

# **Towards a Creativity-based Framework for Defining and Describing Court Interpreting: Based on the true story of court interpreting in Greece**

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The purpose of the paper is to tell the story of court interpreting in Greece. Drawing on a questionnaire-based survey among legal professionals, the general picture of the role, the performance and appreciation of the court interpreter in Greece is established. In the second part of the paper a definition and a descriptive approach to the interpreting process in courts is put forward that allows both non-language professionals to understand what is at stake in court interpreting and at the same time to promote professionalization. I will make a case for the examination of the actual process of (court) interpreting by applying the notion of creativity, which is considered to be a very promising tool for describing and examining problem-solving procedures in general.

*Keywords:* Court interpreting, creative problem-solving, definition of interpreting, description of interpreting, professionalization, Greek courts

## **1 Introduction**

Despite the fact that in the last decade courts in Greece have been facing a growing number of non-Greek speaking individuals coming from a growing number of countries speaking an even larger number of languages and dialects, nobody seems to be really concerned about the lack of professional interpreting services and the fair administration of justice to these individuals. Apart from scattered newspaper articles with anecdotal accounts of incidents with ill-performing interpreters at

Greek courts that range from funny to tragic, there has been no other examination of court interpreting in Greece.

Both the scrutiny of legislation and a survey conducted with fifty two legal professionals in Greece concerning their experience with court interpreters tells the true story of the administration of justice to non Greek-speaking individuals. On the one hand, the inconsistent use of the term *translator* and *interpreter* in legislation, the lack of any profile for a suitably equipped court interpreter and the data from the questionnaire-based survey, on the other hand, show that the dilemma of the court interpreter as either ghost or intruder turns out to be a situation actually in favor of the court interpreter as a ghost deprived of the right even to rattle with its chains.

In the first part of this paper I will draw a map of the uncharted waters of court interpreting in Greece through the analysis of the responses to the questionnaires that had been distributed to fifty two legal professionals; the analysis is expected to unveil poor interpreting services that are due to a poor appreciation of the complexity of the interpreting process by lawyers and judges. As my research has shown, in their eyes interpreting is nothing more than a simplistic mechanical reproduction of source language material in a target language. According to Gerver, what most legal professionals seem to disregard, is that interpreting is “a form of complex human information processing involving the perception, storage, retrieval, transformation, and transmission of verbal information” (1975, p. 119).

Therefore, in the second part I will put forward the position that court interpreting should be defined and described by applying a conceptual framework understandable not solely by experts in interpreting but also by legal professionals, who are major players in the procedure of court interpreting and usually do not have any language training or any other relevant knowledge: The interpreter – at best - is the only party in the procedure of court interpreting with a background in interpreting theory and the principles of intercultural communication; therefore, we believe strongly in the need for a theoretical backdrop that can explain (court) interpreting to lay persons. Such a framework would cater for an enhanced understanding of court interpreting, an appreciation of its importance and its complexity by lawyers and judges – stakeholders in the actual process of interpreting.

It is the objective of the second part of the paper to propose a definition and a descriptive approach to the interpreting process in courts that allows even non-language professionals to understand what is at stake in court interpreting. I will make a case for the examination both of the actual process of (court) interpreting and its teaching and assessment by applying the notion of creativity, which is considered to be a very promising tool for describing problem-solving procedures in general.

## **2 Background**

What fuelled my interest in interpreting at court authorities in Greece was a personal experience: Some years ago I was asked to act as an interpreter in an alleged rape case of a young foreign woman by a fellow countryman of hers. The presence of an interpreter in cases where foreigners are involved is laid down in the law<sup>1</sup>. I was not assessed in any way; upon my arrival I was asked to provide identification and to declare that I “knew” English. I realized that anybody claiming to know a foreign language could be used as an interpreter. Researching into the legal provisions on interpreting at court I further realized that there are no minimum standards for the interpreters and that there is nor any training available for interpreters in the public sector nor any certification<sup>2</sup>.

