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THE CASE FOR
A STATUTORY CODE OF ETHICS
FOR LANGUAGE PROFESSIONALS
SUPPORTING COURT PROCEEDINGS**



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Author: Maria Canellopoulou-Bottis

English Language Consultant: Philip Earl Steele

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Information Ethics:
the Case for a Statutory Code of Ethics
for Language Professionals
Supporting Court Proceedings

The author of this paper, Dr. Maria Canellopoulou-Bottis, is a lawyer and a lecturer at the Ionian University in Corfu, Greece. The paper was delivered during the AGIS Conference held in Warsaw, Poland, on 15 May 2004.

The conference was organized by the Polish Society of Economic, Legal, and Court Translators TEPIS in cooperation with the Institute of Applied Linguistics of the University of Warsaw within the framework of the AGIS Programme "Instruments for lifting language barriers in intercultural legal proceedings".

The Dutch Steering Committee of the AGIS programme was composed of the ITV Hogeschool voor Tolken en Vertalen (University of Professional Education for Interpreting and Translating) and the Stichting Instituut van Gerechtstolken & -vertalers (Foundation Institute of Court Interpreters and Court Translators, in short: SIGV).

The AGIS project was a follow up of two previous programmes for court interpreters and translators – the Grotius I and Grotius II. The Council Decision of 22 July 2002 established a framework programme on police and judicial cooperation in criminal matters (AGIS). The Council of the European Union established the AGIS programme for the period from 1 January 2003 to 31 December 2007.

I. Some initial thoughts

Lawyers, and law professionals in general, are used to flattering themselves in the conviction that they play the most important role in court proceedings. The court is their field; judging from how they think of things, and the 'air' they have in courts, it is as if they practically owned the building and, what is more, lived inside as both landlords and tenants. After all, it is the prosecutor who presses charges (a lawyer), the attorneys who act in defense or against the defendant (lawyers too) and the judge, who will arrive at a verdict (again, a lawyer)¹. The administrative staff, lawyers or (most usually) not, are just there to support the lawyers; this game is, as they accustomed to believe, entirely theirs to control from the beginning until the end.

Well, if indeed this is how lawyers are used to thinking, at least in Europe, this is not true any more, and has not been true for quite some time. Another profession has come to play an increasingly important role, the profession dealing with foreign languages: court interpreters and translators. We have arrive at a point where lawyers and language professionals have to work side by side, and both are indispensable if the purpose of the administration of justice is to be fulfilled. They have to cooperate before, during and for some time after the end of a trial – a trial which in order to be 'fair', as the European Convention on Human Rights dictates, a defendant must not only have counsel, but also, a (competent) court interpreter, plus (if needed) the services of a translator.

Actually, the funny side of this is that, whereas it is nowhere really stressed through imposing 'real' penalties, in the relevant legal texts that a criminal defendant deserves an attorney (if needed, for free) who really knows what she's doing (and God

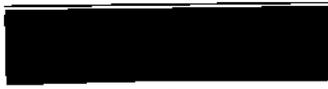
¹ I do not forget that we also have juries in particular cases, nor is their role less important. But the presence of juries, I think, in some cases, does not alter the character of the legal game as I describe it here.



knows how many crucial mistakes a counsel may make during a criminal trial, with the result of practically incarcerating her client in jail forever with her own hands), Greek law demands the services of a competent interpreter, or of a competent translator under the penalty of annulling the whole trial. This is the interpretation of the relevant articles of the Greek Civil Procedure Code on Interpreters, and what our courts have repeatedly said on this. If the interpretation was substandard, the Supreme Court shall quash the judgment and there we go again from the very beginning². Not only this, but the Supreme Court has repeatedly stated that when there is no evidence in the minutes of proceedings that the interpretation, which did take place, was competent (it may very well have been standard, but there is no evidence of it), then the judgment shall be quashed.

