

# NETPRALAT

## Module 7: Interpreter mediated interviews

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# Welcome

Welcome to the module focusing on the interpreter's mediated communication and suspects' procedural rights at the police detention stage. This module gives insights for a better understanding of the interpreter's role according to the EU Directives on suspects' procedural rights and the respective ECtHR case law. Practicing lawyers may then better assess irregularities in interpreters mediated interviews and contribute to a fair communication.

Next





# Welcome

In this module we want to raise awareness about problems linked to representing a client who does not master the language of the court; be it a Foreigner or a deaf individual. Interpersonal interactions with your client, with police, or with Justice representatives and others will utterly depend on the quality and professionalism of the interpreter.

As a practicing lawyer, you will have to devise appropriate strategies to take an influence on the interpreter's selection, his/her professional behaviour; this being the key to a fair communication.



# Introduction

## Module Aims & Topics Covered



### Lawyer empowerment for ensuring the rights of defence:

- by understanding the possibilities and limitations of legal interpreting
- by developing practical remedies against potential risks



*Click on the boxes to open the respective parts*

**Part 1:  
Required  
qualification for a  
legal interpreter**

**Part 2:  
Avoiding  
misconceptions**

**Part 3:  
Assessing  
professionalism before  
and during interview**

**Part 4:  
Improvements due to  
the Directive  
2010/64/EU**



## Part 1: Required Qualifications for a legal interpreter

Be aware that interpreting and translating require professional training, especially when human life and rights may be at stake. The followings competences and skills are to be mastered:

Command of at least two languages and cultures at almost native level

Adhering to the principles of an interpreter's Code of professional ethics

Mastering all Interpreting techniques

Special knowledge in legal terminology





## 1.1 Command of at least two languages at almost native level

To be admitted in a training course the level C2 of **Common European Framework of Reference for Languages: Learning, Teaching, Assessment (CEFR)** is required.

<https://www.coe.int/en/web/common-european-framework-reference-languages>

Additional admission tests are often required!

Language and culture are indissociable.





## 1.2 Adhering to the principles of an interpreter's Code of professional ethics

Trained interpreters all over the world adhere to a Code of professional ethics, all of them agreeing on the same essential principles. As an example, we will refer to the **EULITA Code of professional ethics**



Code of professional ethics



# Adhering to the principles of an interpreter's Code of professional ethics

## Professional Competence

Legal interpreters and legal translators shall use the specific interpreting technique (consecutive, simultaneous, whispering, sight translating) according to the requirements for optimum cross-cultural communication in legal settings.



Professional competence



## Adhering to the principles of an interpreter's Code of professional ethics

Legal interpreters and legal translators **must not take on an assignment for which they have no or inadequate competences (in terms of language or subject matter)**, or which they are not able to perform properly (e.g. for lack of time to prepare for the assignment).

Legal interpreters and legal translators shall strive to **maintain and improve their interpreting and translation skills and knowledge**.



Never accept an assignment if  
not qualified for it!



# Adhering to the principles of an interpreter's Code of professional ethics

## Accuracy

The source-language message shall be **faithfully** rendered in the target language by conserving all elements of the original message while accommodating the syntactic and semantic patterns of the target language.

The **register, style and tone** of the source language shall be conserved.

Errors, hesitations and repetitions should be conveyed.

An interpreter shall **request clarification** when he or she did not understand a sign-language user or speaker, for example for reasons of acoustics, or ambiguity of a statement. He or she shall **signal and correct any interpreting errors** as soon as possible.



