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DETERMINATION OF SCOPE AND QUALITY OF INTERPRETATION AND TRANSLATION IN THE COURSE OF JUDICIAL PROCEEDINGS IN THE JUDGMENTS OF THE ECHR

This article describes the author's investigation of the scope and quality of interpretation and translation in the course of judicial proceedings in the judgements of the European Court of Human Rights. This article includes interpretation provisions of the Convention for the Protection of Human Rights and Fundamental Freedoms, which are aimed at protection of the person's constitutional right of a person to use a mother tongue or the language that the person comprehends. In addition, the author has analyzed judgements of the ECHR, which were made in order to ensure statutory parity of languages.

A number of recommendations were developed in accordance with the results of this investigation in order to determine relevant scope of translation and proper quality of translation. It was established that only oral translation (that is, interpretation) can be considered as sufficient scope of interpretation and translation in the course of judicial proceedings on the condition that such interpretation will be sufficient in order to: understand accusation; ensure subsequent legal protection; as well as have possibilities for presentation of own version of events with the help of the relevant interpreter. In this case, written translations of the procedural or other official documents, which were prepared in the course of judicial proceedings, are not necessary. It was established that in order to state that interpretation is the interpretation of low quality, it is necessary to provide proofs of the unsatisfactory interpretation immediately in the course of judicial proceedings. In addition, the author has established that paragraph «f» of section 3 of Article 6 of the Convention is more connected with interrelations between judge and the person, who/which is accused in commission of a criminal offense, yet nevertheless the court must supervise on quality of interpretation of judicial proceedings.

In addition, in accordance with the results of this investigation the author has revealed unsatisfactory features of the Ukrainian legislation (in respect of assurance of the scope and quality of interpretation and translation in the course of judicial proceedings) and determined areas of improvement of the Ukrainian legislation.

Key words: *scope of translation, quality of translation, judicial proceeding, practice of the ECHR, the person's right of a person to use a mother tongue or the language that the person comprehends.*

Formulation of the problem. From the very beginning of discussion on the human rights, principle of equality is the corner stone for all essential institutions of this sphere of science. During many years, leading scientists, legal practitioners, politicians, and diplomatic officials make efforts for assurance of this principle through establishment of the grounds, which ensure that discrimination will be impossible. It is worth

to pay attention to the grounds of «the statutory parity of languages», which are aimed at protection of the language of the natural person, because of this language (by its very nature) is not only the method for understanding the world around us, but the method for communications and group identification as well.

Discrimination in accordance with the language principle makes it impossible to ensure free communication of the person both in private and in public spheres. Therefore, such discrimination restricts other rights, freedoms, and obligations of the person. For the most part, such discrimination is obvious in the course of legal proceedings, because of its participants often are the persons, who do not comprehends the language of judicial proceedings, and, therefore, they have no any possibilities to exercise their procedural rights and obligations to the full extent.

Understanding importance of utilization of the mother tongue (or another language, which the person is capable to understand) not only in order to ensure participation of a person in the public life, but in order to ensure fairness of the judicial proceedings as well, various states declare principle of the statutory parity of languages at the national and international levels. In addition, states validate the person's right to use of services of the relevant interpreter.

However, such resolutions and recommendations are not always implemented in due manner. There are examples in the judicial practice, which are connected with the improper assurance of quality and complete translation in the course of judicial proceedings. These facts violate principle of equality of participants of judicial proceedings. In order to develop recommendations in respect of establishment of the relevant scope and proper quality of interpretation in the course of judicial proceedings, it is very important to perform analysis of the judicial practice of the European Court of Human Rights (hereinafter to be referred to as the ECHR).

Analysis of recent research and publications. Essential contribution in research of particular aspects determination of scope and quality of interpretation and translation in the course of judicial proceedings in the judgments of the ECHR in particular has been made I. A. Berezhna, I. D. Ivanyuk, T. M. Kuzyk, O. P. Kuchynska, M. I. Leonenko, O. V. Markhevki, B. V. Pchelina, R. M. Savchuk, H. P. Sarkisyants, A. Z. Magpies, T. V. Stepanova and others.

