

E.MA AWARDED THESES

2011/2012



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The interplay between human rights and translation in multilingual newborn Kosovo
Author: **Darts Rebecca Therese**
University of Seville (Spain)



EIUC gratefully acknowledges
the contribution of the European Commission
which made this publication possible.

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First edition: April 2014
DOI 10.7404/eiuc.ema.20112012.02

www.eiuc.org

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FOREWORD

The *European Master's Programme in Human Rights and Democratisation* (E.MA) is the first Master's course in human rights and democratisation launched and financed by the European Commission that later served as model for establishing other Regional Master's around the world. Since January 2013 these are all connected and managed by the *European Inter-University Centre for Human Rights and Democratisation* (EIUC) under the *Global Campus of Regional Master's Programmes* (GC).

E.MA is a one-year master's course aimed at preparing professionals to respond to the requirements of daily work in international organisations, field operations, governmental and non-governmental bodies, and academia. The programme offers an action and policy-oriented approach to learning about human rights, democratisation and international relations from legal, political, historical, anthropological, and philosophical perspectives. This interdisciplinary nature and wide-ranging scope of E.MA reflect the benefits of true European inter-university cooperation in human rights education. It is an inter-disciplinary programme that reflects the indivisible links between human rights, democracy, peace and development.

During the first semester in Venice, students have the opportunity to meet in a multi-cultural environment and be taught by leading academics, experts and representatives of international and non-governmental organisations. During the second semester students relocate to one of the *participating universities* in the various EU member states to follow additional courses in an area of specialisation of their own choice and to write their thesis under the supervision of the E.MA Director or other academic staff. After successfully passing exams and completing a Master's thesis, students are awarded the European Master's Degree

in Human Rights and Democratisation jointly conferred by a group of EIUC/E.MA universities.

Each year the E.MA Council of Directors selects five theses which stand out not only for their formal academic qualities but also for the originality of topic, innovative character of methodology and approach, and potential usefulness in raising awareness about neglected situations or issues and capacity for contributing to the promotion of the values underlying human rights and democracy.

The E.MA Awarded Theses of the academic year 2011/2012 are:

- CHATZOPOULOU, Anastasia, *The Dilemma in the Deaf Community: Linguistic Minority or Persons with Disability?*. University of Cyprus (Cyprus).

- DARTS, Rebecca Thérèse, *The Interplay between Human Rights and Translation in Multilingual Newborn Kosovo*. University of Seville (Spain).

- GIÃO, De Brito Rita, *New Governance Mechanisms and International Human Rights Law: Moratoriums in Law and Practice*. Central European University in cooperation with Eötvös Loránd University, Budapest (Hungary).

- GRUYAERT, Laura, *Safeguarding the Right to Water for Basic Human Needs in the Context of Transboundary Watercourses: Analysis of the Combined Use of Two Legal Regimes: International Water Law and International Human Rights Law*. Université de Montpellier (France).

- MINCHEVA, Ioanna, *Beyond Equality and Non-Discrimination: Escaping Narrow Human Rights Framings in the Context of Sexual Orientation and Gender Identity*. Masaryk University, Brno (Czech Republic).

This volume includes the thesis *The Interplay between Human Rights and Translation in Multilingual Newborn Kosovo* by Darts, Rebecca Thérèse, and supervised by Prof. Carmen Márquez-Carrasco, Prof. Luis Rodríguez-Piñero, Ms Silvia Escobar, University of Seville (Spain).

ABSTRACT

Translation and interpretation have generally been overlooked in international human rights law, yet if there exists the right to use language in private *and* public spheres, this needs to be facilitated through provision of translation and interpretation. Conceptualising the right to translation and interpretation within the framework of linguistic human rights, translation and interpretation are instrumental in the fulfilment of a number of human rights, including rights to a fair trial, language, education, and participation.

This thesis explores the human rights implicated in the provision of translation and interpretation in the specific context of Kosovo: a unique multilingual and political context in which the international community has nurtured the protection and promotion of national minorities.

To analyse the interplay between translation and human rights this thesis applies the 4A analytical framework (availability, accessibility, acceptability, adaptability), which has been developed in other fields of human rights particularly in relation to the provision of public services, including in relation to the right to education, the right to adequate housing or the right to water and sanitation. The thesis concludes that language assistance proves to have key instrumental and practical importance for safeguarding human rights and promoting tolerance in multicultural societies.

Like past editions, the selected theses amply demonstrate the richness and diversity of the E.MA programme and the outstanding quality of the work performed by its students.

On behalf of the Governing Bodies of EIUC and E.MA and of all participating universities, we congratulate the author.

PROF. FLORENCE BENOÎT-ROHMER
EIUC Secretary General

PROF. RIA WOLLESWINKEL
E.MA Chairperson

REBECCA THÉRÈSE DARTS

THE INTERPLAY BETWEEN HUMAN RIGHTS
AND TRANSLATION IN MULTILINGUAL
NEWBORN KOSOVO

Special thanks to: Professors Luis and Carmen for excellent supervision and endless encouragement; my family and friends for their moral support; and Anna, Fidaim, Bardha, and Sercan, for Serbian, Albanian, and Turkish translations.

CESCR	Committee on Economic, Social and Cultural Rights
ECHR	European Court of Human Rights
ECRML	European Charter for Regional and Minority Languages
EU	European Union
KFOR	NATO-led International Peacekeeping Force in Kosovo
ICCPR	International Covenant on Civil and Political Rights
ILO	International Labour Organisation
OSCE	Organisation for Security and Cooperation in Europe
UN	United Nations
UNDP	United Nations Development Programme
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Education, Scientific and Cultural Organisation
UNHCR	United Nations High Commissioner for Refugees
UNMIK	United Nations Mission in Kosovo

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I.

INTRODUCTION

There are an estimated 6,000 languages spoken in the world, and Europe is defined by its linguistic diversity. Languages are an essential part of human life and identity, as such inability to communicate causes significant disadvantages to participation in society. It is natural that at some point in our lives we will have to either use a language different to our mother tongue or seek the assistance of a translator or interpreter¹. Translator bloopers can be highly amusing; yet lacking language knowledge can have serious consequences for accessing human rights. The role of translation and interpretation² in facilitating access to human rights lacks research and is generally ignored. It is easy for English speakers, such as myself, who enjoy the increasing international use of English to take languages for granted and forget or ignore the fate for other languages, particularly minority language. This research focuses on the right to participation and analyses the instrumentality of translation and interpretation in facilitating this right. I explore the challenges faced by multilingualism and ensuring equality of languages in the context of Kosovo, where there is varied and unequal provision of translation and interpretation into non-majority languages. This case study was chosen because: a) language is of particular importance in

¹ Kraus, 2008, p. 87.

² The terms “translation” and “interpretation” are frequently coupled but are fundamentally different. Without entering debates over definitions, for the purposes of this research, “interpretation” refers to the process by which a spoken message is relayed from one language into another language, retaining the same meaning (NB: there are many types of interpretation practices including “simultaneous,” “consecutive” and “chuchotage”), whereas, “translation” refers to the written conversion of one language into another. Despite differences, “translation” and “interpretation” are commonly used interchangeably (as is the case in usage of the terminology by the research subjects). See definition, Hertog & Bosch, 2001, p. 67.

this context to avoid conflict; b) there is a real need language assistance; and c) interest in assessing a relatively “young” language policy and its implementation. This thesis considers translation issues to be a particularly urgent problem for the most vulnerable groups in society; as such this study focuses on minorities/non-majority groups, and incorporates a gendered perspective. Language issues are highly divisive, and have even sparked armed conflicts. Respecting language rights is therefore essential for peace, democracy and human rights.

Interpreters and translators work in many fields of work directly impacting human rights, for instance in courtrooms; immigration detention centres; police stations; peace-keeping missions; and local and national government assembly meetings. They are highly skilled professionals who must juggle languages, cultures and politics, yet their role within the sphere of human rights is under-explored. Translation and interpretation is seen as costly, and in the context of the international economic crisis it is important to show the vital role played by translation and interpretation in guaranteeing human rights.

The logic of this current research is that with increasing protection of linguistic rights in international law, particularly with regard to the right to use language, and increasing recognition of the importance of linguistic diversity³; logically, use of language, where differing from the majority language, must require translation or interpretation. The research aims to: a) apply the human rights discourse to the issue of translation provision, thereby addressing a practical need to investigate the interplay of translation provision and human rights, and confronting a gap in research and contributing to knowledge; b) raise the profile of the translation profession; c) contribute to knowledge regarding the interplay between human rights and translation and the ramifications of inadequate provision.

The question guiding this research is: “What is the interplay between human rights and translation provision in relation to the ‘4A framework’ for human rights?” In order to address this question, the first part of this thesis explores the concept of linguistic human rights, and concludes that there is a strong case to consider translation and interpretation as a progressively realised right. I also examine the

³ Grin, 2000, p. 6.

human rights implicated in translation and interpretation. Furthermore, I justify the protection of linguistic rights with regard to linguistic diversity, tolerance and security. In the second part of the thesis I explore the instrumentality of translation and interpretation in the context of Kosovo using the “4A” analytical framework and based on fieldwork. Treating translation and interpretation as a service and resource, I adapt the framework to consider how its provision should be *available*, *accessible*, *acceptable* and *adaptable* in relation to the participation of non-majority communities in public affairs. Finally I conclude that language barriers in the absence of adequate translation and interpretation negatively impact on the enjoyment of human rights, and that facilitating equality in the use of language is in the interest of inter-ethnic tolerance, security and democracy.

1.1. CURRENT RELEVANT RESEARCH

This present research relates to wide-ranging issues and fields of inquiry, yet the most relevant previous research that will inform my inquiries, regards the impact of translation and interpretation within legal and medical settings. However, current literature avoids expressly using a human rights lens.

Translation in legal settings and human rights are clearly linked. Much attention is centred on the translation of legal texts, including human rights instruments, typically exploring linguistic difficulties in seeking equivalence, and resultant legal implications. Research has explored translation in access to justice, and such issues regularly capture the attention of the media. Most studies have analysed language in the courtroom rather than other legal contexts i.e. police interrogations (Eades, 2003). A significant study by Tsuda highlighted Japan’s non-compliance with international human rights regarding access to interpretation in judicial processes (Tsuda, 1997). There is increasing recognition of the particular importance of interpretation for linguistic minorities.

Research has explored how interpretation affects a trial (Bergenfield, 1977-1978) and issues of bias faced by defendants not speaking the court’s language (Salimbenet, 1996-1997), since language, dialect and accent can affect a trial’s outcome, influencing impressions of trustworthiness and intelligence (Levi, 1990; Berk-Seligson, 2002). Inter-

preters and translators play a critical role in guaranteeing fairness, despite slower proceedings (Bergenfield, 1977-1978): inaccurate or incomplete translation can lead to privation of liberty and failure of legal claims (Shephard, 2007). Without an interpreter crucial questions are misunderstood, and answers misconstrued: a “fundamentally unfair” disadvantage (Berk-Seligson, 2002). There is an increasing awareness of the need for improved quality in legal settings (Berk-Seligson, 2002). Competent interpreter shortages prevail, alongside reliance on untrained, uneducated, biased interpreters in courtrooms (Shephard, 2007). Non-professionals interpreting or translating can lead to miscarriages of justice, yet interpreter competency is often left to the discretion of judges (Mikkleson, 2000).

Various codes of conduct with resultant ethical obligations have been developed in relation to court interpreting to assure equal treatment. Translators and interpreters should adhere to principles of accuracy, honesty, neutrality and professionalism (Salimbenet, 1996-1997). Accuracy in conserving every element of information is essential: nuances of meaning are critical in courtroom testimony, since subtle differences can significantly alter testimony (Salimbenet, 1996-1997).

Court interpreting lacks recognition despite being an extremely difficult and responsible job (Bellos, 2011). The difficulties posed by legalese are well known, and translation in legal contexts requires specialist legal knowledge, and cultural, social and paralinguistic aspects of communication often need consideration beyond pure linguistics (Levi, 1990; Mikkleson, 2000; Berk-Seligson, 2002). Significant studies of the Nuremburg Trials evidenced the difficulties faced in simultaneous interpretation (Mikkleson, 2000). Recruitment of competent, experienced interpreters was difficult and the trials highlighted the stressful, mentally exhausting conditions of the work, the mental agility and skill required, and the affect on interpreters translating horrifying evidence – leading to high turnover and difficulty maintaining neutrality (Berk-Seligson, 2002; Bellos, 2011).

Academic conceptualisation has advanced from Reddy’s conceptualisation of the interpreter as an invisible conduit through which messages enter and exit unmodified (Reddy, 1993). There has been significant debate surrounding the divergent expected, perceived and actual roles of the courtroom interpreter (Mikkleson, 2000; Wadensjö, 1998). Should the interpreter strictly adhere to linguistic elements of the message, or is the role that of a socio-cultural mediator? Berk-

Seligson has argued that interpreters' roles are more active than is realised (Berk-Seligson, 2002). Interpreters are absolutely necessary; yet lack recognition.

There is increasing awareness of the risks of language barriers and inadequate interpretation in medical settings (Jacobs et al., 2004). A significant recent Amnesty International Report⁴ explicitly linked the lack of interpreter availability to the right to maternal health, despite international law not expressly linking translation and the right to health. Amnesty International found indigenous and rural women were most affected by deficiencies in interpretation provision, due to lacking language skills. Recent research studying the impact of interpreters on access to and quality of health care found that misinterpretations and miscommunications have deleterious and tragic effects (Flores, 2006). Language barriers increase the risk of non-adherence to medication, reduce follow-up appointments (Flores, 2006), cause longer hospital stays (Cambridge, 1999; Diamond et al., 2009), and increase the risk of medical errors and misdiagnosis (Diamond et al., 2009). Language barriers are also critical regarding informed consent, and providing health education materials (Szczepura, 2005). There are recognised health disparities in ethnic minority populations resulting from language barriers (Szczepura, 2005), as such, interpretation is important for equality of access to health (Jones & Gill, 1998). Whilst interpretation services are costly, the use of professional interpreters in emergency departments can actually reduce costs compared to encounters with language barriers (Bernstein et al., 2002). Despite evidenced need, there is an endemic worldwide lack of available trained and specialist interpreters in health care (Candlin & Candlin, 2003). Ad hoc interpreters, including family members, and even strangers are considerably more likely to commit errors than professionals (Flores, 2006) and using children as interpreters in medical contexts has proven particularly problematic (Chen, 2006). Nevertheless there is a worrying practice of under-using interpreters, and “getting-by” without (Diamond et al., 2009), which reflects lacking recognition of their importance.

⁴ Amnesty International, 2009 (b), p. 16.

1.2. RESEARCH SIGNIFICANCE AND JUSTIFICATION

The classic translation research remains that of literary translation⁵. Research in the field of translation and interpretation traditionally relates to top down analysis, normative in character-seeking directives for correct translation with a principally linguistic focus. This study will break this trend, looking at the practical implications for human rights bottom-up, and ensuring that interpreters and those who use the translations participate in the research. Moreover, besides court interpretation, the relatively new field of “interpretation,” seriously lacks research especially compared with extensive literature on “translation⁶.” This study contributes to a neglected and emerging field, lacking both empirical and theoretical research. Interpreting research has until recently focused on the “interpreting process.” There has been increasing academic interest in the communicative, social and ethical role of the interpreter, i.e. in “community interpretation,” yet much unexplored territory remains⁷. For instance recent significant research has looked beyond “traditional” settings to explore the role of the interpreter in conflict situations (Inghilleri, 2010) and in asylum interviews yet still lacking a comprehensive human rights approach. Contemporary research is increasingly considering language as a resource and contending the importance of language in determining access to public administration and services. I am therefore planting my research within this emerging discourse by dealing with interpretation and language as service and resource. Moreover, this research addresses the right to participation (within public administration and governance) for which there is no research related to translation, since research only focuses on language use.

There is a desperate need for interdisciplinary research in the field of translation and linguistic human rights. Even research defending minority rights and linguistic human rights has failed to give consideration to translation and interpretation and the implications for human rights, presenting a serious research gap.

Addressing a neglected field of research, the greatest innovation of

⁵ Schäffner, 2004, p. 57.

⁶ Wadensjö, 1998, p. xiv.

⁷ Schäffner, 2004, p. 4.

the present research is to apply the human rights discourse to the field of translation and interpretation. This research addresses a need to acknowledge the vital role played by interpreters in multilingual society related to human rights. The translation profession lacks recognition and the social status of translators is actually getting worse⁸. This research is of particularly urgent need in the context of the current “economic crisis” which has led to cuts affecting translation and interpretation alongside other services; and in the UK has led to strikes by interpreters. This research will challenge the perception of translators as “expendable.” Language barriers, and inadequate translations endanger human rights and even lives; translators are the ignored, unnoticed actors in the field of human rights.

1.3. STUDY DELIMITATIONS

This research is not a linguistic study i.e. not looking at translatability issues, since this has been extensively researched and it requires competence in all the languages examined. Language issues are implicated in many areas of socio-linguistic and legal research i.e. education. This research will focus specifically on the right to participation in addressing the research question in the context of Kosovo. The research is strictly related to language issues in the context of non-majority/minority languages where speakers have limited or no knowledge of the target language. Furthermore, the research question is addressed limited to the context of Kosovo, since language policies and contexts vary considerably.

