the country's generally poor quality interpretation service.

## Introduction

On June 21, 2005, I was present in the courtroom during a criminal case (Grievous Crime File 1184/04) in the Tel Aviv District Court. The District Court, one level below the country's High/Supreme Court, tries serious cases and also functions as an appellate court from courts of first instance. The main witness for the prosecution was a new immigrant from Ethiopia and his testimony was crucial to the three-judge bench that was to reach a verdict in a case of two persons accused of murder. Since the young man did not speak Hebrew, the court called for the services of an interpreter.

The "interpreter" who was brought in was herself a new immigrant from Ethiopia. She was working as an interpreter as part of her National Service. After questioning, it became clear that she had not been trained as a court interpreter (nor as any other kind of interpreter), had no knowledge of legal terminology, and did not even have full command of the Hebrew language. Inevitably, faulty communication between the witness and the court interfered with the proper conduct of the case, and the participants in the

case suffered as a result.

Every day, people who are "translation-dependent" (Shlesinger, 1993) come before the various courts in the State of Israel. These people do not have sufficient command of the Hebrew language to understand what is going on in their cases. Their full participation in such cases depends on an interpreter.

In 2005 I conducted a survey to examine the situation of interlinguistic interpretation in Israel's courts (Hefer, 2005). This article is based on that study. The method I used was: first, to check any previous research on the subject; second, to conduct interviews with judges of the Tel Aviv District Court. Following the disappointing findings of these two stages, I delved deeper, looking at the law and the entities responsible for implementing it. I then examined whether or not the law was being implemented. My research involved interviews with the Courts Administration (the equivalent of the AOC, or Administrative Office of the Courts, in the U.S.), with the CEO of the translation company that provides interpretation services, and with the interpreters who actually perform the work. My main argument is that the case described above, and many other similar cases, are the unavoidable outcome of a system in which there is no professional in charge of interpreting in the courts.

## Prior Research

Very little research has been done about court interpreting in Israel, whether by academia or the judicial system itself. Moreover, at the time of my study, no statistical data had ever been collected for the purpose of evaluating the courts' needs or for determining how interpreting should be organized by the system. Mine is the first academic study to empirically examine both the foundations on which the system operates as well as the relationship

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**MESSAGE FROM THE CHAIR** *continued from page 2*

writing we are also finalizing that program. For more information about the collections agency, please check our website often.

Both these programs are voluntary programs being made available to our organization as a member's benefit at a discounted membership group rate.

The NAJIT board continues to work diligently on our regular day-to-day NAJIT activities while adjusting to the transitional period. Our website will soon have a new look: we plan major reconstruction to assist members in navigating the site more easily.

NAJIT membership continues to grow steadily. This year our membership increased by 100 new members, bringing membership total to 1,200. Conference registrations have also increased steadily each year. Our financial status is healthy. Our visibility has increased. However, with increased visibility, our work has also multiplied. We are at a point where we need more hands on deck.

NAJIT is the largest and only judiciary interpreter and translators association with international members. Although the largest, we're still relatively small in numbers. In order to continue our strong advocacy for the profession, we must grow substantially. I cannot stress enough how important it is to continue to support and promote NAJIT. In furtherance of these goals, we are instituting a membership recruitment plan. Please see page 13. We need strong leaders, good writers, and energetic members to help us continue NAJIT's work. I encourage you to sign up for one of the committees or position papers by e-mailing me at [chair@najit.org](mailto:chair@najit.org). Because I know most of you, I am very optimistic that we can reach our membership goals, fill our committees, create new position papers and continue our strong advocacy.

So get active ... your ripple combined with all the other ripples can help build NAJIT into a strong voice for the judiciary interpreter and translator.

Isabel Framer, Chair  
NAJIT Board of Directors

**EUROPEAN UNION LAW** *continued*

Morgan, Caroline. 2004b. Update on the Proposal for a Council Framework Decision (PROPOSAL FOR A COUNCIL FRAMEWORK DECISION). Presentation at the AGIS Conference: Instruments for lifting language barriers in intercultural language proceedings. The Hague, November 19.