The purpose of this investigation is as follows: to analyze judgements of the ECHR, as well as to develop (on the basis of these judgements) recommendations in respect of the relevant scope of translation and proper quality of interpretation and translation in the course of judicial proceedings in order to ensure the person's constitutional right of a person to use a mother tongue or the language that the person comprehends.

Presentation of the main research material. The day of November 04, 1950, is a very significant day in the world history, because of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter to be referred to as the Convention) was opened for signing on this day. This Convention is the international contract, which is the basis for legal regulation in the sphere of the human rights, freedoms, legally protected interests, and needs at the international level. Provisions of this Convention cover all spheres of life of society and are the essence of this life. The judicial proceedings are also covered by these provisions, because of norms of this international contract determine relevant legal standards and validate basic rights of participants of judicial proceedings.

In the context of this investigation, it is worth to pay attention to the provisions, which are aimed at protection of the person's constitutional right of a person to use a mother tongue or the language that the person comprehends. For example, paragraphs «a» and «f» of section 3 of Article 6 of the Convention determine that each person, who is accused in the criminal wrongful act, shall have the right to be immediately provided with the detailed information in the language, which this person comprehends, on the nature and reasons of the accusation, which was brought against this person. In addition, such person shall have the right to obtain free assistance from the part of the relevant interpreter in the situations, where

such person is not capable to understand language of the relevant judicial proceedings [13].

However, provisions of this international contract in respect of assurance of the above-mentioned right cover not only criminal judicial proceedings. Article 14 of the Convention prohibits existence of any preferences or restrictions in respect of the language principle, which is connected with any sphere of the public life. Taking into account the above-mentioned statement, use of services of the relevant interpreter in the context of assurance of the person's constitutional right of a person to use a mother tongue or the language that the person comprehends covers all kinds of judicial proceedings [13].

The European Court of Human Rights must ensure application of relevant interpretations and methods of implementation of the Convention, which are connected with the inter-state affairs and with claims of certain persons. It is this authoritative judicial body, which has approved the judgements, which make it possible to determine the criteria in respect of the relevant scope and proper quality of interpretation in the course of judicial proceedings in order to ensure the person's constitutional right of a person to use a mother tongue or the language that the person comprehends.

The Judgment of the ECHR in the case of «Luedicke, Belkacem, and Koc» dated November 28, 1978 [6], was one of the first of judicial judgements, which was connected with assurance of the statutory parity of languages. As it follows from this judgement, Luedicke (citizen of the Great Britain), Belkacem (citizen of Algeria), and Koc (citizen of Turkey) during the period, when they have been stayed within the territory of the Federal Republic of Germany, have committed criminal offenses of various degrees of gravity approximately during the same period of time.

However, despite of available differences in criminal cases of these persons, in accordance with the results of the judicial examination each of these persons has submitted his own application to the European Commission on Human Rights (hereinafter to be referred to as the Commission). All these applications included statements on violations of paragraph «f» of section 3 of Article 6 of the Convention in respect of these persons. In order to substantiate their positions, Luedicke, Belkacem, and Koc have been stated that despite of the fact that these persons did not know the language of judicial proceedings in the necessary degree, the German judicial authorities have compelled them to reimburse expenses for the interpreter. In addition, Luedicke, Belkacem, and Koc have considered that they have suffered from discrimination in the context of Article 14 of the Convention because they were in the less favourable position as compared with their German opponents.

In the course of examination of this case essentially, the ECHR has solved the problem in respect of free interpretation and translation in the course of judicial proceedings, as well as in respect of discrimination in accordance with the language principle. In addition, the ECHR has presented its interpretation in respect of the problem of the scope of translation. Particularly, it was established that the right to have free legal assistance of the interpreter envisages not only oral presentations in the courtroom in the course of the judicial examination, but written materials as well. Therefore, each person, who is accused in commission of a criminal wrongful act and who is not capable to understand the language of the relevant judicial proceedings or who does not speak in the language of the relevant judicial proceedings, shall have the right to use free legal assistance of the interpreter. This assistance envisages both written translations and interpretation in respect of all documents or applications, which are considered in the course of judicial proceedings against the person and which are necessary for realization of the right to fair judicial proceedings and trial [6].

