

GUIDANCE DOCUMENT FOR INTERPRETERS AND TRANSLATORS

INTERPRETATION

General principles

The obligation to treat all people equally

The persons being interrogated or questioned in criminal proceedings, asylum-seekers in asylum proceedings, illegal immigrants in border guard proceedings or participants of misdemeanour proceedings can be persons with very different and varied cultural background. Interpreter participating at the procedural acts conducted in the course of such proceedings shall not discriminate the applicant or the person being interrogated or questioned because of his or her gender, ethnic origin, disability, sexual orientation, religion or any other attribute. Interpreter must be polite, professional and must demonstrate respect for people of different cultures.

Impartiality

Interpreter must stay impartial in every situation and must also appear as such to other participants of the proceedings. If others perceive that the interpreter is not impartial, even if the interpreter believes he/she is, the interpreter's credibility will become questionable. Interpreter must try to avoid situations that might create an impression that he/she is favouring one participant of the case when acting as interpreter.

Correct and accurate interpretation

Interpreter must grant the correct and accurate interpretation of everything said in other language. It is important to bear in mind that officials of the Police and Border Guard Board (hereinafter the PBGB) rely completely on the statements of applicant/person being interrogated or questioned as well as on the translated version of documentary evidence. Inaccurate interpretation may have very serious consequences. For example, for that reason an asylum-seeker can be unjustly refused international protection and he or she will be sent back to his or her country of origin, however, that can be a risk to the applicant's life. Interpreter is entitled to request the official conducting the procedural act to provide the existing translatable material (suspicion, ruling, etc.) for review before the questioning or interrogation starts.

In the criminal and misdemeanour proceedings¹ an interpretation or translation of any aspect of a procedural act rendered by an interpreter or translator shall be precise and complete in accordance with subsection 161 (6) of the Code of Criminal Procedure² and the interpreter or translator shall be liable for the provision of a knowingly false interpretation pursuant to section 321 of the Penal Code³.

¹ Pursuant to § 24 of the Code of Misdemeanour Procedure (*abbreviation in Estonian - VTMS*) experts participate and interpreters or translators are engaged in misdemeanour procedure and they remove themselves or are removed on the bases and pursuant to the procedure provided for criminal procedure.

² Code of Criminal Procedure (*abbreviation in Estonian - KrMS*) § 161. Translators and interpreters

(1) If a text in a foreign language needs to be interpreted or translated or if a participant in a criminal proceeding is not proficient in the Estonian language, an interpreter or translator shall be involved in the proceeding.

(2) An interpreter or translator is a person proficient in language for specific purposes or a person interpreting for a deaf or dumb person. Other subjects to a criminal proceeding shall not perform the duties of an interpreter or translator.

(3) An interpreter or translator to whom the oath of interpreters and translators has not been administered shall be warned that he or she may be punished pursuant to criminal procedure for a knowingly false interpretation or translation..

(4) If an interpreter or translator does not participate in a procedural act where the participation of an interpreter or translator is mandatory, the act is null and void.

(5) In order to ensure the correctness of interpretation or translation, an interpreter or translator has the right to pose questions to participants in the proceedings, examine the minutes of procedural acts and make statements concerning the report, and such statements shall be recorded in the minutes.

(6) An interpretation or translation of any aspect of a procedural act rendered by an interpreter or translator shall be precise and complete and the interpreter or translator shall maintain the confidentiality of the information which became known to him or her in the course of the translation. If a non-staff interpreter or translator is not sufficiently proficient in language for specific purposes or in the form of expression of a deaf or mute person, he or she is required to refuse to participate in the criminal proceedings.

Personal benefit

Interpreter shall never accept any money, gifts, favours or other benefits from the persons whose statements the interpreter has interpreted or starts to interpret within the framework of asylum, criminal, misdemeanour or other proceedings, nor from anyone acting in the name of any such named person. If any gifts are offered to an interpreter, the interpreter must explain politely that he/she is not allowed to accept any gifts from the parties related to the case.