Accuracy

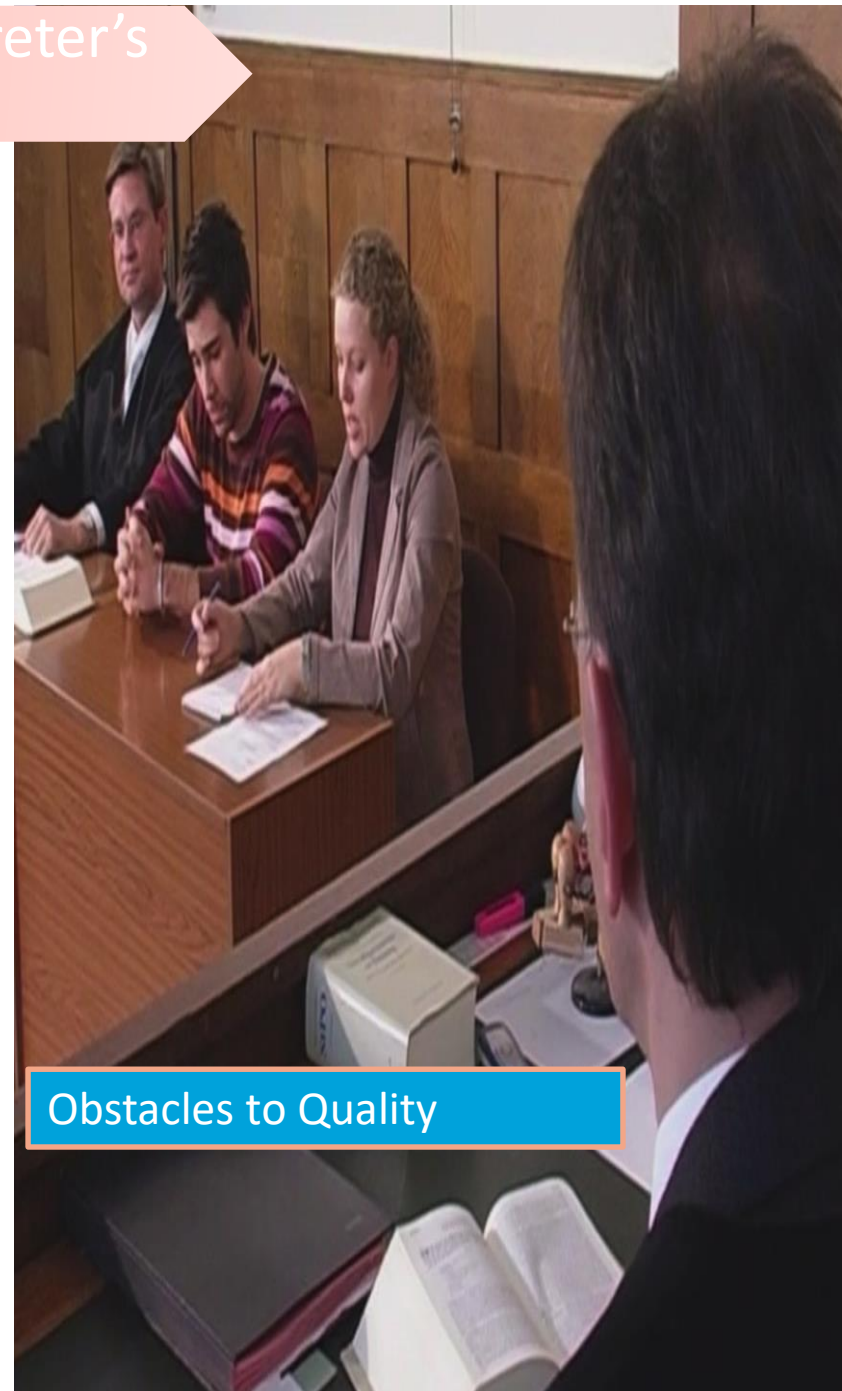


# Adhering to the principles of an interpreter's Code of professional ethics

## Obstacles to Performance Quality

Legal interpreters and legal translators shall bring to a court's attention any circumstance or condition that affects the quality of performance such as **interpreter fatigue**, **inability to hear and/or see**, inadequate knowledge of the **specialized terminology**, **insufficient understanding of a dialect**.

They must **decline assignments** that would have to be delivered under conditions that make a qualified **professional performance impossible**.



Obstacles to Quality



# Adhering to the principles of an interpreter's Code of professional ethics

## Impartiality

Legal interpreters and legal translators shall remain neutral and also maintain the appearance of impartiality, avoiding any undue contacts with either witnesses, defendants and their families or members of the legal professions.

Any potential conflict of interest shall be immediately disclosed to the court\*).

\*) applies to all legal settings



Impartiality



# Adhering to the principles of an interpreter's Code of professional ethics

## Confidentiality

Legal interpreters and legal translators shall be bound by the **strictest secrecy**. Any information acquired in the course of an interpreting or translation assignment for judicial purposes or its preparation shall not be disclosed.

Legal interpreters and legal translators shall **refrain from deriving any personal or financial benefit from information** they have acquired in the course of an interpreting or translation assignment for judicial purposes, or its preparation.



Confidentiality



# Adhering to the principles of an interpreter's Code of professional ethics

## Protocol and Demeanour

Legal interpreters and legal translators shall behave with **dignity** and **respect** towards the court\*) and perform their duties **as unobtrusively as possible**.

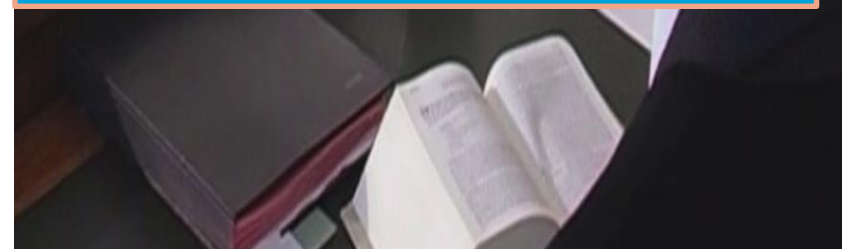
Legal interpreters shall use **the same grammatical person as the speaker or sign-language user**. Should it become necessary for them to assume a primary role in the communication, they must make it clear that they are speaking for themselves, by using for instance the third person (i.e.: "The interpreter needs to seek clarification ...")

Legal interpreters and legal translators shall **refrain from giving advice to the parties or otherwise engage in activities** others than the ones belonging to the actual assignment.

\*) applies to all legal settings



Protocol and Demeanour





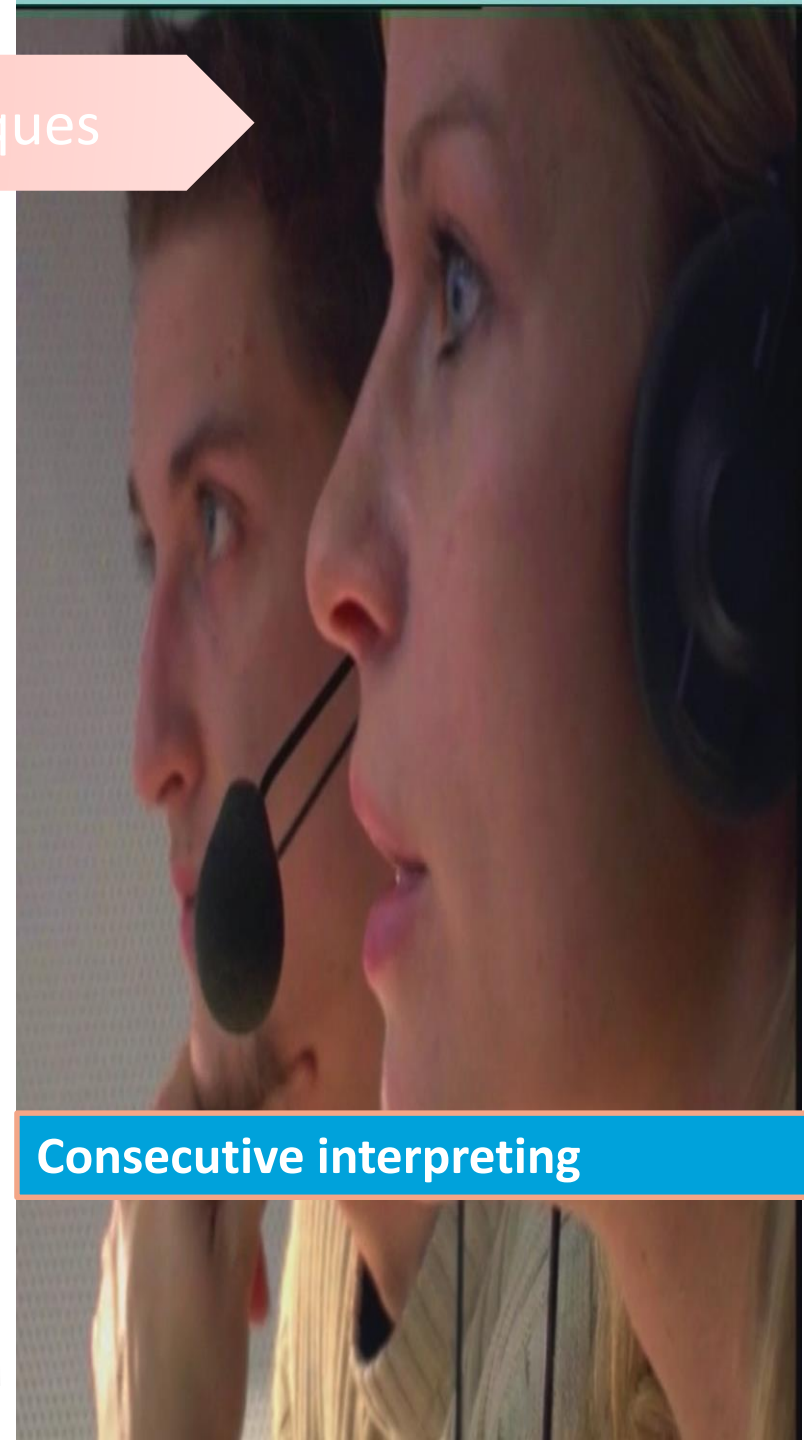
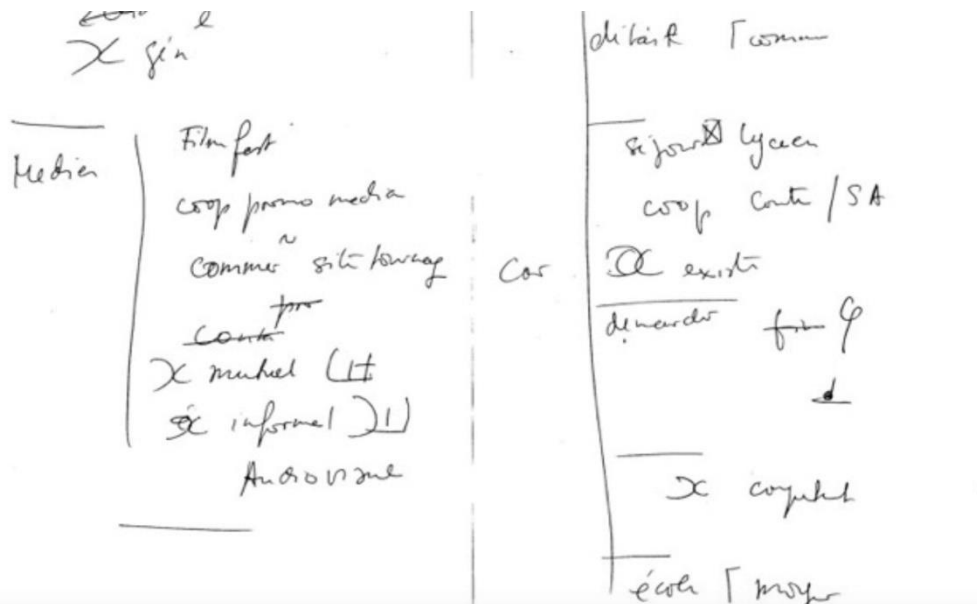
## Mastering all Interpreting techniques and competences