Later on, position of the ECHR in respect of interpretation of the scope of interpretation and translation in the course of judicial proceedings was amended to a small extent as it can be seen from the judgement «Kamasinski v. Austria» dated November 19, 1989 [5]. In this judicial judgement, it was established that a citizen of the USA during certain period after his arrival

to Austria was accounted to be guilty and then he was convicted of fraudulent practices. When Kamasinski has tried all national procedures for legal protection of his rights, Kamasinski has submitted application to the Commission. In his application Kamasinski has stated that there were many violations of the rights, which are determined by the Convention, particularly, the rights, which are guaranteed to him in accordance with Articles 6 and 14 of this international contract.

It is necessary to pay special attention in the context of this investigation to the following violations, which were described by Kamasinski: claims in respect of absence of written translations of official documents at various stages of the legal procedure, including absence of written translation of the relevant indictment. In this connection, the ECHR from the very beginning has approved the Judgment in the case of «Luedicke, Belkacem, and Koc against the FRG» dated November 28, 1978. Then, the ECHR has stated that paragraph «f» of section 3 of Article 6 of the Convention does not require performance of written translations of all procedural documents, which were made in the course of judicial proceedings. Assistance of the interpreter must only ensure that the accused person will understand the case against him/her, as well as that this assistance will help to ensure legal protection, particularly, due to the fact that the accused person will have possibilities for presentation of his/her own version of events with the help of the relevant interpreter.

In addition, the ECHR has stated that indictment shall have the major role in the course of performance of a criminal process, because of in the moment of service of the indictment to the accused person, this person shall obtain official written information on all accusations, which were brought against him/her. Therefore, the person, who is not capable to understand the language of judicial proceedings, can be in the unfavourable position in the situations, where there will be no written translation of indictment into the mother tongue of this person (or into another language, which this person is capable to understand) [5]. This same position was also presented in other judgements, particularly in the Judgment in the case of «Protopapa v. Turkey» dated February 24, 2009 [7].

At the same time, the ECHR contradicts violation of paragraph «a» of section 3 of Article 6 of the Convention in this case on the basis of proofs of absence of the relevant information on the nature and reason of accusation as the result of interpretation of oral explanations. Therefore, the ECHR states that absence of the written translation of the relevant indictment did not prevented for Kamasinski any obstacles in order to perform legal protection and this fact did not violated fairness of the judicial examination [5]. Later on, ECHR has made the same conclusion in the course of approval of the Judgment in the case of «Gunger v. Germany» dated May 17, 2001 [2].

Judgment of the ECHR in the case of «Husain v. Italy» dated February 24, 2005 [4], includes more detailed and complete interpretation of the scope of translation in the course of judicial proceedings. This Judgment of the ECHR includes the statement that the claimer, Mr. Husain, is the citizen of Yemen (who was sentenced in Italy for imprisonment for the term of his natural life – in his absentia) for the armed attack on the passenger cruise liner.

In the course of the extradition procedure, the claimer has obtained the judicial document, which was translated into the Italian language and which contained general information in respect of his conviction. At the same time, despite of the fact that this document was interpreted in the oral form into the Arabic language, the claimer has been stated that he had no possibility to pay his attention to the words of the interpreter or understand essence of these words due to his stress state and medical condition, which were caused by unexpected transportation of him to Italy from a foreign prison. In this situation, no written translation was provided to him in later periods.