In accordance with article 233 paragraph 2 of the Greek Criminal Code the interpreter is chosen from a list which is composed by the court authorities after the recommendation of the district attorney in early September each year. This list is composed of individuals (if possible by civil servants) living or working in the area of the court's jurisdiction. After being approved by the attorney of the court of appeals the list is made official and is valid for one year. According to

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1 See further the Greek Code of Criminal Procedure; in particular article 233 paragraph states that when the defendant or a witness does not know the Greek language satisfactorily an interpreter has to be appointed.

2 An extreme case recorded in Greece has been the appointment by the court of Thessaloniki of an interpreter who has been used for more than ten years. She had been registered with the court for the languages Bulgarian, Serbian, the Yugoslav language (sic) and she declared to have a poor knowledge of Albanian and Turkish. The interpreter in question had been used repeatedly by the courts and she contributed to a considerable number of hearings also in Albanian – a language she declared to have a poor knowledge of.

the same law, in urgent cases and if an individual from the list is not available, another person can be appointed to function as an interpreter. The interpreter swears on the holy bible before the appointing authority (court or prosecutor) to “translate with exactness and faithfulness everything that will be said”<sup>3</sup>. Another issue that arose, was that the legislator shows signs of insecurity as to the differences between translation and interpreting and uses the verb *to translate* even when there is exclusive and indisputable mention of interpreting.

The impact of the procedures concerning the selection of the court interpreter on the fair administration of justice could be severe. On the one hand, the foreigner who does not know or has limited knowledge of the native language is affected. Communication between the foreigner and the authorities might not come into being or misunderstandings might evolve. It is obvious that the poor quality of communication with the foreigners in settings like police stations, public prosecutors and before court, etc., where major personal interests are at stake could bear great inequality. Talking to judges and prosecutors revealed their perspective: The lack of trained personnel is not only a problem for the non-native individual in conflict with the judiciary in Greece. It is also the Greek court system that suffers from the lack of qualitative interpreting services since authorities are forced to locate under time pressure an amateur linguist to assume the role of the interpreter, whose presence is a prerequisite for the procedures involving non-Greek speakers.

### **3 The discourse of proceedings**

In this chapter I will go into the research I conducted with legal professionals in order to map the uncharted waters of court interpreting in Greece. At the outset I will provide the necessary definitions, go into methodological issues and finally I will present the results and an analysis of the findings.

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<sup>3</sup> See further article 236 of the Greek Criminal Code.

### 3.1 What is court interpreting?

For Hermann (1956/2002) interpreting is the activity of enabling or facilitating communication between speakers of different languages and it is a millennial practice, with earliest records dating back some five-thousand years. According to Selescovitch (1978, p. 2) the interpreter anticipates in a dialogue, his words are aimed at a listener whom he addresses directly and in whom he seeks to elicit a reaction. The interpreter has to deal with messages uttered in two languages by at least two different actors in their respective social, cultural and psychological frames, the complexity of the communication increases tremendously (Gonzalez 1991: 296). Pöchhacker (2005, p. 695) wrote:

In a discussion of various models of interpreting (with a strong bias toward the (inter)action-theoretical framework advanced by German translation scholars in the 1980s), I have tried to show that adopting a broader notion of ‘process’ – as a progressive course or event in time – can help achieve a more holistic, ‘real-life’ understanding of the phenomenon. This comes at the cost of using the term ‘process’ very liberally, for anything from memory storage to mediation; but it comes with the benefit of approaching interpreting in a coherent conceptual framework, reconciling situated (inter)action and mental operations in a socio-cognitive perspective. but it comes with the benefit of approaching interpreting in a coherent conceptual framework, reconciling situated (inter)action and mental operations in a socio-cognitive perspective.

Any concentration on the cognitive aspects of interpreting would neglect the fact that communication is in fact a social phenomenon and would blend out the crucial facets of how cognitive processing in interpreting adjusts to both verbal and non-verbal input.