## Consecutive interpreting:

The interpreter renders the interpretation after the source-language speaker has finished speaking or signing. Spoken-language interpreters can use special note-taking techniques to help in the rendering of lengthy passages.



## Consecutive interpreting



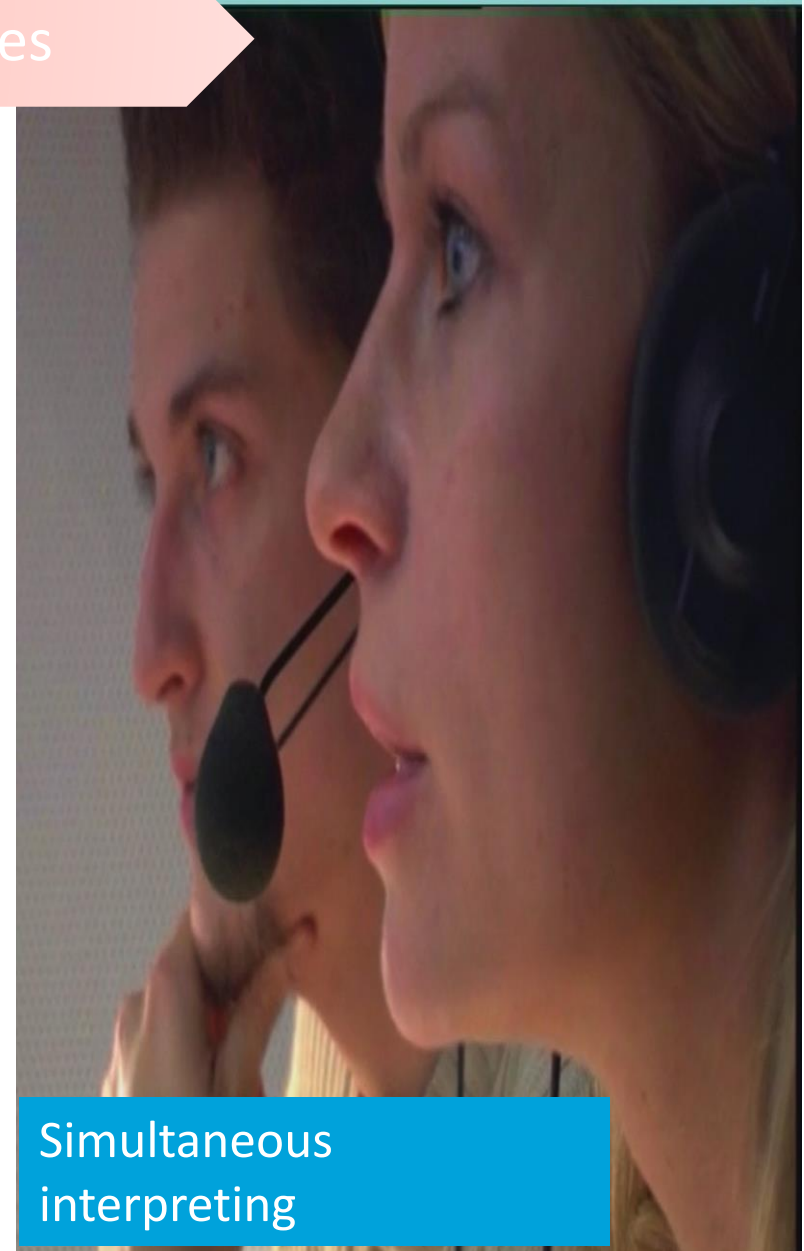
# Mastering all Interpreting techniques

## **Simultaneous interpreting:**

The interpreter transfers the message from the source language into the target language while the source-language speaker speaks or signs continuously. This is the mode commonly used in sign-language interpreting as well as in conference settings.

## **Whispering (*chuchotage*):**

Simultaneous interpreting without the use of interpreting booths usually provided for a maximum of three persons.