At the questioning of asylum-seeker or person being interrogated/questioned the interpreter shall not:

- express his/her opinion at the interrogation in criminal and asylum proceedings or at the questioning of asylum-seeker, comment or tell the official his/her personal observations concerning the applicant's honesty, ethnic origin etc., even if he/she is asked to do that; the interpreter must reject the request and explain that it is not a part of his/her obligations;
- intervene in procedural acts of border guard in the course of illegal person proceedings, however, at the request of the body conducting the proceedings the interpreter can express his/her opinion and suspicion concerning the content being interpreted, also nationality, possible ethnic origin, that is – to participate at the procedure also as an interpreter of identity.
- enter into general conversation with an applicant at the questioning of asylum-seeker before providing the interpretation service (except for finding out whether both are speaking the same language and/or dialect), also during the providing of interpretation service or after that, because such a conversation may leave the impression of partiality; in case an asylum-seeker, participant at the proceedings or their representative contacts interpreter out of the time when the interpretation service is provided, the interpreter must explain that he/she cannot discuss the case and must not enter the conversation; interpreter must notify the PBGB about such approach as soon as possible;
- know the person being interrogated/questioned or the asylum-seeker personally and have any relationship with the person being interrogated/questioned or the asylum-seeker or any other person related to the case; if such conflict of interest appears promptly before or during the provision of interpretation service, then the interpreter must immediately notify the official about that, and the official will decide whether the interpreter is suitable to interpret in that case or not;
- be personally interested in the final result of the case or get any monetary benefit from it;
- give an asylum seeker or person being interrogated/questioned any advice not related to the provision of interpretation service, for example, information concerning the proceedings etc., regardless of the fact whether he/she is asked to do that or not;
- disrupt the questioning due to other reasons than for correcting the interpretation, asking for explanations, solving misunderstandings or pointing out hindrances;
- beautify the said text – the task of the interpreter is to interpret correctly and accurately, interpreter must confine oneself to interpreting only the words said by the official and the applicant/person being interrogated or questioned to each other, interpreter shall not enter into any discussions concerning the content of the questioning and he/she must interpret everything the applicant/person being interrogated says in the course of the questioning, even if that is not an answer to the question asked or if the words of the applicant/person being interrogated are meant directly to the interpreter, not the official;

(7) A **suspect** or accused or **his or her counsel** may file an appeal against the provision of a false translation or interpretation by a translator or interpreter pursuant to the procedure provided for in § 228 of this Code.

³ **Penal Code (abbreviation in Estonian - KarS) § 321. False expert opinion or false translation or interpretation**

(1) Rendering a knowingly false opinion by an expert, or provision of a knowingly false translation or interpretation by a translator or interpreter, is punishable by a pecuniary punishment or up to one year's imprisonment.

(2) The same act, if it involves fraudulent creation of evidence, is punishable by a pecuniary punishment or up to five years' imprisonment.

- leave anything out from the statements of an applicant or person being interrogated/questioned – it is not a task of interpreter to determine which information is relevant and which is not, the interpreter must interpret everything that is said;
- try to guess what the questioner or the person being questioned want to say, nor give an answer that is not corresponding to the actually said words;
- let his/her experience or views affect the provision of interpretation service;
- reveal his/her emotions – the only reactions the interpreter is allowed to show/mediate are those of the applicant; interpreter is also not allowed to use body language (for example, „rolling one’s eyes“, reprimanding sounds) in case an explanation of the person being questioned does not seem credible; the credibility of the statements given by an asylum-seeker or person being interrogated/questioned is assessed by the official, not by interpreter – interpreter is a mediator, not a person authorised to assess or resolve anything;
- discredit by his/her behaviour (incl. sexual misconduct, violence, threatening, political activities, disgrace, etc.) the party that engaged him/her, for example, to participate at a procedural act under the influence of alcohol or drugs, harass sexually, reveal one’s sexual interest or antipathy, post or derogate sexual orientation, impose violence or threaten an applicant/person being interrogated or questioned, advocate one’s own and/or derogate political views or religion of the person being interrogated/questioned or asylum-seeker by disgracing behaviour.

