

Working paper - Interpreting services for victims in criminal proceedings



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Research group: TransLaw - <https://translaw.univie.ac.at/>

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Abstract:

Following a long process of development in this field, both based on empirical research and European as well as national legislation, victims of crime are nowadays no longer reduced to their role as witnesses but are seen as an important party in criminal proceedings, thereby acknowledging both their specific role and the strains they are exposed to. In order to enable victims to participate actively, they need to be able to understand the proceedings. Consequently, for victims not capable of speaking the language of service, an interpreter has to be appointed. Through a transdisciplinary study in Austria, experiences of both interpreters and victim support organisations concerning specific challenges in this field were examined. The results indicated that although both groups assessed the legal and practical framework for interpreters as rather good, specific deficits could be identified. These concerned for example the insufficient number of high-quality interpreters, cultural barriers and different perceptions concerning issues such as domestic abuse or sexual offences as well as situations in which interpreters and victims both come from the same ethnical community, leading to a lack of trust from the victims concerning the confidentiality of the interpreters.

1 Introduction

In order to be able to follow the court proceedings, victims of crime who are incapable of speaking the language of service are dependent on the support of interpreters. Interpreters enable parties in criminal proceedings not able to speak the language of service to be heard and to converse with German-speaking parties in the proceedings. They support the principle of public access to the court in a multicultural society and thus contribute to the functioning of the rule of law. The work of

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interpreters is a basic prerequisite for being able to follow the procedural steps, pleadings and decisions in proceedings.

Up to now, there is no data available in Austria on the services of interpreters for victims of crime and their involvement at victim support facilities. In order to find out how this task is performed in practice and what challenges the people involved are facing in this field, an Austria-wide survey was designed and carried out, which made it possible to examine these questions by means of empirically determined data.

Within this working paper, the results of the quantitative questions are listed and important subject matters stemming from the qualitative questions are reported. Ensuing, the conclusion outlines the essential findings as well as improvement suggestions.

2 Austria-wide survey

Two online surveys were created in SoSci Survey and made accessible via an online link. The link to the questionnaire for the interpreters was sent to a total of 735 certified court interpreters via e-mail. In addition, the Austrian Association of Certified Court Interpreters used its communication channels to advertise the survey. The link to the questionnaire for victim support facilities was sent by e-mail to 76 facilities that are active in the field of supporting women, children and men as victims of crime. The survey period lasted from 23.1.2021 to 14.2.2021. The questionnaires comprised four sections, whereby closed and open questions were used. The first question set asked about the assignment modalities and the remuneration of the interpreters. The next question set addressed the work in the context of criminal prosecution for victims, before asking about possible cultural barriers during an interpreter-mediated communicative event in the next question set. Due to the pandemic, interpreting was also enabled through audio and video technology. Experiences with audio- and video-mediated interpreting were therefore surveyed.

No personal data was collected from the respondents. Both qualitative and quantitative methods were used in the evaluation. From the data, recommendations can be derived on how the situation regarding interpreter-mediated communicative events with victims of crime can be further improved.

2.1 Evaluation of the questionnaire for interpreters (n=173)

In total, 173 respondents completed the questionnaire for interpreters. As an exclusion criterion, participants were asked at the beginning whether they are certified court interpreters. If this was not the case, the survey was terminated. All over, 16 respondents stated that they did not belong to this group. Thus, 157 usable questionnaires from certified court interpreters were available and included in the evaluation.

2.1.1 Question set regarding the assignment and remuneration of interpreters

A001

In what settings do you work as an interpreter for victims? (M)

- Police interviews: Selected 100 times (63.7 %)
- Public Prosecution: Selected 84 times (53.5 %)
- Main trials: Selected 138 times (87.9 %)
- Victim support facilities: Selected 41 times (26.1 %)

(M) This question allowed multiple answers.

A002

Are you usually briefed on the background and topic of the interpretation before the assignment? (S),
missing = 5, *n* = 152

- Yes: 7 respondents (4.6 %)
- Sometimes: 79 respondents (52 %)
- No: 66 respondents (43.4 %)

(S) This question allowed only a single answer.