Gonzalez' and Pöchhacker's holistic approaches allow us to consider the interpreting process as an integrated process where the cognitive processing operations and situatedness interact; disregarding the instance of social interaction and focusing on the cognitive processing operations would deprive any examination of the interpreting process of what feeds the interpreter's cognition with valuable data and keeps the interpreter going. Selescovitch's words of eliciting a reaction

suggest the existence of a problem-solving situation on how the purposeful reaction can be brought about. The social interaction in Pöchhacker's terminology is what feeds the cognitive operations of the interpreting process; it is expected to trigger a constant problem-solving procedure of how to get the message across languages and cultures. Elaborating the words of the researchers quoted above, for the purposes of our project court interpreting will be defined as the activity of enabling or facilitating communication between speakers of different languages in legal settings aimed at eliciting a purposeful reaction on the basis of verbal and non-verbal input that simulates constant problem-solving operations.

Accordingly, our attempt to draw a picture of court interpreting in Greece takes into consideration that interpreting is a process, fed not solely by linguistic data and world knowledge, but that it should have also an input from the examination of the situational factors by the interpreter.

### 3.2 Research methodology

In the years from 2008 to 2010 a questionnaire-based survey on interpreting services offered in courts in Greece was conducted. Randomly selected legal professionals, fifty lawyers and two judges were asked to respond to a questionnaire. The twenty questions of the questionnaire were expected to yield insight into the qualifications, performance of the individual called upon to act as an interpreter and into how the legal world in Greece views interpreting. It was my aim to confirm the anecdotal evidence collected through talking to legal professionals, to individuals having acted as interpreters in Greek courts, from newspaper articles and from personal experience as a court interpreter. The survey was conducted in the areas Ioannina, Arta, Preveza of the Region of Epirus and on the Island of Corfu.

### 3.3 The survey: Charting the uncharted waters of court interpreting in Greece

The questions were divided into three categories: The first set of questions aimed at revealing the present status of the interpreter in the court room, the second set was aimed at the issue of quality in the interpreting process, whereas the last set of questions were asked in

order to establish, what kind of an interpreter the legal professionals in Greece wanted to have.

a. The state and status of the interpreter in the court room

The first set of questions was aimed at establishing the status of the interpreter in the court room; it was my purpose to establish if he was considered an equal partner in the court procedure. The results showed that not all of the legal professionals questioned had worked with foreigners; twelve of the interviewees had answered the questionnaires on the basis of what they observed in courts, whereas the majority had relevant experience. The overall impression concerning the quality of the services delivered was that the performance ranged from satisfactory (thirty two out of fifty two) to unsatisfactory (eighteen). Only two legal professionals considered the interpreting services to have been good on a scale consisting of the qualities *good, satisfactory and unsatisfactory*.

The answers provided gave us the impression that the interpreter as an individual and a services provider was more or less simply tolerated. The legal professionals displayed a marginal interest in the interpreter's qualification: Eight of the legal professionals declared they knew the qualifications of the interpreters who attended, eighteen declared they knew only in a few cases what kind of qualifications the interpreter had and twenty six did not know anything about the interpreter.

b. Does quality matter?

Quality should play a major role in the provision of court interpreting services. We concentrated on the availability of multiple interpreters for multiple witnessed, the availability of resources to the interpreters as well as the degree of actual reliance on the interpreter's performance in court.

The questions focusing on the comprehension of the source text utterance as experienced by the legal professionals yielded the following results: Many of the interviewees believe that there were cases in court when the interpreter did not (fully) understand what the foreigners were saying: In detail, two had witnessed a case where the interpreter seemed not to understand anything of what was said by the foreigner; twenty participants in the survey stated that the interpreter did not understand everything, whereas thirty did not witness such a case.

As to the production of the target utterance, eight interviewees declared that the interpreter did not render fully in Greek what was said. Forty two had the impression that the interpreter did not render accurately what was said by the foreigner, whereas two were sure that interpreters did not render accurately the source utterance.

