

# Third Study Commission Questionnaire 2020

## Costa Rica

For 2020, the Third Study Commission, which focuses on Criminal Law, decided to study "Communication in the criminal courtrooms". This topic should cover different aspects of communication including questions related to interpreters and the communication of judges with non-legally educated participants to the procedure.

In order to facilitate discussion and to assist us in learning from colleagues, we ask that each country answer the following questions:

### **A. Interpretation in criminal courts**

1. What criteria must be met for an interpreter to be appointed? Does this differ if it is for a party to the case, or a witness?
2. Is the interpretation limited to certain languages?
3. Who appoints the interpreter?
4. Are there standard requirements for the quality of the interpretation or qualifications of the interpreter?

If so, how does the judge ensure compliance?

In any event, how does the judge ensure that the interpretation is accurate and meets good standards?

5. Are there legal obligations for court interpreters?
6. For the main hearing of the case is the translation for the whole hearing or only part of the hearing? If it is only part, which parts, and why is the whole hearing not translated?

**B. The importance of good interpretation and good communication for the verdict (or "*for a due process*")?**

7. Assuming that the quality of interpretation could affect the outcome of a case:

7.1 Do you consider this applies more in certain types of cases than others and, if so, what types of cases?

7.2 Is it a problem that can be remedied, or a problem that the judiciary must live with? And if yes, how do we secure that no one is wrongfully convicted?

8. Is there a risk that people who have difficulty explaining themselves, possibly due to low intelligence or poor education, suffer disadvantages at the court? If yes, what remedies exist?

9. Is intercultural communication a subject of training for judges or part of the instruction of juries?

**C. Nonverbal communication in the courtroom**

10. Can the body language of accused persons, victims or witnesses influence the outcome of a case?

11. Is nonverbal communication a subject of training for judges or part of the instruction of juries?

Please send your answer to:

Lene Sigvardt, Co-President

Dieter Freiburghaus, Co-President

Sally Cahill, Vice President

Secretariat of the IAJ/UIM

LES@domstol.dk

dafreibi@protonmail.com

HHJ.Sally.Cahill.QC@ejudiciary.net

[secretariat@iaj-uim.org](mailto:secretariat@iaj-uim.org)

The language of the proceedings is Danish. To the extent possible, the proceedings involving and examination of persons who do not master the Danish language must be conducted with the assistance of a translator with a master's degree in translation (language for special purposes) or the like.

No person may be called in to assist as an interpreter expert who would be disqualified from sitting as a judge in the proceedings due to the rules of conflict or bias.

The interpretation isn't limited to some languages.

The use of an interpreter may be dispensed with in some criminal cases and where the court and the other stakeholders in the case have sufficient knowledge of the foreign language and the court otherwise has no reservations in this regard.

The court receive the request for an interpreter normally from the prosecutor or the defence lawyer and the court choose the interpreter. In the beginning of the court session the judge will ask the person who is in need of the interpreter if the person and the interpreter understand on and the other.

There is no training in how to interrogate through an interpreter and many do not know how to – and some interpreter due to lack of education due to lack of qualified interpreter do not know how to interpret either – but they must be guided by the judge.

If the judge senses that the interpreter is not qualified during the court session despite having asked before hand if there is a good understanding the interpreter and the person in question the judge will end the session and ask for a new interpreter.

I think that the interpretation can have an impact on the outcome of a case if the interpreter is not able to pass on the details of the testimony. The more complex a case is the more important is the interpretation. If the burden of proof is based on testimony more than cold facts.

If it can't be remedied with a new interpreter the court must consider that all misunderstanding that it is disfavor of the defendant are taken in to consideration.

This could also be a problem to people who for other reasons have difficulties in explaining them self.

I think that poor interpretation, primitive speech and body language can trigger the judgement if the court is not aware of the biases that it can resolve in.

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