A003

How do the appointing courts and authorities usually find you before the first assignment? (S), *missing*
= 2, *n* = 155

- List of certified court interpreters: 115 respondents (74.2 %/74.7 %)
- Internal or external recommendation: 11 respondents (7.1 %/7.1 %)
- Internal list of interpreters: 15 respondents (9.7 %/9.7 %)
- I have never interpreted for courts and authorities: 1 respondent (0.6 %) *this respondent is excluded*
- Other: 13 respondents (8.4 %/8.4 %)

A027

How do the appointing victim support facilities find you before the first assignment? (S), *missing* = 12,
n = 145

- List of certified court interpreters: 59 respondents (40.7 %/67 %)

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- Internal or external recommendation: 6 respondents (4.1 %/6.8 %)
- Internal list of interpreters: 7 respondents (4.8 %/7.9 %)
- I have never interpreted for victim support facilities: 57 respondents (39.3 %) *these respondents are excluded*
- Other: 16 respondents (11 %/18.2 %)

A004

Are you usually reappointed as an interpreter for the same person after the first assignment? (S), *missing* = 4, *n* = 153

- Yes, regularly: 43 respondents (28.1 %)
- Rather yes: 88 respondents (57.5 %)
- Rather no: 14 respondents (9.2 %)
- No: 8 respondents (5.2 %)

A005

On what basis is the remuneration usually calculated? (S), *missing* = 2, *n* = 155

- Austrian Fees Entitlement Act [*explanation: The interpreter is paid directly from public funds. The interpreter cannot determine the remuneration since this is subject to fee law.*]: 144 respondents (92.29 %)
- Fee splitting [*explanation: The interpreter is paid directly by the parties, not from public funds. The interpreter determines the remuneration according to the market price.*]: 2 respondents (1.3 %)
- Institutional rates (lower than Austrian Fees Entitlement Act): 6 respondents (3.9 %)
- Institutional rates (higher than Austrian Fees Entitlement Act): 1 respondent (0.6 %)
- Other: 2 respondents (1.3 %)

A006

Are you sometimes also appointed for a language that is related to one of your working languages or is a variety of your language? (S), *missing* = 3, *n* = 154

- Yes: 9 respondents (5.8 %)
- Sometimes: 17 respondents (11 %)
- No: 128 respondents (83.1 %)

Certified court interpreters are basically called to interpret in the language they are authorised to interpret. In reality, however, it can happen that the person to be interpreted does not speak the language or language variety for which the interpreter is appointed and certified. The survey revealed

that, in such cases, the interpreters choose a transparent approach. The client is informed of the linguistic deviation.

A008

In which situations are you called in as an interpreter by the victim support facilities? (M)

- Consultations at the facility: Selected 47 times (29.9 %/54.7 %)
- Accompanying the victim to the police, e.g. to file charges: Selected 27/25 times (17.2 %/29.1 %)
- Accompanying the victim during the main trial: Selected 53/50 times (33.8 %/58.1 %)
- Other situations: Selected 16/14 times (10.2 %/16.3 %)
- I have never interpreted for victim support facilities: 71 respondents (45.2 %) *these respondents are excluded*

2.1.2 Question set regarding the interpreting assignment at main trials

The interpreters mainly reported a lack of time resources for providing proper interpretation during the main trial. This was also linked to the costs of the proceedings. The time constraint influences the work of interpreters in that they are supposed to interpret the statements in summary.

A009

Does it happen in main trials that you do not (only) have to interpret the testimony of a victim, but (also) the testimony of e.g. the police or victim support facilities for the victim? (S), *missing = 6, n = 151*

- Always: 28 respondents (18.5 %)
- Frequently: 32 respondents (21.2 %)
- Sometimes: 48 respondents (31.8 %)
- Never: 43 respondents (28.5 %)

A011

In your opinion, is the practical framework for interpreting for victims in PRELIMINARY PROCEEDINGS designed in such a way that it usually allows the victim to participate in the proceedings without restrictions (sufficient time, interpretation of all essential content, etc.)? (S), *missing = 17, n = 140*

- Yes: 30 respondents (21.4 %)
- Rather yes: 70 respondents (50 %)
- Rather no: 30 respondents (21.4 %)
- No: 10 respondents (7.1 %)

A013

Does adversarial questioning pose special challenges for you as an interpreter? (S), *missing* = 4, *n* = 153

- No, there are no special challenges: 63 respondents (41.2 %/54.8 %)
- Yes, there are special challenges: 52 respondents (34 %/45.2 %)
- I have never interpreted in such a setting before: 38 respondents (24.8 %) *these respondents are excluded*