Now imagine a legal rule saying that, if the Supreme Court has no evidence, stemming from the case's record, that the attorney's performance was standard, then the judgment shall be quashed! The law, then, allows the trial of a criminal defendant using a lawyer at his choice (if incompetent, if negligent, no problem), or a trial without a lawyer at all (at the choice of the defendant, again, to appear freely pro se), but, when it comes at the interpretation/translation case, they are absolutely necessary, and have to be competent too, on pain of nullity. It follows that an attorney's negligence cannot annul a trial (an attorney may not be there at all!), but a court interpreter's negligence can 'kill' the whole trial. Is this not a nice little point to remind the court's traditional landlord/tenants? The law, at least as I

² Greek Supreme Court (Areios Pagos) 609/1998, absolute nullity of proceedings, since no evidence that the court interpreter, appointed by the court, interpreted for the defendants; Greek Supreme Court (Areios Pagos) 43/1998, the imperfect interpretation of court proceedings to a criminal defendant breaches the defendant's defense rights and causes absolute nullity of the proceedings. Identical judgment: Supreme Court 165/1994 ('we have no evidence that the proceedings were interpreted at all, or even, that they were correctly interpreted...') quashes a sentence of three years incarceration.



understand it in this instance, has much stricter standards for the language professionals, than for the legal ones: You are allowed to have a fool for a lawyer (someone else, or even yourself), but not a fool for a court interpreter.

This last conclusion may be somehow tempered by the Proposal for a Council Framework Decision of 28 April 2004, on certain procedural rights in criminal proceedings throughout the European Union, where we find Art. 4, entitled 'Obligation to ensure effectiveness of legal advice' which states: 'Member States shall ensure that only lawyers as described in Art. 1 (2) (a) of Directive 98/5/EC are entitled to give legal advice in accordance with this Framework Decision. Member States shall ensure that a mechanism exists to provide a replacement lawyer if the legal advice is found not to be effective. On this, I would like to comment the following: the effect of annulling all the procedures, where no effective legal representation occurred is not in the text of the Framework decision (therefore, perhaps not applicable?). The proposal only mentions the obligation to replace the (incompetent) lawyer. Also, there is no help in the text with the crucial text who and how is to judge whether a certain representation was ineffective and how the replacement is going to take place procedurally. This proposal is not yet valid as law. But of course, it marks a clear progress. It is recognized that ineffective legal representation – even for free – is intolerable.

2. Ethics and Professionals

Having come to this, it is only natural that since the transmission of information from the defendant to the interpreter and vice versa is so crucial¹ to the common good we call fair

¹ See also: the European Agreement of the Transmission of Applications for Legal Aid, Exploratory Memorandum: 'a failure to understand the language used by court is a serious obstacle to access to justice-the state should



administration of justice, it creates a real need not only for legal rules, regulating and safeguarding its existence and rationality, but also a necessity for ethical rules. Ethics is a branch of philosophy (others being, for example, logic, semantics, epistemology), which has a very long history, as we all know, in terms of what is good, what is fair, what is immoral – but its branch of professional ethics is fairly new in our civilization. The usual claims for ethical rules were brought by the usual claimants of professionalism, among them of course, physicians and lawyers. Now that we know that in a criminal trial, lawyers and language professionals ‘walk’ side by side, and are both bound by professional obligations, there is no doubt that ethical rules also should regulate the behavior of both.

Or is there? When the question of ethics for journalists came about, there were some voices stressing that in a craft (they carefully avoided the term ‘profession’) such as this, where there are no licensing requirements, in a craft where everyone can start publishing her writings and declare herself a journalist, it would be rather superficial to award the honor and the recognition, the desert of a code of ethics⁴. In the librarians’ case, the argument went differently: the librarians have no potential of doing good or bad (they just give or take books), so there is no ethics to talk about. We know fairly well now that librarians are able to do harm, and they very appropriately have

therefore take measures to remedy this situation’. From European case law, see *Kaminski v. Austria*, December 19, 1989, A128, right to free assistance of an interpreter applies not only to oral statements but also to the translation of documentary material, also *Luedicke, Belkacem and Koc v. Germany*, November 18, 1987, A29, right to free interpreter.