1.4. RESEARCH METHODOLOGY

a) Research Approach

“Human rights and translation,” a topic straddling legal and socio-linguistic studies, has naturally required an interdisciplinary approach.

⁸ Ibidem, p. 57.

Mostly qualitative research methods were used through interviews since: a) substantial datasets are lacking both for Kosovo and the topic in general; and b) qualitative methods aptly address attitudes and perceptions necessary for assessing language policy and implementation. Where necessary, I have used quantitative data to provide for more reliable and verifiable results.

b) “4A” Analytical Framework

This research innovatively employs the “4A framework” to translation and interpretation, treating it as though it were a right. The framework developed by Tomaševski⁹ measures the enjoyment of the right to education on the basis of: availability (availability in sufficient quantity); accessibility (non-discrimination, physical accessibility, economic accessibility); acceptability (adequate quality according to international standards); and “adaptability” (culturally appropriate, adapting to changing societies, situations). It is a powerful tool as it shows the extent to which rights are being fulfilled. Since translation and interpretation is a service, like health and education (services already analysed through this framework), it has generally adapted well to the framework. “Adaptability” proved most difficult to adjust since the research already specifically focuses on vulnerable non-majority groups. The adapted “4A framework,” alongside associated indicators I have developed, have allowed for thorough dissection of translation and interpretation provision related to the right to participation.

Indicators correlate with data collection.

c) Developing Indicators

As indicators of the right to participation and representation, I have identified the following tangible elements for study related to political participation and requiring written translation or oral interpretation: official documents and decisions; election materials; official websites; interactions with general public; assembly meetings; notifications; preparation material for meetings i.e. invitations, information, agendas;

⁹ Tomaševski, 2001.

minutes; and legislation. Within the “4A framework,” “availability” concerns the allocation, investment and availability of financial and human resources and equipment. “Accessibility” concerns the barriers and obstacles in practice accessing the right to participation via translation and interpretation and whether there is discriminatory access to participation on the basis of unequal provision. “Acceptability” concerns the quality both of translators/interpreters and the translated oral or written product and also considers the working conditions of translators/interpreters. Finally “adaptability” will illustrate how the provision must be flexible enough to adapt to individuals and contexts.

d) Data Collection

Primary research data collection formed an essential part of my research methodology. I conducted a field trip to Kosovo on 24 April-1 May 2012, where I conducted eight semi-structured interviews using a mixture of open and closed questions with stakeholders, key institutions, local government representatives, community representatives, interpreters and translators. The interview sample demographics were: 50% female; 37.5% Kosovo-Albanians; 25% Kosovo-Serbians; 25% Kosovo-Bosniaks; 12.5% Kosovo-Turkish. Research was conducted in Prishtinë/Prizren and Graçanicë/Gračanica to study “Albanian-majority,” “multi-ethnic,” and “Serbian-majority” areas respectively.

The subjects of the research are non-majority linguistic/ethnic groups, and I included a gendered perspective. A focus on vulnerable groups facilitated identifying human rights impacts related to translation since a) they are most likely to need translation and b) they are most likely to suffer violation of human rights. This research focused attention on the Albanian, Serbian, Bosniak and Turkish language communities since a) these are the four largest ethnic groups and b) research concerning the other minorities (Roma, Ashkali, Egyptian and Gorani) recognised to be challenging hindered by lacking data and moreover, these groups typically have knowledge of the majority language. The research excluded Northern Kosovo as a result of the security situation.

e) Research Ethics

Since the research involves human participants, and moreover

concerns a sensitive political situation, I developed a research ethics protocol to guide the research. Considerations for ethics guided my research methodology. Participants were contacted as early as possible, and I provided a research brief upon contact and prior to the interview. All participants in my research were asked to complete a consent form prior to their participation (see Annex). I recorded and transcribed all interviews, except one, where permission was not granted, but the interviewee kindly spoke slower allowing for accurate transcription. To ensure the validity of results the completed research will be shared with participants. In light of the complex and tense situation in Kosovo participants' names are abbreviated to initials, and furthermore, interviewees chose how they would be recorded in my research. I also took into consideration personal data, confidentiality, the wider impact of my research, and my own personal security.

f) Methodological Challenges and Limitations

Safety and security considerations limited the research. As a result of the current tense political situation in Kosovo¹⁰, I excluded Northern Kosovo (Serb-majority) from the research. Financial considerations and time, limited the scope of the research: collecting primary data through field research is time-consuming and expensive. The research was reliant on the goodwill of relevant sources to spare time for an interview.

Obtaining reliable quantitative statistics for Kosovo proved challenging. Not all information is publicly available or known; as such I was required to contact the Ministry of Education for certain information. Remaining neutral and objective in relation to Kosovo was challenging particularly when reliant on qualitative assessments on the basis of interviews. Interviewees often expressed strong opinions that contradicted information from other sources. Therefore, I ensured diversity (gender, ethnic, and geographical) in my interview subjects, and I backed up research with reports by international organisations, particularly the OSCE.

¹⁰ Tensions were particularly high during my research trip to Kosovo particularly as a result of a fatal bombing in Northern Mitrovicë, arrests in Serbia of Albanian Kosovars and imminent elections in Kosovo.

Languages both challenged and limited the research since, whilst a linguist, I am not competent in the languages relevant to this research. Except for one interview (interpretation was provided by his colleague, also an interview subject), interview subjects were fluent in English. Language considerations naturally limited whom I could interview, and some interview opportunities were denied. The research was aided by limited knowledge of Albanian and Google Translate although I sought translation where necessary in communication, and also for documents not available in English.

II.

HUMAN RIGHTS AND TRANSLATION

Language rights refer to education, equality and use of language. The clearest definition of language rights is provided in Article 3(1) UNESCO Universal Declaration on Linguistic Rights¹¹:

the right to be recognised as a member of a language community; the right to the use of one's language both in private and in public; the right to the use of one's own name; the right to interrelate and associate with other members of one's language community of origin; the right to maintain and develop one's own culture.

Furthermore, Article 3(2) provides:

the right for their own language and culture to be taught; the right of access to cultural services; the right to an equitable presence of their language and culture in the communications media; the right to receive attention in their own language from government bodies and in socioeconomic relations.

There has been increasing recognition and affirmation of linguistic minorities¹² and “language rights” in international instruments¹³ during

¹¹ UNESCO Universal Declaration on Linguistic Rights (1996).

¹² Capotorti, defines a minority as: “A group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language.” See United Nations, 2010, p. 2.

¹³ UNESCO Universal Declaration on Linguistic Rights (1996); International Covenant on Civil and Political Rights (1966); ILO Convention no. 107 (adopted 16 June 1957); UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992); European Charter for Regional and Minority Rights (ECRML) (1992); OSCE, Oslo Recommendations (1998); Central European Initiative for the Protection

the past two decades; and the situation of minority linguistic communities has certainly improved from assimilation-orientated policies¹⁴. Language rights seek “at least some of the support and conditions [...] that dominant languages naturally enjoy¹⁵,” since dominant, majority languages typically have the right to use their language in all contexts. The original and prevailing conception of language rights is within the framework of the rights of minority and indigenous rights, and they are traditionally territorially defined. Nonetheless the right to a fair trial is a universal guarantee to interpretation, including for non-nationals. This present research conceptualises translation and interpretation as a linguistic right and furthermore a human right requiring progressive realisation with positive measures. The essential logic underpinning a human rights perspective on translation and interpretation is the following: if there exists the right to use a language, then there must also be the right to translation and interpretation in order to facilitate this right.

2.1. CONCEPTUALISING LINGUISTIC HUMAN RIGHTS

The language rights discourse has evolved from the right to preservation and linguistic survival (now widely recognised for linguistic groups)¹⁶, through to the right to protection and recognition, and currently a dramatic shift defending the right to diversity¹⁷ that could be significant for immigrant minorities¹⁸. The “environmentalist approach¹⁹” to linguistic rights (i.e. language ecology of rights) stems from concern for endangered languages²⁰ and safeguarding linguistic heritage, and values multilingualism and equality²¹; and in this regard lan-

of Minority Rights (1994); Universal Declaration on the Rights of Indigenous Peoples (UNDRIP) (2007).

¹⁴ Hamel, 1997 (a), p. 6.

¹⁵ Ibidem, p. 3.

¹⁶ Mälksoo, 1998-2000, p. 445.

¹⁷ Hornberger, 1998.

¹⁸ Burch, 2009, p. 109.

¹⁹ Hamel, 1997 (a), p. 2.

²⁰ Interestingly, the term “linguicide” was proposed by Skutnabb-Kangas, and “cultural genocide” regarding language was included in the Draft Convention on Genocide, although later removed (see Mälksoo, 1998-2000, p. 445): “any deliberate act with intent to destroy the language [...]” i.e. prohibiting the use of language in daily intercourse, etc. See Report of the Ad Hoc Committee on Genocide, ESCOR, UN Doc. E/794 (1948).

²¹ Phillipson, 1999, p. 31.

guages have received protection from assimilation i.e. “protection against ‘unfair or coercive pressures’ that threaten to compromise the flourishing of that language²²” and the “right to linguistic security” has been advanced by academics such as Green and Réaume²³. Influential distinctions have been made between toleration- and promotion-orientated (Kloss, 1971; 1977), as well as accommodation-orientated rights (Patten, 2008). “Toleration rights” protect individuals from (government) interference in language use and choices²⁴; “accommodation rights” guarantee use of language in special circumstances i.e. criminal proceedings, and conditional on insufficient knowledge of the majority language²⁵; whereas promotion rights extend to education and use with public institutions²⁶, and even freedom to use minority language despite fluency in the majority language²⁷.

Language is a basic human right, intrinsically linked to human identity. Yet despite the recent emergence of the concept of “language rights as human rights belonging to everyone²⁸,” language rights are not universally accepted, “states vary in their tolerance and promotion of linguistic human rights²⁹” and “it is difficult to create universally acceptable and far-reaching rules to cover all existing linguistic situations³⁰.” Language rights are controversial³¹, inherently political³², and vehemently debated by academics³³. The development of extensive internationally acceptable language rights is challenged³⁴ by extremely diverse “linguistic situations” i.e. numbers of speakers, concentration of language communities and socio-political contexts³⁵. Furthermore, linguistic human rights are defended as both individual³⁶ and collective rights³⁷, which is problematic for universal recognition. Languages

²² Patten, 2008, p. 31.

²³ Green & Réaume, 1989.

²⁴ Patten, 2008, p. 9.

²⁵ Ibidem, p. 11.

²⁶ Ibidem, p. 9.

²⁷ Ibidem, p. 12.

²⁸ Mälksoo, 1998-2000, p. 432.

²⁹ Kontra, 1999, p. 93.

³⁰ Mälksoo, 1998-2000, p. 448.

³¹ Hamel, 1997 (a), p. 1.

³² Williams, 1991, p. 2.

³³ Burch, 2009, p. 106.

³⁴ Abayasekara, 2010, p. 103.

³⁵ Grin, 2000, p. 17; Mälksoo, 1998-2000, p. 448.

³⁶ Kukathas, 1995, p. 230. See also, Rannut, 1999, p. 110.

³⁷ Hamel, 1997 (a), p. 1.

rights are fundamentally collective in nature, and the right to use and maintain a specific language, naturally requires recognition of a collective linguistic community³⁸.

Certain limited language rights are well established in international law or implied through rights concerning minorities, culture, non-discrimination, education³⁹, children, due process, and freedom of expression⁴⁰. However, current international law provides weak⁴¹, protection for language rights through minimal “tolerance” rights⁴² (NB: the term “language rights” is absent altogether) although protection is greater at a regional level.

2.2. INSTRUMENTAL LANGUAGE RIGHTS: THE RIGHT TO USE LANGUAGE

a) Languages and Non-Discrimination

Central to protection of linguistic minorities and language rights is the principle of equality and the universal norm prohibiting discrimination, distinction, exclusion, restriction or preference based on language⁴³ “which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons on an equal footing, of all rights and freedoms⁴⁴.” States may reasonably regulate languages but not exclude languages⁴⁵. Nowak notes that “it is not easy to separate linguistic from racial discrimination⁴⁶.”

³⁸ Hamel, 1997 (b), p. 123.

³⁹ Linguistic rights to education include rights to learn both mother tongue and official languages, for linguistic minorities to operate educational activities and institutions, and protection from discrimination in education: International Covenant on Civil and Political Rights (ICCPR), Article 27; ILO Convention no. 107; UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 3 and Article 4(3).

⁴⁰ Abayasekara, 2010, p. 90. See also De Varennes, 1999, p. 118.

⁴¹ Hamel, 1997 (a), p. 5. See also Abayasekara, 2010, p. 91.

⁴² Abayasekara, 2010, pp. 90-91.

⁴³ Charter of the United Nations (1945), Article 1(3): no distinction as to language; Charter of Fundamental Rights of the European Union (2000), Article 21: “non discrimination [...] language – prohibition”; ICCPR, Article 2(1): “non distinction [...] language.”

⁴⁴ UNHCR, General Comment no. 18: Non-discrimination (1989); CCPR, General Comment no. 18: Non-discrimination, UN Doc. A/45/40, 10 November 1989.

⁴⁵ De Varennes, 1995-1996, p. 113.

⁴⁶ Nowak, 2005, p. 51.

b) Language Rights and Education

There is widespread recognition of the rights to learn both mother tongue and official languages, and for linguistic minorities to operate educational activities and institutions, and protection from discrimination in education⁴⁷. At a tolerance level, the state should not interfere unreasonably in minority-maintained educational institutions. The right to education is a promotion-orientated right designed not only to maintain knowledge of a language through education⁴⁸, but also promoting the use of minority language in schools and in teaching⁴⁹. The ECRML provides particularly extensive and increasing considerations for education at all levels, primary to university, and also promotes the study and research on minority and regional languages⁵⁰.

c) Language Use and Freedom of Expression

The right to freely use language can be easily defended through the right to freedom of expression⁵¹, since language is “a means of *expression*”⁵². The Framework Convention for the Protection of National Minorities expressly recognises in Article 9 the right to freedom of expression (including the right to impart information and ideas) in a minority language. Furthermore, the UN Human Rights Committee commented in *Singer v. Canada*, that whilst a state may choose official languages “it may not exclude, outside the spheres of public life, the freedom to express oneself in a language of one’s choice”⁵³. Restricting

⁴⁷ Language rights related to education: ICCPR, Article 27; ILO Convention no. 107; UNESCO Convention Against Discrimination in Education, Articles 1 and 5; UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 3 and Article 4(3).

⁴⁸ UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 4(4), encourages states to take measures in order to encourage knowledge of languages; the ILO Convention no. 107 provides in Article 23(3) for measures to “preserve the mother tongue or vernacular language”; and UNDRIP Article 14 provides the right for indigenous peoples to provide education in their own languages.

⁴⁹ Convention Against Discrimination in Education, Article 5(1)(c)(i).

⁵⁰ ECRML, Articles 7(1)(h) and 8(1).

⁵¹ European Convention on Human Rights (ECHR), Article 10; Charter of Fundamental Rights of the European Union, Article 11; ICCPR, Article 18; Universal Declaration of Human Rights (1948), Article 19.

⁵² Patten, 2008, p. 10; Hamel, 1997 (a), p. 4.

⁵³ *Singer v. Canada*, Communication no. 455/1991, UN Doc. CCPR/C/51/D/455/1991 (1994).

use of a particular language in the private sphere (language used at home, private correspondence, privately operated media, etc.), would also clearly violate the right to privacy since such interference is against liberal democratic principles. Other language rights relate to the use of names, script and topographical indications, which are intimately related to the rights to freedom of expression and privacy⁵⁴.

d) The Right to Use Language in Public and Private

Right to use a language in both private and public spheres is protected in a wide range of international instruments⁵⁵, including Article 27 of the ICCPR, which provides that “In those states in which [...] linguistic minorities exist, persons belonging to such minorities shall not be denied the right, [...] to use their own language⁵⁶.” Whilst this negative provision is limited to negative obligations of non-interference, it could presuppose positive measures to ensure possibility to use language.

2.3. HUMAN RIGHTS IMPLICATED IN TRANSLATION AND INTERPRETATION

a) The Right to an Interpreter and Translated Documents in Criminal Proceedings

The right to an interpreter as part of the right to a fair trial is the most well recognised linguistic right⁵⁷. It is the only “traditional” and international human right to specifically mention interpretation and translation; moreover, the right provides clear obligations for authorities to accommodate minority language speakers. Article 14(3) of the ICCPR (paralleled in Article 6, ECHR) provides, *inter alia*, that everyone shall be entitled to have the *free* assistance of an interpreter if he/she *cannot* understand or speak the language used in court, as well as the right to be

⁵⁴ See case of *Bulgakov v. Ukraine*, ECHR 59894/00 (2007) on interference with private life, regarding use of names.

⁵⁵ See also: UNDRIP, Article 13(1) and UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, Article 2; Vienna Declaration and Programme of Action (1993), Article 19.

⁵⁶ ICCPR, Article 27.