A023

In your opinion, is the practical framework for interpreting for victims during the MAIN TRIAL designed in such a way that it usually allows the victim to participate in the hearings without restrictions (sufficient time, interpretation of all essential content, etc.)? (S), *missing* = 16, *n* = 141

- Yes: 36 respondents (25.5 %)
- Rather yes: 62 respondents (44 %)
- Rather no: 37 respondents (26.2 %)
- No: 6 respondents (4.3 %)

2.1.3 Question set regarding cultural difficulties during the interpretation

A015

Have you ever experienced a situation where the interpretation was difficult because of cultural differences between your working languages? (S), *missing* = 7, *n* = 150

- Yes, situations like these happen regularly: 31 respondents (20.7 %)
- Yes, such a situation has already occurred, but that is the exception: 52 respondents (34.7 %)
- No, such a situation has never occurred: 67 respondents (44.7 %)

A017

Were these cultural differences usually addressed during the interpretation so that difficulties could be resolved? (S), *missing* = 74, *n* = 83

- Yes: 27 respondents (32.5 %)
- Rather yes: 38 respondents (45.8 %)
- Rather no: 17 respondents (20.5 %)
- No: 1 respondent (1.2 %)

When cultural differences arise, the certified court interpreters use translational strategies to facilitate the transfer of culture and thus communication. They use explications and interventions in order to clarify cultural phenomena. They consider this as a part of their work as cultural mediators. The responding interpreters also mentioned the targeted use of translational transfer strategies as a solution to cultural obstacles, whereby the adapting and then the mapping transfer strategy is chosen in combination or vice versa. In addition, plain language was also used for non-native speakers to facilitate communication.

2.1.4 Question set regarding distance interpreting

A018

Are you also called in for telephone interpreting as part of your work for victim support facilities? (S),
missing = 7, n = 150

- Yes: 8 respondents (5.3 %/11.3 %)
- No: 63 respondents (42 %/88.7 %)
- I don't work for victim support facilities: 79 respondents (52.7 %) *these respondents are excluded*

A020

Are you also called in for video interpreting as part of your work for victim support facilities? (S),
missing = 12, n = 145

- Yes: 8 respondents (5.5 %/11.8 %)
- No: 60 respondents (41.4 %/88.2 %)
- I don't work for victim support facilities: 77 respondents (53.1 %) *these respondents are excluded*

Due to the pandemic, it was necessary to use video-mediated interpreting. Victim support facilities also widely used audio-mediated interpreting via telephone. Technical limitations were caused by poor sound and image quality. The interpreters reported that this limitation of perception requires the application of specific translational strategies. In telephone interpreting, no facial expressions or gestures can be seen, which is why the mood or emotional state of the interpreted person cannot be captured. The use of technology also puts interpreters at a disadvantage in terms of pay.

2.2 Evaluation of the questionnaire for victim support facilities (n=103)

On the part of victim support facilities, the questionnaire was completed by 103 respondents.

2.2.1 Question set regarding the assignment and remuneration of interpreters

A101

What criteria do you use to select interpreters? (M)

- Gender: Selected 83 times (80.6 %)
- Education: Selected 29 times (28.2 %)
- Availability: Selected 82 times (79.6 %)
- Previous cooperation: Selected 85 times (82.5 %)
- Costs: Selected 31 times (30.1 %)
- Court certification: Selected 13 times (12.6 %)

A107

In which situations do you call in an interpreter? (M)

- Consultation at the facility: Selected 102 times (99 %)
- Accompanying the victim to the police, e.g. to file charges: Selected 39 times (37.9 %)
- Accompanying the victim during the main trial: Selected 35 times (34 %)
- Other situations: Selected 27 times (26.2 %)

A125

In which situations do you ask relatives to interpret? (M)

- Consultation at the facility: Selected 32 times (31.1 %)
- Accompanying the victim to the police, e.g. to file charges: Selected 7 times (6.8 %)
- Accompanying the victim during the main trial: Selected 3 times (2.9 %)
- Relatives are not asked to interpret: Selected 61 times (59.2 %)
- Other situations: Selected 23 times (22.3 %)

A102

How are the interpreters appointed? (S), *missing* = 1, *n* = 102

- The interpreters are appointed centrally by the facility: 12 respondents (11.8 %)
- The interpreters are appointed individually by the staff: 90 respondents (88.2 %)

