

On Ethnic Minority Language Interpretation System and Practice in Court in China

Abstract: The right of language is a fundamental human right. *The Constitution of China* stipulates that the minority litigant's rights in taking proceedings in his native language should be safeguarded. As a crucial approach to ensuring procedural justice, the principle is significant in guaranteeing the trial fairness, keeping harmonious relationship between all nationalities and respecting ethnic minorities' language. However, in legislative and judicial levels, due to the lack of bilingual practical regulations, many problems related to the issue exist, such as oversimplified principles leading to various practices. The author, based on surveys, statistics and a historical review on China's ancient interpreting systems and a comparative study on the counterpart of Hong Kong, analyzed those reasons and put forward proposals.

Keywords: Minority litigant; Ethnic Minority Language; Legal Interpretation

1 Introduction

In *Constitution of the People's Republic of China*, it is clearly stated in Article 4 that "All nationalities have the freedom to use and develop their own spoken and written languages and to preserve or reform their own folkways and customs." In actual judicial practices, some measures have been adopted to protect the nationalities' right of language, but due to its lack of practicality, some laws could not be effectively enforced. The study is significant to further China's judiciary reform, to construct a harmonious society, to protect the language right of ethnic minority litigants', and to defend their rights and interests of property, freedom even life.

Procedural justice is very significant to guarantee the entity notarization. One aspect of procedural justice is to fully safeguard the right of action of litigant participants, which agrees with the idea of crime control and human rights assurance. Only when the litigant participants' right could be fully guaranteed, could the case facts be ascertained. But if the accused could not understand the language and words during litigation, it will be hard for them to exert their litigious right. Accordingly, it is also one of basic requirements to realize fair justice that participants can use their native languages to institute proceedings. Recently, the increase in criminal cases involved with minorities and language barriers concerned have caused plenty of inconveniences to court trials, which makes the role of interpreters prominent. In criminal proceedings, interpreters are more than litigant participants, but they are pusher to make communication between parts of all kinds possible to drive the procedure. Especially when minority defendants are unable to understand Chinese Putonghua, the interpreters, as the assistant to court, will play a part from the beginning of the procedure to announce the judgment. Just as some experts compare them as "transparent", interpreters play an important role which seems to be inconspicuous. In recent decade, educational circles or practical circles have paid a lot attention to protecting rights concerned with all suspects and defendants as a whole, but some special minorityies have not been attached enough importance to. In criminal cases involved minority nationalities happened in provinces rather than regions inhabited by minority nationalities, those defendants, who compared with others, know little common language, are more isolated and helpless. Thus, it is necessary for the whole society to consider the role of interpreters of minority languages in court trail. The right of

all nationalities to have the freedom to use and develop their own spoken and written languages is one aspect of language right and one of many rights China has empowered ethnic nationalities as well.

In terms of theoretical studies, China's scholars, as far as the author can see, till now, have discussed the language rights of ethnic minorities concerning human rights (Hou etc. 1994; Zhou 2002), ethnic policies (Wang 2005; Liu 2010), litigation principles (Dou etc. 2006; Xue 2007), and the right of litigants (Wang 2014). In terms of legal translation, some legal linguists such as Gonzalez (1991), Benmaman (1999), Framer (2000), Laster (2011) and Taylor (2005), Michael Howie (2007), Jan Battles (2007), Morris (2014), have done research on court translation from the angle of linguistics. In Hong Kong, China, a bilingual legal system has been established and it has become the only area with legislation in both Chinese and English, so the legal translation system is relatively mature. Specific institutions for translation are set up in the Department of Justice and courts of all levels in Hong Kong, and many scholars have conducted studies such as Wu Weiping (2002). However, the studies above are more concerned with translating techniques rather than institutional construction. Zhu Yingping (2001) from Mainland China and some other scholars have mentioned this marginal issue but fewer have paid enough attention to the practical situation of the enforcement of language rights of ethnic minorities, thus the study on the issue is very significant.

2 Problem Introductions

2.1 The Particularity of Ethnic Minorities

It is generally believed that there are two levels concerning international protection of human rights of ethnic minorities. One is on the basis of principles of equality and nondiscrimination, ethnic minorities enjoy all human rights as their counterparts. The other is, according to special principle of protection, ethnic minorities enjoy special rights to protect and develop their own distinctive characteristics (Yang etc. 1994). However, it is considered that the special protection should be more than the fair equality of opportunity in form or privileges endowed, but the protection should, according to the particularity of ethnic minorities, meet different demands in order to provide distinctive treatment including preferential policies and measures, with the genuine equality principle as the basic standing point. China's ethnic minorities are characterized by : (1) the total population of ethnic minorities is small. According to 2010's national census, the whole population was 1,332.8 million, including Han nationality 1,225.9 million, accounting to 91.51%, while ethnic minorities of all 113.79 million, only accounting to 8.49%, which shows that Han nationality is preponderant; (2) ethnic minorities share a common low cultural quality with a high rate of illiteracy which accounted to 33% of the whole ethnic minorities, even as high as 50%-80% in some regions concentrated occupied by minorities; (3) the economic situation and development in ethnic minority areas was backward and unbalanced, compared with other regions of China (Zhou 2002). Due to these characteristics, a special attention should be paid to the protection of rights and interests of ethnic minorities and the protection should also be based on the particularities.