⁵⁷ De Varennes, 1995-1996, p. 140.

informed of the reasons of their arrest and charge in a language the arrestee understands. The obligation to provide interpretation in international law is absolute, although subject to absolute necessity through insufficient knowledge of the court's language, rather than affording the right to free expression in a preferred language; cf. decisions *Guesdon v. France*⁵⁸. The right extends to include translation of written materials, but this right is limited only to essential documents for the defence⁵⁹. Both Nowak and the European Commission⁶⁰ have advocated that the right “implies a certain minimum quality of court interpretation in order to ensure a fair trial⁶¹.” The right to a fair trial demonstrates how a human right is implicated through the provision of translation and interpretation, which needs to be not only available, accessible financially (i.e. provided by the state and free of charge), but also of adequate quality. It is reasonable logic to conclude (as will be illustrated through the right to participation), that other human rights could be implicated in translation and interpretation despite no specific mention.

b) The Right to Participation

The right to participation, focus of this present research, is intrinsically linked to the right to use language and this research argues that, whilst the ICCPR does not specifically mention translation and interpretation in this instance, the right nevertheless implicates it. The right to participation (and representation)⁶² protected by Article 25 of the ICCPR and Article 15 of the FCNM, recognises (in the narrow sense) the political rights of every citizen to take part in public affairs, the right to vote and be elected and the right to access public service. “Effective participation in public affairs” has a wide scope of meaning, especially since the notion “is not restricted to the formal political institutions of a state but also includes social and civic activities of a public nature⁶³.” Furthermore, the

⁵⁸ *Dominique Guesdon v. France*, UN Human Rights Committee: *Dominique Guesdon v. France*, UN GAOR, 45th session, UN Doc. A/45/40 (1990). This case clarified that there is no right to interpretation if they are proficient in the official language used by the court.

⁵⁹ 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, L 153/14, *Official Journal of the European Union*, 20 October 2010, p. 5.

⁶⁰ Nowak, 2005.

⁶¹ *Ibidem*, p. 344.

⁶² See also Universal Declaration of Human Rights (UDHR), Article 21(1).

⁶³ Machnyikova & Hollo, 2010, p. 103.

right regards both direct and indirect participation in public affairs⁶⁴; as such “the rights to consultation” is included. *Effective* participation requires minority representatives to be present *and* able to actively participate and influence decision-making⁶⁵, effectively communicating specific concerns and needs⁶⁶.

It is a vaguely defined right that allows states a broad discretion in implementation. Article 25, whilst vaguely defined and allowing broad discretion in terms of implementation, implies that there must be opportunity to exercise these rights⁶⁷. Since no distinction is permitted in relation to this right on the grounds of language, and linguistic minorities must also be allowed access to public services and equality in suffrage⁶⁸, there is an implicit need for language considerations. The Lund Recommendations⁶⁹ stressed the importance of facilitating minority political participation through specific measures⁷⁰, and elaborated on the right’s substance⁷¹.

2.4. FACILITATING LANGUAGE RIGHTS: POSITIVE OBLIGATIONS

There is increasing advocacy and support for the right to use minority languages in official contexts, and the European Framework Convention for the Protection of National Minorities expressly requires states to make possible the use of minority languages in communications with administrative authorities in Article 10(2). The UN Declaration on the Rights of Indigenous Peoples is particularly significant for its recognition of language rights in Article 13(2), which expressly links the right to use measures with the political sphere, and moreover provides for positive measures and explicitly mentions interpretation: “the right

⁶⁴ Ibidem, p. 109.

⁶⁵ Verstichel, 2010, p. 75. See also Nowak, 2005, p. 564.

⁶⁶ Machnyikova & Hollo 2010, p. 97.

⁶⁷ Nowak, 2005, p. 569.

⁶⁸ See *Ignatane v. Latvia* (Communication no. 884/1999 Latvia, 31/07/2001, CCPR/C/72/D/884/1999): “The right to be elected is without distinction to language. Consequently, this case found a violation of article 25 in conjunction with article 2 of the ICCPR.”

⁶⁹ OSCE, Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999).

⁷⁰ See also Central European Initiative for the Protection of Minority Rights (1994), Article 22 advocating the right to “effective participation in public affairs, in particular in the decision-making process on matters affecting them.”

⁷¹ Machnyikova & Hollo, 2010, p. 107.

to use language and access to political, legal and administrative proceedings, states shall take effective measures [...] where necessary through the provision of interpretation⁷².” At a European level, the Framework Convention obliges states to “create the *conditions* necessary for the effective participation of persons belonging to national minorities”; and the European Charter for Regional and Minority Languages encourages states to facilitate use of languages in private and public life⁷³. Türk shrewdly rationalised that without positive measures “these rights are meaningless and ineffective⁷⁴.” The European Charter represents an important evolution in language rights as it focuses on “concrete commitments⁷⁵.” The Charter is legally binding with a reporting mechanism supervised by a committee of independent experts who evaluate the adequacy of measures implemented by states. Whilst including relatively extensive rights and substantial obligations, it is an innovatively flexible instrument with “*à la carte*”⁷⁶ provisions in the third part of the Charter and a scale of measures of implementation; which has facilitated wide ratification (25 states)⁷⁷. Within the Charter’s provisions related to language use with administrative and public services (i.e. access and publication of documents and forms in languages, use in regional assemblies, and written/oral communication), Article 10(3) recognises that translation or interpretation may be required as a measure of implementation, alongside recruitment of bilingual staff.

The respect, protect, fulfil typology of rights clarifies the obligations of states, and enables translation and interpretation provision to be conceptualised within positive obligations implied in, and provided by language rights. Some immediate obligations are identifiable in language rights such as the “obligation to respect” languages and linguistic minorities i.e. non interference in the use of minority language individually and in association of others, respecting the integrity of linguistic community identity abstaining from policies of assimilation, ensure regulation and legislation. The “obligation to protect” refers to protection for linguistic minorities from discrimination through legisla-

⁷² Universal Declaration on the Rights of Indigenous Peoples (UNDRIP), Article 13(2).

⁷³ See especially Article 7(1)(d) of the European Charter.

⁷⁴ Türk, 1992, p. 458.

⁷⁵ Grin, 2000, p. 20.

⁷⁶ *Ibidem*, p. 19.

⁷⁷ Council of Europe, European Charter for Regional or Minority Languages (1992).

tion. If there is the right to use language, and even the right to translation, this requires positive measures to convert language rights into reality. Therefore, translation fits within the obligations to fulfil (or promote) language rights⁷⁸. As for economic social and cultural rights, progressive implementation is required to fulfil positive obligations, since translation/interpretation require budgetary commitments, and therefore political will.

No state is capable of providing its services and activities in every language spoken on earth. Whilst some rights related to language are universal, language use is not an absolute right. Minority language rights are governed by principles of territoriality and historical precedence⁷⁹. Furthermore, linguistic situations are complex and rights provision necessarily and legitimately adapts accordingly. Linguistic rights depend on “local demand and supply⁸⁰,” since implementation demands significant human and financial resources; hence, linguistic rights are typically qualified and limited, with escape clauses such as found in the European Charter i.e. “as far as possible” and “where necessary⁸¹.” Language rights protection should increase progressively dependent on population concentration, and frequency of language use⁸² and “when a linguistic group is sufficiently large, state services should be available in those areas where the group represents a substantial part of the population, even if they are not the majority⁸³.” States must provide services and positive measures for minorities appropriate to their relative numbers⁸⁴.

⁷⁸ This typology of rights has been applied to other services, including the right to health. In the General Comment on health, violations of the obligation to fulfil included “failure to adopt or implement [...] policy designed to ensure the right [...] for everyone; insufficient expenditure or misallocation of public resources which results in the non-enjoyment of the right [...] by individuals or groups, particularly the vulnerable or marginalized; the failure to monitor the realization of the right [...] [and] the failure to take measures to reduce [...] inequitable distribution of [...] facilities, goods and services.” See General Comment no. 14: The Right to the Highest Attainable Standard of Health, CESCR, E/C.12/2000/4, (2000), para. 64. See also CESCR, General Comment no. 3 The Nature of States Parties’ Obligations, UN Doc. E/1991/23, 14 December 1990, para. 37.

⁷⁹ Hence national linguistic minorities are protected whilst non-nationals, and minority immigrant groups are more problematic and thereby usually excluded.

⁸⁰ Patten, 2008, p. 36.

⁸¹ For instance, Article 10(2) “within the administrative districts [...] in which the number of residents [...] justifies the measures specified [...] and according to the situation of each language.”

⁸² Grin, 2000, p. 13.

⁸³ De Varennes, 1995-1996, p. 131.

⁸⁴ De Varennes, 1999, p. 117.

Inherently linked to questions of national identity, languages are first and foremost the concern of individual nation states⁸⁵, the onus is on states to regulate and protect the languages of their choosing. International law only recognises a minimum standard⁸⁶ and states often extend far more generous measures to their linguistic minorities with Kosovo serving as an excellent example. Kosovo's official language policy seems to surpass the demands of international law, yet there are significant failures of implementation.

2.5. THE "4A FRAMEWORK"

The "4A framework," developed by Tomaševski in relation to the right to education, has been extremely influential, particularly within the field of economic, social and cultural (ESC) rights and it has been used to promote the implementation of specific positive measures. The framework has been applied extensively to the rights to education, health and water and is employed in the related General Comments nos. 13, 14 and 15 by the Committee on Economic Social and Cultural Rights. The right to interpretation and translation is framed within civil and political rights, whilst previous application of the framework regards ESC rights. Nevertheless, the common element shared by interpretation and translation is that it requires positive measures for effective implementation and it is also by nature a service, and thereby compatible with analysis through the "4A framework." The framework is extremely useful in assessing the effect of apparently neutral human-rights policies⁸⁷ and it comprehensively identifies the requirements implicit in fulfilment of human rights. Tomaševski recognised the far-reaching importance of guaranteeing the right to education since it operates as a multiplier for human rights: "enhancing the enjoyment of all individual rights and freedoms where the right to education is effectively guaranteed, while depriving people of the enjoyment of many rights and freedoms where the right to education is denied or

⁸⁵ Burch, 2009, pp. 110-111.

⁸⁶ Mälksoo, 1998-2000, p. 433.

⁸⁷ Tomaševski, 2001, p. 8.

violated⁸⁸.” The framework was used by Tomaševski to illustrate the interrelatedness of individual components of the right to education and map a conceptual framework of the right to education⁸⁹. Furthermore the framework is related to government obligations and pragmatically addresses the translation of a right from requirements into reality.

2.6. JUSTIFYING LINGUISTIC HUMAN RIGHTS

The need for language rights have been justified both as an “ethical imperative” and an “ecological necessity⁹⁰.” Justification in protecting minority rights has been argued on the grounds of maintaining peace and security⁹¹. The Preamble to the Universal Declaration on Linguistic Rights advocates promotion and respect for languages use both in public and private, “to ensure peaceful coexistence between language communities.” It is notable that language issues form an essential part of the OSCE’s work in conflict prevention. The case of Former Yugoslavia (i.e. Kosovo) highlighted the lamentable fact that languages have been a source and trigger of serious ethnic conflict both in European and international contexts⁹². Varrennes notes that “Language arouses highly charged sentiments⁹³” since language is intimately connected to questions of individual and collective identity. It is well acknowledged that inequalities, disadvantages and hardship lead to frustration and increased tensions⁹⁴. Imposing retrogressive monolingual policies (seen in Former Yugoslavia), which would curtail linguistic human rights, exclude minorities and create inequality, are “difficult to defend⁹⁵.” Nevertheless, Varennes importantly reflects that, translation and interpretation provision whilst a means of accommodation, still leaves minority language speakers at a disadvantage, inferior to the freedom of using one’s mother tongue⁹⁶.

⁸⁸ Ibidem, p. 10.

⁸⁹ Ibidem, p. 13.

⁹⁰ Arzoz, 2008, p. 1.

⁹¹ Kymlicka, 1995 (b), p. 123; Åkermark, 1997, pp. 69-72.

⁹² De Varennes, 1995-1996, p. 107; see also Rodríguez, 2006, p. 695.

⁹³ De Varennes, 1995-1996, p. 108.

⁹⁴ Ibidem, p. 118.

⁹⁵ Ibidem, p. 120.

⁹⁶ Ibidem, p. 115.

Ensuring participatory rights for minorities is essential in liberal democracies⁹⁷, since they reflect principles of non-discrimination, inclusion and equality⁹⁸. Participatory rights are bound with questions of democratic legitimacy⁹⁹, and the principle of “meaningful, popular consent¹⁰⁰” that is essential in identifying with, and having ownership of, local and national politics rather than feeling disenfranchised, ignored and marginalised. Language rights are empowering in the context of participation: “Language is a major tool to protect [the interests of minority communities] as it facilitates effective participation¹⁰¹.” Language is “fundamental in human society,” as such, language rights (including translation and interpretation) are empowering, facilitating the realisation of various human rights which require oral and written communication i.e. addressing a complaint to the local administration. Lack of language knowledge and language rights is disempowering and creates significant disadvantages. Proficiency in the majority tongue naturally allows for greater economic opportunities and access to public resources¹⁰².

An ecological justification for linguistic rights is based on valuing cultural and linguistic diversity, considering language as a “common heritage of humanity¹⁰³,” as promoted by UNESCO, and as a resource. Core values of the European Union include, “openness towards other cultures, tolerance, and acceptance of others, [and] respect for linguistic diversity¹⁰⁴.” Whilst one could be idealistic, in truth ethnic diversity establishes a troubling paradox, and creates a variety of tensions. It has been extensively argued whether ethnic diversity breeds conflict¹⁰⁵, yet disregard for ethnic diversity has also triggered conflicts. Growing interest in language rights reflects, above all, an admission that, disregard for the needs and interests of linguistic minority rights (and in the case of Kosovo, non-majority language speakers) risks serious conflicts ensuing¹⁰⁶.

⁹⁷ The Oslo Recommendations note the importance of diversity in a democratic state.

⁹⁸ Kymlicka, 1995 (b), p. 108.

⁹⁹ Fox, 2000, p. 50.

¹⁰⁰ *Ibidem*, p. 49.

¹⁰¹ OSCE, 2012, p. 5; see also, Rodríguez, 2006, p. 693.

¹⁰² De Varennes, 1995-1996, p. 107.

¹⁰³ Arzo, 2008, p. 1.

¹⁰⁴ Commission of the European Communities, 2005, pp. 2-3.

¹⁰⁵ See Wimmer, 2004, pp. 3-5.

¹⁰⁶ De Varennes, 1995-1996, p. 108.

2.7. THE HUMAN RIGHT TO TRANSLATION/INTERPRETATION
IN *LATU SENSU*

The right to translation and interpretation could be seen as implicit within current human rights. The right to a fair trial explicitly provides for interpretation and translation, encouraging states to facilitate conditions, and provide positive measures to facilitate language use, which presupposes considerations for translation and interpretation. Furthermore, the European Union's language policy in practice reflects an institutional right to translation and interpretation. The EU's commitment to multilingualism is reflected in colossal efforts interpreting in conferences and translating "over two million documents yearly" into official languages¹⁰⁷. There is arguably a right to translation/interpretation in *latu sensu*. Nevertheless, I am hesitant in concluding a *human* right to translation. Currently, linguistic rights lack universal consensus in international law, and they must adapt to diverse contexts and political preference. Translation and interpretation are strikingly absent from the large part of international human rights instruments.

¹⁰⁷ EurActive, 2012.

III.

CASE STUDY: TRANSLATION PROVISION
IN NEW BORN KOSOVO

3.1. INTRODUCING MULTILINGUAL KOSOVO

Over a decade after devastating inter-ethnic conflict, in which language played a significant role, tore apart Former Yugoslavia; “inter-ethnic relations, in particular between persons belonging to the Serbian and Albanian communities, remain tense and marked by distrust and divisions along ethnic lines¹⁰⁸.” In February 2008, Kosovo declared independence from Serbia; “newborn” as proclaims the famous sign in the centre of Kosovo in bright yellow letters. Resolving language issues remains one of the “unresolved issues from the war [...] issues from a very recent past¹⁰⁹.” It is not just a matter of respecting minorities, since the presence of large numbers of different ethnic groups in Kosovo is a fact that cannot be denied¹¹⁰; Kosovo is multiethnic and multilingual.

The right to use language is of critical importance in the context of Kosovo, since there is a genuine need. Rather than being an issue of preference, many people, and increasingly so, have little or no knowledge of other communities’ languages, and essentially knowledge of the majority Albanian language: “most Kosovo-Serbs do not speak Albanian¹¹¹.” In general children are not learning the languages of other ethnic groups, since “at present, neither the Albanian nor the Serb

¹⁰⁸ Resolution CM/ResCMN(2011)14 on the Implementation of the Framework Convention for the Protection of National Minorities in Kosovo.

¹⁰⁹ Interview with H.C., Researcher on Local Governance, NGO EC Ma Ndryshe, Prishtinë/Prishtina, 30 April 2012.

¹¹⁰ Interview with S.M., (Kosovo-Bosniak Community), Community Representative, Prizren, 25 April 2012.