⁴ For a general account see Kapler R & Maines P., *The Government Factor, Undermining Journalistic Ethics in the Information Age*, 1995.



their own codes of ethics⁵. And court interpreters and translators certainly may do (lots of) harm – not only to individual persons such as their clients (criminal defendants etc), but to the common good. On the other question, though, of whether a craft, without formal and homogenous licensing procedures, with no national registers⁶, with no clear-cut boundaries about who is, or may act as, and who is not, or may not act as, a court interpreter/translator, the question whether these professionals, or actors in professional roles should and/or could be bound by a set of ethical rules, and how, is slightly more difficult to answer.

3. Practical problems stress ethical responsibilities

In Greece we have about 8,000 people serving their sentences in jails, and about 3,500 of them are not Greek, but foreign nationals. It is astonishing to read that these 3,500 people represent not less than 86 nationalities – so, say, as many languages? We have had, then, 3,500 trials, where people who (logically) could not understand Greek (only a tiny fraction of them must have been able to) and who, by legal necessity, were served by the services of court interpreters and translators. Now if a Japanese were to be tried here in Corfu, and the Code of Civil Procedure demands the appointment of a competent interpreter to be selected by an annually drafted and certified by the Appeals Prosecutors Council list, how can I find a

⁵ See generally Lindsey J., Prentice A., *Professional Ethics for Librarians*, 1985. In Greece the first Code of Operation for Public Libraries (containing ethical rules and others) was promulgated in 2003.

⁶ However, see the very important Draft Bill for laying down rules in respect of the swearing in, the quality and integrity of sworn translators and of interpreters working in the domain of the judiciary and police; Dutch Act on the Court Interpreter and Sworn Translator, which provides for the creation of a national register.



professionally trained interpreter in Japanese/Greek? I can't. I will appoint an interpreter who happens to know Japanese and Greek, if there is one, or two and rely on their knowledge of an intermediate language, I will do my best, but I cannot demand to have a list of professionally trained court translators in all these 86 languages in Greece. Not now, and perhaps not for a very long time. And if they are not professionally trained and licensed, and are thus not professionals, are those persons right who believe that when there is no profession, there are no professional ethics?; and that any Code we make and impose upon them has no validity and is but an elegant disguise of what is in fact not a profession at all?

Perhaps it is for these reasons, whether or not understood by the lawmaker at the time, which lead us to impose only an oath upon the court interpreter, that she will interpret fully and competently (Greek law again). This, coupled with the penalty of perjury hanging over their heads is the only 'check' Greek law offers today, as slightly similar to an ethical rule. For the interpreter who did not in fact interpret competently, leading to the quashing of a whole trial, as I described above, there are no individual liabilities. No one will search for them then, no one will go after them. So, there is only ethics to turn to, not only because law is lacking or deficient, but also because in information ethics, as in professional ethics in general, there are many 'holes' left untouched by the law and left to people's consciences to deal with.

4. Choices

The main problems when drafting a Code of Ethics are the following:

- a. Who is competent to draft the Code? Is the Code going to be a handful of principles or a detailed Code with examples etc?

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- b. Will the Code contain sanctions or not? If yes, will the Code provide for a disciplinary panel?
- c. In our case, will the Code draw its validity because the various associations of interpreters/translators will endorse the Code, or are the courts going to endorse the Code instead and just impose it upon all court interpreters/translators? If this last is the case, are the courts going to have the power to discipline offenders or must they refer them to their professional associations?
- d. Is there another way of securing the validity and the implementation of this Code of Ethics?

As you may see, the one problem I do not mention here is the exact content of the Code – the sanctions section set aside. This is because there are many Codes of Ethics for Interpreters and Translators around, and because the minimum, to say the least, of this Code is more or less well known. In chapter 7 of the Access to Justice Across Language and Culture in the EU, the first Grofius project, we have an excellent Code, presented by Ann Corsellis and Leandro Felix Fernandez⁷. One may disagree whether, for example, the principle of competence ('only undertake assignments that you know you can fulfill') should take, or not, precedence over the principle of veracity ('interpret and translate truly and faithfully'), but there is no doubt whatsoever that both constitute a necessary part of the Code's contents. Corsellis's and Fernandez's Code is a Code with 11 principles, covering all necessary aspects of an ethical conduct from the court interpreter/translator.