As to the rendition of Greek language utterances into the foreign language, ten interviewees said that there were cases where the interpreter did not interpret to the foreigner any communication in Greek between the lawyers and judges. Thirty eight stated that this happens often and four that this is the norm. This result explains that forty eight legal professionals consider it impossible for the alien to have a picture of the entire procedure in court.

The interpreter and the foreigner were addressed in the majority of the cases inconsistently by the legal professionals, twelve witnessed cases where the interpreter was addressed while in sixteen cases the alien was addressed. Six lawyers witnessed that the interpreters used the first person singular when rendering the source utterances, thirty used reported speech while eight interviewees reported inconsistency.

Only twelve out of the pool of fifty two legal professionals remembered cases, where the interpreter took notes; only four cases were reported, where the interpreted asked for a dictionary or another aid.

In most cases (forty four) the same interpreter was used for all parties involved; only eight legal professionals witnessed cases, where different interpreters were employed. Only six of the interviewees remembered cases where the interpreter was asked if he was tired, whereas the rest answered that the interpreter's physical state was never an issue.

- c. What kind of court interpreter does the Greek legal professional want?

When asked if the interpreter in legal settings should act also as a specialist in cultural and linguistic issues, thirty six of the answered positively; forty answered that the interpreter should reproduce the source utterance, only six believe in a functional interpretation of the source text wording. Generally the remuneration of the interpreter was considered poor. Only one of the lawyers and judges questioned

believed that the remuneration is satisfactory<sup>4</sup>. All participants in the survey answered that there is a need for a court interpreter training in Greece and that the quality of court interpreting is not satisfactory in general. As to the system of appointment of court interpreters in Greece, the interviewees responded unanimously, that the system was considered unsatisfactory.

### 3.4 Evaluation of the findings

The findings are telling the true story of court interpreting in Greece: It seems that the legal system merely tolerates court interpreters and it does not seem to rely on them.

The fact that the rendition of Greek language utterances into the foreign language were not transferred effectively, the fact that the foreigner was isolated since in most cases the interpreter did not render any communication between lawyer, public prosecutor and judge and the fact that forty eight of the legal professionals considered it impossible for the alien to have a picture of the entire procedure in court is evidence enough that interpreting in court settings is not at all contributing to the fair administration of justice. Moreover, the interpreter is viewed as a machine expected to limit his services to the linear reproduction of the source utterance in the target text; only for six of the legal professionals interviewed functionality of the interpreting process seemed to be in the focus.

The lack of interest in the qualifications or working conditions of the interpreters that could limit their performance, the minimal interest in their actual performance in the court room, the lack of any protocol on court interpreting or the ignorance of how interpreting in court should function are evidence of a poor appreciation of court interpreting in Greece.

Unfortunately, the picture drawn by the answers confirm the anecdotes about the court interpreting process in general. What is even more a source of concern is that there have been no indications of protest against the poor quality of legal interpreting: The legal professionals having witnessed this unfair administration of justice seem to tolerate this.

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<sup>4</sup> This could be seen as an indication of the prestige court interpreting has in Greece.

What was encouraging is that all participants in the survey answered that there is a need for a court interpreter training in Greece and that the quality of court interpreting is not satisfactory in general.

#### **4 A creativity-based description and definition of court interpreting: Steps towards the professionalization of court interpreting in Greece**

Practically, in Greek courts the interpreter seems to play solely a marginal role; the previous chapter has shown that legal professionals show only a minor interest in the court interpreter both as an individual and as a professional. They put up with low quality interpreting services. The tolerance of such conditions in the administration of justice is a sign of a poor appreciation of the complexity of interlingual and intercultural communication. How can this be changed? What is it that will make the legal professionals show an increased interest in court interpreting?

##### 4.1. How do we make them understand?

I think that the key issue is to make legal professionals understand what court interpreting is about and what it takes for the interpreter to succeed in an assignment. The key issue is to make legal professionals understand what court interpreting is about and what it takes for the interpreter to succeed in an assignment.