Simultaneous  
interpreting



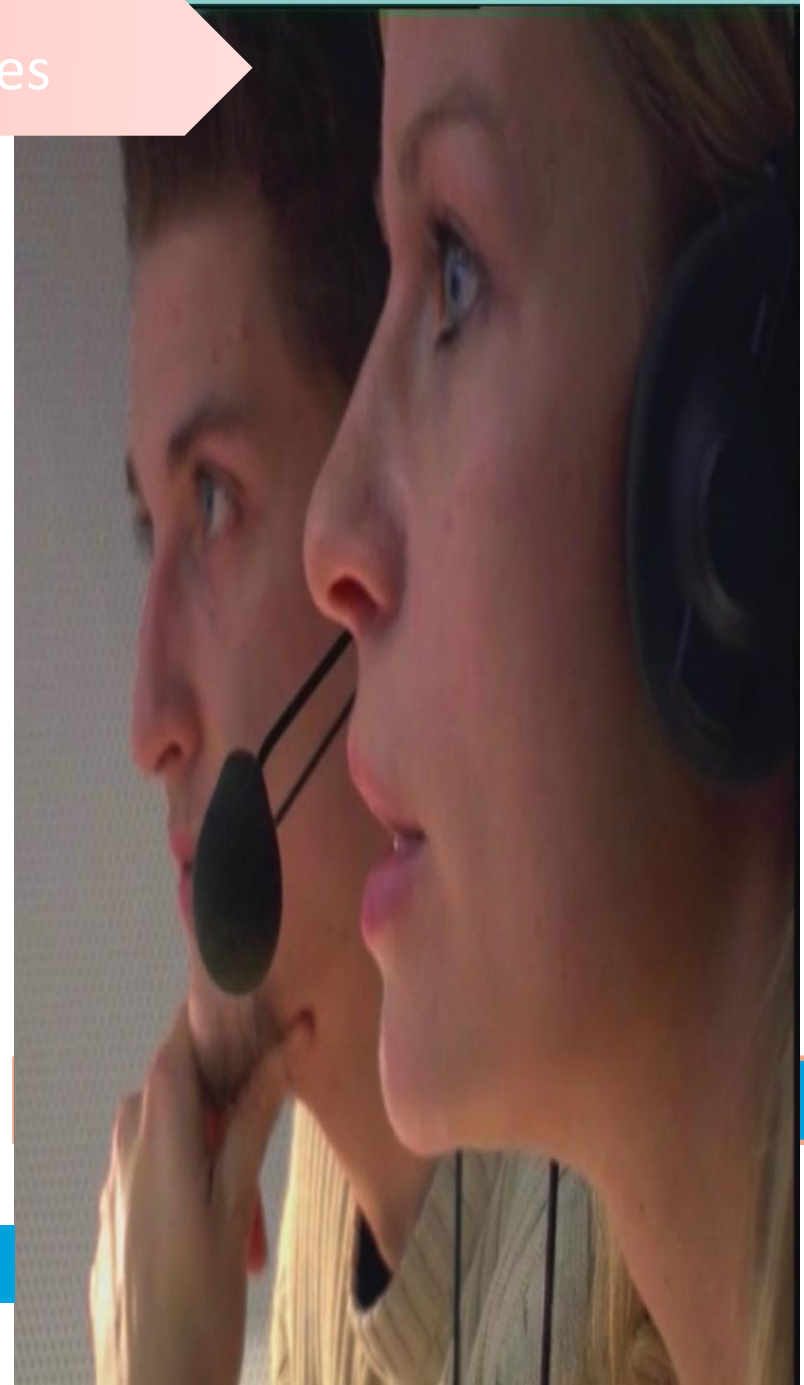
# Mastering all Interpreting techniques

## **Sight translation:**

It is required for the ad-hoc oral translation of documents. The source-language document is rendered orally or signed in the target language as if it were written in the target language.



**Sight translation**

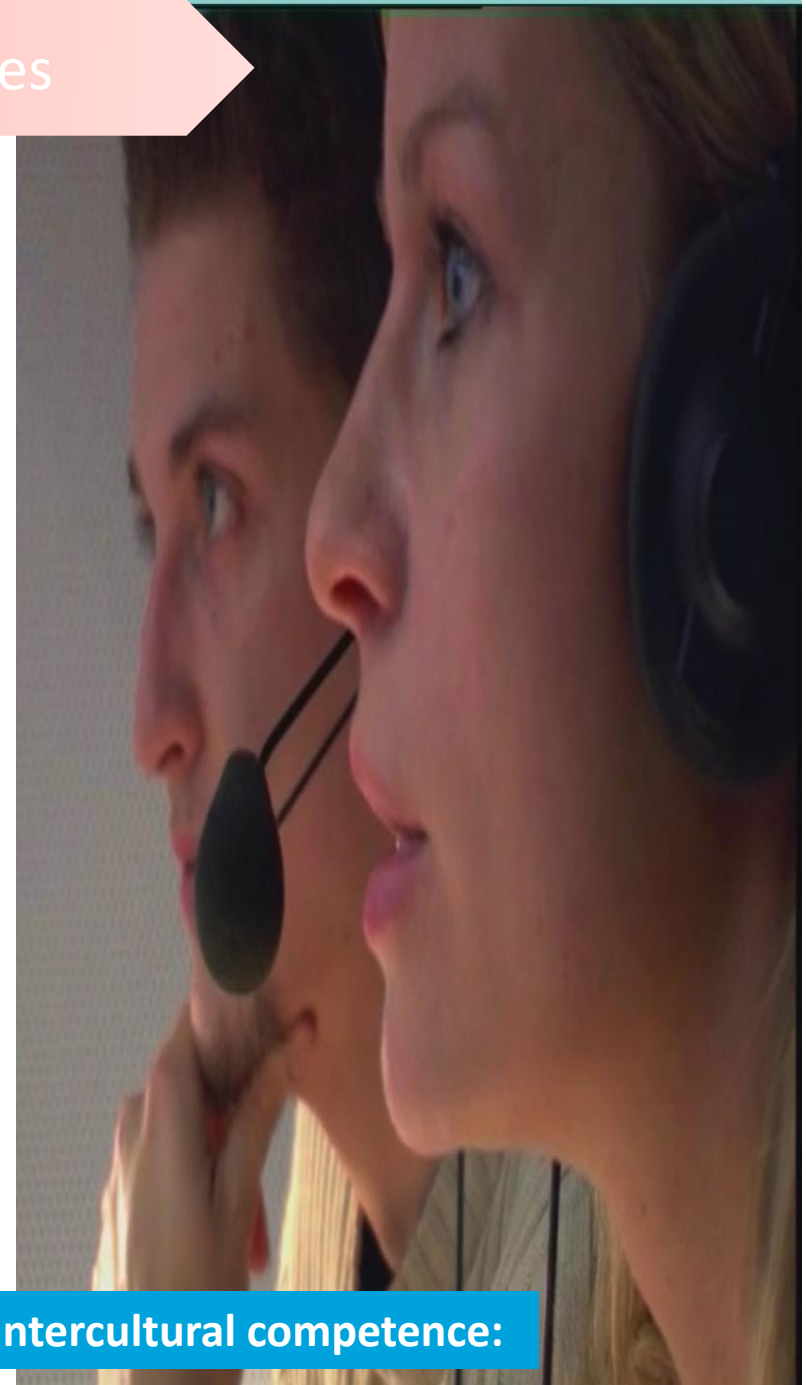




# Mastering all Interpreting techniques

## **Intercultural competence:**

Professional awareness and understanding of the cultural factors, including but not limited to, behaviour and gestures, tone, values, roles, institutions, as well as linguistic differences and similarities.