A103

Where do you usually find the interpreters before the first assignment? (S), *missing* = 1, *n* = 102

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- Official list of certified court interpreters: 6 respondents (5.9 %)
- External recommendation (e.g. by victim support facilities): 19 respondents (18.6 %)
- Internal (facility) recommendation or list of interpreters: 77 respondents (75.5 %)

A104

Is the same interpreter usually appointed again for a victim after the first assignment? (S)

- Yes, regularly: 53 respondents (51.5 %)
- Rather yes: 49 respondents (47.6 %)
- Rather no: 0 respondents (0 %)
- No: 1 respondent (1 %)

A105

On what basis is the remuneration usually calculated? (S), *missing* = 1, *n* = 102

- Austrian Fees Entitlement Act: 3 respondents (2.9 %)
- Individual agreement: 21 respondents (20.6 %)
- Institutional rates: 78 respondents (76.5 %)

A106

Have there been situations in the past where an interpretation for a victim in your care could not be realized due to a lack of financial resources? (S), *missing* = 1, *n* = 102

- Yes, situations like these happen regularly: 6 respondents (5.9 %)
- Yes, such a situation has already occurred, but that is the exception: 20 respondents (19.6 %)
- No, such a situation has never occurred: 76 respondents (74.5 %)

2.2.2 Question set regarding the interpreting assignment in preliminary proceedings

A108

In your opinion, is the right to interpretation for victims in PRELIMINARY PROCEEDINGS designed in such a way that it usually allows the victim to participate in the proceedings without restrictions? (S)

- Yes: 8 respondents (7.8 %)
- Rather yes: 71 respondents (68.9 %)
- Rather no: 20 respondents (19.4 %)
- No: 4 respondents (3.9 %)

A110

In your opinion, is the practical framework for interpreting for victims in PRELIMINARY PROCEEDINGS designed in such a way that it usually allows the victim to participate in the proceedings without restrictions (sufficient time, interpretation of all essential content, etc.)? (S), *missing* = 1, *n* = 102

- Yes: 3 respondents (2.9 %)
- Rather yes: 66 respondents (64.7 %)
- Rather no: 32 respondents (31.4 %)
- No: 1 respondent (1 %)

2.2.3 Question set regarding the interpreting assignment at the main trial

The use of adversarial questioning is found to be aggravating on different levels. The technology used often only allows for an inadequate acoustic and visual perception of the questioned victim who is testifying in real time from another room. The lack of organisational and technical concepts in the context of adversarial questioning leads to more difficult working conditions for interpreters, e.g. not enough time is planned for the interpretation or several participants in the proceedings speak at the same time and in confusion.

A112

In your opinion, is the right to interpretation for victims during the MAIN TRIAL designed in such a way that it usually allows the victim to participate in the proceedings without restrictions? (S), *missing* = 3, *n* = 100

- Yes: 22 respondents (22 %)
- Rather yes: 65 respondents (65 %)
- Rather no: 12 respondents (12 %)
- No: 1 respondent (1 %)

A114

In your opinion, is the practical framework for interpreting for victims during the MAIN TRIAL designed in such a way that it usually allows the victim to participate in the hearings without restrictions (sufficient time, interpretation of all essential content, etc.)? (S), *missing* = 2, *n* = 101

- Yes: 11 respondents (10.9 %)
- Rather yes: 73 respondents (72.3 %)
- Rather no: 17 respondents (16.8 %)
- No: 0 respondents (0 %)

2.2.4 Question set regarding cultural difficulties during interpretation

By questioning the employees of victim support facilities, it was found that in cases involving relationship violence or sexual offences, it is not always possible to call in same-sex interpreters. Likewise, the bias caused by the fact that the interpreter, the victim and the offender are acquainted, since they all come from the same language community or small town, makes the proceedings more difficult.

A116

Have you ever experienced difficulties during an interpretation because of cultural differences? (e.g. difficulties in domestic violence proceedings or sexual offences)? (S), *missing* = 1, *n* = 102

- Yes, situations like these happen regularly: 21 respondents (20.6 %)
- Yes, such a situation has already occurred, but that is the exception: 61 respondents (59.8 %)
- No, such a situation has never occurred: 20 respondents (19.6 %)

A118

Were these cultural differences usually addressed during the proceedings so that difficulties could be resolved? (S), *missing* = 21, *n* = 82

- Yes: 5 respondents (6.1 %)
- Rather yes: 26 respondents (31.7 %)
- Rather no: 38 respondents (46.3 %)
- No: 13 respondents (15.9 %)

2.2.5 Question set regarding distance interpreting

The use of audio- and video-mediated interpreting makes it possible to engage interpreters for small language communities without risking that they are personally connected to the victim or the offender. Furthermore, a certain level of quality assurance can be exercised.