¹¹¹ Interview with L.J., (Kosovo-Serb Community), Community Representative, Centre for Peace and Tolerance, Graçanicë/Gračanica, 29 April 2012.

communities include the respective other language in their curricula¹¹².” However, language knowledge varies significantly within Kosovo from more monolingual areas such as Prishtinë/Priština to situations as found in Prizren, where Turkish is widely spoken, even among non-Turks: “It is a kind of social norm that you would not be considered a citizen of Prizren unless you speak Turkish. It is a tradition you can find in every Prizren family.”

There are increasingly apparent language barriers that disadvantage participation of non-majority language speakers in political, and socio-economic life. Language education is of serious concern since: minority communities have insufficient opportunities to learn official languages, and at the same time the majority community also lacks opportunities to study other official and minority languages¹¹³. It should be noted that the languages of concern in Kosovo are extremely different from each other. Learning other communities’ languages promotes understanding, mutual respect and tolerance, and even the opportunity for integration. With regard to declining language knowledge, the urgency for adequate facilitation of language use, via translation, is increasingly apparent.

Kosovo’s Constitution provides high standards for the protection of its minority communities. Whilst Kosovo “has not ratified any international treaties regarding protection of human rights¹¹⁴,” due to its debated political status, Article 3(2) of the Constitution commits Kosovo, nonetheless, to these international standards of human rights and fundamental freedoms¹¹⁵. Minority language rights are protected both at national and local level in Kosovo’s Law on the Use of Languages, Law on Local Self Government¹¹⁶, and the Law on the Protection and Promotion of Communities and Their Members in Kosovo: laws adopted in 2008 following independence and with the decentralisation process envisaged by the Ahtisaari Plan. The official languages specified by Article 5 of Kosovo’s Constitution are Albanian and Serbian; whilst at municipal level, dependent on community size,

¹¹² UNICEF, 2005, p. 34.

¹¹³ Resolution CM/ResCMN(2011)14 on the Implementation of the Framework Convention for the Protection of National Minorities in Kosovo.

¹¹⁴ Kosovar Institute for Policy Research and Development, 2009, p. 1.

¹¹⁵ Constitution of the Republic of Kosovo (2008).

¹¹⁶ Law on Local Self Government (Law no. 03/L-040).

Turkish, Bosnian and Roma languages also have official status¹¹⁷. Kosovo law requires equality of official languages. The Law on the Use of Languages is particularly significant since it is formulated largely around issues of participation, clearly evidencing the link between participatory rights and linguistic rights. Unfortunately, the field research I will present has found that in practice language equality is on paper only.

The Law on Local Self Government regulates the functioning of municipalities and is particularly important in the protection and promotion of minority rights to participation coupled with considerations for language and moreover, specific considerations for translation and interpretation. Guarantees for political participation of communities are also found in Article 11(2) of the Law on the Protection and Promotion of Communities and Their Members, which also provides for the freedom of all communities to use their languages (Article 2(1)) and the protection of use of names and language script in private and official public spheres i.e. in documentation. According to the Law on the Use of Languages (Article 7), municipalities must provide interpretation when requested, and all minutes, and decisions must be translated into all official languages of the municipality. For Prizren this requires translation into four languages: Albanian, Serbian, Bosniak, Turkish.

Despite the genuine language needs in Kosovo and the role respecting language plays in promoting inter-ethnic tolerance, there is an institutionalised lack of awareness of the importance of translation and interpretation for the inclusion of communities. In practice, many of Kosovo's legal provisions on language, translation and interpretation are not respected which prevents effective and active participation of minority communities (particularly Serbian, Bosniak and Turkish) from active participation in public affairs. This research centres mainly on local level participation and representation in public affairs since it allows a bottom-up approach to participation and language issues and according to the Kosovar Institute for Policy and Research Development, municipalities can "serve as the best barometer of the real will for inclusion of all communities"¹¹⁸.

¹¹⁷ Whilst this research only deals with the Albanian, Serbian, Bosniak and Turkish communities, it is worth noting that for the Roma, Ashkali and Egyptian communities, my interviews confirmed that the situation was far worse in terms of language access.

¹¹⁸ Kosovar Institute for Policy Research and Development, 2009, p. 1. See also, the

3.2. AVAILABILITY

a) Availability of Linguistic Representatives

At a municipal level Kosovo has created Committees on Communities and even a Deputy Mayor for Communities in the case of multiethnic communities to ensure the respect for the interests of non-majority communities including regard for languages. The Constitution promotes and regulates the representation of communities within public institutions, governance and the civil service (Article 101). Active participation in political processes is essential for communities to influence municipal decisions and policy making. The non-participation of many Serbian communities in elections, governance and civil services has had a disabling effect, preventing the community from having a “strong and credible voice within municipal governance¹¹⁹.” In Obliq/Obili and Gjilan/Gnjilane, boycotts resulted in no Kosovo-Serbs elected as minority community Municipal Assembly counsellors in these municipalities¹²⁰. The election of Serbian community representatives is essential in facilitating representation, and the provision of adequate translation is symbolic of political will, both of which would encourage greater participation. The representation of minority communities, particularly of the Serbian community, “remains unsatisfactory¹²¹.” The issue of representation is later expanded in relation to women’s participation and language concerns.

b) Availability of Translation and Translators

It is hard to assess exactly how many translators are working in Kosovo in local and central level government because of the lacking of statistics, however the Coordinator for the Human Rights Unit of the Kosovo Ministry of Finance, Xhevat Shabani, estimated that larger municipalities usually have approximately two translators¹²². Neverthe-

European Charter for Local Self-Government (1985), Preamble: “It is at a local level that this right [of citizens to participate in the conduct of public affairs] can be most directly exercised.”

¹¹⁹ Kosovo Forum for Open Society, p. 13.

¹²⁰ Ibidem.

¹²¹ Resolution CM/ResCMN(2011)14 on the Implementation of the Framework Convention for the Protection of National Minorities in Kosovo.

¹²² Email from Xhevat Shabani, Coordinator, Unit for Human Rights: Kosovo Government, Ministry of Finance, 24 May 2012.

less, the interview-based research I conducted clearly indicated that there were insufficient numbers of translators and interpreters, as will be elaborated in more detail in relation to the quality and proficiency of translators.

At a central level, the OSCE reported good practice, in which plenary sessions and committee meetings simultaneous interpretation was always provided¹²³. However, in the process of drafting legislation, the OSCE reported that the translation of amendments in written form was not always provided, therefore reducing and hindering the participation and effective representation of non-majority languages¹²⁴. All interviews affirmed that, as a result of international intervention and support from organisations such as the OSCE, all aspects of the elections were provided in all the official languages, accurately adhering to language policy¹²⁵. At a local, municipal level, the translation of laws, regulations, forms and other documents is not done to a sufficient extent, particularly: “more than a third of the municipalities do not translate their draft and adopted legislation into all official languages¹²⁶,” and the translation of meeting materials “is frequently not done” with only 14 of 34 OSCE monitored municipalities translating these records¹²⁷. The OSCE reported that six municipalities had not established translation units¹²⁸. Furthermore, whilst the “vast majority of municipalities comply with the legal obligation of providing simultaneous interpretation upon request during municipal assembly meetings¹²⁹.” Therefore it can be concluded that there are serious inconsistencies in the availability of translations, and lacking availability of this service could have some relation with the lower level of representation.

c) Availability of Resources

Kosovo’s language policy is necessarily ambitious, although its feasibility is questionable. Effective implementation of the Law on the Use of Languages ensuring the rights to use language has financial implications

¹²³ OSCE, 2011.

¹²⁴ OSCE, 2012.

¹²⁵ Interview with H.C., 30 April 2012.

¹²⁶ OSCE, 2012, p. 4.

¹²⁷ OSCE, 2011, p. 10.

¹²⁸ OSCE, 2012, p. 19.

¹²⁹ OSCE, 2011, p. 9.

and the realisation of all the rights contained within is challenging. Municipalities often lack the capacity, human and financial resources to translate law into reality¹³⁰, and the central level is also affected¹³¹.

Furthermore, “some municipal translation units lack basic technical equipment for translators such as dictionaries or computer spell-check programmes¹³².” The OSCE also reported in 2011 that simultaneous translation equipment was in place in just 26 of 38 municipalities¹³³. Nevertheless, whilst salaries are reducing, “all in all, translators are paid pretty well for Kosovo standards¹³⁴.” According to Xhevat Shabani of the Kosovo Ministry of Finance, “the law on equality of language and scripts in Kosovo is fully implemented with the financial capacities that Kosovo has.” Kosovo is one of the ten poorest countries in the world, and average monthly wages in Kosovo are the lowest in Europe: 368 € (according to 2011 data on the public sector)¹³⁵. According to the Ministry of Finance, “the average remuneration for translators is 325.00 € per month¹³⁶,” which is therefore, below the national average. There is no disaggregated data on investment and spending on translation available.

d) Feasibility v. Political Will

The provision of translation and interpretation requires “both capacity and will¹³⁷.” According to researcher on local governance interviewed: translation is a huge burden and “I don’t think that the Kosovo public administration is capable of dealing with this obligation, because we have a very weak public administration and it lacks the budget to operate effectively¹³⁸.” Yet, according to Xhevat, the monitoring report on implementation of language law, “there is sufficient knowledge, readiness and willingness for the implementation of this

¹³⁰ Kosovar Institute for Policy Research and Development, 2009, p. 1.

¹³¹ OSCE, 2012, p. 20.

¹³² *Ibidem*.

¹³³ OSCE, 2011, p. 4.

¹³⁴ Interview with L.J., (Kosovo-Serb Community), Community Representative, Centre for Peace and Tolerance, Graçanicë/Gračanica, 29 April 2012.

¹³⁵ InfoGLOBI, 2012.

¹³⁶ Email from Xhevat Shabani, Coordinator, Unit for Human Rights: Kosovo Government, Ministry of Finance, 24 May 2012.

¹³⁷ Interview with H.C., 30 April 2012.

¹³⁸ *Ibidem*.

law¹³⁹” at both central and local levels. As a result of budgetary constraints, there is “understaffing, a lack of qualified translators and insufficient training¹⁴⁰.” Nonetheless, some municipalities have decided that there is no reason to employ translators or interpreters in the absence of sufficient numbers of non-majority language speakers, even though, according to the OSCE, a complete “lack of translators could be seen as an indication of a lack of willingness to comply with language provisions to the full extent.” Furthermore, the OSCE noted that these same municipalities were unable to provide services through already existing staff¹⁴¹. Such monolingual policies excluding considerations for linguistic minorities are dangerous if not unjustifiable. A 2006 report by the OSCE highlighted the absence of any attempts through awareness raising initiatives or training to confront non-respect and compliance with language laws¹⁴². This is not the case everywhere since some municipalities are reported to have sought extra funding for additional translators, and organised language training of civil servants to improve capacities. Language issues are heavily politicised in Kosovo and rather than being seen as a basic human right, they can become a political tool and bargaining chip¹⁴³. Regardless of resource availability and capacities, language compliance should be prioritised.

3.3. ACCESSIBILITY

Accessibility regards the ease with which the right to translation and interpretation can be obtained, whether provision is automatic (best case scenario), or there are administrative, financial or physical barriers to access. Furthermore, the online accessibility of documents essential to participation in public affairs (with particular regard to written translation of materials). Thereby enabling assessment of whether there is discrimination in accessing participation through translation/interpretation.

¹³⁹ OSCE, 2011.

¹⁴⁰ OSCE, 2012, p. 4.

¹⁴¹ OSCE, 2011, p. 12.

¹⁴² OSCE, 2006, p. 5.

¹⁴³ Interview with H.C., 30 April 2012.

a) *The Procedure: Administrative Barriers*

According to my research, access to translation when it is available seems to be in general an accessible service: “It is easy to get translation, since there are offices where you can get it¹⁴⁴.” Yet, this was disputed in my interview with Serbian community representatives. The OSCE considered in its 2012 report that “at the Assembly of Kosovo level, translation procedures appear satisfactory¹⁴⁵.” At a central level, in Kosovo Assembly meetings, there is always simultaneous interpretation for Serbian and Albanian, whilst Turkish would be provided only if explicitly requested by a committee member, since it is not official at a central level¹⁴⁶.

The Law on the Use of Languages (Article 7), regarding communications and the issuing of documentations in the language of the citizen’s requests in multiethnic municipalities appears to be generally respected and is an automatic process. However, there are reports of non-majority community members receiving answers and communication in Albanian, rather than in the language requested, and furthermore, in a case documented by the HLC, the Serb affected was told to hunt down the municipal administration translator by themselves. Moreover the Serb reported: “I didn’t do because it’s their responsibility, not mine¹⁴⁷”; so access to translation services and as a consequence participation was denied, as a result of an administrative barrier. This case serves to highlight the importance of the provision of this service being automatic; it is the duty of the government institutions, not of the citizens. Communication with the Kosovo government, however, is exclusively in Albanian and “municipal administration officers receive documents written only in Albanian. If they do not understand Albanian, they contact the respective service within the Government asking them to send a document in a language that they can understand¹⁴⁸.” Since translation is not automatic, it appears to place an administrative barrier to receiving translation and therefore, hindering participation and representation, since there is more

¹⁴⁴ Interview with M.Z., (Albanian Community Representative), Human Rights Officer, Municipality of Prizren, Prizren, 26 April 2012.

¹⁴⁵ OSCE, 2012, p. 30.

¹⁴⁶ *Ibidem*, p. 12.

¹⁴⁷ Humanitarian Law Centre, 2007, p. 13.

¹⁴⁸ *Ibidem*, p. 12.

administration to work through for minority officers. There is also no automatic process in Serbian majority municipalities (for instance Zvečan/Zvecan), where the Law on the Use of Languages is barely applied at all, all documents are issued “in Serbian unless a client specifically demands that the document be issued in Albanian¹⁴⁹,” despite Albanian being an official language.

Municipal staff, administration clerks, should be able to communicate in the different official languages (i.e. Turkish, Serbian, Albanian), since it is a job requirement¹⁵⁰. Yet, accessibility and respect of the law on languages varies, according to willingness of staff that can impose unnecessary barriers for non-majority language speakers: “it depends. Sometimes people are facing obstacles, sometimes not. Sometimes the official is actually willing to switch to the language¹⁵¹.” Yet whilst it should be automatic, my investigation found that Serb community members sometimes even experience resistance in implementing the law on language, which amounts to discrimination: “We needed some documentation for some NGO to be registered and of course as we are doing that, we are actually trying to implement the law. We know our rights so we went there and we asked for that and that, they wouldn’t even speak to us in Serbian. Then when we said, ‘ok, call me your boss, because you are paid to do your job, and your job is to provide me with papers and to speak Serbian.’ Of course, it was a big drama and we found out that they do actually speak Serbian, but they don’t want to, because they think that we should learn Albanian¹⁵².”

From the point of view of an ordinary citizen, seeking translation requires an extra hassle, an administrative hurdle: “If I go to the municipality, and I want something to be done immediately, then I will close my eyes and then pray to God that I have the correct information, sign it, submit the request and then go home and wait for it. But if I am stubborn and I would like to get it in my own language: then I would give them back the decision, for example on my property tax, and I’d tell them that I would like to have it translated, and that only then I will sign it¹⁵³.” This extra hassle should not be overlooked, as it creates an

¹⁴⁹ Ibidem, p. 11.

¹⁵⁰ Ibidem, p. 12.

¹⁵¹ Interview with S.D., (Kosovo-Bosniak Community), Freelance Translator, Prizren, 25 April 2012.

¹⁵² Interview with L.J., 29 April 2012.

¹⁵³ Interview with S.M., 25 April 2012.

administrative barrier, not only to receiving translation, but full, free and effective participation.

b) Financial Accessibility

For judicial proceedings, it is well established in international law that assistance by an interpreter should be provided free of charge. Whilst there is no specific mention in Kosovo law related to costs and translation other than in criminal proceedings, it does stipulate that the responsibility and duty of providing the translation/interpretation lies with the central and municipal institutions that would indicate that the burden of cost should be borne by the institutions¹⁵⁴. Yet, unfortunately there have been reported instances where translation needed has incurred a cost on the part of the citizens. In Gjilan/Gnjilane municipality, it was reported that the process of correcting irregularities detected in the spelling of Turkish names in personal identification documents “costs 20 Euros and the citizens bear these expenses, even though it is not their fault¹⁵⁵.” In Serb-majority areas in the north, the Humanitarian Law Centre reported that to obtain documents in English “the applicant must pay 20 Euros¹⁵⁶,” otherwise municipalities issue documents in Serbian and moreover in Cyrillic script.

Furthermore, throughout Kosovo there is no guarantee of the quality of translation provided by institutions, and often visitors are recommended to bring their own translator/interpreter¹⁵⁷. Therefore, if quality is required, a financial barrier exists since most people will not be able to afford private/freelance translation charges.

c) Physical Accessibility

There does not appear to be any issue in terms of physical accessibility of translation and interpretation services, since citizens travel to municipality offices in the city from wherever they live, and there is regular transport to enable this. In the case of municipal outreach to a rural area, then they “bring someone who is able to communicate,

¹⁵⁴ See Articles 4(2), 7(7) and 8(2) of Kosovo Law on the Use of Languages.

¹⁵⁵ Humanitarian Law Centre, 2007, p. 7.

¹⁵⁶ *Ibidem*, p. 11.