**Intercultural competence:**

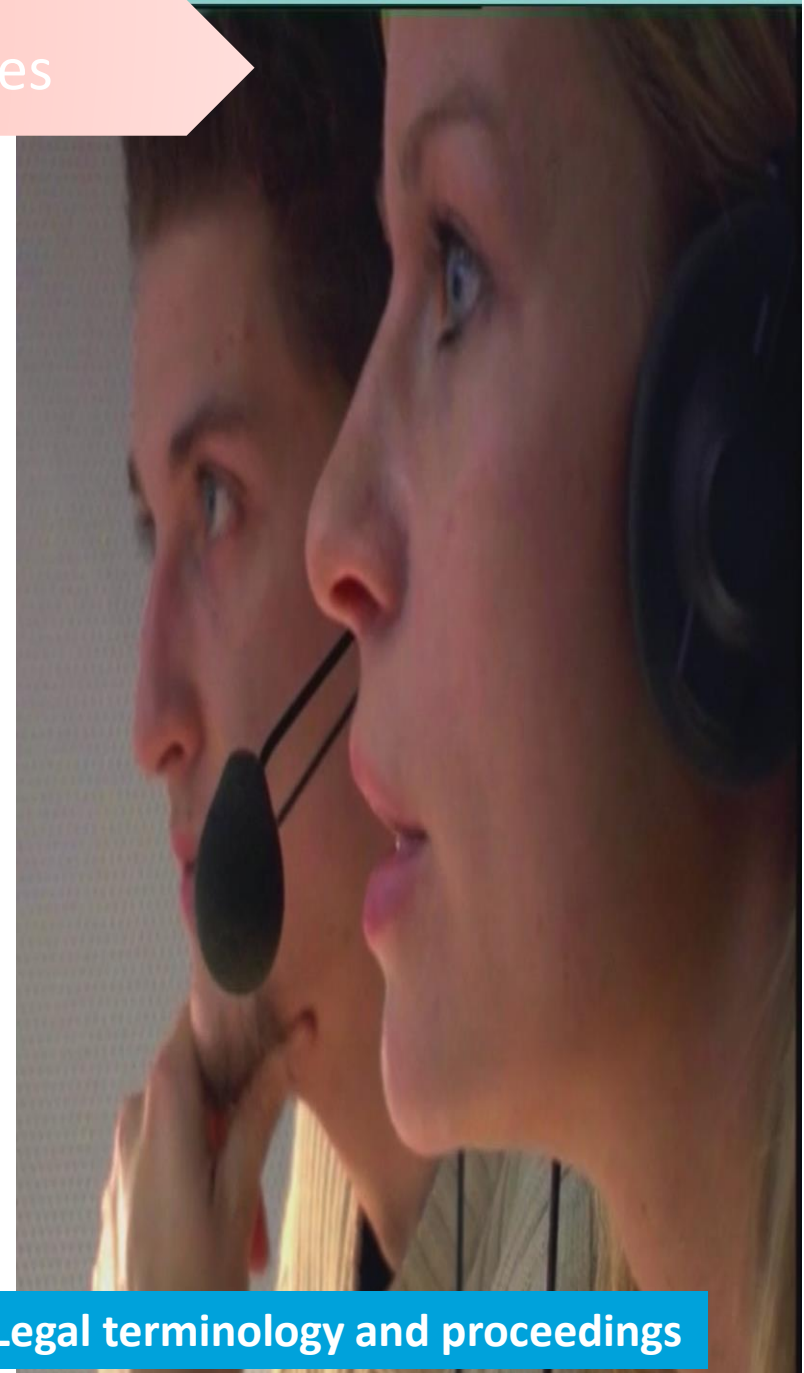


# Mastering all Interpreting techniques

Legal interpreters should have comprehensive knowledge of the structure of the legal system(s) and administration of justice in the countries where their source and target languages are spoken. They should have an understanding of the relevant fields of law (substantive, procedural, criminal, civil, administrative, etc.). They should demonstrate a thorough understanding of the roles of lawyers, judges, judicial officers, prosecutors, and interpreters.

## **(ISO 20228:2019**

Interpreting services -- Legal interpreting – Requirements)