Procedure File for PROPOSAL FOR A COUNCIL FRAMEWORK DECISION (<http://europa.europa.eu/oeil/FindByProcnum.do?lang=2&procnum=CNS/2004/0113>).

Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union (PROPOSAL FOR A COUNCIL FRAMEWORK DECISION). 2004. Commission of the European Communities, Brussels. COM(2004) 328 final, April 28.

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**ISRAELI LEGAL SYSTEM** *continued from page 1*

between what the system is and what perhaps it ought to be.

**The Judges' View**

In 1990, Judge Vardimus Zailer, then Presiding Judge of the Jerusalem District Court, was quoted in a published interview as having commented that a substantial portion of the population was unable to understand the language used in the courts, and that the problem of court interpreting troubled him.

Judge Zailer is not the only judge to remark on this issue. Other senior justices, such as Yaakov Tirkel, Yitzhak Zamir and Mishael Cheshin have also expressed similar points of view on the topic.

In interviews conducted with three judges of the Tel Aviv District Court, the interviewees expressed strongly worded complaints about the quality of interpretation. They reported that the interpreters working for the courts are not professional, do not translate accurately, and tend to omit (i.e., not to render) many statements by witnesses. In addition, the interpreters very frequently identify with one of the parties and distort statements in that party's favor. According to the judges, these factors cause problems from which all parties suffer.

While asserting that the interpreters who appear before them are unprofessional, the judges were apparently unaware of the existence of any criteria defining what a professional court interpreter ought to be. Nor were they aware that the Courts Administration had formulated such criteria for the Israeli legal system, in a section of the invitation to tender [what in the U.S. would be called an RFP, request for proposals] for the supply of translation/interpretation services to the courts, which sets out what the company that is awarded the contract is required to provide. In other words, no one had notified the bench of these criteria, and in their day-to-day work, judges decide base their opinions of interpretation or translation quality on individual criteria.

In a paper on interpreting in Israel's courts, Ruth Morris shows that judges have no choice but to live with the failings of the system. Although a number of judges have tried to correct this state of affairs, their attempts have proved fruitless, and any real progress has been thwarted due to the unwieldy nature of the administrative system (Morris, 2003). Similarly, the judges interviewed for this study did not foresee a solution in the near future, and argued that any attempt to change the status quo would, in their view, be utopian.

We can therefore conclude that while in the judges' view the existing situation as far from desirable, and as not conducive to the professional conduct of proceedings involving non-Hebrew speakers, they also feel that their hands are tied in a system which fails to offer an adequate solution.

**Statutory Requirements**

Access to the courts is a fundamental human right: "... *the right of access to the court [...] is a supremely fundamental right. What is more, the upholding of this right is a necessary and essential condition for upholding all other fundamental rights.*" (Levin v.

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Levin, 1993). Judge Ilan Sofer (2002) goes on to make a connection between *the right to access to the courts* and a person's right to an interpreter in court, arguing that the linguistic gap must not be an obstacle to the realization of this right.

In the British Mandatory period preceding Israel's establishment in 1948, the country's courts employed an ad hoc approach: when a person who did not understand Hebrew was before a Hebrew-speaking court, the judges would improvise in any way they could. In his memoirs, Judge S. Z. Cheshin writes that the judges themselves would act as interpreters, or would be assisted by people who happened to be in the courtroom at the time.

Although more than 50 years have passed since the establishment of Israel's legal system, it appears that not much has changed, and yet the need is ever greater. The right of access to the courts gave rise to the enactment of a statute in Israel requiring the court to summon an interpreter where necessary in criminal proceedings. The wording of that statute is as follows:

**The Criminal Procedure Law [Consolidated Version], 5742-1982:**

140. Where the Court becomes aware that the defendant does not know Hebrew, it shall appoint an interpreter for the defendant, or shall itself interpret for the defendant.
141. Evidence not in Hebrew or in some other language spoken by the court and the litigants, adduced with the leave of the court, shall be translated by an interpreter, and evidence adduced as aforesaid shall be recorded in the transcript in Hebrew translation; unless the court orders otherwise; the recording of the translation into the transcript shall serve as prima facie evidence of the statements translated.
142. The interpreter's fee shall be paid by the State Treasury, unless the court otherwise instructs.