2.2 Problems in Legislative level

In addition to China's Constitution, the protection of language rights is mainly mentioned in *Law of People's*

Republic of China on Regional National Autonomy, and *Law of the People's Republic of China on the Standard Spoken and Written Chinese Language*. China's Constitution is the root, from which lower-level laws of regulations, provincial standards, disciplines grow.

The following articles are directly concerned about language rights:

Table 1 Articles Concerning Language Rights in *Constitution of the People's Republic of China*

All the national autonomous areas are inalienable parts of the People's Republic of China. The people of all nationalities have the freedom to use and develop their own spoken and written languages, and to preserve or reform their own ways and customs.	Article 4
The state promotes the nationwide use of Putonghua (common speech based on Beijing pronunciation).	Article 19
In performing their functions, the organs of self-government of the national autonomous areas, in accordance with the autonomy regulations of the respective areas, employ the spoken and written language or languages in common use in the locality.	Article 121
Citizens of all nationalities have the right to use the spoken and written languages of their own nationalities in court proceedings. The people's courts and people's procuratorates should provide translation for any party to the court proceedings who is not familiar with the spoken or written languages in common use in the locality. In an area where people of a minority nationality live in a compact community or where a number of nationalities live together, hearings should be conducted in the language or languages in common use in the locality; indictments, judgments, notices and other documents should be written, according to actual needs, in the language or languages in common use in the locality.	Article 134

Table 2 Articles Concerning Language Right in *Law of People's Republic of China on Regional National Autonomy*

The organs of self-government of national autonomous areas shall guarantee the freedom of the nationalities in these areas to use and develop their own spoken and written languages and their freedom to preserve or reform their own folkways and customs.	Article 10
While performing its functions, the organ of self-government of a national autonomous area shall, in accordance with the regulations on the exercise of autonomy of the area, use one or several languages commonly used in the locality; where several commonly used languages are used for the performance of such functions, the language of the nationality exercising regional autonomy may be used as the main language.	Article 21
In accordance with the guidelines of the state on education and with the relevant stipulations of the law, the organs of self-government of national autonomous areas shall decide on plans for the development of education in these areas, on the establishment of various kinds of schools at different levels, and on their educational system, forms, curricula, the language used in instruction and enrollment procedures.	Article 36
The organs of self-government of national autonomous areas shall independently develop education for the nationalities by eliminating illiteracy, setting up various kinds of schools, spreading compulsory primary education, developing secondary education and establishing specialized schools for the nationalities, such as teachers' schools, secondary technical schools, vocational schools and institutes of nationalities to train specialized personnel from among the minority nationalities.	Article 37

<p>In the prosecutions and trial of cases, the people's courts and people's procuratorates of national autonomous areas shall use the language commonly used in the locality. They shall guarantee that citizens of the various nationalities enjoy the right to use the spoken and written languages of their own nationalities in court proceedings. The people's courts and people's procuratorates should provide translation for any party to the court proceedings who is not familiar with the spoken or written languages commonly used in the locality. Legal documents should be written, according to actual needs, in the language or languages commonly used in the locality.</p>	<p>Article 47</p>
<p>The organ of self-government of a national autonomous area shall persuade and encourage cadres of the various nationalities to learn each other's spoken and written languages of the local minority nationalities. While learning and using the spoken and written languages of their own nationalities, cadres of minority nationalities should also learn Putonghua and the written Chinese (Han) language commonly used throughout the country.</p>	<p>Article 49</p>

In addition to article of language rights, many other regulations, which are considered as essential parts of the constitution, also contain the similar principle and spirit, for example article 47 of *the Law on Regional National Autonomy*, article 6 of the *Organic Law of the People's Courts*, article 9 of the *Criminal Procedural Law*, article 11 of the *Civil Procedure Law*, and article 8 of the *Administrative Procedure Law*.

The regulations and laws mentioned above require that ethnic peoples, when taking part in proceedings, have their right to use their own spoken or written language to sue, respond to lawsuits, submit a complaint, answer, provide with evidence or bill of action. By doing so, the minority party's litigious right and fulfillment of their obligations would not be affected due to the language barriers. In areas where people of minority nationalities live in a concentrated community, the judicial offices of all levels should employ the language or languages commonly used in the locality to write indictments, judgments, notices and other documents. To guarantee minorities' equal right to exercise their litigation rights properly to safeguard their legitimate rights and interests, judicial offices should provide the minority party, ethnic litigant participants with interpreters, if they cannot understand or speak the language used in court, so as to eliminate the language barriers.