¹⁵⁷ Interview with F.D., (Albanian Community Representative), Inicitiva Kosovarë Për Stabilitet, Prishtinë/Priština, 24 April 2012.

either directly or via an interpreter. It is not an issue of physical accessibility. We have now this ‘one-stop-shop’ in the municipality¹⁵⁸.” The issue is the quality of access.

d) Online Accessibility

There is clear inequality in online access to documents. Municipal websites are required to be available in all official languages, which in the case of Prizren, means four languages. Following the decentralisation process, several municipalities either have sites currently under construction or are in the process of updating the sites to ensure their language compliance in both official languages¹⁵⁹. My own research documented staggering lack of municipal documents, decisions and regulations available in official languages online compared with Albanian (see Annexes C, D and E). In Pejë/Pećno Serbian documents of any sort were available online in Serbian despite the presence of community members. “Multilingual Prizren” was the only municipality I found with online materials in Turkish, although even in this municipality, there was unequal access between Albanian and other languages. Surprisingly, the website for the Turkish-majority municipality, Mamuşa/Mamushë/Mamuşa, was only available in Albanian, however this municipality is relatively new as a result of the recent decentralisation process. Examples of the documents available online included a notice concerning free business training, reports on the economic situation and investment plans¹⁶⁰, rules for taxes and fines, regulation on the organisation of transport¹⁶¹. These examples underline how the publication and accessibility of such written material, requiring translation, could affect daily life, such as the decision regarding the position of a bus stop. Figure 1 illustrates the number of municipalities with up to date news in Albanian and Serbian. Only one municipality (Parteš/Partesh) failed to provide news in Albanian. Nonetheless, a total of 14 municipalities failed to provide any translation of news at all. The online availability of many of these documents is essential in ensuring transparency in governance, as well as allowing participation in public affairs.

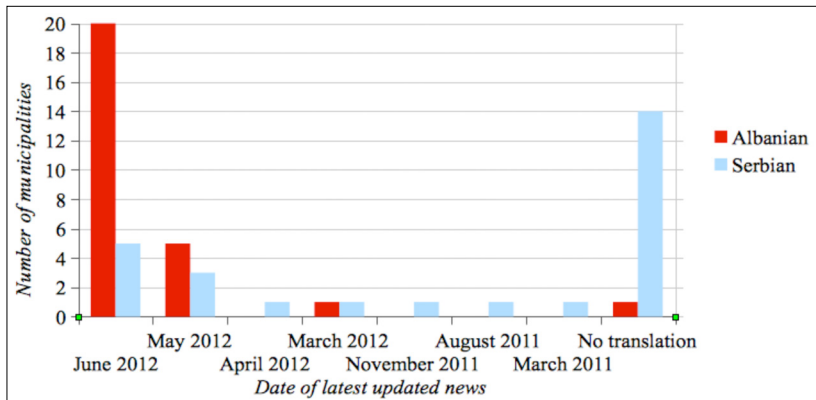
¹⁵⁸ Interview with S.M., 25 April 2012.

¹⁵⁹ OSCE, 2006, p. 8.

¹⁶⁰ See Podujevë/Podujevo, <http://kk.rks-gov.net/podujeve> (consulted on 6 June 2012).

¹⁶¹ See Kamenicë/Kamenica, <http://kk.rks-gov.net/kamenice> (consulted on 6 June 2012).

Figure 1. News updated on municipal websites official languages (consulted on 6 June 2012)¹⁶²



e) Discrimination

The law, particularly on languages in Kosovo could not be described as discriminatory. However, discrimination could be identified in uneven implementation and access to translation and interpretation. The negative consequences for participation in the absence of translation and participation amounts to discrimination, or feelings of discrimination for affected parties, which is critical as regards tolerance. Non-compliance is perceived as discrimination and an attempt at assimilation. Respect for names, particularly as regards script and spelling, is particularly important in order to avoid offence. Changing spelling could be interpreted, if not as laziness, as direct interference into an aspect of private life integral to personal identity, and results in discrimination on both ethnic and linguistic bases, since this affects the

¹⁶² This data is based on my own research into 27 of 38 municipalities with developed websites, including Serbian and Albanian majority areas: Ferizaj/Uroševac, Fushë Kosovë/Kosovo Polje, Graçanicë/Gračanica, Hani i Elezit/Elez Han, Istog/Istok, Junik, Kačanik/Kaçanik, Kamenicë/Kamenica, Klinë/Klina, Klokot/Kllkot, Lipjan/Lipljan, Malishevë/Mališevo, Mamuşa/Mamushë/Mamuşa, Mitrovicë/Mitrovica, Novo Brdo/Novobërdë, Obiliq/Obilić, Rahovec/Orahovac, Partesh/Partesh, Pejë/Peć, Podujevë/Podujevo, Prizren, Štrpce/Shtërpçë, Shtime/Štimlje, Skenderaj/Srbica, Suharekë/Suva Reka, Viti/Vitina, Vushtrri/Vučitrn. See <http://kk.rks-gov.net/> (consulted on

Serb, Bosniak and Turkish communities¹⁶³. The non-translation of legislation contravenes the principle of equality before the law and creates legal uncertainty for the non-majority linguistic communities. Whilst translation of notices, minutes and decisions in one language and not another creates a significant obstacle and disadvantage to participation and results in discrimination. Whilst the law promotes equality of official languages, in reality there are clear advantages for Albanian speakers, as evidenced in the section relating to online access. Amnesty International reported in 2011 that “discrimination remained pervasive against non-Albanian minorities¹⁶⁴” in Kosovo; furthermore, the 2009 report highlighted that *both Serbs and Albanians* “suffer discrimination in areas where they were in a minority¹⁶⁵.” The OSCE noted that “political willingness or, in cases, resistance in the application of the law [...] has lead to disrespect for individual minority rights and in certain cases, possible minority discrimination¹⁶⁶.”

It is important to note that the right to communicate in one’s own language is visibly secured for persons belonging to all communities across Kosovo. Despite Article 8(4) of the Law on the Use of Languages, non-majority communities are wary of freely speaking their mother-tongue in all contexts, for instance, the language spoken by the Bosniak community has similarity to Serbian, and the OSCE reported that the “Bosniak community in Decan/Decane [...] are afraid to speak Bosnian in public and therefore prefer to communicate in Albanian¹⁶⁷.” Where there is fear of using language, there is no equality of language; the culture of multilingualism is still evolving¹⁶⁸.

6 June 2012) for the municipalities website portal.

¹⁶³ OSCE, 2006, p. 17.

¹⁶⁴ Amnesty International, 2011, p. 34.

¹⁶⁵ Amnesty International, 2009 (a), p. 286.

¹⁶⁶ OSCE, 2006, p. 12.

¹⁶⁷ *Ibidem*, p. 11.

¹⁶⁸ However, this contradicts information provided by the Kosovo Government Ministry of Economy and Finance: “On the basis of permanent monitoring we estimate that in central and regional level economy and finance services, these legal norms are fully applied, members, officers of all communities use their native languages, at work, or in completing their services at work in an equally manner without any type of potential discrimination.” Kosovo Government Ministry of Economy and Finance, Monitoring Report on the Implementation of Law no. 02/L-37 on Language Use/Monitorimi i zbatimit të ligjit nr. 02/L-37 për përdorimin e gjuhëve në MEF, included in an email from Xhevat Shabani, Coordinator, Unit for Human

3.4. ACCEPTABILITY

a) Evaluating the Quality of Translation

Translation is often lacking altogether, but when it is there, the quality is “quite bad¹⁶⁹” and often: “we are talking about really poor translation. Really huge mistakes¹⁷⁰.” The quality of translation is particularly poor in written translation¹⁷¹, where there are a lot of grammar and orthographic mistakes¹⁷²: “there is very low quality, so are we lucky to have such a poor translation?¹⁷³” According to the Ombuds-person of Kosovo, translated documents can be “of such a low quality that quiet often those reading them have difficulties to understand the document¹⁷⁴,” they are “barely readable and understandable by the readers¹⁷⁵.”

i) Disproportionate Impact on Non-Majority Languages

The acceptability of translation disproportionately affects non-majority languages, and Serbian translations in particular are reported to be particularly poor¹⁷⁶. There are often complaints from members of minority communities that translated documents “are not written in accordance with the rules of their language” for example, Serbian orthographic rules were reportedly disrespected in Fushë Kosovë/ Kosovo Polije¹⁷⁷ and Pejë/Peć¹⁷⁸ municipalities, whilst Turkish grammar and orthographic rules were not respected in Gjilan/Gnjilane¹⁷⁹. My investigation found reports of lazy translation practice that would use the Albanian roots and just add Bosnian or Serbian suffixes, importing non-existent words, when proper words exist¹⁸⁰. Mistakes reported include “the use of Croatian and Bosnian words in Serbian trans-

Rights: Kosovo Government, Ministry of Finance, 24 May 2012.

¹⁶⁹ Interview with H.C., 30 April 2012.

¹⁷⁰ Interview with S.D., 25 April 2012.

¹⁷¹ Interview with H.C., 30 April 2012.

¹⁷² Interview with L.J., 29 April 2012.

¹⁷³ Interview with S.D., 25 April 2012.

¹⁷⁴ Kosovo Ombudsperson, 2011, p. 104.

¹⁷⁵ *Ibidem*, p. 109.

¹⁷⁶ UNIJA, 2008, p. 17; OSCE, 2006.

¹⁷⁷ Humanitarian Law Centre, 2007, p. 6.

¹⁷⁸ *Ibidem*, p. 8.

¹⁷⁹ *Ibidem*, p. 7.

lations¹⁸¹.” Despite being different languages, Serbian and Bosnian are regularly treated as one language in provision due to their similarity. Online, the letters “Š, Č, Ć, Đ, Ž,” necessary for Serbian languages are often absent in Serbian versions of web pages¹⁸² which is likely to be linked to lacking technology and software, or even respect. Even translations from international organisations are reported to be of unacceptable quality: “they would send invitations in some language, multi-ethnic, I don’t know how I should call it¹⁸³.”

ii) Quality of Multilingual Legislation

Poor translation of legislation is common practice “both at the central and local level¹⁸⁴,” and Serbian language translations are noted for being of particular bad quality since there are “lots of linguistic and grammatical errors and the terminology used in these translations is inadequate¹⁸⁵.” If there is poor translation at the central level, it is likely that municipalities will be “less inclined to increase their own translation standards¹⁸⁶” whilst “in most cases, such language issues do not affect the content of the draft law as they are mostly grammar mistakes, syntax errors and insignificant typos. However, some language mistakes are significant¹⁸⁷.” The OSCE reported that “translators tend to translate words or phrases literally without considering the wider legal context of the respective provision.” This practice is unacceptable and “resulted in inaccurate or even incorrect translation, potentially changing the meaning of the article¹⁸⁸.” “Considerable discrepancies” have been identified by the OSCE between the different language versions of legislation¹⁸⁹, often the result of poor translation. There are potentially significant legal ramifications arising from inaccuracies and inconsistencies in legal provisions which should be avoided at all costs: “if these mistakes are not detected and corrected at the drafting stage, they may result in different treatment of individuals

¹⁸⁰ Interview with S.M., 25 April 2012

¹⁸¹ OSCE, 2012, p. 22.

¹⁸² Humanitarian Law Centre, 2007, p. 7.

¹⁸³ Interview with L.J., 29 April 2012.

¹⁸⁴ OSCE, 2012, p. 4.

¹⁸⁵ Kosovo Ombudsperson, 2011, p. 108.

¹⁸⁶ OSCE, 2012, p. 22.

¹⁸⁷ *Ibidem*, p. 12.

¹⁸⁸ *Ibidem*, p. 10.

once the legislation is adopted and applied¹⁹⁰,” especially when the official language versions (Albanian and Serbian) “are equally authoritative¹⁹¹.”

There is a serious lack of co-drafting of law in both languages, from the outset of the process¹⁹². Furthermore there is a lack of common terms and common glossary. Unsurprisingly, therefore there are frequently inconsistencies observed, “for example, in different laws there are different terms used for the same institution for protection of minority rights in the local community¹⁹³.” Adequate translation is needed throughout the drafting process, including amendments to “provide a solid ground for the effective participation of all communities in the drafting process at its initial stage¹⁹⁴.” Linguistic errors in legislation, “may pose obstacles to the everyday work of public officials, and individuals and other subjects of legislation may also be negatively affected¹⁹⁵.” Ultimately, participation and representation is negatively affected when uncertainty surrounds legislation.

b) Respecting Language and Encouraging Participation

When grammar and orthographic rules are disrespected, and the translations are poor in quality, it can be viewed as disrespectful and even insulting for non-majority communities: “There are people who can do it in a proper way, but they still do it with mistakes, [...] so people see it as an insult [...]. Nobody cares, and nobody enforces the law. Now, besides all the human rights that are broken here for Serbs in Kosovo, one of the biggest problems is the language barriers – that nobody actually respects our right to our language¹⁹⁶.” A Serbian civil society network representative, described his reaction to receiving an inadequately translated invitation from the United Nations to participate in a workshop: “the invitation was like [...] multiethnic language, and I got really [...] not upset, I got offended! [...] Pay me a

¹⁸⁹ Ibidem, p. 4.

¹⁹⁰ Ibidem, p. 21.

¹⁹¹ Ibidem, p. 13.

¹⁹² Ibidem, p. 8.

¹⁹³ Kosovar Institute for Policy Research and Development, 2009, p. 3.

¹⁹⁴ OSCE, 2012, p. 9.

¹⁹⁵ Ibidem, p. 21.

thousand Euros a month or, three Euros per page, or whatever, or I'll do it for free so you can have a proper translation¹⁹⁷.”

The quality of translation is important for participation and representation. There are practical difficulties caused through poor-quality language versions of documents and legislation that negatively impact “on the involvement of non-Albanian officials in municipal affairs¹⁹⁸,” and municipal officials have reported that “poor translation contributes to confusion and misunderstanding in everyday work. The consequent need to seek clarifications and explanations, and to compare the different language versions make tasks more time-consuming and difficult. Additional problems arise if the official does not speak the other official language, and therefore cannot cross-check easily with the other version of legislation¹⁹⁹.”

Improving the quality of translations could increase participation of non-majority communities beyond practical reasons, translation quality is seen as an indicator of commitment to, and respect for these communities. Serbian language translations suffer most from poor quality, and they have extremely low participation in political affairs and elections, largely due to boycotting and pressure from Serbia, yet a Serbian community representative agreed that “If it [translation] was done in a good way, then it would definitely encourage people²⁰⁰.” Poor Serbian language versions of leaflets and documents discourage interested people who might otherwise consider participating: “For example, we have elections now and we get this, brochure, and you get it in English, Albanian, and then you get in Serbian. If you check the Serbian part you will see, again, lots of mistakes and of course people would, even those who are encouraged by some situation to participate, they would get discouraged.”

Poor translations can be an annoyance visible on a daily basis, for example “I bought cigarettes and it says here, ‘smoking kills, be careful so your kids don’t eat cigarettes’ instead of, what they want to say, and it’s only one letter, to ensure that they are not around when you smoke, so that they don’t inhale the smoke²⁰¹.”

¹⁹⁶ Interview with L.J., 29 April 2012.

¹⁹⁷ *Ibidem*.

¹⁹⁸ OSCE, 2012, p. 22.

¹⁹⁹ *Ibidem*, p. 22.

²⁰⁰ Interview with L.J., 29 April 2012.

Ensuring good standards of language is also important for protecting and promoting linguistic diversity. Non-majority communities are concerned at protecting their language for future generations²⁰² by ensuring that language is written in the correct way: “If you preserve your own language you preserve your culture, your tradition, everything. It is very valuable [...]. People forgot the basic rules of their own language. I know, I see many different documents. ‘Ministry of Public Services,’ is written with capital letters in English, but if you translate it, the first letter should be capital and all the rest with little letters. But usually they just copy²⁰³.”

c) Timely Delivery of Translation

It is a “legal requirement to provide timely and high quality translation of all official documents²⁰⁴.” Yet the lack of human and financial resources impedes this from happening in practice. There are many issues across Kosovo with delays in translation that is unsurprising considering the lack of translators and the backlog of work. If non-majority representatives receive translated invitations, agendas and other materials late, as is often the case in Gjilan/Gnjilane municipality²⁰⁵, it hampers their ability to adequately prepare in advance of meetings, thus hindering participation. “In Prishtinë meetings are sometimes postponed due to translation delays²⁰⁶.” Delays in translating documents are common, with 11 municipalities reporting that they often have delays²⁰⁷. The translation of official documents and decisions into minority languages can require an unsatisfactorily long wait for affected communities and their citizens²⁰⁸, who until receiving the translation may be effectively denied their participation. Furthermore, for ordinary citizens of these communities, the wait may have practical implications on their daily life if related for example to important documents needed for work, business or travel. Delays in making translated

²⁰¹ Ibidem.

²⁰² Interview with S.D., 25 April 2012.

²⁰³ Interview with S.M., 25 April 2012.

²⁰⁴ OSCE, 2012, p. 27.

²⁰⁵ OSCE, 2006, p. 7.

²⁰⁶ Ibidem.