At the questioning of asylum-seeker or at the interrogation/questioning the interpreter is obligated to:

- communicate at the questioning of the person being interrogated or asylum-seeker every last detail included in the message of the person being interrogated/questioned or an applicant, and interpret as accurately as it is possible by following the style, sentence construction and grammar;
- be able to interpret efficiently throughout the whole questioning/interrogation procedure;
- speak calmly and clearly;
- notify the official/questioner promptly about any difficulties appearing during the interpretation (due to weariness, language understanding or other reasons);
- always stay calm, even when he/she hears unpleasant or contradicting facts – the interpreter is not connected with the facts he/she interprets;
- use direct speech when interpreting, for example, not to interpret in the form: “He said, that he...”, but in the form: “I said, that he...”;
- interpret also insulting linguistic performance – due to linguistic and cultural reasons it may be difficult to interpret the above named, however, in such case the closest possible expression in meaning must be found;
- announce his/her occupational limitations promptly after receiving an offer for providing interpretation services, and accept only the jobs that are in his/her competence;
- ask the questioning person to make a pause if he/she feels that weariness troubles him/her to provide accurate interpretation;
- tell the questioning person in case he/she cannot provide accurate interpretation, for example, in case any jargon unknown to him/her is used or in case his/her state of health deteriorates suddenly;
- notify the questioner immediately about the fact that the applicant is not speaking the language the interpreter was invited to interpret, even if he/she is proficient in the other language as well;
- switch off all mobile phones, watches and other devices that might disturb the questioning or the operation of video-conference equipment;
- give recommendations at procedural acts of border guard for conducting a questioning/interrogation, if that is necessary due to the cultural or religious specialties of the applicant/person being interrogated.

TRANSLATION

Requirements for translation

The primary obligation of translator is to translate the original text into the target language by providing precise and complete translation of all aspects of the relevant procedural acts, and to maintain the confidentiality of the information which became known to him or her in the course of the translation. In the course of performing an assignment, the translators must take into account the following requirements.

1. **Correct communication of the content.** The translator must communicate the content correctly. The translation must emanate totally from the original text and must be as precise as possible, clear and unambiguous, while retaining the substantive meaning of the original text. The result must be equal to the original text as to its meaning and effect.
2. **Terms.** The terms used must be equal to the concept of the original text as to their meaning, comprehension and impact, and must communicate the wording and content of the text correctly. If necessary, the translator will prepare a list of terms in order to grant the unity, accuracy and acceptability of the terminology used in the translation. The list shall comprise the terminology of the sphere of this translation.
3. **Consistency.** The use of terminology must be consistent. Translator should be guided by basic rules of logic, especially the rule of unchanged concept meaning (A=A: the same concepts in original text should be translated to the target language in the same way), but also the rule that different concepts do not coincide (A≠B: generally different concepts of original text should not be translated into target language by using one and the same concept).
4. **Compliance with the language rules.** The translation must comply with the official language rules applicable in Estonian language. No mistakes against the rules and norms prescribed in the grammar dictionary („*Eesti õigekeelsussõnaraamat*“) and grammar book (“*Eesti keele grammatika*“) are permitted. The translation must also be correct and consistent in spelling and first letter orthography, abbreviation, number-writing and punctuation marks (hyphens and dashes). Confer: *Tiiu Erelt. Eesti ortograafia*.
5. **Purity of language.** When translating, the excessive impact of foreign languages must be avoided.
6. **Proofreading.** The finished text must be checked using the spelling checker.
7. **Appearance.** The translation must be prepared according to the document management rules applicable in the institution (font *Times New Roman*, 12 pt, block-layout, take into account book-binding margins). For strict separation of different documents within a file the computer command for page separation must be used (add page margin *PageBreak*).
8. **Subsequent verification of translation.** The written translation file sent for verification to the Head of the Translation Division, Chief Interpreter/Translator or Leading Interpreter/Translator must be identical to the translation file that will be submitted to the person who ordered the translation. The digitally signed files must be saved only with extensions *.rtf, *.pdf, – which make it impossible to overwrite any data after signing digitally.