The language right is the symbol of the idea "every nationality is equal". We can see there are three points worthy of attention: first, to use their native spoken and written languages in court proceedings is the crucial right of the party and litigant participants, and it is a right that is not permitted to be deprived or restricted. Second, to safeguard the language right of the party and litigant participants is the obligation fulfilled by the related organs. Third, while performing its functions, the organ of self-government of a national autonomous area shall, in accordance with the regulations on the exercise of autonomy of the area, use one or several languages commonly used in the locality; where several commonly used languages are used for the performance of such functions, the language of the nationality exercising regional autonomy may be used as the main language.

The constitution and other regulations mentioned above guarantee the realization of the language right of minority peoples to some extent. In most autonomous regions, the right has been implemented and protected well. In these areas, minority judges familiar with both Mandarin and native language are equipped and the whole trial and also the final judgment are done in the native language of the defendants. And when defendants cannot understand Chinese or fail to express in Chinese, courts will hunt for interpreters for the defendants actively and pay for it, in order to protect the language right of the defendants. Take the procuratorial organs in Xilingol League of Inner

Mongolia Autonomous Region for instance. Every year, more than 1,000 cases will be handled, among which more than 50% is bilingual cases with both Mandarin Chinese and Mongolian Language involved. Many problems exist that Parties involved randomly select their languages, charging documents are written in both Mongolian and Mandarin, and languages of proceeding fail to consist with written documents. To solve the problems, Xilingol Procuratorate has formulated and implemented an Interim Provisions on Standardizing Bilingual Trial, to standardize judges and procurators right of judicial and enforcement power, so that the language rights of parties related could be guaranteed and their legitimate rights and interests could be protected. In Urumuchi, Xinjing province, since 2004, a similar interim provision with 18 articles has been carried out. It stipulates under what circumstance native language or Chinese Putonghua should be employed by both parties and all trial personnel during the trial, in paper document writing, and interpreting service should be provided in detail.

However, apart from those interim provisions applied in some autonomous regions, generally speaking, when it comes to specific ways such as when to, how to and who to be chosen as the interpreter, and what an interpreter should be qualified with and how to work, there's no regulations yet in this aspect, which is a judicial blank. What's more, there is also no definite regulation on whether the bilingual defendants are eligible to choose the language on court. For instance, in 2014, a case concerned a Mongolian defendant who is able to speak both in native language and Chinese, but during the trial, he suddenly asked to use his native language rather than Chinese to continue the trial. And the whole trial had to start over, which is a waste of time and energy. Whatever the reason for the defendant to change his language, there's no specific regulation concerned which should be noticed.

The principle of legality is supposed to be comprehensive and stable, and thus it is always in guiding and general words, so is the principle of ethnical languages, but the regulations are also oversimplified, and hard to operate and with many deficiencies, which have caused many judicial practice in a mess.

2.3 Problems in Judicial Practice Level

In the stage of investigation and prosecution, there widely exists a phenomenon of ignoring languages of ethnic minorities in both before trial and on court.

A common practice is, if the party is unfamiliar with Mandarin, a staff that is competent with mandarin and the native language will be equipped for investigation and prosecution. However, the disadvantage is also apparent. Firstly, if other personnel handling the case are unable to understand the native language, the cooperation and supervision will fade as the client who speaks the native language takes all parts actually. Secondly, even all personnel equipped are able to understand the language involved, which language is supposed to be employed to take the record remains the problem. If the native language of the minority is used, all personnel in the following trial are supposed to understand the minority language, which is almost impractical. However, if Mandarin is employed to take record, which is the common routine, the interests and rights of the migrant litigant's may be affected due to the difference between various languages, especially as to some core detail and key statement, defense etc.. For example, an interviewee from a procuratorate (female, 43 years old, Mongolian) presented a representative example in this regard. In one case involving intentional injury leading to the death of the victim in 2013, the defendant collided with the victim and further fought and hurt the victim. The original confession in Mongolian was "I cut him in his neck, and his head hung down immediately". But the translated recorded wrote as "I cut him in his neck, and his head dropped immediately", which aggravated punishment. There is another case

involved a juvenile accused. The judge asked in Mongolian language: “Before going into the store, what did the other accused say to you?” The young man answered in Mongolian: “He asked me to stay outside.” Then the judge asked: “What did you do outside.” The juvenile answered: “Nothing but looking.” In Mongolian language, to look can mean to check out, to hang around, and to be on the lookout as well. Even the bilingual judge would have to be cautious about the key meaning of the word to choose, which would certainly influence the sentence made.

As a commonly employed form of evidence, verbal evidence plays an important part in juridical practice, verbal evidence involved languages of ethnic minority groups is not only widely applied in litigious activities, but with unique probative effect as well. However, for a long time, in actual case handling process, the personnel usually ignore the use of ethnic minority languages and have formed a common procedure of “inquiring-interrogating-translating & recording” at the same time of obtaining evidence, that is, the personnel handling cases may inquire and interrogate in ethnic minority languages but record the translation of the verbal evidence in Chinese while translating the recorded testimony back to the individuals involved to confirm the evidence in ethnic minority languages. Such practices may cause hidden danger for the later prosecution and trial.