Note that this law refers to criminal procedure only. According to the Civil Procedure Law, the parties are responsible for paying the interpreter, based on the argument that the State is not a party to the civil proceedings.

However, the Criminal Procedure Law is itself couched in over-general terms. The section provides that in the absence of an interpreter, the judge may interpret, or may use any other means available to him. In other words, the law as presently articulated does not require that a language professional be utilized.

**Implementing the Law**

The entity responsible for implementing the statute is the Courts Administration. It was difficult to find out the exact year when this body began to outsource interpretation services by hiring the services of a private-sector company, but it was probably some 20-25 years ago. The Purchasing Department of the Courts Administration, a logistical entity in its own right, has issued a tender (Tender, 2004) every three years or so for bids to provide both interpretation and translation services to the country's courts. However, even a careful reading of the tender

documents fails to reveal the basis for the specific requirements to be complied with, let alone any specific wording relating to the provision of interpretation services. One thing is clear: the tender's requirements regarding the quality of interpretation and the level of expertise of the interpreters themselves do not meet the standards of a legal system which must be built on reliably interpreted testimony.

Interestingly, only Section 4 of the tender relates to translation, and it includes both oral interpretation and written translations. The rest of the tender addresses the commercial and legal aspects of the contract. The following is a summary of Section Four:

In a section entitled "Description of the Work Required," the services tendered for are faithful, reliable and quick translation services for the purpose of ensuring that all relevant persons understand what is said in court. Interpreters must have a fluent knowledge of both of the translation languages, and must be able to translate meanings in context; interpreters must have general knowledge in various areas: politics, economics, law, psychology, medicine, so as to be able to interpret in a reliable and precise fashion; interpreters must undergo training in order to learn basic legal terms, activities to be organized and paid for by the company; the interpreter must undergo security vetting as an essential precondition to commencement of employment, and the Courts Administration may, at a time prescribed by it, examine and test the interpreter's knowledge of the basic legal terms. The interpreting candidate must present a résumé, documents attesting to full secondary education and an Israeli matriculation certificate. The candidate must be present at three legal proceedings before commencing work and must receive written confirmation of such fact from the courts secretariat; and the candidate must produce recommendations from previous employers for whom the candidate provided a similar service.

The tender does not require that translators be professional. Instead, it refers to criteria which do not meet the usual standards. (The professional criterion is based on the requirements established by NAJIT, a professional association founded in 1978 in the State of New York, for those who specialize in interpreting and translating for the judicial system. The association has formulated professional criteria, including a code of ethics. Court interpretation studies frequently use the professionalism of this association as their benchmark.) Professional standards would require that an interpreter hold special qualifications in the field of court interpreting, subsequent to training in relevant legal terms and concepts, aspects of the legal process and rules of ethics. In this scheme, a court interpreter would, for instance, be aware of the need to render a witness's statements without omissions, additions or distortions; to maintain objectivity and avoid bias; and to refrain from intervening in the judicial process, either by giving advice to the translation-dependent person, or by providing explanations relating to the proceedings. The absence of these and many other requirements from the Court Administration's tender indicates that the Israeli legal system is not aware of many of the professional aspects of an interpreter's work. Inevitably, such a shortcoming cannot but cause obvious harm not only to the proper

conduct of judicial process, but also to the most fundamental right of the translation-dependent — having true access to the courts.

In response to the tender of 2003, issued for Israel’s five jurisdictions, five companies put in bids. In January 2004, a company named “Protocol Office Services (1993) Ltd.” won the interpreting tender for all five jurisdictions. This company had in the past provided cleaning services for the five judicial districts. Protocol received the entire annual interpretation budget (approximately NIS 3.2 million), in return for which it was required to comply with the conditions of the tender and provide interpreters to the country’s court system. The questions are whether it did so, and whether the Courts Administration had any oversight to ensure that the conditions of the tender were fully upheld. In order to answer these questions, I looked at practices in the field by observing proceedings in courtrooms, interviewing interpreters, talking to Protocol, and speaking with all the people involved in this matter in the Courts Administration and the various “secretariats” or administrative bodies responsible for the day-to-day running of the different courts.