Completion of translations

The header of the translation (or the top of front page/first page) must include a reference of source language according to the following sample:

Translation from English

Translations within the framework of criminal matters must include the following confirmation at the footer of translation or as an endnote of each separate translated document:

Translator (replace with given name(s) and surname(s) of the translator) is aware of the due diligence and confidentiality commitments under subsection 161 (6) of the Code of Criminal Procedure, and of the liability under sections 318, 321 of the Penal Code.

(signature / digital signature of translator)

Statutory liability

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Penal Code § 321. False expert opinion or false translation or interpretation

(1) Rendering a knowingly false opinion by an expert, or provision of a knowingly false translation or interpretation by a translator or interpreter, is punishable by a pecuniary punishment or up to one year's imprisonment.

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Confidentiality clause of interpreters and translators

In the criminal proceedings

- according to the amendments to the Code of Criminal Procedure that entered into force on 27.10.2013, in the criminal proceedings an interpretation or translation of any aspect of a procedural act shall be precise and complete in accordance with subsection 161 (6) of the

Code of Criminal Procedure and the interpreter or translator shall maintain the confidentiality of the information which became known to him or her in the course of the translation.

In the asylum proceedings

- it must be taken into account, that, according to subsection 13 (1) of the Act on Granting International Protection to Aliens (the AGIPA), proceedings concerning asylum shall not be public. Subsection 13 (2) of the AGIPA provides that “the Police and Border Guard Board, the Ministry of Social Affairs and the agencies within the area of government thereof, the detention centre, the accommodation centre for applicants for international protection, as well as the translator and other relevant persons shall maintain the confidentiality of information related to applicants and adhere to the requirements for the protection of personal data in the processing of the personal data of the said alien“. According to subsection 13 (4) of the AGIPA, information is not communicated to the country of nationality or country of origin of the applicant.

Interpreter and translator is obligated to notify the PBGB immediately, if

he/she is a suspect or has been accused, convicted and/or punished in any offence or misdemeanour, or has been cautioned for any violation, or an occupational disciplinary procedure has been commenced concerning the interpreter or translator.

INVOICES

Invoices must be prepared in compliance with the currently valid accounting regulation of Estonia, incl. the Accounting Act (§ 7 (1)), guidelines of the accounting committee (*raamatupidamise toimkond*) (RTJ) etc., the invoice must include the following mandatory requisites:

Invoice number and date

Issuer of invoice

(self-employed entrepreneur (*FIE*)/company name, register code, address, contact data, bank account number in the form of IBAN)

Recipient of invoice:

Police and Border Guard Board

139 Pärnu road, 15060 Tallinn

Register code 70008747

Contact person:, phone 612

Content of the service/work (make sure to insert the (reference)number of our corresponding order on the explanatory part of your invoice):

..... language translation service, order 2017K.....

..... language interpretation service, (date), order 2017S.....

The **(reference)number** of an order shall be communicated by Chief Interpreter/Translator of the PBGB when ordering an interpretation or translation (exceptionally also when the translation is ready/interpretation is provided);

The letter **K** in the middle of the reference number refers to translation and the letter **S** to interpretation, in the case of interpretation the **date of service providing** must definitely be indicated.

The invoice must include the **unit** (hour/page) indicating the **quantity/volume** of the provided service, **unit price** and **sum** together with possible **VAT calculation**.

NB! If an invoice is being submitted **jointly for several translation/interpretation orders**, meaning that it includes several lines, then, please insert **sequence numbers** on the line of each provided translation/interpretation.

The payment term of the invoices is 21 days.

Date: _____

Given name(s) and surname(s) of the interpreter/translator who became acquainted with the guidance document for interpreters/translators: _____

(signature / digital signature of translator/interpreter)