Ignoring the use of ethnic minority languages first affects the stability of the evidence. The common practice of “inquiring-interrogating-translating while recording” directly causes the instability of the evidence and becomes the excuses for the witness to change their testimony. Since the initial written testimony which reflected the witness statement in his native language has never been recorded, the written proof on court is nothing but translated words by personnel handling cases, once the witness changed the testimony by the excuse of improper translation, the public prosecutor will always be unable to refute and thus the accuser may fall into a passive situation. Secondly, it hinders the judicial fairness to obtain evidence in languages of minorities. “To base itself on facts and take the law as the criterion” is regarded as the basic principle of law enforcement, and the case facts are identified with evidence with authenticity, consistence and validity. Witness testimony which is supposed to prove the authenticity of the case, should be characterized with the three features mentioned above to safeguard the fairness. However, the authenticity of verbal evidence translated by the personnel handling the cases is liable to be questioned. In actual practice, some investigators may defy the facts that the informant could not speak or understand Chinese very well, and do not remind or stress the principle that he or she is endowed the right to speak in his or her mother tongue, but let them go on with poor Chinese Mandarin. In other cases, the investigator may record in Chinese while the informants are stating in Mongolian language, and then translate the written Chinese back to Mongolian to confirm with the informants. The investigator plays double roles of recording and translating. The spoken language may be in consistent but the accuracy may be lost. The authenticity and validity of the practice is questionable. The effect of evidence obtained like this may be affected due to improper translation and the judicial fairness may be hindered. Thirdly, ignoring the language of minority interferes with maintaining the seriousness of the law. The practice that the personnel handling cases recorded the translated Chinese testimony is regarded as “quick and effective way” but is harmful to the seriousness of the law. It may cause that testimony fails to verify the obtained physical evidence due to wrong translation. Furthermore, it is utterly baseless to accept the translated verbal evidence to decide on a verdict. The record of inquiry or interrogation should preserve the original form of the statement of the informant. The translation without recorded statement in original languages, undoubtedly, failed the expectation in this sense.

In the stage of civil procedure and criminal procedure, in autonomous regions, all trial personnel could be all bilingual ones, but a lot of defenders do not know native languages at all, and then the court language will switch to Chinese, but the native defendant knows nothing about the whole defense. As the judicial subject, court may meet the similar dilemma. If the minority parties are involved, it becomes an issue whether all documents related should

be in the native language of the minority parties. In actual practice, it is hard to realize. In my survey, only a very small portion of court could realize all document concerned are written in native language. If not, as for those who are not familiar with Mandarin, when they get the written judgment, they may just focus on the result of the trial, but neglect the important middle part of explanation and fail to understand, which leads to higher rate of appeal, and is bad for the final solution of the case. Furthermore, in cases involved with minority parties, court will be responsible for hiring the interpreters, and there are usually kinds of connections between the interpreters and court, which must hinder the neutrality of the interpreters and the defendants may misunderstand, which thus affects the final judgment.

In judicial practices, due to a lack of minority interpreting staff, judges, procurators, or lawyers will take the role of interpreter. And to save time and effort, the judicial staff oneself will be recorder, interpreter and judicial party at the same time, and in the circumstance when the minority defendant takes the interpreter as saver, they seldom ask them to challenge. When the questioning is done by native language but recorded in Chinese without any evidence of translation, as long as the defendants lodge an appeal, the record fails to be valid evidence.

2.4 Interpreting service

According to our survey, there are no full-time legal interpreters/ translators as well as specific legal translation institutions. And the interpreters employed are at varying levels. Sometimes, the interpreter fails to translate accurately. What's more, there is a lack of comprehensive examination on interpreters. Due to the shortage of interpreters of ethnic minority languages, the Court usually pays more attention to the result of the translation than the comprehensive examination of the legal experience, the interpreters' professional morality and other aspects related. Besides, there is a lack of supervision system on interpreters. In some cases, the same interpreter will do the translation for public security organs, procuratorial organs and people's courts at the same time, and no one can supervise the accuracy of the translation, which may cause the loss of fairness in trial.

Legal interpreters have at least four aspects of values in procedural law: foreigners take proceedings in China; ethnic minority people take proceedings in areas of Mandarin or Han litigant in minority areas; parties with local accent and parties speaking Mandarin Chinese; deaf or mute participant in proceedings (the author will not discuss this issue due to the limited space). In practice, the right to have interpretation service is facing the following difficulties.