²⁰⁷ Ibidem.

information available also impedes equal opportunities to participate, yet online information is often not updated in non-majority languages i.e. Dragash/Dragaš municipality in Serbian/Bosniak²⁰⁹, whilst in Prishtinë/Priština “only the part written in Albanian is updated regularly²¹⁰.” Pro-activity on the part of municipalities is essential in ensuring that translated information is made available on notice boards and online.

d) Proficiency of Translators/Interpreters

i) Experience and Qualifications

The level of qualifications and requirements varies depending on level²¹¹. Simultaneous interpretation at a central level for Prime Minister, President, embassies, NGOs, is the top level “and the requirements are quite high²¹².” Even at a local level, i.e. Prizren municipality, the requirement is for translators to have a University language degree²¹³, or a translation qualification²¹⁴. Nevertheless, in general, there is discontent concerning the proficiency of translators. Therefore there are signs of improvement, since translator recruitment just after the war was “based on a basic level of English, German or whatever language. No one asked any diploma, CV or experience, it was important for you to know some words in a particular language in order to get recruited to a position²¹⁵.”

There is not just a problem regarding the availability in numbers of translators in general, but also a more serious lack of qualified, professionally trained and experienced translators²¹⁶. Even when there is the will to employ qualified translators, there is a lack in qualified translators. Prizren municipality tried to increase the numbers of their translators, and “one of the translator vacancies in Prizren municipality has been continually re-advertised, but qualified translators aren’t

²⁰⁸ Kosovo Ombudsperson, 2011, p. 109.

²⁰⁹ Humanitarian Law Centre, 2007, p. 8.

²¹⁰ *Ibidem*, p. 12.

²¹¹ Interview with S.D., 25 April 2012.

²¹² *Ibidem*.

²¹³ Interview with M.Z., 26 April 2012.

²¹⁴ Interview with S.M., 25 April 2012.

²¹⁵ Interview with H.C., 30 April 2012.

applying²¹⁷: “we offered jobs, but they only had high school qualifications, and we want quality: University-level²¹⁸.” However there is a danger that qualification requirements could prove discriminatory. For example, the Albanian Philology degree requirement in Pejë/Peć would have severely limited access for non-majority community members²¹⁹.

It is not just a matter of qualifications, since “having a language background doesn’t mean to say that you are a good translator or interpreter²²⁰.” Translation, and particularly interpretation is a skill that needs experience to reach a high standard. If the standard has improved, it is in part through increased experience in the job. Furthermore, translation within Kosovo institutions often requires specialised knowledge beyond language expertise. The specialised knowledge required for the translation of legislation is problematic. There is a general “lack of adequate qualifications²²¹” relating to this specialisation, and inexperienced municipal translators struggle with “the right use of legal terminology often resulting in translated provisions of different legal significance²²².”

ii) Remuneration and Quality (cf. Availability)

It is primarily public sector budgetary constraints that create difficulties, particularly for municipalities, attracting and recruiting qualified and experienced candidates and staff²²³, “in view of the low salaries and benefits²²⁴”: “So we are talking about a large amount of work that is not paid, or very poorly paid so no one wants to do it, even if he or she is qualified.” “Qualified candidates often find better-paid job opportunities in Kosovo,” for instance with international organisations²²⁵ or doing freelance private translation²²⁶. It is seen as a better option than “working in the municipality and translating three hundred pages in one month for two hundred Euros²²⁷.” As a result, of the low

²¹⁶ OSCE, 2012, p. 4.

²¹⁷ Interview with S.M., 25 April 2012.

²¹⁸ Interview with M.Z., 26 April 2012.

²¹⁹ OSCE, 2006, p. 6.

²²⁰ Interview with S.M., 25 April 2012.

²²¹ OSCE, 2012, p. 19.

²²² *Ibidem*, p. 20.

²²³ *Ibidem*, p. 7.

²²⁴ *Ibidem*, p. 20.

²²⁵ *Ibidem*, p. 7.

²²⁶ Interview with S.M., 25 April 2012.

salaries, it is the lowest quality of translators that work for municipalities. “As a result, persons filling positions of ministerial translators often lack adequate qualification and professional experience²²⁸.”

iii) Contracting Translation (cf. Adaptability)

If the internal translation services are insufficient, an alternative is contracting translation – although it is more expensive, and there are only a few professional interpreting companies in Kosovo²²⁹. The practice of using contracted translators is common at a central governance level. The choice of using contracted translators or civil servants is “entirely at the discretion of the sponsoring ministry because there is no legal act regulating whether or not translation must be done internally²³⁰.” Whilst outsourcing the work is not without risks, officials interviewed by the OSCE, mostly “expressed satisfaction with translations provided by contracted translators²³¹.” Moreover, the translation services provided by contracted translators were reported to be “of higher quality in comparison with those provided by internal translation units²³².”

iv) The Unofficial Translators (cf. Adaptability)

Lacking or non-existent translation services in Kosovo mean that the necessary work of translation often falls to un-official, non-professional or unqualified translators. The OSCE found in 2007 that “sometimes, even the municipal administration clerks translate some documents themselves in order to ease the pressure on the translators and to make sure they issue documents to citizens in time²³³.” It was reported that Albanians employed in an Office of Communities in the Serb-majority municipality of Zubin Potok/Zubin Potoku, would sometimes translate documents received in Albanian, despite being outside scope of their duties, since they were not official translators²³⁴. Yet in 2012, little appears to have changed: “municipal officials, who are not translators and who do not possess the relevant educational and professional back-

²²⁷ Ibidem.

²²⁸ OSCE, 2012, p. 7.

²²⁹ Interview with H.C., 30 April 2012.

²³⁰ OSCE, 2012, p. 7.

²³¹ Ibidem.

²³² Ibidem.

²³³ Humanitarian Law Centre, 2007, p. 8.

ground,” were reportedly doubling as translators when needed in municipalities lacking translation units²³⁵.” My own investigation even encountered allegations against certain international actors, whose translations were of a poor quality, and that were apparently using one of their drivers as a Serbian translator (despite not even being Serbian) for official invitations.

However, it must not be forgotten that there is a significant number of people who are fluent in both languages and therefore would be able to switch into the different languages without needing to place an extra burden on of work on translators. If there is genuine fluency, there is no reason why the quality should be poor, particularly if they are experienced in switching between languages. Experience, particularly for interpretation is arguably more important than qualifications. So if the quality is good, and the right to participation is enhanced through their translation or fluent interactions between languages, there is clearly an important role that unofficial translators play, that cannot be dismissed. The value of having an official, professionally qualified translator/interpreter is that there is a greater guarantee that the translation will be good, but it is not an absolute guarantee. Yet despite the benefits of this flexibility to enable translation, “it represents an ad-hoc response and does not address structural problems as such²³⁶.”

e) Accuracy, Neutrality and Impartiality

Accuracy, neutrality and impartiality are fundamental principles for translators and interpreters. It is standard practice for international organisations in Kosovo to require signing of an agreement to impartiality. Principles aside, in practice the situation on the ground can be different and without any monitor. For effective provision of translation and interpretation trust is crucial. There needs to be confidence that communication is accurately relayed between languages. If there is no trust then there is doubt or no confidence in the translation or interpretation, which would undermine the oral or written product. Acceptability of translation provision therefore requires accuracy, neutrality and impartiality.

²³⁴ Ibidem, p. 11.

²³⁵ OSCE, 2012, p. 19.

Fortunately the situation regarding accuracy, neutrality and impartiality of translations has improved substantially, yet memories from the recent war stain the reputation of translation provision today. During the war “it was very important, of course, wherever you are, to have an interpreter from that area” but there were more Albanian translators serving as translators into Serbian: “just after the war you had KFOR patrolling and you had an Albanian translator in a Serbian village. If something happened of course he won’t [...] even though the internationals are there to be neutral. Through the translation you lose that [...]”²³⁷.

In 2004, they came to check whether there was any weapons in the houses and the translator would say “he’s not sure,” when the guy is saying, “no, I don’t have weapons,” and it wasn’t translated in the right way. He would cause problems. That’s just one situation. You had thousands of them. The worst (particularly for me when I used to work) was when somebody’s getting robbed, killed, kidnapped, burnt [...] if somebody else picks up the phone, “oh, ok, Serbian, it’s all good.” So you can manipulate with that stuff. If you are in the right place at the right moment you can manipulate with the language²³⁸.

During and after the war there were reports of incidents of misguidance by the interpreter, and although it is impossible to determine the extent of this behaviour “It was definitely happening.” There could be “completely different information²³⁹” per language, or the message could be altered, for instance: “you have Serbian on one side, and Albanian on the other. The Serb says something to offend the Kosovo government, and the Albanian translator would make it nicer for you, and a Serb would make it worse²⁴⁰.” Whatever the agenda or purpose in distorting translations, there are always potential serious political or other ramifications with inaccuracy in translation. On the one hand there is always the potential for a technical mistake or misunderstanding, it is another game when there is intent. Yet the allegations relate to 8-9 years ago when “everyone was a beginner²⁴¹.” Impartiality and neutrality is difficult to guarantee and more so in situations of heighten-

²³⁶ Ibidem.

²³⁷ Interview with L.J., 29 April 2012.

²³⁸ Ibidem.

²³⁹ Ibidem.

²⁴⁰ Ibidem.

ed tension between different ethnic communities: “of course I would pull on my side, and an Albanian would pull on his side. In an ideal world it wouldn’t but let’s face it²⁴².”

The identity of the translator is critical for trust, even today. Especially in inter-ethnic conflict or disputes, “the non-majority community would always seek the translator from their own community. Language? Maybe they know you? Maybe they heard about your qualities? Maybe they feel more confident being open in front of you? It’s a matter of trust²⁴³.” Still, the Serbian translator interviewed expressed concern that whilst the situation had changed, “I would feel more comfortable working for you here in Gračanice/Gračanica because if they found out that I’m not Albanian then... you know, I’d have problems, because they would assume that I wouldn’t translate in the right way.” There continues to be distrust amongst communities regarding translation: “the people who are being interviewed would pretend not to speak English just to see whether the translator is doing his job correctly.”

Beyond trust, it is widely accepted that it is better for quality to translate into your mother tongue and above all to be fluent in both languages, and it is better for respect²⁴⁴ that the translator comes from the community: “the quality is better²⁴⁵.” Yet “it is difficult to find good translators, who can provide quality translations into Serbian²⁴⁶.”

f) Quality Control: Proofreading

Despite serious concerns over the quality of translations and documented inaccuracies there is almost no practice of proofreading. Any proofreading, is usually done by the translators themselves since “there are no professional proofreaders²⁴⁷,” and in the municipality translation services there are no lectors in charge of verifying translation quality²⁴⁸. Although, whilst proofreading is a specialised skill, it essentially requires good knowledge of your own language: “you can’t be a good

²⁴¹ Ibidem.

²⁴² Ibidem.

²⁴³ Interview with S.D., 25 April 2012.

²⁴⁴ Ibidem.

²⁴⁵ Interview with S.M., 25 April 2012.

²⁴⁶ Interview with H.C., 30 April 2012.

²⁴⁷ Interview with S.M., 25 April 2012.

translator or interpreter if you are not good in your own language, that's a very reasonable fact." Proofreading sometimes happens, but not often enough: "I'm really happy if I have something to proofread [...] because I know that I will fix common mistakes." Most worrying is that "the practice of systematic proofreading is not established amongst legislative institutions²⁴⁹," "legislation is often adopted and applied with language mistakes²⁵⁰," and it is often only after laws are approved that there is proofreading to detect mistakes and harmonise different language versions²⁵¹. There is a strong link between the shortcomings of human and budgetary resources and the absence of proofreading in practice.

g) The Acceptability of Online Machine Translation (cf. Accessibility)

There have been astounding advancements in machine translation in recent years, particularly by the market leader, Google Translate that works via statistical analysis rather than applying grammatical rules²⁵². Serbian translation has been available since 2008 and Albanian and Turkish since 2009. Moreover, in 2011, the Welsh Assembly, which had been struggling to implement its own law on languages, considered using Google Translate "to provide bilingual record of meetings at the National Assembly²⁵³." Although this idea was severely attacked and dismissed as a "ridiculous idea²⁵⁴," hypothetically it could save a significant amount of money. It was estimated that the total bill for proof reading the translation would be £110,000, whilst translating the record from English to Welsh in 2008-2009 amounted to £290,000²⁵⁵.

In a given day, Google Translate translates "roughly as much text as you'd find in 1 million books. To put it another way: what all the professional human translators in the world produce in a year, our system translates in roughly a single day²⁵⁶." Machine interpreters do

²⁴⁸ Kosovo Ombudsperson, 2011, p. 109.

²⁴⁹ OSCE, 2012, p. 4.

²⁵⁰ Ibidem, p. 21.

²⁵¹ Ibidem, p. 12.

²⁵² Garreau, 2009.

²⁵³ Shipton, 2011.

²⁵⁴ BBC News, 2007.

²⁵⁵ Bodden, 2007.

not get tired, they are usually free of charge, available whenever you want, and don't suffer from human bias.

The new capabilities of online machine translation are especially important for speakers of minority languages since it opens the web and an infinite amount of information and it has significant potential for improving and increasing participation of non-minority groups. Google Translate allows amateur translators and people with no knowledge at all of a language to gain some understanding, allowing greater access to websites, online documents and other material that would have been completely inaccessible. My investigation found that ordinary citizens of non-majority communities were often using Google Translate²⁵⁷.

In many daily situations, an online translation could be sufficient to enable participation, and having some level of understanding is more important than the quality of the translation: "For ordinary people that don't know a language and use Google Translate, if they can figure out 50-60% of the sentence, that's more than enough for them to get a clue²⁵⁸." Online accessibility also often tends to be limited to the younger generation who are more computer and internet literate²⁵⁹. It does not provide a solution in terms of the translation needed for important documents, since only official translations are accepted²⁶⁰. "Copy paste and we can understand each other, but when it comes to important things, you cannot rely on it. You have to have real knowledge or you have to pay an interpreter to translate²⁶¹."

i) Online Translation Acceptability (cf. Accessibility)

The value of this online machine translation services are undeniable, the question is over quality: "They use it often without paying attention to the details²⁶²." All online machine translations, including Google Translate, are recognised as having failings and limitations particularly regarding the quality and accuracy of the output. Accuracy depends on the subject, for instance a highly technical or colloquial/idiomatic text

²⁵⁶ Och, 2006.

²⁵⁷ Interview with S.M., 25 April 2012.

²⁵⁸ Interview with S.D., 25 April 2012.

²⁵⁹ Interview with A.R., (Kosovo-Serb Community), Community Representative, Alternative Culture Centre, Gračanice/Gračanica, 29 April 2012.

²⁶⁰ Interview with L.J., 29 April 2012.

²⁶¹ Ibidem.

can often produce laughable results. Google Translate works better in some languages over others, so for instance, the quality of translation between English and French is much higher than for English and Albanian. Machine translation is nowhere near as good as human: important nuances and subtleties in language get lost in translation. Since translation can change the structure entirely, it is essential to have some knowledge of the language if using the tool, to avoid misguidance²⁶³.

For more important translation work for instance within institutions and municipalities, quality become far more important, and all of those interviewed contested to either never using online machine translation or only using it to head in the right direction, or as “maybe additional assistance – but you cannot rely on it!”²⁶⁴ There appears to be widespread use of the tool in Kosovo, apparent even in my own correspondence. Using online translation is risky, especially copying and pasting²⁶⁵ without checking the translation: “We have a colleague that is not fluent in English language and then he uses Google Translate to translate, but he never checks or proofreads it, and sends it like that. So it is really difficult to understand what he wants to say”²⁶⁶. Yet those who have not studied languages and translation, this may not be obvious, and awareness of the linguistic pitfalls may be limited. For translation relating to law, justice and legislation online machine translation is out of the question: “especially when it comes to legal issues and laws, there must not be space to misunderstand something. One word can change everything”²⁶⁷.

It depends on the material you are translating, the subject. For example nowadays I’m doing the reform of the juridical system in Kosovo, so for the ones who don’t have this background it’s quite difficult. Luckily I had this nine years experience working for the UN Department of Justice, so I’m getting through it, but it’s not easy. But then if you would use the Google Translate with this subject it will easily misguide you somewhere else”²⁶⁸.

²⁶² Interview with S.M., 25 April 2012.

²⁶³ *Ibidem*.

²⁶⁴ Interview with S.D., 25 April 2012.

²⁶⁵ Interview with S.M., 25 April 2012.

²⁶⁶ *Ibidem*.

²⁶⁷ Interview with L.J., 29 April 2012.