I firmly believe that at the point we are now with the these professions, we do not need a more detailed Code of Ethics, one similar, say, to the Codes of Medical or Bar Associations. We

⁷ Corsellis A., Fernandez Leandro Felix, Code of Ethics and Conduct and Guidelines to Good Practice, *Aequitas. Access to Justice across Language and Culture in the EU*, ed. Erik Hertog, 2001, p. 147-165.



could perhaps have something like this in the future when we will have national Registers everywhere, homogenous licensing procedures etc. but as things are now, we should stay with a Code like the one I mention here, with 10-12 principles. Why this is so will perhaps be illustrated with the description of the problems which follow.

When we last met in Antwerp, I presented a paper maintaining, *inter alia*, that court interpreters and translators should not be left alone in drafting (and implementing) their Codes and that legal advice is necessary. If, for example, we want a European Code of Ethics for all court interpreters and translators, we must first understand how difficult this project is indeed, and then seek the best possible way to achieve this end. The best possible way here will not be perfect though, as what we are trying to do is, in fact, to impose a Code of Ethics upon people who may not be members of any association at all: they may also not even be members of any profession either. As I said above, the Japanese-speaking individual who will be called before the Corfu Tribunal to interpret for the Japanese defendant will most probably not be a professionally trained interpreter/translator. That a Code of Ethics drafted and agreed upon by a professional association etc. will bind him has at most, I believe, a symbolic meaning.

5. Consent or statute?

We cannot fail to note that the one thing legalizing the binding effect of any ethical instrument -- namely the consent of those involved -- will be missing here. The Japanese knows no more than that he was called to interpret, to the best of his abilities. If he was a lawyer, to pass the Bar exam he would also need to pass the ethics exam (the case of the US); in Greece, once you become a member of a Bar, you are automatically deemed to have 'consented' to this Bar's Code of Ethics. But the Japanese interpreter is not bound by any procedures: he did not pass any interpretation exam; he did not have to become a member of a

[REDACTED]

court interpreter's association in order to have a license to practice. So, it is only the role of the court that may legalize the imposition of ethical rules and penalties for breaching them. When this Japanese takes the oath before the Court, he swears to interpret to the best of his abilities. It is the intervention of the court which may impose ethical standards here and it is the court which may sanction ethical breaches. And the court may intervene because the lawmaker granted this power, enacting the criminal code sections on the swearing in of interpreters.

In terms of harmonization, what I believe is absolutely necessary here is to acquire the broadest 'consent' possible for a court interpreter and translator's Code of Ethics⁸. This, for me, is the key to a successful implementation. Is this possible? Here we have Ann Corsellis and Felix Fernandez's Code of Ethics and suppose we all agree to this one: how broad a consent is this? Not very. We need the consent of many more parties. But what if we brought together all the associations of court interpreters and translators we know; what if we sought the participation of the representatives of all courts too, because, as I said, we need the court's participation in this endeavor, and we ended up with what I call the widest 'consent' possible. This would be a genuine effort to group together all parties legitimately concerned and secure the consent we need to validate such an important document. For these documents are indeed the embodiment of self-binding rules, as opposed, of course, to laws. So such consent is absolutely necessary.

⁸ Codes of Ethics are, as forms of systematization of rules of conduct, models of consensual self-determination of certain professional branches; see: Advertising and Codes of Ethics, second national conference of Greek corporate lawyers' association, 1999, in Mouzoulas, p. 275. This self-determination through consent is their unique legal nature. They are a way to apply in practice the idea of assistance of the State, see Kontogiorga-Theoharopoulou, The idea of assistance of the State in internal Greek legal order, HellD/ni 1999, 977 (the State may, in certain circumstances, take a second place in rulemaking).