First, the ignorance of translation of local accent and pasimology is against the basic principle of equal justice under law. Second, since interpretation plays an important role in bilingual litigation, the standard for legal interpreters is higher. Legal interpreters should not only be good interpreters who are well trained with language skill, but equipped with considerable law knowledge, so that they could manage to convey accurate information with satisfactory quality, and thus the parties' rights could be protected. However, according to the current law in China, there have not been any specific and clear feasible rules to define issues on interpretation such as the source or qualifications needed of interpreters. In juridical practice, the selection and appointment of interpreters are not standardized, and thus the quality cannot be guaranteed as well. According to our survey, in Xilingol League, those local bilingual judges, more or less, have the experiences to serve as interpreter in court trials. In this way, the neutrality in trial must have been affected to some extent, let alone the interpretation quality. Third, lack of qualified interpreters is another contributor to the fact that the litigious language right of the ethnic nationalities cannot be implemented effectively. The investigation shows: without qualified legal interpreters, it will take great efforts to

find one when the ethnic party didn't understand mandarin in court. In 2005 in Wuhan, in a criminal case with a Mongolian as the defendant, due to the fact that the Mongolian did not understand Chinese, it took the court for almost a month to select an interpreter with basic legal knowledge, which to a large extent, impacted the judicial efficiency and neutrality and fairness of the trial.

Due to the problems mentioned, as for minority litigants, minority living in scattered group and ethnic migrant population in particular, their rights to use their own language in taking proceedings cannot be safeguarded and improved. Take Hohhot, the capital city of Inner Mongolian Autonomous Region as an example. As a city with scattered minorities, the population of Hohhot city, according to 2010's national census, was 286.86million with ethnic minority of 0.27million, accounting to 10.29%. With the economic development of the city, there has been a steady increase in ethnic minority moving to Hohhot city to work, visit, or study, and the peak amounted to 48.6% of the total population. Compared with city residents, the interests and rights of those minorities living in scattered group and floating population are more liable to be infringed. And once the infringement happened, due to the lack of storage of interpreters of minority languages, their interests and rights could not be protected promptly as the result.

3 Interpretation in ancient China and modern Hong Kong

China, since long ago, has been a nation mixed with nationalities speaking in various accent and languages. There has been elementary interpreting system established in different dynasties. To study these historic stages will surely be significant reference to the construction of modern legal interpreting system. In Hong Kong, a bilingual legal system has been established and it has become the only area with legislation in both Chinese and English, so the legal translation system is relatively mature, which can also be examples.

3.1 Regulations concerning interpretations in ancient China law suit

The recorded document literature says that “Since the Western Zhou Dynasty (c.11th century -771 B.C.), there have been organs for foreign affairs and translation as well as interpretations in government.¹” And “Since Han Dynasty (202B.C.-220 B.C), an interpretation institution during law suits between different nationalities has been stipulated and written as law to trace interpreter's responsibility with errors occurring or other actions to bend the law for personal gain. The institution achieved its peak in Tang Dynasty (618-907) after its development in the Northern and Southern Dynasties (420-589) and extended in to Ming and Qing Dynasty. This legal institution solved the problems in litigations caused by language barriers, whose targets include both foreigners and minority nationalities. At the same time of safeguards litigants legal rights in proceedings, it is beneficial to promote international communication and grand domestic national fusion.² ”

Table 3 Historical Development of Interpretation Institution in Ancient China

Dynasty	Address Term	Interpretation Institution	Responsibility	Responsibility of the Interpreters	comments

¹ Ma Zuyi: *Chinese Translation History*,1999,9,p2

² Zheng Xianwen: *Interpreters in Lawsuit in Tang Dynasty*, 2007.

The Western Zhou Dynasty	<i>Sheren</i> (Tongue Men)	<i>XiangXu</i>	Foreign Affairs		
Qin		<i>Dianke</i>	Minority Nationalities		
Han	<i>Yiren/Yiguan</i>	<i>Dianke/ Daxingling Dahonglu</i>		If the anyone cheated interpreters, the one concerned will be published with face thrust.	Minority kingdoms around Han also established similar institutions and interpreters
Beiwei	<i>Yiyu ren</i>				
Tang	<i>Yiyu ren Yishi</i>	<i>Honglu Si</i> (mainly for interpretations) <i>Zhongshu Sheng</i> (mainly for translations and Interpretations)	Foreign Affairs	The interpreters and translators must sign on the documents to assure the accuracy. Certain regulations and punishment stipulated for false interpretations	
Song	<i>Yiren/ Tongshi</i>			If interpretations are provided on purpose, the interpreter will be punished equally as the criminals involved in the case.	
Yuan	<i>Sheren</i>	<i>Huitong Guan</i>	Foreign Affairs	If false interpretations are made on purpose, the interpreters will be fired and the one who find out the mistake will be promoted	
Ming	<i>Yizi Sheng/ Tongshi</i>	<i>Siyi Guan</i>	Domestic and Foreign affairs	If interpretations are provided on	<i>Siyi Guan</i> is also the first school

				purpose, the interpreter will be punished equally as the criminals involved in the case.	to train interpreters and translators in China
Qing	<i>Tongshi</i>	<i>Yixun Chu</i>	Foreign Affairs	If interpretations are provided on purpose, the interpreter will be punished equally as the criminals involved in the case.	