**Legal terminology and proceedings**



# Mastering all Interpreting techniques

## **Distance interpreting**

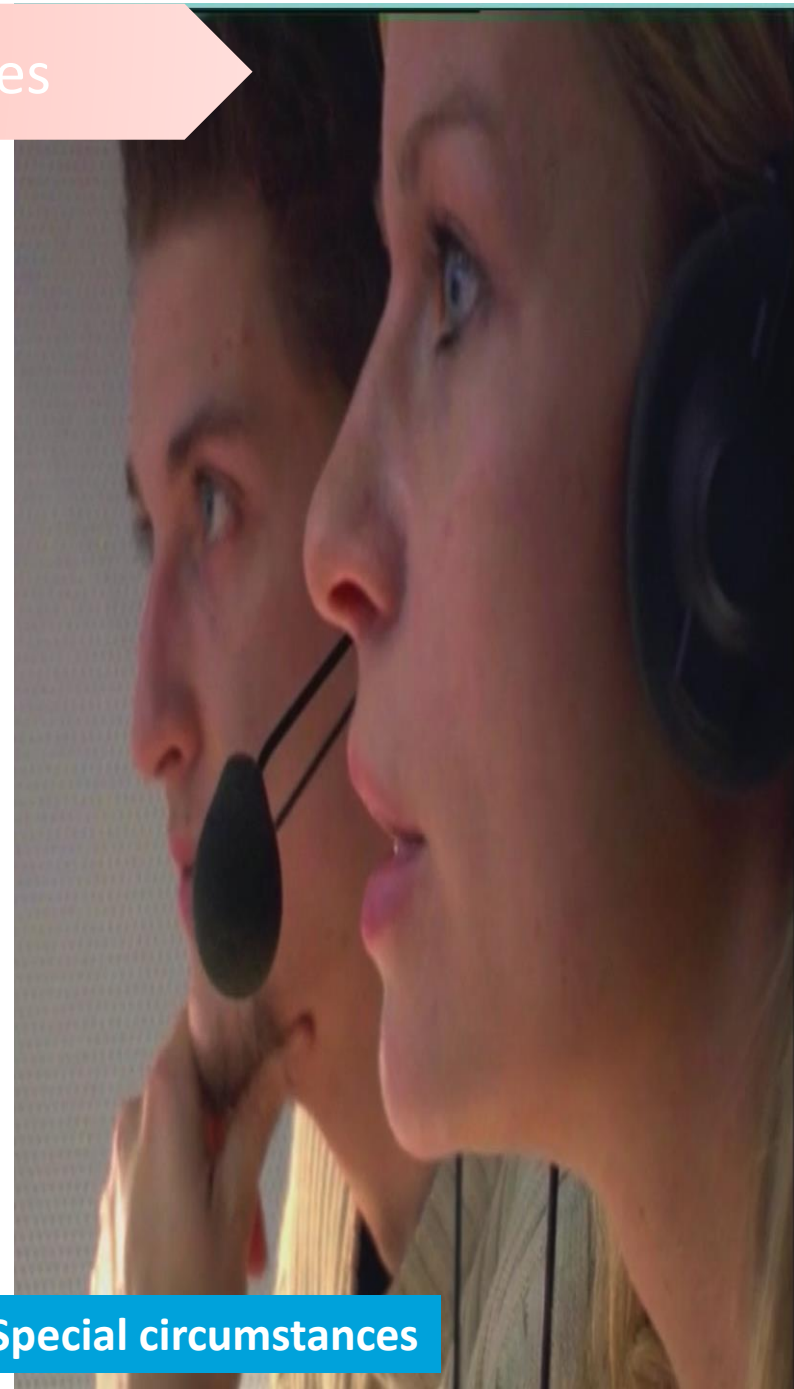
### **remote interpreting**

information and communications technology enabled interpreting (of a speaker or signer in a different location from the interpreter

The interpreter (1) can be at the same location as either the speaker or the end user or at a third location.

### **Relay interpreting**

interpreting that occurs when an interpreter's source input comes from another interpreter's rendition instead of from the speaker directly



**Special circumstances**



## Part 2: Avoiding misconceptions

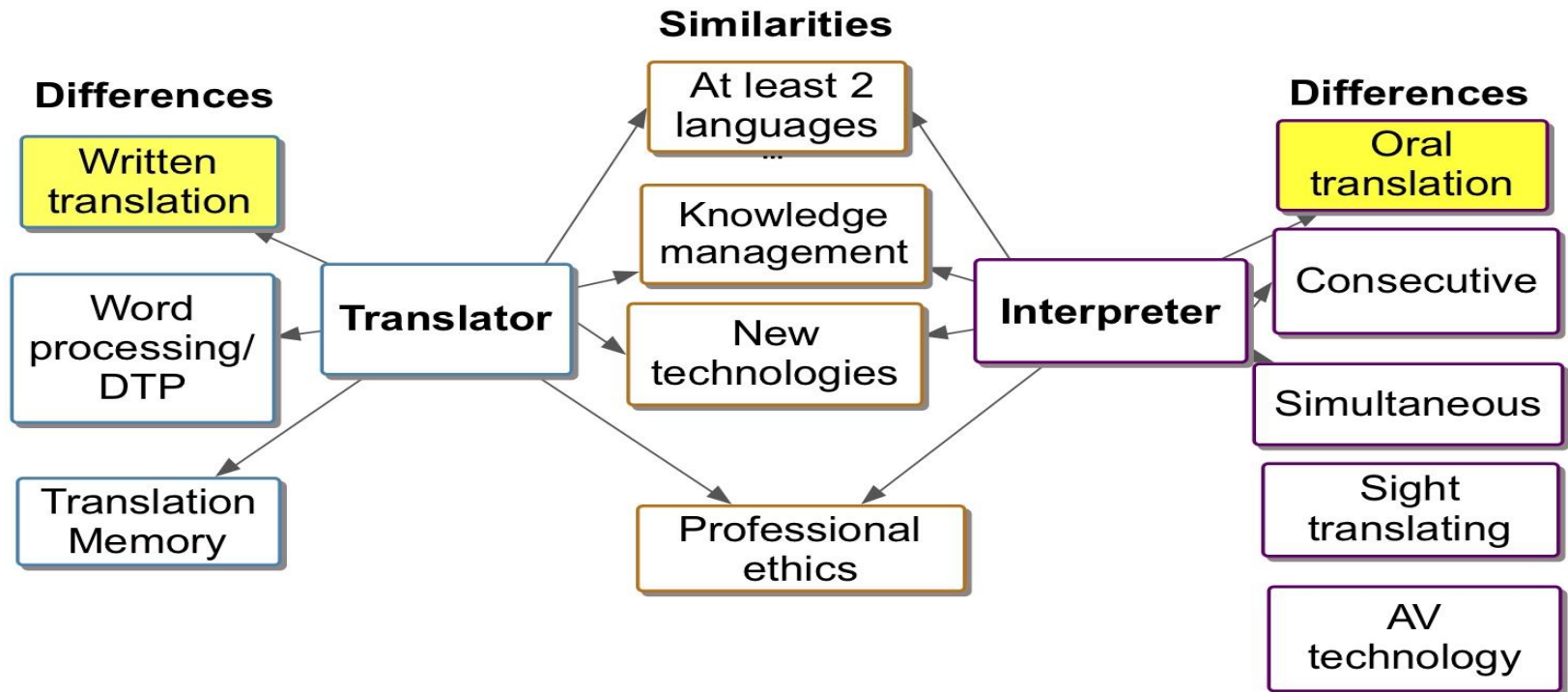


- Interpreter vs translator
- Word by word translation
- Languages of lesser diffusion
- Interpreting at national and international courts



# Avoiding misconceptions

## Interpreting vs Translating





## Avoiding misconceptions



Word by word ?

Word by word is only possible by unambiguous contents (e.g. technic)

Exchanges in a legal settings are heterogenous consisting of :

1. legal language describing facts or concepts related to a specific judicial system. There may not be an equivalent in target language
2. all registers of involved languages: from rude insults to highly technical or educated language and relating to different sociocultural worlds



## Avoiding misconceptions

- A language of lesser diffusion is a language rarely represented in a given geographical area
- Immigration language requirements vary constantly and at short notice
- Training methods and programmes are nevertheless available
- Interpreters can be made available via remote technique or using relay



Languages of lesser diffusion



# Avoiding misconceptions



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## International vs national jurisdictions

- Interpreting is interpreting: cases at national and international jurisdictions bear the same level of complexity
- Nevertheless a majority of national courts ignores the skills and competences of a legal interpreter indispensable to ensure a fair trial
- All parties involved should strive and contribute to higher quality and thus guaranty fairness!