As already said, in the following lines we will put forward the position that court interpreting should be defined and described by applying a conceptual framework understandable not exclusively for experts in interpreting but also for legal professionals who are major players in the procedure of court interpreting and usually do not have any language training or any relevant knowledge. The interpreter – if trained - is at best the only party in the procedure of court interpreting with a background in interpreting theory and the principles of intercultural communication; therefore, we strongly believe in the need for a conceptualization that can make (court) interpreting understandable to lay persons. Such a framework would cater for an enhanced understanding of court interpreting by lawyers and judges –

parties, whose involvement in the process of interpreting determines largely the success of any interpreting project.

The present state of affairs as far as court interpreting is concerned, associates the court interpreter in Greece more with a ghost in the whole procedure and - to be more precise – with a ghost that is not even allowed to rattle with its chains. But what kind of ghost do we need? Do we need a silent ghost? I think that everybody who is familiar with court interpreting knows that an interpreter cannot be a silent ghost. He should be a ghost in terms of discretion, but in terms of performance he should become an intruder – for the sake of fair administration of justice.

It is the objective of the lines that follow to propose a descriptive approach to the interpreting process in courts that allows even non-language professionals to understand what is at stake in court interpreting and to provide a conceptual framework for training and assessing court interpreters. A better understanding of the principles of court interpreting and the difficulties a court interpreter has to face increase the court systems demand for quality interpreting services.

#### 4.2 Describing and defining court interpreting as creative problem-solving.

The interested reader might turn to Pöchhacker (2005, pp. 683-685) and to Gonzalez (1991, pp. 315-358) who provide a basic overview of approaches adopted to describe the interpreting process. All these theories have in common that they employ notions to conceptualize the interpreting process which are difficult to grasp by non-specialists: Ranging from Seleskovitch's work in the early 1960's up to functionally-oriented information processing theories of the last fifteen years (e.g. Pöchhacker, 2004) all models have been devised for specialists. But what about settings where the contribution of the interpreter is not considered to be the norm? How can the usual stakeholders in such a setting be convinced about the necessity to draw upon professional interpreting services? This can be made feasible only by conceptualizing interpreting by means of a terminology accessible by non-specialists.

A description and a definition of the (court) interpreting process based on creativity, which as a concept is more accessible, would shed

another light on court interpreting and make legal professionals understand what court interpreting is about.

Horvath (2010) has proven that interpreting is an act of creativity and that on the basis of the psychological literature, creativity can be identified as an intrinsic element of interpreting on the three levels of the interpreting: The level of the interpreting product, the level of the mental processes underlying cognitive strategies, and the level of the interpreter's professional behavior in a given communicational situation (2010, p. 157). Furthermore, he writes (2010, p. 156) that beyond the interpreting process as such, creativity plays a vital role also in the way an interpreter engages with the overall communicative situation. Even if a great number of cognitive processes may become automatic in the course of the professional interpreter's career, the situational characteristics change with every assignment and call for creative problem-solving.

Creativity researchers converge on the notion that creative thinking<sup>5</sup> is a complex process that may include problem definition and redefinition, divergent thinking, synthesis, reorganization, analysis, and evaluation, which is inherent to human nature and becomes visible through the individual's interaction with the environment.

In psychology creativity has been defined by Urban (1990, pp. 104-105) as

- a. the ability to create a new, unusual and surprising product as a solution to an insightfully perceived problem or a given problem whose implications have been insightfully perceived,
- b. and by means of an insightful and broad perception of existing and open data and information purposively looked for,
- c. and by analysis, by solution-oriented but highly flexible processing, by unusual associations and new combinations of data and information and with the help of data from experience or with imaginative elements,
- d. these data, elements and structures into a new solution-gestalt (whereby the processes 3 and 4 may partially run simultaneously on different processing and consciousness levels),

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<sup>5</sup>See Sternberg and Lubart 1996, Lubart 2000, Sternberg 2006.