Having considered this claim, the ECHR has presented its preliminary approval with the conclusions, which were stated in the Judgments in the case of «Luedicke, Belkacem, and Koc against the FRG» [6] and in the case of «Kamasinski v. Austria»

[5]. Later on, the ECHR has presented its more detailed interpretation in respect of scope of translation. Particularly, it was established that provisions of paragraph «f» of section 3 of Article 6 of the Convention do not include requirements in respect of provision the accused person with written translations of any official documents. In addition, the above-mentioned norm includes only statements on oral translations (that is, interpretation). Therefore, provision of the linguistic legal assistance to the accused person only in oral form (on the condition that such assistance will be sufficient in order to ensure understanding of the relevant accusation, ensure subsequent legal protection and possibility to present own version) is in complete compliance with the requirements of the Convention [4]. Later on, the ECHR has made the same conclusions, particularly it has approved judgements in the case of «Hermi v. Italy» dated October 10, 2006 [3], as well as in the case of «Protopapa v. Turkey» dated February 24, 2009 [7].

The above-mentioned judgements of the ECHR in respect of determination of the scope of translation are very important for the domestic judicial practice and they were duly represented in the Ukrainian legislation.

For example, norms of Article 10 of the Commercial Procedural Code of Ukraine (hereinafter to be referred to as the CPC of Ukraine) [10], provisions of Article 15 of the Code of Administrative Procedure of Ukraine (hereinafter to be referred to as the CAP of Ukraine) [11], and provisions of Article 9 of the Code of Civil Procedure of Ukraine (hereinafter to be referred to as the CCP of Ukraine) [16] have established that the participants of judicial proceedings, who do not know the officially recognized language or know this language insufficiently, shall have the right to make declarations, provide explanations, speak in the court, and present petitions in their mother tongue (or in another language, which they are capable to understand) on the condition of using services of the relevant interpreter in accordance with the procedure, which is validated by the above-mentioned procedural documents.

Analysis of the above-mentioned norms makes it possible to make the conclusion that utilization of services of the relevant interpreter in the course of commercial, administrative, and civil judicial proceedings is exclusively aimed at assurance of possibilities of the person to take part in discussion in respect of circumstances of the case. At the same time, there are no indications, which would state that the person must understand essence of the claims under the lawsuit, which were formulated against him/her, as well as understand written translations of the «key» documents in the case. This fact is the evidence of partial lack of correspondence between the Ukrainian legislation and judicial practice of the ECHR in respect of the scope of translation. Therefore, this problem must be solved and corrected.

The Criminal Procedural Code of Ukraine (hereinafter to be referred to as the CPC of Ukraine) includes more detailed conclusions of the ECHR in respect of determination of the scope of translation. Sections 2 and 3 of Article 29 of this normative legal act validate the person's right to be provided with information on suspicion against him/her provided that this information must be presented in the language, which the person is capable to understand as the essence of suspicion in commission of a criminal offense. In addition, it is envisaged that the person shall have the right to give evidences, present petitions, submit claims, speak in the court in the mother tongue (or in another language, which the person is capable to understand) and use services of the relevant interpreter if it is necessary [14].

Analysis of the above-mentioned norms makes it possible to make the conclusion that legal assistance of the interpreter in the course of criminal judicial proceedings is exclusively aimed at assurance of understanding the circumstances of the case against the person and at promotion of legal protection. Such position of legislation is in full correspondence with conclusions of the ECHR, which were made in accordance with the results of examination of the cases, which were analyzed above.

At the same time, section 4 of Article 29 of the CPC of Ukraine validates somewhat more detailed guarantees for realization of

the person's constitutional right to use the mother tongue (or another language, which the person is capable to understand) in the course of judicial proceedings (in the context of the scope of translation). Particularly, it was established that the final judgements of the court in the course of judicial examination (essentially) should be provided to the relevant person as translation into its mother tongue (or into another language, which the person is capable to understand). Translation of other procedural documents of criminal judicial proceedings shall be only made in accordance with relevant motion of the person or motion of his/her representative [14]. Instead of this, the ECHR considers that it is sufficient to ensure only oral translation/interpretation of the «key judgements» and states that there is no necessity to provide translations of other documents, if the person understands essence of the accusations, which were brought against him/her.