From what the table shows, we can see that to provide interpreting service for litigants has always been one of the functions of diplomatic establishments in ancient China. Although in different address terms, “Sheren, Yiren, Yiyuren etc.” all refer to interpreters or translators. They were not only responsible for dealing with foreign affairs, but also managing minority nationalities. Yet, the interpreters were not only specifically set for judicial activities, but for administrative activities. They were diplomats as well as legal interpreters when legal dispute occurred.

As for the responsibilities of the interpreters and translators, we can see since Tang, the interpreters had been supposed to be punished if they did false interpretation on purpose for personal interests. Because Yuan Dynasty was established by Mongolian nationality, the interpreters and translators played important role in the society as a whole, and consequently, the punishment was strict and the one who make mistakes would be fired but the one who recognized the error would be awarded, which was the first time in China’s history that the award would be given. In Ming Dynasty, the first school to educate and train interpreters and translators were founded named as “Siyi Guan” .

The advancement of the ancient interpretation institution in China is embodied in: first, in over 2,000 years of history from the Western Zhou to Qing Dynasty, the regulation concerning interpreters and translators were recorded in laws, which showed the long tradition of promoting litigants taking proceedings with their own languages; second, duty and responsibility of interpreters and translators were stipulated by asking them to sign on paper documents and pledge to provide truthful interpretation, otherwise they would take the legal liability of breach of duty; third, special judicial organs for both foreigners and minority nationalities were set up to maintain the sovereignty but also safeguard litigants’ right.

3.2 Interpreting System in Hong Kong

Hong Kong is an international metropolis where people speaking various languages live together. In order to protect the legitimate rights enjoys by parties to the case, the court interpreting system has been established for a long time in Hong Kong. Having evolved over years, this system has grown mature. By looks into the court interpreting

system in Hong Kong in the aspects of court interpreters, qualification, training and supervision, we can promote the interpreting system construction in mainland China.

The court interpreting in Hong Kong could be traced back to 1841 when Qing Dynasty ceded Hong Kong to the U.K. And from then on, the English language has become the official language. Before 1997 when Hong Kong came back to China, the official language employed in HK court was English. After 1997, the judge can make decision to choose either Chinese or English to carry on a court trial, which means Chinese and English are equal. However, due to the fact that the law system in HK belongs to British American Case Law, laws are written in bilingual Chinese and English, most references are in English though. Moreover, some judges and lawyers in HK are foreigners who need court interpreting service during court trial with defendants or witnesses who do not understand English. In response to the huge demand, HK government set specific organization to deal with the matter. The Court Chinese Office attached to judicial organization is responsible for assigning interpreters and translators to levels of courts in HK. Besides English to Chinese, court interpreting also includes Tai, India, Malay, Cantonese and Chinese local accents.

There are full-time and part-time court interpreters. In 2014, there were 187 full-time interpreters who enjoyed welfare as civil servants. If the demand is beyond the capability, registered part-time interpreters will be invited and paid by hours.

In terms of qualification to be an interpreter, HK judicial organs have different standards: for full-time interpreters, they have to possess bachelor degree and have 2nd above grade in Common Recruitment Examination and also pass the related translation and interpretation tests and interviews. Different from the full-time interpreters, court, when in demand of legal service, will recruit part-time interpreters and provide with related tests.

HK court lays emphasis on training of interpreters. All full-time should take part in a one-month training to learn about procedures and grasp basic law knowledge and court terms, to be familiar with common cases, vocabulary and basic interpreting skills such as simultaneous and interactive interpretation.

As for supervision, since court interpreters are the bridge between parties, the quality of interpretations are closely related with interests of the parties. A regular appraisal will be carried out by a senior official to junior counterparts, and feedback will be sent to staffs concerned and instruction will be given as well. Part-time interpreter will be evaluated by full-time ones. In HK, almost all courts are equipped with recoding system, and every trial will be recorded, thus the record could be used for supervision. In addition to supervisors, a complain scheme is established. If parties in court trial including judges, clerks or public are not satisfied with the performance of the interpreter, they can complain to the relevant departments. And the interpreters concerned may be punished even deleted from the registration.

What can we learn from the past and HK? First, a specific organization responsible for interpreting languages of minority nationality in China's judicial system should be established as in ancient China and HK. Second, a strict supervision and accountability mechanism should be set up to safeguard the quality of interpretation and thus protect the legitimate rights. Third, a stable training like HK or specific school for judicial interpretation should be provided to ensure the interpreting talents.

4 The reason why China has not yet established the court interpreting system

On the one hand, although entity notarization and procedural justice are connotation of fairness, in China, entity notarization is valued more than procedural justice. Once the two is contradictory, entity notarization is preferred in most cases to procedural justice. In fact, to realize the judicial fairness, the two should be stressed and in a dynamic balance.