**The Company and the Conditions of the Tender**

My research found the following:

Contrary to the section in the tender which provides that interpreters must have fluent knowledge of both the languages to be interpreted, most of the interpreters do not have full command of the Hebrew language.

All of the interpreters stated that none of them had been trained by the contractor, at its expense, to learn basic legal terms, as required by another section.

None of the interpreters had been given any instruction regarding the translation of legal terminology, as is required of the contracting translation company.

Apparently, none of the interpreters specializes in any particular field, i.e., none is well versed in special terminology relating to fields such as medicine, economics or weapons.

All the interpreters stated that they had not been asked to show any documents attesting to their education, not even on acceptance for employment.

One section of the tender provides that a candidate who wishes to act as interpreter in a court be required to attend three court proceedings prior to commencing work. Interpreters informed me that none of them had been present at three proceedings; some of them had not even been present at one proceeding prior to commencing work.

All these deficiencies are the responsibility of Protocol, which is not, so far as can be determined, performing its contractual duties and functions. It would appear that every one of the sections of the agreement between Protocol and the Courts Administration is being breached. When asked in an interview about the linguistic level of the interpreters he employs, Doron Cohen, CEO of

Protocol, responded: “There is no need for interpreters who have a good knowledge of Hebrew, or who are specialists in a particular field, since the criminal cases relate to criminals and they speak in simple, everyday language. There are almost no cases where the specific terminology of a particular field is required knowledge.”

Natan Sabo, in charge of the employment and training of Protocol’s interpreters, told me that the interpreters are only required to present their résumés when accepted for work, and that the extent to which they are qualified for the job is examined in the field, by an interpreter who is also a dispatcher, known as an “on-call” interpreter. (This person, not necessarily a professional interpreter although with greater seniority than others, is called by the court to obtain interpreters from Protocol’s list.) As for the level of service the company provides, the two interviewees claimed that a lack of complaints by the courts is an indication that Protocol is operating properly.

Another finding indicative of the attitude of the company management relates to the interpreters’ conditions of employment. Since almost all are employed as freelancers, they do not receive salary slips and are not entitled to social benefits. In addition, their salaries are

low, they are not entitled to full refunds on travel expenses, and they must acquire other sources of income in order to make ends meet.

Interpreters employed by Protocol repeatedly stated that

their employer fails to provide solutions to problems relating to their employment, and that at best interpreters’ requests are treated with contempt, when not ignored outright. Their employer’s attitude makes interpreters feel exploited and helpless. They added that the translation company ought to at least assist them in integrating effectively into the the legal system, by providing them with a glossary of legal terms, and a detailed explanation of their duties.

**The Courts Administration and the Conditions of the Tender**

To answer the question of whether the legal system does in fact check on the implementation of the tender’s conditions, I looked next at the administrative mechanisms, from the national Courts Administration down to the “secretariats,” or administrative bodies, in the different courts in Israel’s cities. My study shows that there is no one in the organizational structure of the Courts Administration with responsibility for ensuring that the contracting company’s obligations to the public are in fact implemented. Nor is there any such person in the various courts on a local level.

My inquiry revealed the following:

The person in charge of the translation budget and of drafting the tender documents in the Purchasing Department confirmed that there is no unit in her department which checks interpreting/translation quality. Her department is responsible for financial aspects only, and in her words, the manager of the Court Typists Department is the only person in touch with what goes on in the field. To the question of who drafted the require-

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ments of the tender (Israel does not have a body of court reporters. What passes for the record of legal proceedings held in the courts is a version typed “live” by a typist, in part dictated at the time by the presiding judge), she replied that she herself had, without consulting any professionals working in or researching the field of court interpretation.