It is worth to note that these norms of the CPC of Ukraine are more favourable for realization of the person's constitutional right to use the mother tongue (or another language, which the person is capable to understand) in the course of judicial proceedings, as compared with the conclusions, which were presented by the ECHR. However, provisions of the CPC of Ukraine can be used as the basis for abusive acts from the various parties in order to violate principle of due periods of the relevant judicial proceedings. Therefore, we think that the court in each specific case must thoroughly assess necessity of satisfaction of petitions on provision of written translations of «secondary and subsidiary» documents taking into account importance of such subsidiary documents in order to ensure that the person will understand essence of the accusation, to ensure his/her legal protection, as well as observe the principle of due periods.

At the same time, it is worth to note that Article 74 of the Law of Ukraine «On the Constitutional Court of Ukraine», which determines specific features of the constitutional judicial proceedings, states only possibility of motion in respect of participation of an interpreter for the participants, who do not know the officially recognized language. In addition, there are no indications in respect of the scope of translation [15]. Instead of this, the Code of Ukraine on Administrative Offenses (hereinafter to be referred to as the CUoAO) [12] does not validate not only the problem of the scope of translation, but the person's constitutional right to use the mother tongue (or another language, which the person is capable to understand) in the course of examination of cases on administrative offenses.

It is worth to consider the abovementioned defects as the unsatisfactory feature of the existing legislation, which forms the grounds for violations of the right of the persons, who do not know the officially recognized language, to use the mother tongue (or another language, which the person is capable to understand) in the course of judicial proceedings. For the most part, realization of this right is the problem in the cases on administrative offenses, participants of which often are foreigners, stateless persons, or persons without nationality and other citizens, who do not know the Ukrainian language.

In the course of discussion of the scope of interpretation and translation in the course of judicial proceedings, it is also necessary to pay attention to the problem of provision of legal assistance from the part of an interpreter in order to ensure communication of the person, who is not capable to understand language of judicial proceedings, with his/her counsellor-at-law and other participants of judicial proceedings.

In this context, it is worth to pay attention to the judgements of the ECHR in the case of «X v. Austria» dated May 29, 1975 [9]. As it follows from this judicial judgement, a citizen of Italy, who was in the Austrian prison, has submitted application to the ECHR with the claim in respect of absence of free assistance from the part of the relevant interpreter for communications with his counsellor-at-law out of the courtroom. The claimer has stated that these events have caused difficulties in the course of legal protection, because of his counsellor-at-law did not know the Italian language. Therefore, provisions of Article 6 of the Convention were violated.

Having considered the claim of citizen X. and the norms, which are presented in paragraph «f» of section 3 of Article 6 of the Convention, the ECHR has made the conclusion that translation/interpretation is only connected with interrelations between the judge and the person, who is accused in commission of a criminal offense. In addition, the ECHR has taken into account and approved the statement that such language misunderstanding has caused difficulties in the course of legal protection. The ECHR has rested responsibility for occurrence of this situation upon the claimer. In order to substantiate this position, it was established in the Judgment that the claimer must select the counsellor-at-law, who knows the Italian language, or engage the interpreter for communications with the counsellor-at-law and make payments for these services at his own account. Taking into account the fact that citizen X. had no financial resources, the ECHR has stated that citizen X. could submit his motion on provision of free legal assistance, conditions of which cover services of the interpreter as well [9].

At the same time, later on the ECHR has made certain amendment to its position in respect of assurance of communications between the accused person and his counsellor-at-law in respect of legal assistance in the form of translation and interpretation. Particularly, it follows from the Judgment in the case of «Cuscani v. the United Kingdom» dated September 24, 2002 [1]. It was established in this judicial judgement that the Italian citizen Cuscani (in respect of whom relevant sentence has been passed by the United Kingdom of Great Britain and Northern Ireland) has submitted his claims to the ECHR in respect of the unfair judicial proceedings and trial due to absence of the interpreter.