## Avoiding misconceptions, be aware of history!



### International vs national jurisdictions

Origin of modern legal interpreting: Nuremberg trial!

- Simultaneous interpreting (first time at court) and other techniques
- Everything was recorded, translated and interpreted
- Interpreters were given the opportunity to prepare
- All international and European courts follow this tradition



## Part 3 Assessing professionalism before and during interview

Watch the Film



Has the right interpreter been recruited?

- Right language? (e.g. does the interpreter speak your client's language ?)
- Language of lesser diffusion in a given area (e.g. Many languages and dialects are spoken in China)
- Is the interpreter suitable for vulnerable defendants or victims? Previous experience, gender, origin?
- Is he or she qualified and adhering to a Code of professional ethics?



## Part 3 Assessing professionalism before and during interview



The practising lawyer will be able to assess these prerequisites to a fair interaction between client, lawyer and interviewing party during the first consultation with his/her client.

1. Ask the interpreter about possible difficulties in communicating with your client
2. Assess the fluency of the interpreter in the language of the proceedings
3. Interpreter behaviour according to the rule of professional ethics (introducing him/herself, using the right pronoun while interpreting, membership in a professional association).

**Diplomatically address any problems with the interviewing party**



## Part 3 Assessing professionalism before and during interview



### The practising lawyer observes :

- the fluency of oral communication and the interpreter's command of the respective languages on the highest level (the language of proceedings may give a suitable indication)
- His/her mastering of interpreting technic and use to the best of communication,
- Sees if he/she respects ethical rules:
  - never interfering without urgent motives (e.g.: factual misunderstanding, risks deriving of suspect's health condition)
  - asking for permission if in need of explanation
  - strict focussed question
  - strict focussed explanation if required from the interviewers
- **Diplomatically address any problems with the interviewing party.** If necessary: the lawyer expresses a warning or even asks for dismissal of the interpreter.



## Part 4: Earlier sources and Improvements due to the Directive 2010/64/EU

### Earlier sources

The Universal Declaration of Human Rights,  
December 1948 (Articles 1-11)

The European Convention for the Protection  
of Human Rights and Fundamental  
Freedoms, November 1950 (Articles 5 and 6)  
The

Charter of Fundamental Rights of the  
European Union (2000/C 364/01),  
CHAPTER III – Articles 20 – 21, CHAPTER VI –  
Articles 47 – 50



Earlier sources



## Part 4: Earlier sources and Improvements due to the Directive 2010/64/EU

**The European Convention for the Protection of Human  
Rights and Fundamental Freedoms,  
November 1950:**

### **Article 5 § 2**

Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

### **Article 6 § 3**

Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; ...
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

No guarantee that the information is given by a professional

No guarantee that the interpreter is qualified





## Part 4: Earlier sources and Improvements due to the Directive 2010/64/EU

DIRECTIVE 2010/64/EU OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL of 20 October 2010 on the **right to  
interpretation and translation** in criminal proceedings

DIRECTIVE 2013/48/EU OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL of 22 October 2013 on the right of  
access to a lawyer in criminal proceedings and in European  
arrest warrant proceedings, and on the right to have a third  
party informed upon deprivation of liberty and to  
communicate with third persons and with consular  
authorities while deprived of liberty

DIRECTIVE 2012/13/EU OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL of 22 May 2012 on the **right to  
information** in criminal proceedings

DIRECTIVE 2012/29/EU OF THE EUROPEAN PARLIAMENT  
AND OF THE COUNCIL of 25 October 2012 establishing  
minimum standards on the rights, support and protection of  
**victims of crime**, and replacing Council Framework  
Decision 2001/220/JHA





## Part 4: Earlier sources and Improvements due to the Directive 2010/64/EU

### *Article 2*

#### **Right to interpretation**

1. Member States shall ensure that suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, without delay, with interpretation during criminal proceedings before investigative and judicial authorities, including during police questioning, all court hearings and any necessary interim hearings.
2. Member States shall ensure that, where necessary for the purpose of safeguarding the fairness of the proceedings, interpretation is available for communication between suspected or accused persons and their legal counsel in direct connection with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications.

Extension of rights





## Part 4: Earlier sources and Improvements due to the Directive 2010/64/EU

### *Article 2*

#### **Right to interpretation**

4. Member States shall ensure that a procedure or mechanism is in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter.

5. Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.



Challenging decision on need  
for an interpreter

Quality of interpreting performance



## Part 4: Earlier sources and Improvements due to the Directive 2010/64/EU

6. Where appropriate, communication technology such as videoconferencing, telephone or the Internet may be used, unless the physical presence of the interpreter is required in order to safeguard the fairness of the proceedings.

Importance of an accordingly  
trained interpreter





## Part 4: Earlier sources and Improvements due to the Directive 2010/64/EU

### *Article 3*

#### **Right to translation of essential documents**

1. Member States shall ensure that suspected or accused persons who do not understand the language of the criminal proceedings concerned are, within a reasonable period of time, provided with a written translation of all documents which are essential to ensure that they are able to exercise their right of defence and to safeguard the fairness of the proceedings.
2. Essential documents shall include any decision depriving a person of his liberty, any charge or indictment, and any judgment.