But perhaps we could start from the opposite side, i.e., by persuading the European states that they need to impose our Code of Ethics as a statute; this has been the case, for example, for Greece's Medical Ethics rules. They were transformed into a statute⁹. The Medical Association had only to persuade lawmakers to make it a statute and every new member is, of course, bound by the statute on medical ethics. The same is true in Greece for the Code of Journalistic Ethics, the Code of Ethics for Radio-television Programs or Radio-television Advertising or the Code of Operation for public libraries (which is full of ethical rules), the Code of Ethics for the Corporations providing Investment Services and the Code of Ethics for the Limited Liability Companies Managing Mutual Funds (and there are more). The technical instrument used to implement these Codes as laws has not been uniform – it has entailed, for example, a ministerial decision (code for libraries), or a decision by an independent Authority such as the National Radio-television Council (granted by the laws of the land the relevant power to legislate, under certain circumstances), or the 'normal' lawmaker (codes for corporations etc). The crucial point though is not this technicality: what is important is that ethical rules acquired a normative nature and were implemented 'from above' upon all concerned.

So, ethical rules are increasingly becoming statutes – or 'statute-like'. If we seek the same for the court interpreters/translators case, we may draft a Code, obtain the permission by the professional associations involved (we should secure as much 'consent' we can) and then lobby the European states' Parliaments. If every European state adopts this Code as a statute, then we have an instant harmonization, at least on a set of some 11 principles of ethics. Most of them are legal rules anyway, confidentiality being the most obvious. If we have

⁹ Regulation of Medical Ethics, Royal Decree of 15.5/6.7.1955. Since then, there has been a Proposal for a Code for Medical Ethics, which has not been implemented yet.



these statutes, they would probably be amendments of the Codes or laws of civil/criminal procedure. They would add a few sections at the places dealing with court interpreters. And if we have a statute, through Parliament for example, we instantly have the implied consent of all citizens, as is the case for all laws. Our Japanese interpreter may not allege that she did not offer consent, implied or otherwise, to any ethical rule-in court, she will have to play by the rules of court. All of them.

I fully understand how one may disagree with these ideas. We are used to thinking of ethical rules and ethics codes as something within the profession, a 'private' thing, perhaps private as the old obligation of keeping professional secrets. It would be great indeed if no such need for the state imposition of ethical rules existed, that is, if we had already established a European register of all court translators and interpreters, and who would all be professionally trained and accredited and who would have to pass, from time to time, exams designed to ensure continuing competence. It would be great if we had no need for other court interpreters/translators than those included in the list of these registers; if we could practically forbid anyone else from aiding justice as a court interpreter/translator. It would be great if we could make it a crime to exercise a profession by an 'alien', as is the case, for example, for anyone trying to exercise medicine or law, without first being a lawyer or a doctor. This is not the case today and this does not look like it will be the case in the near future. Our courts badly need the help of those who would otherwise be held criminally responsible for exercising a profession without a license.

I suppose we have to balance interests – the lawyer's typical favorite game. The interest of leaving a profession 'alone' to deal with the ethical violations of its members is very important indeed. On the other hand, as I have said, perhaps we do not as yet have a mature profession, one that is able to block the way of 'aliens' to the exercise of court interpreting and translating. The practicalities and the needs of justice are such as to foreclose such a possibility for the time being. By this I of

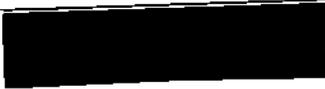


course do not mean that a court should, for example, have the power of imposing the penalty of expulsion upon a court interpreter. These matters will always rest within the professional associations. What a court may do, though, is to refer the offender to her national association. Besides, for the kind of grave offenses, that would warrant expulsion, there are always legal sanctions.