- e. to arrive at a solution-gestalt, which as a product or in a product, in whichever form, becomes elaborated,
- f. and, finally, through communication can be grasped via the senses and experienced by others as meaningful and significant.

The above definition of creativity depicts a process of managing existing data after an intelligent prompt in order to come to a needed product. It reminds us of what an interpreter actually should be doing: he should constantly be managing the data he receives on every level, the level of the interpreting product, the level of the mental processes underlying cognitive strategies, and the level of the interpreter's professional behaviour in a given communicational setting.

Building up on the definition of creativity given, one can produce the following coherent creativity-based definition of interpreting. Interpreting could be defined as

- a. an interpreter's response to a prompt to interpret a given source utterance,
- b. which deploys on data from source utterance and initiator
- c. involving elaboration of the data
- d. in order to produce a target utterance,
- e. which is perceived as useful and appropriate by the receiver.

In psychology creativity has been described as a four stage process<sup>6</sup>. The four stages are the following:

- a. *Preparation* (preparatory work on a problem that focuses the individual's mind on the problem and explores the problem's dimensions), this is the research phase: Collect information or data.
- b. *Incubation* and *intimation* (where the problem is internalized into the unconscious mind and nothing appears externally to be happening and the creative person gets a 'feeling' that a solution is on its way).
- c. *Illumination* or *insight* (where the creative idea bursts forth from its preconscious processing into conscious awareness).

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<sup>6</sup> In 1926 Graham Wallas presented in his work *Art of Thought* one of the first but still widely cited process descriptions of creativity. For further details see Armbruster (1986).

d. *Verification* (where the idea is consciously verified, elaborated and finally applied).

The scheme used in creativity research to describe the actual sequential nature of the creative problem-solving process could very well describe what happens at any of the three levels of problem-solving in interpreting, the level of the interpreting product, the level of the mental processes underlying cognitive strategies, and the level of the interpreter's professional behaviour in a given communicational situation. Every phase of the creativity process corresponds to a phase on the appropriate level. In the first phase (preparation), the initiator provides the relevant information, while the translator looks for as much information as possible. In the incubation phase the translator starts constructing a unique cognitive decision-making process, which leads gradually to the product. In the last stage, the verification phase, the solution is tested as to its appropriateness and effectiveness.

Describing and defining interpreting as a creative problem-solving procedure could enhance its appreciation among laypersons: Employing a notion like creativity, which is on the one hand familiar and associated with a superior set of procedures by the layperson, and on the other hand a psychological term denoting complex cognitive processes that are purpose-oriented could give the legal professional the chance to view court interpreting as a process and as a product and the interpreter's performance in a different light.

## **5 Conclusion**

The purpose of our paper has been to tell the story of court interpreting in Greece for the first time. Through a questionnaire-based survey, a general picture of the role, the performance and appreciation of the court interpreter in Greece could be established. Court interpreting in Greece is far from being even satisfactory; what has been recorded through the questionnaire-based survey is a total lack of professionalization. The worst thing seems to be the tolerance of this situation by the major stakeholders in the administration of justice, lawyers and judges. It seems that the lack of interest in interpreting and the interpreter as well as the tolerance of poor interpreting services can

only be changed if the legal professionals understand what interpreting (in court) is about and what it requires from the interpreter. Therefore, in the last part of the paper a definition and a description of (court) interpreting as a creative problem-solving procedure was put forward; using a terminology much more accessible than the one used in the definitions and descriptions by specialists in the field of interpreting studies, would allow the lawyers and judges to see the complexity of the interpreting process and appreciate the value of high-quality services.

Further research might go into two different directions: First of all, it should investigate whether the legal professionals would indeed respond to a creativity-based definition and description of court interpreting and secondly, it should be researched to what extent a description and a definition of interpreting as a creative problem-solving procedure can carry the weight of not only fostering an increased understanding of interpreting, but also the training and assessment of interpreters<sup>7</sup>.

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