Vigilance of  
the lawyer  
required



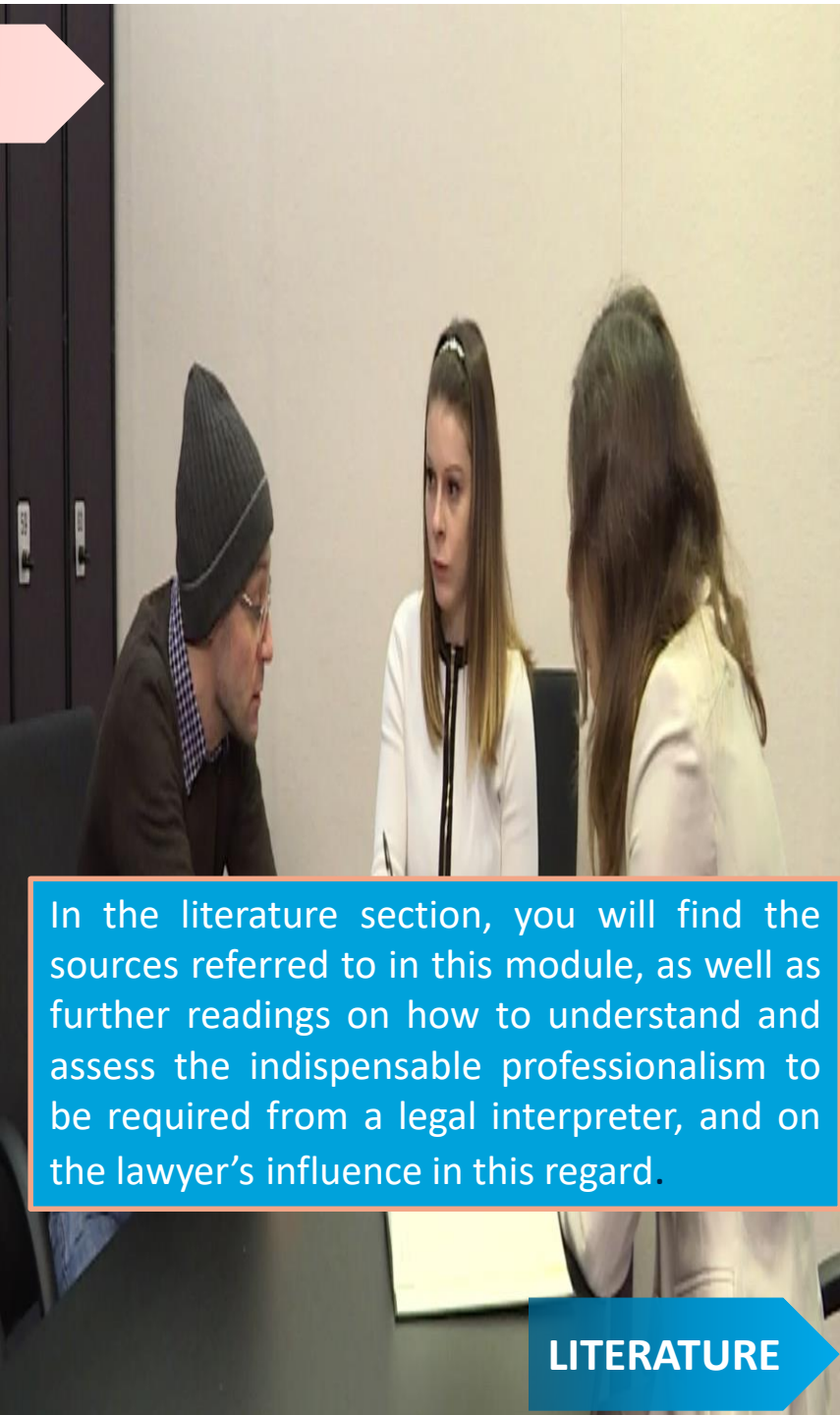


## Module summary

### In this module we have:

- learned about the skills and competences required from a legal interpreter to contribute to a fair trial;
- seen the utmost importance of professional ethics to this respect;
- reflected on how lawyers could use this knowledge in guiding their actions during problematic situations encountered by interpreter mediated interviews

We have also learned that it is often the lawyer's responsibility to actively protect the procedural rights of their clients to professional interpretation.



In the literature section, you will find the sources referred to in this module, as well as further readings on how to understand and assess the indispensable professionalism to be required from a legal interpreter, and on the lawyer's influence in this regard.

LITERATURE



## EU REGULATIONS:

Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings

[Directive 2010/64/EU](#) on the right to translation and interpretation in criminal proceedings

[Directive 2012/13/EU](#) on the right to information in criminal proceedings

## ECtHR CASE LAW involving interpreting:

*ecision*), no. 43640/98, 2003

### **PeCase-law of the European Court of Human Rights**

*Baka v. Romania*, no. 30400/02, 2009

*Brozicek v. Italy*, no. 10964/84, 1989 (Series A no. 167)

*Cuscani v. the United Kingdom*, no. 32771/96, 2002

*Delcourt v. Belgium* (Commission decision), no. 2689/65, 1967

*Edwards v. the United Kingdom*, no. 13071/87, 1992 (Series A no. 247-B) *Erdem v. Germany* (decision), no. 38321/97, 1999

*H.K. v. Belgium* (decision), no. 22738/08, 2010

*Hacioglu v. Romania*, no. 2573/03, 2011

*Hermi v. Italy* [GC], no. 18114/02, § 70, ECHR 2006-XII

*Horvath v. Belgium* (decision), no. 6224/07, 2012

*Husain v. Italy* (decision), no. 18913/03, 2005.

*Kamasinski v. Austria*, no. 9783/82, 1989 (Series A no. 168).

*Luedicke, Belkacem and Koç v. Germany*, no. 6210/73, 1978 (Series A no. 29) *Mariani v. France* (dtuhovs v. Germany (decision), no. 60705/08, 2010

*Plotnicova v. Republic of Moldova*, no. 38623/05, 2012

*Protopapa v. Turkey*, no. 16084/90, 2009

*Rahimi v. Greece*, no. 8687/08, 2011

*Shannon v. Latvia*, no. 32214/03, 2009

*Vikulov and Others v. Latvia* (decision), no. 16870/03, 2006

Next



## ADDITIONAL LITERATURE:

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Brannan, J., European Court of Human Rights case-law on the right to language assistance in criminal proceedings. In: *EULITA Conference* , 27 Nov. 2009, Antwerp. EULITA.

Driesen, C. & Drummond G. (2011). The "Tandem Method Training Interpreters to Work at National Courts. *Forum Université Paris 3 Sorbonne Nouvelle KSCI*, 9 (2), p. 139-156.

Driesen, C. (2016). L'interprétation juridique : surmonter une apparente complexité. In revue française de linguistique appliquée 2016/1 (vol. Xxi), (pp. 91-110). Pub. Linguistiques.

Disponible sur : <http://www.Cairn.Info/revue-francaise-de-linguistique-appliquee-2016-1.Htm>

Gaiba, F.(1998). *The Origins of Simultaneous Interpretation: The Nuremberg Trial (Perspectives on Translation)*. illustrated edition ed. University of Ottawa Press.

Mikkelsen, H., (2000). *The Interpreter's Companion*. 4th ed. Acebo.

Mikkelsen, H., (2000). *Introduction to Court Interpreting (Translation Practices Explained)*. St Jerome Pub.

Shlesinger, M. & Pöchhacker, F. (2010). *Doing justice to court interpreting*. Amsterdam: John Benjamins Pub.

Seleskovitch, D., Lederer, M.(2001). *Interpreter pour traduire*. 4e ed. Didier érudition.