6. A proposal for a statute on ethical rules for court interpreters/translators

A statute (generally, a normative rule) on ethical rules for court interpreters/translators would have the following benefits:

- it would apply before all courts
- it would apply for all (professional) court interpreters/translators and also for all persons acting qua court interpreters/translators
- it would educate the public about the role of court interpreters/translators and it would stress the professional character of their plight
- it would bring the court interpreters/translators to a par with attorneys, with whom they collaborate for the administration of justice
- it would reinforce the profession in general, obliging state parliaments to realize the important role of court interpreters/translators
- it would free us from the painful procedure of seeking to enforce the best possibly way to achieve the widest consent needed for a code of ethics
- it would also help judges – who, after all, are used to applying statutory rules

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- it would help people acting as court translators/interpreters realize what an important role they play in a trial, and act accordingly
 - it could also serve as an example of a code of ethics for interpreters and translators outside the domain of courts

Perhaps such a Code would fulfill the usual objectives of every Code of ethics: the disciplinary, advisory, educational, inspirational and publicity objectives¹⁹. In the interpreter/translator's case, perhaps we could add the objective of connecting all interpreter/translators and people called to act as interpreter/translators into a common 'net'.

7. Control and oversight

As time goes by, and our profession becomes better organized, perhaps we will see a strong professional association of a European (perhaps international?) character that, could then, go on to secure the aims of the profession. At the time being, I have not managed to arrive at a solution more practical than the one I mention above - to have ethical rules coded into statutory rules and, therefore, effectively imposed upon all parties involved. This is what happened, for example, in the case of the ethical rules for the court translator/interpreters in the Court for former Yugoslavia: this unique court, as a state unto itself, enjoyed the power to legislate its own rules of procedure and implemented a

¹⁹ See: Kizza, *Ethical and Social Issues in the Information Age*, 2nd. ed., 2003, p. 57. Disciplinary objective: the group of professions ensures professionalism and integrity of its members. Advisory objective: the codes guide members in areas which are fuzzy. Educational: codes are good educational tools for members of the domain. Inspirational: codes carry subliminal messages to those using them to inspire them to be good. Publicity: a way to create a good clientele, showing that members of the profession are committed to basic values and are responsible.



code of ethics for court interpreter/translators as a part of its code of procedure (art. 76). The same, of course, can be done by all states. And again, if we can avoid lobbying all these parliaments separately, why not go directly to the European institutions and secure, for example, a recommendation containing these rules? Then the states would have to act upon it in a comprehensive way. What is optimal, in terms of harmonization?

The operation of the statutory codes of ethics in other professions is sometimes overseen in Greece by a non-governmental organization, for example, the upkeep of the advertising codes of ethics that were recently made into a statute is left to the national council of radio/television. This Council made up of experts may impose sanctions, take licenses, etc. Perhaps we could establish national expert councils, as well as European-wide ones to oversee the application of the court interpreters/translators code of ethics. The code, for example, could refer to this council as competent to hear complaints over court interpretation and translation, and as competent to impose all sanctions (across the boards, from warnings to expulsion). The council's members may also be set by laws: for example, today a statute stipulates who may be appointed as a member in the National Radio-television Council, in the Data Protection Authority, the Bioethics National Commission, etc. Why not do the same for a national (as a start) committee of experts, statutorily competent to hear disciplinary complaints about the administration of justice in terms of faulty court language services, such as interpreting/translating? If this were to come to pass, what higher recognition could a profession have, if the state within the profession grants it the potential of (indirectly) appointing its experts as members of a committee, with full disciplinary powers? What if this committee became 'equal' to the (nota bene: very prestigious here in Greece) committees on data protection, radiotelevision, bioethics, etc? Such a committee would have a statute of its operating rules, a web site explaining to anyone interested what they are there for, and so on.



mechanical applications of what 'we usually do' in these situations. Perhaps this distinction is also the point where a member of what others may call a 'craft'¹¹, becomes a true professional.

¹¹ And sometimes not only others, but themselves: see, for example, Biguenet J. & Schulte R., *The Craft of Translation*, 1989, The University of Chicago Press. And a different point of view in Biguenet J. & Schulte R., *Theories of Translation*, 1992, The University of Chicago Press, p. 11. Hugo Friedrich, *On the Art of Translation*.