It is also a matter of treating official languages and their speakers with due respect and affording them equality. To use a machine translator is to undermine this principle treating one language less favourably than the other. “Of course it’s useful and you can catch the meaning. It’s definitely useful for a lot of things, but it’s not how it should be²⁶⁹.” Where there should be a translation available of adequate quality, Google Translate should not be needed. There is certainly a role for online machine translation, but any use must be with extreme caution. The question remains, what level of translation provision is “good enough,” if some translation even of a poor quality is enhancing the right to participation?

b) The Position of the Translator

There are important considerations to take into account regarding the translators and interpreters themselves. Translators are humans. This is important to remember. The toll of the work endured by translators is often overlooked, although examples of some of the affects for translators were documented in the Nuremburg Trials, where overburdened interpreters experienced “burnout.” The working conditions, workspace and the respect they are afforded, impact the quality of the translators’ and interpreters’ work. The human behind a service should never be forgotten.

i) Working Conditions of the Translator

Since there is not enough translation staff, translators and interpreters are overburdened by the huge task of translating all the official documents, all meetings, and all information. The situation is particularly hard for municipal translators who are paid very low salaries and have huge workloads: “I wouldn’t be a municipal translator, working 22 working days per months when I can be a freelancer and get that amount of money for a day and a half or two days. No way!²⁷⁰” Furthermore, it is not possible to have another job since it is a full-time job: “I would never do it! We are talking about 22 days per month, that’s 40

²⁶⁸ Interview with S.D., 25 April 2012.

²⁶⁹ Interview with A.R., 29 April 2012.

hours weekly and you are stuck there. There's no way you can get a second job. Once you get it you are already exhausted." Considering the length of meetings, there is too much work for one interpreter alone, yet apparently in Prizren there is only one elderly interpreter²⁷¹: "if you are alone, and you have the assembly session from 9am until 5pm, you are exhausted. So now we're talking about the quality of translation. There is no human being who can stand 5 hours without a break [...] I did it [...] I did a couple of days by myself [...] I never guaranteed for the quality. That's impossible²⁷²." At a central level interpreters are always in pairs: "between us we share the job and every half an hour we rotate²⁷³."

In principle, a translator should only take on work that they are fully competent to do taking into account time constraints. Translators working in Kosovo especially privately often cannot afford to refuse translation work: "If you don't want to do it, there is always someone else that will do it." If you refuse, "you won't get another job! If you're a freelancer you won't get another offer. That's it²⁷⁴." Since there are extremely high levels of unemployment, "when you have this level of competition, the quality doesn't matter."

Furthermore the working space and availability of resources of translators is problematic. Office space is a serious issue, and "in the municipality of Prizren they share an office with other people, [...] 4 or 5 sitting in the office," which impacts their ability to work. Worryingly, as recent as 2010 the OSCE reported that the "lack of resources affects the availability of necessary materials such as dictionaries²⁷⁵."

ii) Respect for the Translator and Translation

Translation and interpretation are highly skilled professions yet in Kosovo the importance of translators and their work is not recognised²⁷⁶. Their position is considered as the lowest level of civil servants²⁷⁷. Even at a higher level, a "translator is a simple service provider

²⁷⁰ Interview with S.D., 25 April 2012.

²⁷¹ Interview with S.M., 25 April 2012.

²⁷² Interview with S.D., 25 April 2012.

²⁷³ Ibidem.

²⁷⁴ Ibidem.

²⁷⁵ OSCE, 2010, p. 11.

²⁷⁶ Interview with H.C., 30 April 2012.

and who is there because he gets paid for what he or she does, and it is not considered as anything more than technical work²⁷⁸.” Translators used to be paid really well and even today, private translators can charge high prices for instance €80 per hour, but there is still not as much respect for translators as there once was²⁷⁹. Despite translators working as a bridge between the communities allowing communication, sometimes translators can be seen as “traitors”: “if we go now to some small Serbian village, where they had constant problems with Albanians burning and stealing this and that, and never got any response, never got anything back. And now if I come with the US as an interpreter, they would feel that I’m a traitor because I never helped them before, even though I’m just the bridge²⁸⁰.” Then there are other stereotypes for translators “labeling them as spies²⁸¹.” Worse are the sexist jokes regarding female translators, for instance that if you are a woman working for an international organisation, “the first label, in a negative sense, the first opinion about you, is that you translate, because it is the easiest thing you can do in an international organisation but another stereotype is that local population can only translate or do some paperwork in international organisation because we don’t think that we are capable enough of entering higher levels in international organisations²⁸².”

i) Recognition of the Importance of the Translation

Recognition of the importance of translation varied in my investigation. Whilst the Prizren municipality representative attested that the importance of translation was recognised by the municipality and taken very seriously²⁸³, Prizren is very special in Kosovo since there is more inter-ethnic dialogue than elsewhere. I encountered greater recognition of issues related to translation amongst the non-majority community, who are in greater need of the interpreters and translators in order to communicate and participate: “The majority community doesn’t see it as something necessary, but something that is imposed on them because

²⁷⁷ Interview with S.M., 25 April 2012 and interview with S.D., 25 April 2012.

²⁷⁸ Interview with L.J., 29 April 2012.

²⁷⁹ Ibidem.

²⁸⁰ Interview with H.C., 30 April 2012.

²⁸¹ Ibidem.

²⁸² Ibidem.

the law requires it. Otherwise they wouldn't do it, I think. They would ask people to learn the language²⁸⁴." The majority community appears to be less aware of ongoing problems and lack of implementation of the Law on the Use of Languages. Furthermore, OSCE research in 2012 which "confirmed that municipal officials belonging to non-Albanian communities are more troubled about the poor quality of translated documents, than their Kosovo Albanian colleagues²⁸⁵." "Issues of language and representation have always gone together," even going back to Former Yugoslavia. Yet the fight has always been for "language representation" rather than "translation," with the demand for "institutions, schools and the rest guaranteeing all of that in their own languages²⁸⁶." Translation's importance is either overlooked, unknown or disregarded, since in Kosovo, "translation is not necessarily seen as a means of creating participation [...] but serving international interests²⁸⁷."

3.5. ADAPTABILITY

Adaptability is the most fluid and challenging of the 4As as regards criteria, but also as regards obligations, since it elicits the question of who should adapt. There is no question that the "recipient" of this service should adapt, although their tolerance could be reasonable to expect. It is the obligation of the provider i.e. the municipality and the translators. In reality it is adaptation that is principally the responsibility of the translator reacting to intuition and common sense and taking initiative. The "right to translation and interpretation" must be adaptable to the individual as an inclusive right. Adaptability in translation provision should enhance protection of human rights and ensure protection for all, with particular consideration for vulnerable groups. Adapting to varying needs, contexts and situations takes into account the heterogeneity of Kosovo. In the context of the general comment on education, adaptability was interpreted as adaptation to "the needs of

²⁸³ Interview with M.Z., 26 April 2012.

²⁸⁴ Interview with S.M., 25 April 2012.

²⁸⁵ OSCE, 2012, p. 22.

²⁸⁶ Interview with H.C., 30 April 2012.

²⁸⁷ Interview with N.L., (Albanian Community), Lecturer on Anthropology and Sociology, University of Pristina/American University of Kosovo, Prishtinë/Priština, 30 April 2012.

changing societies and communities and respond to the needs of students within their diverse social and cultural settings.” As such, adaptability considers both individuals and changing contexts.

a) Adapting to Situations

i) Absent Interpretation

Considering the lack of translators, the system must adapt to cope when there is no interpreter available. In the absence of a professional interpreter, the task is usually transferred to someone who is bilingual who tries to assist²⁸⁸. “It depends how desperate they are²⁸⁹.” Some situations desperately need translation i.e. “somebody comes from Belgrade to finish some legal documents,” and often there is not the option of postponing till another day, so “you have to do whatever²⁹⁰.” Some interpretation, regardless of quality is perhaps better than none in some cases, and could allow for participation to be enabled, whereas without this minimal level, participation would be impossible. Absence of interpreters is a municipal level problem, however sometimes even when there are interpreters available, it may be decided not to use them to enable more effective direct communication. This is in a situation where most people are bilingual: “I asked people ‘Can you understand me if I speak directly, so we don’t lose time on waiting for translation or if there is someone who doesn’t really understand, can we have the person translating next to you, so you can be able still to communicate?’ [...] And after there was lively discussion about the topic.” However. “If there is someone who wouldn’t otherwise understand, then of course translators and interpreters will stay all the time to make sure that everybody understands, or repeating something slower, giving slower presentations. There are ways to deal with something but the legal obligation should be respected²⁹¹.” At a central level, simultaneous translation is instant: “it’s a question of seconds²⁹²,” allowing for high-level interaction and participation. On a municipal level, interpretation can be a slower process that can hinder the work of municipalities, and

²⁸⁸ Interview with S.M., 25 April 2012.

²⁸⁹ Interview with L.J., 29 April 2012.

²⁹⁰ Ibidem.

²⁹¹ Interview with S.M., 25 April 2012.

²⁹² Interview with S.D., 25 April 2012.

should you be able to follow communication in both languages “it can impede communication²⁹³.”

ii) Increased Tension and Conflict

Ideally, no matter what the political situation, the translation provision would remain the same. In reality, there is an inversely proportional relationship between translation and tension. Translation provision in Kosovo worsens according to increased tensions between communities for example as a result of an ethnically motivated attack. According to a Serbian community representative, “It varies depending on the situation. People get more or less tolerant, people get angry and then of course you have more problems. When the situation is calm you could find the way somehow, but when the situation is tense it has a big influence. If you have problems in the North of Kosovo because of the Serbs, then there are more problems here as well [Graçanicë/Gračanica]. It’s a rolling stone. It’s a reaction²⁹⁴.” Providing adequate translation requires the will of those employed to implement the law. When tension and conflict are increased, it is when it is most important for all communities to have effective participation and ensure dialogue between groups. Therefore, when there is increased risk of intolerance and lack of good will to implement the law, there should be increased monitoring and supervision in order to secure the translation service. Furthermore, should the translation provision worsen it risks increasing tensions further, adding to a spiral of intolerance.

b) Adapting to Language

i) Cultural Mediation

In principle the translator should just translate and avoid active participation in conversations, since a cultural mediator is a different job. Yet it depends on the situation and for whom you are translating: “In most cases, I’m totally neutral all the time. I just do my job and that’s it. Either I’m a voice or written word²⁹⁵.” Through cultural mediation there is the possibility for the interpreter to enhance participation

²⁹³ Interview with S.M., 25 April 2012.

²⁹⁴ Interview with L.J., 29 April 2012.

²⁹⁵ Interview with S.D., 25 April 2012.

– allowing for effective communication between citizens and authorities: “[...] in some specific scenarios, when the message that you are trying to deliver is not understood by the party, then actually you have to improvise and adapt yourself to be understood²⁹⁶.” Whilst there is this possibility of cultural mediation it remains the judgement of the translator, whether the situation requires an adjustment of their role and whether they are competent: “it depends on the situation, the subject, the person [...] many things²⁹⁷.” However, this is only possible when the translator knows the issue in depth, otherwise you might change the sense of what was said²⁹⁸. Frequently staff of international organisations can provide translation, which would mean that they would have sufficient knowledge and serve a double role. The translators’ International Code of Professional Practice encourages interpreters to “take all reasonable steps to ensure complete and effective communication between the parties, including intervention to prevent misunderstanding and incorrect cultural inference²⁹⁹.”

c) Diversity of Language and Education

There are various dialects in Kosovo even within the respective languages i.e. Gheg and Tosk in Albanian language. There are unique dialects in Kosovo blending languages, for instance the dialect of Rahovec/Orahovac, sadly close to extinction, combines a mixture of Albanian, Serbian and Bulgarian³⁰⁰. “It happened to me in Dragash/Dragaš, for example for the UNDP, we had some kind of meeting and most of the people in the audience were of poor education and the speaker was holding the lecture in very sophisticated language and I was also doing the interpretation. I read the people through their reaction: that they had no clue what was going on. In the break I spoke to this UNDP lady and I told her, ‘listen, it’s my remark, I know the people, I’ve spent some years working there, and you can’t expect that an elder guy who is having just a primary school education understands

²⁹⁶ Ibidem.

²⁹⁷ Ibidem.

²⁹⁸ Interview with S.M., 25 April 2012.

²⁹⁹ International Federation of Translators, 2009, Article 4(3)(2).

³⁰⁰ Hurriyet Daily News, 2010.

such a sophisticated vocabulary. No chance.’ So then she understood, and I was allowed to improvise in a very local dialect³⁰¹.”

The Turkish language spoken in Kosovo, especially in Prizren and some areas of Mitrovicë/Mitrovica and Pejë/Peć differs so much from the modern Turkish language in Turkey they are almost two completely different languages. “Our Turkish in Kosovo is an archaic form of Turkish: a mix of ottoman and modern Turkish with the influence of Serbian and Albanian because it coexisted with these other languages³⁰².” Yet official translation in Kosovo is rendered into modern Turkish as required by the Constitution, and demanded by the Turkish community, since “the Turkish language that is spoken here has no standard or grammar, so it is more of a dialect.” It is therefore questionable to what extent this translation is aiding participation: “I’m quite sure that many Turks living in Kosovo would not really properly understand if a document is translated into modern Turkish, and it would make no sense to serve them with this modern Turkish language³⁰³.” Considering the wishes of the community of itself and the provisions in the Constitution it is difficult to see how there could be flexibility to accommodate for lack of knowledge of modern Turkish. However, under the influence of the media, particularly younger generations tend to speak modern Turkish since “Cable TV provides many Turkish channels and people in Prizren tend to watch Turkish channels³⁰⁴.” In this sense Kosovo translation provisions have adapted ahead of trends in language knowledge.

d) Adapting to Individuals

i) Education, Women and Translation Provision

This research is considering the need for translation based on lack of knowledge of another language than the mother tongue. Yet, where there are low levels of education, difficulties can arise even within the mother tongue. Illiteracy is particularly problematic for the context of translation. Translation provision must be able to adapt for those people with low levels of education, particularly those with low levels

³⁰¹ Interview with S.M., 25 April 2012.

³⁰² Interview with H.C., 30 April 2012.

³⁰³ Ibidem.

³⁰⁴ Ibidem.

of literacy. Translation provision to citizens by municipalities is mainly written translation. Where there are pre-prepared documents and forms translated into the respective languages, these efforts become useless confronted with someone who cannot read. This therefore would require the administration to adapt and find someone able of interpreting i.e. using oral communication. Whilst languages are not always learnt at school, it is logical to conclude that the longer spent in education, the greater the level of education, the more likely the opportunity to learn other language.

Education has improved in recent years because of projects implemented and efforts to improve the situation³⁰⁵. Whilst the statistics for schooling have improved with “almost universal primary school enrolment for the Kosovo Albanian and Kosovo Serb communities³⁰⁶,” 62% of the adult population in Kosovo has a low level of education, and “only 1% has completed higher education³⁰⁷.” For women the situation is worse, since adult female illiteracy is three times higher than for men³⁰⁸. Yet enrolment for minority children particularly for girls remains unsatisfactory. A consideration for women within adaptability is essential since women are the most marginalised of the marginal, historically the most vulnerable.

ii) Rural Communities and Women

Education in rural areas, particularly for girls, remains a persistent problem. There are higher dropout rates for girls in rural areas³⁰⁹, and illiteracy is particularly high among rural women, with 14% compared to 4% of rural men. Nearly one in four rural women is functionally illiterate, meaning that they can barely read or write³¹⁰. “Because of the very patriarchal structure of society in such cases when the woman cannot read or write, then a family member, a man, assists through all these administrative procedures³¹¹.” Therefore, lower education reduces or removes participation. Gender disparity in education which is particularly prevalent in rural areas can be explained by poverty,

³⁰⁵ Interview with S.D., 25 April 2012.

³⁰⁶ UNICEF, *UNICEF in Kosovo*.

³⁰⁷ European Training Foundation, 2007, p. 2.

³⁰⁸ Employment and Skills Observatory of Kosovo, 2004, p. 18.

³⁰⁹ Gjurgjeala, 2005, p. 50.

³¹⁰ UNICEF, 2009, p. 1.

³¹¹ Interview with H.C., 30 April 2012.

parental choices favouring boys and early marriage amongst other factors. For instance Dragash/Dragaš, a “rurally located municipality, located in the mountains and difficult to access³¹²,” where there was “a big discussion with the school principle who said: ‘If I continue to live in the village, how can I be different from my village inhabitants and send my daughter to school.’”

Since non-majority communities are often located in more rural areas, education (of languages) is a greater problem for these communities. According to the OSCE, women and girls in some remote rural areas do not possess the same degree of Albanian language skills, impeding their participation and interaction with the majority³¹³. Language knowledge in general is lower amongst women. In the Deçan/Deçane municipality, for instance, “Kosovo-Bosniak men tend to learn the Albanian language and interact with the majority community, whereas the women of the community do not speak Albanian and are therefore more isolated³¹⁴.” In the Serb community, whose older generation has knowledge of Albanian, women speak less Albanian³¹⁵. Translation is particularly important for women of non-majority communities, and especially for those living in rural areas. The translation need is directly linked to the lower education levels of women.

iii) Lower Representation and Participation of Women

Despite women representing more than 50% of Kosovo’s population, this is not reflected in Kosovo’s institutions. Despite Kosovo’s political representation quota of 30% in Parliament, and boasting a female President (Atifete Jahjaga) and two female deputy Prime Ministers, women are still under-represented and gender equality a long way. At a central level Kosovo-Bosniak women are relatively well-represented holding 40% of the seats reserved for the community in the Kosovo Assembly³¹⁶, Kosovo-Turkish women held over 30%³¹⁷, but Kosovo-Serb women only held 15% of central level posts³¹⁸. At a local level, in the municipal assemblies Kosovo-Bosniak women constituted

³¹² Interview with S.M., 25 April 2012.