The ECHR has stated in the relevant Judgment (in addition to other issues that cover assurance of the rights, which are envisaged by Articles 6 and 14 of the Convention in respect of the statutory parity of languages) that despite of the fact that legal protection is (for all intents and purposes) the matter of the accused person and his counsellor-at-law, the court must ensure fairness in the course of judicial examination and it must supervise on availability of interpretation in the course of communications between these two persons [1]. Later on, these provisions were approved in other judgements of the ECHR, particularly in the case of «Hermi v. Italy» dated October 10, 2006 [3].

In accordance with results of analysis of these judgements, it is worth to note that the Ukrainian legislation is quite different as compared with the judicial practice of the ECHR. Particularly, analysis of provisions of the CPC of Ukraine [10], the CAP of Ukraine [11], the CCP of Ukraine [16], and the CPC of Ukraine [14] makes it possible to make the conclusion that interrelations in the course of translation and interpretation cover all participants of judicial proceedings. Therefore, it follows from this statement that there exist many various subjects, who are engaged in realization of the right to use the mother tongue (or another language, which the person is capable to understand) in the course of judicial proceedings, however, this statement is not in correspondence with provisions of the Convention and general judicial practice of the ECHR.

In addition, provisions of these normative legal acts include another inconsistence with the established judicial practice of the ECHR: obligation of the court in respect of supervision over interpretation in the course of communications between the accused person and his/her counsellor-at-law or another representative is not validated in due manner.

Problems of quality of translation/interpretation many times were discussed in various judgements of the ECHR. Particularly, these problems have been discussed in the Judgment «Kamasinski v. Austria» dated November 19, 1989 [5].

This Judgment has established that Mr. Kamasinski had claims in respect of quality of interpretation in the course of judicial proceedings, because of there was a consecutive interpretation only, but not the simultaneous interpretation. Overall, this interpretation was very general; there were no possibilities to understand «details» of the case. The claimer stated that the questions, which were presented to witnesses and answers of these witnesses were not

interpreted. Therefore, it was impossible to perform check of these witnesses, as well as to perform cross-examination on his behalf. Therefore, due to such insufficient interpretation Mr. Kamasinski could not understand which proofs against him were presented. The ECHR has taken into account that minutes of this judicial examination contains no objections from the part of Kamasinski or from his counsellor-at-law in respect of quality of interpretation. Therefore, the ECHR has resolved that fact of violation of norms of the Convention is not proved in respect of these grounds [5].

The ECHR did not change its position in other cases despite of more comprehensive statements of claimers in respect of quality of interpretation and translation in the course of judicial proceedings. For example, it is possible to state Judgment in the case of «Ucak v. the United Kingdom» dated January 24, 2002 [8]. In accordance with this Judgment, it was established that Mr. Ucak (who was a citizen of Turkey of Kurdish origin) was convicted by the law-enforcement authorities of the United Kingdom for possession of narcotic substances. Having tried all methods of legal protection in the national judicial bodies, Mr. Ucak has submitted his application to the ECHR. This application included many facts in respect of unsatisfactory interpretation in the course of the pre-trial examination and in the course of legal proceedings. These facts have violated his rights that are envisaged by Articles 6 and 14 of the Convention.

The claimer has been stated that he had no possibilities to take any efficient part in judicial proceedings due to improper interpretation. Mr. Ucak stated and claimed that he had no translations of main procedural documents, including relevant indictment, as well as written proofs in the form of witnesses.

In addition, this citizen of Turkey stated that interpretation was very short and unsatisfactory; translations were presented in the form of manuscript copies. Overall, interpretation was unsatisfactory interpretation because of it was performed by the interpreter of the Armenian origin, who did not specific characteristics of translation and interpretation of the Kurdish words and the judicial terms. In addition, Mr. Ucak stated his doubts in respect of qualification and independence of this interpreter, because of he was the witness from the part of accusation and had a conflict situation with the claimer. Therefore, the claimer was frightened and this fact restricted his freedom in communications with his counsellor-at-law.