The manager of the Court Typists Department does maintain contact with Protocol, but only regarding financial statements; she told me that she had not been made responsible for checking the quality of translations or interpretations in the field. When asked to whom that responsibility had been assigned, she said that in some cases, the judges inform the chief court clerks of their dissatisfaction, and the latter report to her, so that she can deal with the matter financially.

When the Administration was asked whether the State Comptroller (who also doubles as the country’s ombudsman) looks into the matter, the response was negative.

The Chief Clerk of the Beersheba District Court, who has held this position for many years, informed that he does not check interpreters at all. He made the point that not only did he not have the knowledge or the tools to do so, but also that it is not part of his job to test their level or even to come into contact with them. Only when complaints are received from judges, which he claims is a very rare occurrence, will he intervene to replace an interpreter.

Under the tender applicable during my research, the courts may conduct quality assurance tests of the interpreters supplied by the contractor at any time; however, no one in the system has been designated to do so. Confirming the view of his superiors, the Chief Clerk asserted that the judges are responsible for monitoring the quality of interpretations.

### The Responsibility of the Judges

The Courts Administration adopts a passive attitude, in the belief that the authorization or disqualification of an interpreter are matters for which judges alone are responsible. Effectively, “so long as the judges aren’t complaining, everything must be in order.” Therefore, the responsibility falls entirely on an entity — the judiciary — which is separate from the administrative structure.

It is important to note that the administration has not given the country’s judges any clarification or information regarding the requirements in the tender, nor have the judges received any guidance for assessing the level of interpretation services. Clearly, the Courts Administration relies on the theoretical presumption that if a party has signed a contract, it must be complying with it.

To reinforce this last point, I will quote the spokesperson for the courts in response to a newspaper article by Liat Ron, which appeared in *Ma’ariv* on August 16, 1998, describing the problematic state of affairs:

*The courts are unable to monitor or oversee the interpreters who are hired by the companies that provide interpretation services.*

*The professional who hires them is supposed to supervise their work based on his own accumulated experience. There have been a very small number of complaints in this regard, but we have received no input from judges or attorneys and, therefore, we see no problem with the level of interpretation services provided at present. There are Russian and Arabic interpreters available at the courts in Tel Aviv, and therefore the judges have not needed to call upon the public in the courtroom for assistance. A judge’s translation of proceedings occurs in very short segments only, where no other option is available. We trust the judges to exercise their discretion and not prejudice defendants’ rights to a fair trial due to proceedings being too cumbersome.*

### Conclusion

My research gives rise to the conclusion that courts in Israel are not treating the issue of interpretation with the requisite gravity. The company that works for the courts does not see its mission as a professional service; and the Courts Administration does not check the quality of the services received. The Courts Administration relies on the judges to evaluate interpretation services, but provides them no guidance in how to do so. In fact, judges do not have the means to evaluate interpretation work, and are forced to make

do with interpreters whose qualifications have never been tested, since there is no entity in the court system that considers itself responsible for testing

qualifications or monitoring performance.

What value can a defendant’s physical presence in a courtroom have, if he is not present mentally? As stated succinctly by Advocate Claris Harbon: “In the absence of interpretation, or where a translation is faulty, the witness is prevented from being mentally present at his own trial, and the other people involved in the case are unable to derive maximum value from his presence.”

In light of these findings, we may ask one final question: given that Israel’s judicial interpretation system is not at the required level, who is responsible? Where is the weakest link?

Prima facie, it would appear that a stringent mechanism to monitor the specific performance of the tender would change matters. But in the chain of procedures that makes up the interpretation system, we can find deficiencies in each of the links: there is no Basic Law ensuring access to the courts, the Criminal Procedure Law is vague and there is no provision in the Civil Procedure Law at all; the company that provides interpretation services to the courts is unprofessional and there is no designated professional in the Courts Administration responsible for language services. Given this state of affairs, it is not possible to point to only one weak link, the repair of which would improve the situation.