³¹³ OSCE, 2010, p. 91.

³¹⁴ *Ibidem*, p. 90.

³¹⁵ Interview with L.J., 29 April 2012.

³¹⁶ OSCE, 2010, p. 87.

³¹⁷ *Ibidem*, p. 57.

³¹⁸ *Ibidem*, p. 259.

22% of representation and Kosovo-Serb women only 18%, below the quota. The representation at local level of Kosovo-Turkish women is particularly concerning since in the communities committees, essential for their role in inter-ethnic dialogue, there were no Turkish women in 2010 statistics and in the Kosovo-Turkish majority municipality of Mamushë, women represented only 19% of the civil service. Women from the majority Albanian community represent 37% of the communities' committee membership for Kosovo-Albanians – a significantly higher representation.

It is difficult to determine whether the lower representation and participation of women is linked to translation and/or language knowledge. There have been no studies of this dynamic in Kosovo³¹⁹, mainly because there are so many other substantial issues for women and the communities in general. There is a serious lack of disaggregated data for Kosovo. However, it is logical to assume that, if women have lower education levels, they will be less likely to know either other local languages, or foreign languages; therefore they will be elements of the society most in need of translation provision. There are several other dynamics that hinder determining the link between representation and participation of women and translation. For instance “there is a culture of lower representation of women³²⁰.” In Prizren, from the non-majority community there are “2 men and 1 woman representatives.” In this case, “the woman was educated in Albanian language so language is not an issue for her, but she is still not outspoken. She doesn't speak in the municipality, she is in the background³²¹.” “It's a matter of culture³²².” However, suppose language barriers were to be introduced into this scenario (in combination with the cultural dimension), it could be assumed that her representation would be further hindered or reduced.

It is important when considering how translation provision and participation should adapt to recognise the particular challenges faced by women in terms of education and participation. True democratic governance requires equality of representation by women in decision-

³¹⁹ Interview with S.M., 25 April 2012.

³²⁰ *Ibidem*.

³²¹ *Ibidem*.

³²² *Ibidem*.

making processes. Improvements in translation provision could be a small step to improve representation.

iv) Encouraging Youth Participation

Despite “Kosovo has the youngest population in Europe, with 53% under 25 years of age³²³,” young people’s participation in decision-making processes remains a major challenge. Apathy is particularly high among Serbian youth. Only 1.5% of the Serb youth believe in voting as effective for improving their country, compared with 58.7% of Albanians and 36.2% of youth of other ethnicities³²⁴. Better translation could increase confidence and recognition of the government by Serbs. However, it is difficult to assess since the Serb community actively boycott state institutions.

The current translation and language situation means that young people from non-majority communities “are getting excluded from everything³²⁵.” Failures in translation provision can be discouraging for youth, the future generations of voters, potential politicians and citizens: “If you don’t get something in your own language, you are not interested in anything to do with it, even when there is something that might interest you. If you had a proper translation it might be different. It definitely has a big influence on young people³²⁶.” For example, “Aleksandar is an artist and he wants to do stuff in Pristina. Artists are the first who connect, forget things and move on... But he cannot because there’s a language barrier. Maybe he would be interested to go and see an exhibition, or even participate, but he’ll get put off at the beginning when he sees that they don’t respect you at all. They don’t respect your basic human rights³²⁷.”

Youth participation in decision-making processes used to be higher in the 80s and 90s when “youth were at the forefront of civil resistance in Kosovo, demanding better conditions at the University of Prishtinë, access to education for all and an end to human rights abuses³²⁸.” Young people, particularly of the Turkish, Gorani, Roma, Ashkali and

³²³ European Union Office in Kosovo, 2010, p. 3.

³²⁴ Kosovar Stability Initiative, 2010, p. 56.

³²⁵ Interview with L.J., 29 April 2012.

³²⁶ Interview with A.R., 29 April 2012.

³²⁷ Interview with L.J., 29 April 2012.

³²⁸ Kosovar Stability Initiative, 2010, p. 50.

Egyptian communities are becoming more aware of their communities' rights and are becoming more active in claiming and advocating for these rights: "they [youth] want the administration to speak to them in their language³²⁹." It is important to increase youth participation in decision-making processes since young people are positive actors for change. Whereas, ignoring such a large proportion of Kosovo's population risks generate greater instability. Ensuring improvements in translation provision affecting youth could encourage greater participation. Poor translation can be a dissuasive element. Translation is empowering and as such adaptation to the need of young people ensures social inclusion. The situation regarding translation and young people could become critical in the future, since inter-ethnic dialogue has decreased alongside, education and of other local languages, meaning younger generations have less knowledge of other local languages, preferring English.

3.6. THE INTERPLAY BETWEEN HUMAN RIGHTS AND TRANSLATION/INTERPRETATION

From conceptualising language rights as human rights and framing the right to translation and interpretation within this paradigm, this section has examined the case study of Kosovo, where there is a genuine and increasing need for language assistance, which could prove critical in the future. I have applied the human rights perspective developed in the first chapter to translation provision in practice. In the context of Kosovo official status of several minority languages, the right to use language fails to be adequately facilitated through application of national law and respecting international human rights standards by making translation and interpretation available and accessible to non-majority language communities. Furthermore, the acceptability of the provision is questionable. Insufficient facilitation of the right to use language affects the right to participation and representation and threatens to aggravate inter-ethnic tensions. The case of Kosovo has served to demonstrate how translation and interpretation is instru-

³²⁹ Interview with H.C., 30 April 2012.

mental for guaranteeing the right to participation. Furthermore, the “4A framework” has comprehensively illustrated the inter-relatedness of various aspects of translation provision with human rights, tolerance and democratic effective participation.

IV.

CONCLUSIONS

Whilst this research is heavily reliant on qualitative data sourced in interviews, I am confident of the reliability of my findings, since they are well backed by reports and other academic literature. Furthermore, I interview subjects from a variety of communities, although the research sample is fairly limited. My findings were confirmed across all the interviews conducted, affirming deficiencies and challenges of translation provision in Kosovo, whilst there was greater recognition of the issues regarding provision by the non-majority community interview subjects. There is a need for further research into human rights implicated in translation and interpretation. In particular, a comprehensive analysis spanning a range of human rights could conceptually advance this field of study.

There has been increasing recognition of language rights, particularly through indigenous and minority rights. This research has explored the evolving concept of language rights from tolerance i.e. non-interference and non-discrimination, to active promotion of languages through education and the facilitation of language use in the public sphere, which naturally implies consideration for translation and participation. This research identified language rights inherent in international and regional human rights standards. There is a human right to interpretation and translation in *latu sensu* that requires progressive realisation, since it requires financial commitments to implement.

Language plays a vehicular role in facilitating the right to participation. The right to use language in the public sphere is inherently bound with the right to participate in public affairs. The right to participation and representation enables rights not just for politicians, but also for ordinary citizens to effectively influence and participate in decision-making. At the most basic level, participation can mean being

able to access information about a scheduled municipal assembly meeting, or a regulation concerning agricultural policy. Participatory rights, particularly for minorities, are essential for inclusive democracy.

In Kosovo, translation delays, inadequate and inaccessible translated materials hinder non-majority representation, and participation, whilst unavailability excludes non-majority languages all together. Implementation of language law regarding translation is uneven and varies across Kosovo resulting in inequalities for participation, and in some cases, discrimination. In the fight for multilingualism and inter-ethnic tolerance, it is not enough to impose legislation, effective implementation of language laws and minority rights requires overcoming mistrust between communities and genuine political will. There needs to be greater accountability for language issues in Kosovo. This is currently achieved through the reports and monitoring of international organisations such as the OSCE, and the advocacy of civil society organisations, since the Kosovo Language Commission is still not fully functional. Language services in Kosovo need continued and increased investment; the position and recognition of translator and interpreter needs to improve at all levels; greater education and training opportunities need to be provided to improve the quality and availability of translation provisions; the importance of translation and interpretation for human rights and conflict prevention needs greater promotion at all levels, but particularly in local governance.

Provision of language assistance alone is not a sustainable language policy. In the context of Kosovo, the translation service is already stretched, under-funded, under-resourced and under-staffed. Unfortunately, knowledge of other community languages is decreasing, particularly with regard to young people. The consequences will be seen in the future and should be addressed with urgency, via the promotion of language. Whilst education should not be imposed, individuals should have the opportunity to become bilingual or multilingual. Civil servants, particularly those working at a local level should be able to communicate in official languages. Further research should identify the level of language knowledge of civil servants. Language learning naturally fosters respect for other cultures, whilst lacking language knowledge creates barriers of difference (psychologically and in accessing participatory rights).

Translators and interpreters are bridges between ethnic communities; yet they are often not given due recognition and respect; they

must work under difficult conditions; and are sometimes treated with mistrust, as per the Italian expression: “*traduttore, traditore*” (translator, traitor). With regard to the critical role of translators and interpreters in guaranteeing human rights, they should be recognised as “human rights defenders,” rather than “administrative furniture.” There is a moral imperative to respect and promote linguistic and minority rights, thereby providing translation and interpretation, since languages are divisive and a potential spark to ethnic-conflict. Therefore, and particularly as regards Kosovo, translation and interpretation is instrumental for peace and security alongside human rights.

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- Interview with A.R., (Kosovo-Serb Community), Community Representative, Alternative Culture Centre, Graçanicë/Gračanica, 29 April 2012.
- Interview with N.L., (Albanian Community), Lecturer on Anthropology and Sociology, University of Prishtinë/ American University of Kosovo, Prishtinë/Priština, 30 April 2012.
- Interview with H.C., Researcher on Local Governance, NGO EC Ma Ndryshe, Prishtinë/Priština, 30 April 2012.

Emails

- Email from Xhevat Shabani, Coordinator, Unit for Human Rights: Kosovo Government, Ministry of Finance, 24 May 2012.
- Email from A.S., Project Manager, Youth Energy Advance Centre, 22 May 2012.

ANNEXES

ANNEX A

Email (in Albanian) from Xhevat Shabani, Coordinator, Unit for Human Rights, Kosovo Government Ministry of Finance, 24 May 2012

E nderuara Rebecca,

Së pari ju përshëndes dhe ju urojë shumë sukses në këtë drejtim. Ju keni kërkuar nga unë përgjigje. Lidhur me përgjigjen e parë që ka të bëjë me buxhet është pak e komplikuar sepse nuk kam njohuri për numrin e saktë të përkthyesve në nivel të vendit dhe se për këtë nuk ka kod te veçantë buxhetor por kjo bëhet në kuadër të administratës. Por jam i saktë se të gjitha Institucionet shtetërore buxhetore kryesisht kanë përkthyes për gjuhët zyrtare në Kosovë dhe atë si në nivel qendror ashtu edhe lokal. Institucionet e nivelit qendror kanë përafërsisht nga dy përkthyes. Komunitet me përjashtime të rralla kanë shërbime të përkthimit e numrin e tyre të saktë nuk e di, por e di që Komunitet më të madhja përafërsisht duhet ti kenë nga dy përkthyes. Të gjithë këta mesatarisht minimum I të ardhurave personale është 325,00 € (pra kjo është përgjigje e pyetjes së dytë).

Lidhur me përgjigjen e pyetjes së tretë mendoj se Ligji për barazinë e gjuhëve dhe shkrimeve në Kosovë bëhet komplet i zbatueshëm më këto kapacitete financiare që Kosova I ka.

E nderuara kjo është mundësia e ime për të ndihmuar dhe përkrahur.

Bashkëngjitur keni edhe një vlerësim nga ne të cilën e kemi bërë përkritazi me zbatimin e ligjit për përdorimin e gjuhëve të cilën bashkëngjitur ua dërgojmë po që se mund të shërbej për nevojat tuaja.

Të lutem mund të hysh edhe në ueb faqe të Googles me kërkesë të zbatimi I ligjit për barazi të gjuhëve.

Me respekt,

Mr. Xhevat Shabani, Koordinator i NJDNJ-së

Translation:

“Rebecca

First of all, greetings and I wish great success in this project. You asked me some questions. In relation to your first question about budget, it's a bit complicated because I don't know exactly how many translators there are at a central level, and because of this there is no special budgetary code, but this has to do with the administrative structure. But I know for certain that all state institution budgets mainly have translators for official languages in Kosovo at central and local levels. Each central level institution has two translators. Municipalities, with rare exception, have translation services, but I don't know the exact numbers. But I know that the bigger municipalities should have two translators.

For all of these [translators], the minimum salary is approximately €325 per month (this answers your second question). As regards your third question, I think that the law on equality of languages and scripts in Kosovo³³⁰ becomes is entirely applicable with the financial capacity of Kosovo.

This is all I can offer to help and support you.

Please find attached, a relevant evaluation that we have done on the implementation of the Law on the Use of Languages (that I can also send you should it help or you can use Google Translate to help you find it).

Sincerely,

Mr Xhevat Shabani, Coordinator of Ministry of Finance.”

ANNEX B

Extract, email from A.S., Project Manager, Youth Energy Advance Centre, 22 May 2012

“We are not learning and paying attention to other communities languages. It is previous generation who are much more professional translator/ interpreter because they spent most of their life working with two communities languages (Albanian and Serbian), and most of the translators that currently are employees and engage to translate are older people. There isn't any teaching or learning of Serbian in Kosovo State educational institutions. However, there is a department of Serbian language at the University, but we have little interest in learning Serbian language because of the bitter past history with Serbs. The same is true for Serbs, who are not willing to learn Albanian for the same reason (even though, before the war, both used to learn the other languages. However, those who speak Serbian, for instance, learn it in their social environment (if they live near to Serbian communities and work with them).”

³³⁰ Cf. Law 2006/02-L-37 on the Use of Languages.

REBECCA THÉRÈSE DARTS

ANNEX C

Regulations uploaded to municipality website (consulted on 6 June 2012)

Municipality	Language	
	Albanian	Serbian
Istog/Istok	32	11
Kaçanik/Kaçanik	16	0
Kamenicë/Kamenica	0	26
Ferizaj/Uroševac	12	0
Fushë Kosovë/Kosovo Polije	7	0
Novo Brdo/Novobërdë	4	0
Obiliq/Obilić	11	0
Pejë/Peć	29	0
Štrpce/Shtërpçë	12	6
Suharekë/Suva Reka	3	0
Viti/Vitina	5	0
Vushtrri/Vučitrn	19	12
TOTAL	147	29

ANNEX D

Documents, reports and notifications uploaded to municipality website (consulted on 6 June 2012)

Municipality	Language	
	Albanian	Serbian
Istog/Istok	8	0
Kaçanik/Kaçanik	12	0
Kamenicë/Kamenica	19	3
Ferizaj/Uroševac	1	0
Fushë Kosovë/Kosovo Polije	69	19
Novo Brdo/Novobërdë	5	0
Obiliq/Obilić	7	0
Pejë/Peć	8	3
Štrpce/Shtërpçë	2	1
Suharekë/Suva Reka	25	0
Viti/Vitina	48	0
Vushtrri/Vučitrn	2	0
Istog/Istok	50	1
TOTAL	256	27

ANNEX E

Decisions of the Municipal Assembly uploaded to municipality website (consulted on 6 June 2012)

Municipality	Language	
	Albanian	Serbian
Istog/Istok	59	0
Kaçanik/Kaçanik	53	38
Kamenicë/Kamenica	51	0
Ferizaj/Uroševac	12	0
Fushë Kosovë/Kosovo Polije	4	0
Novo Brdo/Novobërdë	71	0
Obiliq/Obilić	1	0
Pejë/Peć	49	0
Štrpce/Shtërpçë	9	9
Suharekë/Suva Reka	8	0
Viti/Vitina	4	0
Vushtrri/Vučitrn	78	0
TOTAL	350	47

REBECCA THÉRÈSE DARTS

ANNEX F

*Research Participation Consent Form*³³¹

RESEARCH PARTICIPATION: CONSENT FORM		
RESEARCHER: <i>Rebecca Darts, Post-graduate Student</i>		
UNIVERSITY: <i>Universidad de Sevilla, Spain (European Inter-University Centre for Human Rights and Democratisation)</i>		
THESIS SUPERVISOR: <i>Carmen Márquez-Carrasco</i>		
RESEARCH TITLE: <i>The Interplay Between Translation/Interpretation and Human Rights</i>		
RESEARCH AIMS <i>Researching the translation provision (accessibility, quality, availability etc.) for non-majority communities within Kosovo, related to the effective participation and representation in local and national government and the election process. The research aims to explore the pre-conditionality of translation and interpretation for human rights.</i>		
PARTICIPANT: _____		
Position/ Institution: _____		
<ol style="list-style-type: none">1. I confirm that I have read and understand the information about the research.2. I understand that my participation is voluntary and that I am free to withdraw at any time, without giving any reason.3. I understand that any information given during the interview may be used within the research.4. I understand that participant anonymity will be respected unless requested otherwise.5. I agree to the interview being recorded.6. I understand that recordings and any personal data will only be retained for the period of study ending after September 2012.		
I agree to take part in the above study		
_____ Name of participant	_____ Date	_____ Signature
_____ Name of researcher	_____ Date	_____ Signature

³³¹ NB: contact details have been removed from the form.