On the other hand, generally speaking, in five regions where minority nationalities concentratedly live, the court interpretation system has been developed based on bilingual judges and judicial staff. However, in other parts of China, or out of the region of the major minority lives, the situation is rather serious. There are some institutional causes, and the crucial is that court construction failed to keep pace with the rapid migration of population with the reform and opening up policy, and the sharp difference in language pattern. In the past, minority nationalities usually inhabit a region as an ethnic group, but with economic development and to meet the demand in job market, more and more minority nationalities started leaving their hometown to work in center cities far away. And thus accordingly court interpreting has met huge challenges from two aspects: on the one hand, thanks to the promotion in economic, social and educational status of minorities, the industries engaged in by minorities have expanded from industries with national features, the low end to various jobs, and so crimes involved with minorities also have extended from criminal field to economic and other cases. More opportunities to communicate with major cultures have brought more cultural clashes, and as a result, more contradictions occurred. The local courts have to deal with cases in various fields, which is a challenge for the professional skills of legal professionals, especially in language competence. On the other hand, more and more courts in mainland China, developed inland cities have to deal with cases involved with minority nationalities speaking different languages, which put more pressure on the court capability, interpreting system in particular.

5 Proposals

To solve the problem, in the long run, the government would go on promoting the use of standard mandarin Chinese among ethnic minorities, which is a systematic construction and will take a long time and involve efforts of the whole society. But many other approaches could be taken in different respects.

5.1 To establish a legal interpreting system

The existing problems discussed above indicate that current legal translation in China is extremely imperfect and needs further institutionalized and professional legislation construction. The nature and status of legal translation decides that the legal interpreters should only be qualified if they manage to master language competence, translation skills and legal knowledge at the same time. The ones who should not only have strong capacities to understand and analyze cases, apply legal ideas and knowledge, but also have the certain ability to organize languages and express ideas. What's more, they should have wide scope of knowledge, strong cognitive competence of social reality and cultural background, sound observing ability, strong sense of social responsibility and commonweal consciousness. Besides, they should be self-confident and equipped with the spirit of lifelong learning and the perseverance of promoting individual professional levels constantly. Only the ones who have all

these qualities can burden such heavy and strict legal translation tasks. Therefore, it's necessary for us to use the experience of the US and HongKong for reference, setting up qualification examination for legal translation, issuing legal translation certification, increasing the thresholds to legal translation, in order to guarantee the legal interpreters' quality. In the meantime, the professional self-disciplinary organization of legal translators, similar to lawyers association, should be established, by which the code of professional ethics and practicing rules will be formulated, the examination, registration, assessment will be managed, the learning, training and experience exchanging will be organized, and rewards and punishments will be applied to the legal translators and their legal translation.

First, to establish a certification system. Taking practicing lawyer regulation as reference, a certificate could be issued to a legal interpreter or translator if he/she can pass the tests organized by authorities. Second, to establish a register system. A particular department in judicial organ takes register of all interpreters and translators according to their languages, educational level, age and working areas. Third, to carry on a regular training. Departments concerned should provide trainings including vocational moral, court procedures, duty and responsibility as well as interpreting and translating skills and all registered interpreters and translators must attend certain hours of training to be qualified. Forth, to build a transferring system to form an exchange interpreters and shared resources, in order to promote efficiency and proficiency of interpreters. Fifth, to set up a payment standard. The service fee should be included into law aid system, and the local court even litigates do not have to pay for the interpreting service. Legal translation system, including translation of the ethnic nationalities' languages, dialects, sign languages as well as the translations concerning foreign affairs, should be established and improved in the flowing aspects of building basic principles and rules, basic requirements for translators, identifying source of translators/interpreters, funding sources and payment, management of legal translation, right and obligation of translators, negligence liability of translation.

5.2 Judicial level

First, to establish an avoidance system. Conditions when interpreters are to be avoided should be clarified according to their interests with defendants. Second, to set a time limitation for paper document translation. A time limitation should be stipulated for written translations of paper documents in proceedings and also the legal consequence if the translations is failed to complete within the time should also be set. If the translation has to be done out of court, the original should be kept in court and the translator could only take the copy. Third, to clarify the conditions under which translations or interpretations are invalid. If the translators or interpreters have colluded with defendants or languages of minority nationalities are not employed when questioning, the judge must make decision on accepting or rejecting the interpretation or translations and explain. If in judicial proceedings, there exists questioning without employing languages of minorities nationalities, the procedural action will be invalid and the case will be remanded for retail.

5.3 Supervision

First to establish a supervision system: double interpreters. A system of double interpreters could realize a consecutive interpretation, which will realize mutual supervision as well as best state of interpreters to increase the accuracy. The most important is when litigants are from areas with different local accents, two interpreters from accordingly various areas could reduce the interference from accents to increase the quality. Second, supervision afterwards. A synchronous audio and video recordings for the whole process should be provided so as to check the

interpretation on the one hand, and on the other hand it is helpful to urge interpreters to carry out their duty correctly and prevent them from colluding with defendants.