Therefore, the question that must be asked is rather: what is the missing link? The missing link in this scenario is a professional linguist in the administrative chain, who would have knowledge of the issues surrounding court interpretation and who could manage this area in accordance with professional standards, with a view to improving the quality of service.

*Courts do not monitor or oversee the companies that provide interpreters.*

In this paper I do not presume to suggest any one solution. My argument is simply that the interpretation system in Israel's courts at present is so weak as to be void of any professional value, and its practical efficacy is in grave doubt. Those who are dependent on interpreting services suffer each day. And it is undeniable that a justice system as a whole suffers if it receives incomplete or inaccurate information. This is a state of affairs that requires immediate change.

**Epilogue: A New Tender**

Originally, the tender for providing interpretation (and translation) services to the Israeli legal system was system-specific, i.e., the special tender was for the legal system only. In February of 2007, the tender for interpretation services for the legal system was suddenly replaced by a new tender with a much wider range of public systems to provide for, namely, all governmental ministries, presumably including such bodies as the Health Ministry, the Social Security services, etc. Protocol, the same company that has proven to be inept in providing interpretation services to the legal system (one of the many reasons being its lack of personnel), has been awarded the new tender, and is now the only company in the whole country to receive the entire budget allocated to language services in all public services. This has, of course, worsened the situation for the Israeli legal system and for those in it who are dependent on interpretation. The new tender does not address or even define the specific needs of legal interpreting; rather, it lays out general requirements for language services needed for public services. Moreover, there is scanty if any reference to professional requirements for interpreting; instead the provisions of the tender focus almost exclusively on the financial aspects of the contract.

At the same time that Protocol was awarded the new tender, in a case where an Amharic interpreter was required (Case Misc. App. 1135/07, Beersheba Magistrates Court, defendant: Demka Kapela, February 11, 2007), Judge Pablo Akselrad fined Protocol for failing four times in a row to provide an interpreter without previously notifying the court, thus causing the court to convene and cancel proceedings. "... I feel a great shame that the respondent appears in court, hears the judge talking, hears the lawyers talking, sees the record being written, while all he can do is to stare into the courtroom frightened, not having a clue about what is going on around him," said Judge Pablo Akselrod in response to poor performance by Protocol.

Protocol was ordered to pay court costs to the defendant and an additional sum to the state treasury for unprofessional behavior. If Protocol does not have adequate personnel to service the legal system properly, how does it intend to provide interpreters for a contract that has grown many times bigger in its requirements? Further deterioration in the system can only be expected.

Finally, a peek into the legal landscape in Israel. On June 21, 2006, Knesset member Eli Aflalo posed a parliamentary question

to then-Justice Minister Haim Ramon (<http://www.knesset.gov.il/plenum/data/04012306.doc>). A new Romanian immigrant had been detained in custody for over a month due to lack of an interpreter; Mr. Aflalo queried the Justice Ministry's position on the case: had the court investigated why an interpreter was not provided, and what could be done to prevent such a case from recurring?

The Justice Minister responded that a Romanian-speaking court employee referred to as a "legal assistant" (whom Mr. Aflalo later implied was a typist or cleaning woman) was used to interpret the proceedings, and so "the defendant's rights were not violated." Such an assertion clearly illustrates the Justice Minister's ignorance regarding the need for professional legal interpretation, indicating at best a cavalier attitude if he truly believed that "ad hoc" interpretation was a legitimate way of maintaining the rights of those dependent on interpretation.

The Minister added, however, that Protocol had acted in an irresponsible and harmful manner and that he doubted whether Protocol could be trusted in the future to provide interpretation services. In response, Mr. Aflalo reiterated that a defendant's rights had been infringed, and demanded that the Minister recuse Protocol from employment by the court system. This demand was never answered. A new Justice Minister is now in office. ▲



[Shira Hefer holds an MA from the Department of Translation and Interpreting Studies at Bar Ilan University (2005).]

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**ITEMS OF INTEREST**

ATA President-elect Dr. Jiri Stejskal took office on November 2, 2007 at the American Translators Association's Annual Conference in San Francisco. Dr. Stejskal is President and CEO of CETRA Language Solutions.