A119

Do you also use telephone interpreting in your facility? (S)

- Yes: 56 respondents (54.4 %)
- No: 47 respondents (45.6 %)

A121

Do you also use video interpreting in your facility? (S)

- Yes: 41 respondents (39.8 %)
- No: 62 respondents (60.2 %)

3 Conclusion

Qualified support by professional interpreters is a basic prerequisite for ensuring that victims of crime not speaking the language of service can actually exercise their right to participate in the proceedings. In line with multipartiality (Kadrić 2019), interpreters act in favour of all parties involved in the proceedings. For interpreters, it is irrelevant whether they are interpreting for the judge, the accused or the victim.

The data shows that the provision of interpreting services for victims in criminal proceedings is comprehensive and, for the most part, well functioning. The legal framework enables the provision of comprehensive interpreting support for different stages of criminal proceedings.

The assessment of both the employees of the victim support facilities and the interpreters in the context of the study carried out here also showed that the majority of them considers the legal framework to be designed in such a way that it enables the victim to participate in the proceedings without restrictions. Nevertheless, there are clear deficits in some areas. Some of the respondents described the poor quality of the interpretation, as well as situations in which interpreters attempted to influence the victims.

These responses from the employees of the facilities, in relation to the criteria according to which interpreters are selected by the facilities (primarily previous cooperation, gender and availability), as well as the fact that only a small proportion of the interpreters working for the facilities are paid according to the Fees Entitlement Act, suggest that the facilities do not primarily employ certified court interpreters. This could be due to the financial burden of hiring certified court interpreters but also the lack of availability of interpreters at short notice.

The fact that the remuneration of interpreters has not been adjusted for decades but has even been reduced has led to a decline in the number of certified court interpreters in Austria. These trends also influence the work of the courts, as the appointment of certified court interpreters is required by law and necessary for parties not being able to speak the language of service. Adequate remuneration for interpreting is urgently needed to guarantee the availability of a sufficient number of trained and certified interpreters. This is the only way to ensure that, on the one hand, the interpreting service

meets the required quality standards and, on the other hand, that the interpreters do not act in a biased but serious and professional manner.

In crucial settings, such as interpreting the statements of crime victims, professionalism and interpreting competence based on professional training are mandatory prerequisites. In addition, specific training for interpreters should be implemented for their work with crime victims to ensure that special challenges such as the consequences of traumatisation are sufficiently taken into account in the context of interpreting. In the survey, it was regularly reported that there are not enough interpreters available. Especially in rural areas, this could become a problem. The use of audio- and video-mediated interpreting enables the facilities to have ad hoc access to interpreters. Audio and video technologies, with their many advantages, should be used more and the possibilities should be further developed. Another positive aspect of distance interpreting can be mentioned here in relation to the bias of interpreters when the offender, the victim and the interpreter belong to the same language community.

Distance interpreting enables the use of an interpreter from another region or even another country. Also, it becomes less likely that children or other family members will be asked to interpret if distance interpreting is used. In view of the increasing digitalisation and the advantages of distance interpreting, the remuneration of distance interpreting services should be assessed and reformed.

From a legal perspective, Austria fulfils the requirements for the development of victims' rights as standardised by the European Directive establishing minimum standards on the rights, support and protection of victims of crime (2012/29/EU) in this area. This includes the possibility to provide victims with an interpreter for the entire proceeding in order to protect their rights and interests. At the same time, it is envisaged that the interpretation will be limited to a summary of the essential content. It seems doubtful that this will guarantee active participation in the proceedings, especially considering the methods and possibilities available to interpreting science today, such as whispered interpreting or the use of technical means.

If these options are used, it would be possible to expand victims' participation in the proceedings without adding to the burden of the proceedings, thereby taking up some of the deficits reported in the study. The comprehensive participation of crime victims in criminal proceedings is an essential achievement of the modern constitutional state. This can be ensured for crime victims not speaking the language of service only with the help of competent interpreters. Accordingly, efforts should be made to eliminate those deficits that can currently be identified.



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