Second to establish an accountability system: (1) to set a specific crime. In China's Criminal law, article 305 says: "if, in the course of criminal procedures, any witness, expert witness, recorder or interpreter intentionally gives false evidence or make a false expert evaluation, record or translation concerning circumstances that bear an importance relation to a case, in order to frame another person or conceal criminal evidence, he shall be sentenced to fixed-term imprisonment of not more than three years or criminal detention. If the circumstances are serious, the offender shall be sentenced to fixed-term imprisonment of not less than three years and not more than seven years. It is suggested a "false interpreting crime" should be divided as a single crime, and "involuntary interpreting crime" should be set. The "involuntary interpreting crime" refers to "errors" made by interpreters including "mistranslation" and "miss of translation" due to the interpreter's carelessness, which could have been avoided, and have caused negative impact on court judgment. The difference between the two crimes mentioned above is that the former is intentional, for instance the interpreter has colluded with the defendants for personal interests, and the latter is errors caused by skill inadequacy. (2) To set up different ways to call to account. If the interpreters have broken the law via intentional false interpretation or involuntary interpretation, judicial organs will take the charge, and cancel their licenses as legal interpreters. But if they have not yet been serious to break the law, authorities concerned could talk to, warn, fine or cancel their licenses according to gravity of circumstances.

5.4 Court responsibility

The court should take the responsibility to examine the qualification of interpreters, and to provide interpreting service according to situations. When minority nationality parties are involved, the court should ask if they need interpreting service promptly. Third, avoid judicial staff to act as interpreters to protect the neutrality of interpreters.

5.5 Legal interpreters' talent bank

To cultivate and train bilingual judges and procurators. Bilingual judges and procurators are more capable to dealing with cases involved with minority defendants. If the judge is unable to understand native language, customs or religions, he/she may miss the opportunity of meditation. And when interpreter is the only source of information, once there's mistake in interpretation intentionally, a false judgment may be resulted. In consideration of lack of bilingual judges, the government could set special policies to enroll more bilingual talents into judicial professions and provide them better promotion. By then end of 2012, in Inner Mongolia, 345 bilingual procurators and judges had graduated from the bilingual training program.

Perfecting and implementing the litigious rights of the ethnic nationalities to use their own ethnic languages is not only required by international agreements and international conventions, and the obligations of legislative, judicial and administrative departments, but also one of the most cogent services that the non-official aid agencies can provide for the ethnic nationalities with legal aids to protect their rights and interests. At present, various governmental or non-official legal aid institutions offer legal aid to ethnic minorities mainly via providing legal consulting or serving as an agent, and on account of kinds of reasons, legal translation has not been included yet.

However, as a comprehensive social governance system, ruling by law should be penetrated in every aspect of social activities. In terms of the purposes and objectives of the establishment of legal aid system, legal aid such as

reducing and remitting fees should be offered for the vulnerable groups who are situated in poverty or the disadvantaged position due to many factors in every link or every level in the legal system operation. Vulnerable groups may need professional aids when they are in difficulty in every aspect of law ruling, so the service offered only by lawyers cannot meet the demands which may cover all contents of legal aid which may fail to realize the true values of legal aid. According to “the Survey of Chinese Language Situation” published by Ministry of Education and the Language Commission in December, 2004, mandarin (Putonghua) was only spoken by 53.06% of the population throughout the whole country; 66.03% in town and 45.06% in countryside. As to mastering and applying mandarin, there has been a great difference between town and countryside, Middle West regions and Eastern regions. In particular, among those 47% who cannot communicate in mandarin, most are farmers. As a result, it’s necessary and urgent to protect the 46.94% of the population’s language right in litigation via legal aid. We think in order to provide professional legal translation service, we could build a translation talent bank for ethnic minority and other minorities, based on bilingual talents with both language competence and legal knowledge in national higher education institutions.

6 Conclusions

All people are equal before the law, including equal in status in litigation, while language is the prerequisite to realize equal litigation. If the litigants, judge, public prosecutor, and lawyers can not communicate, or faced with accusation, the defendants are unable to defend themselves, the trial is far from being regarded as fair and just. Court interpreting is a tool to ensure the litigants’ equality in status of litigation. But the current situation in China is very worrying: there is no clear law or regulation to guide court interpreting, no specific department to supervise and manage qualifications, language competence, and quality of interpreters, no related training and testing mechanism for legal translation, so much so that it has been out of control that whether the quality is guaranteed, the interpreter is neutral or whether the moral standard of the interpreter could meet the demand. Some experts point out the legal interpreting asks most but it has not been valued enough. What we should do is to take proper measures to regulate legal interpreting and make the legal service the strong arm to protect minority nationality’ s right to realize a true judicial fare and justice (Zhu 2014; Weng 2011; Lan 2009; Dou 2006). In judicial proceedings, the language right of the litigants should be safeguarded. In practice, when the impairment of the language right happens, a system of investigating and fixing the liability should be set up to find out who should be held accountable.

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