Having considered this claim, the ECHR has stated on the absence of any violations of provisions of Articles 6 and 14 of the Convention taking into account absence of proofs in respect of unsatisfactory quality of translation and interpretation in the course of the judicial examination or requests in respect of improvement of interpretation [8]. Materials of the case did not include proofs of incorrect interpretation or incompleteness of translations. Therefore, it was not proved that there were violations of paragraph «f» of section 3 of Article 6 of the Convention in the case of «Husain v. Italy» in respect of unsatisfactory interpretation [4].

In addition, the ECHR has made the conclusion that the interpreter is not the judicial employer; therefore, requirement in respect of necessary check of his independence is not established for this person. At the same time, interpreter must provide efficient legal assistance in the course of legal protection, but his behaviour (on the whole) must not interfere fairness of judicial proceedings [8].

It is worth to pay attention to the fact that in the case of «Kamasinski v. Austria», with the purpose of prevention of possible violations of the person's constitutional right to use the mother tongue (or another language, which the person is capable to understand) in the course of judicial proceedings due to unsatisfactory interpretation, the ECHR has stated that competent authorities, particularly the court, must appoint relevant interpreter, and it must supervise over subsequent quality of interpretation [5]. Later on, this position was confirmed in the Judgment in the case of «Hermi v. Italy» dated October 10, 2006 [3].

In accordance with results of analysis of the above-mentioned judgements, it is possible to state that national legislation is different as compared with the judicial practice of the ECHR. For example, the CPC of Ukraine [10], the CAP of Ukraine

[11], The CCP of Ukraine [16], the CPC of Ukraine [14], the CUoAO [12], and the Law of Ukraine «On the Constitutional Court of Ukraine» [15] have no provisions in respect of the criteria for assessment of quality of interpretation and translation in the course of judicial proceedings and supervision over these interpretation and translation. There are no doubts that these facts are the systemic defects and this problem must be solved immediately.

Conclusions and suggestions. Summarizing the above-listed conclusions it is worth to state that the ECHR with the purpose of assurance of the person's constitutional right to use the mother tongue (or another language, which the person is capable to understand) in the course of judicial proceedings and of equality of participants of judicial proceedings in accordance with the language principle, has developed certain recommendations in respect of the scope and quality of translation and interpretation, therefore it is worth to generalize these recommendations and make them more specific.

1. In accordance with practice of the ECHR, legal assistance of the interpreter must only ensure that the person is capable to understand circumstances of the case against him/her and that it will help promote legal protection, particularly, due to the fact that with the help of the relevant interpreter the person has possibilities for presentation of own version of events. Therefore, only oral translation (that is, interpretation) can be considered as sufficient scope of interpretation and translation in the course of judicial proceedings on the condition that it will be sufficient in order to understand accusation, ensure subsequent legal protection and has possibilities for presentation of own version of events with the help of the relevant interpreter. Written translations of the procedural or other official documents, which are made in the course of judicial proceedings, are not necessary. At the same time, it is recommended to ensure written translation of such procedural document as indictment, because of its absence can create an unfavourable situation for the person because he/she will not understand essence of the presented accusations.

It does not follow from the recommendations that it is necessary to ensure only oral translations (that is, interpretations) in the course of judicial proceedings and that written translations must not be made at all. The ECHR only states that absence of written translations of documents (provided that proper interpretation makes it possible to understand essence of the case and to take an active part in this case) is not considered as violation of provisions of Articles 6 and 14 of the Convention.

Such position is a fair position because it is necessary to prevent abusive acts of various parties. Such position is a correct position because it is necessary to maintain proper periods of relevant judicial proceedings.

2. Paragraph «f» of section 3 of Article 6 of the Convention is more connected with interrelations between the judge and the person, who is accused in commission of a criminal offense, because of it is the judge who must be ensured in the complete understanding of the essence of the presented accusations, as well as in the subsequent communications with the purpose of establishment of important circumstances of the case. Therefore, the accused person must independently select methods of communication with his/her counsellor-at-law through engagement of such person, who knows relevant language, or he/she must use services of the relevant interpreter. In this situation, the court must supervise over absence of language difficulties in the communications between the accused person and his/her counsellor-at-law.

3. Analysis of the judicial practice of the ECHR has shown that in order to state that interpretation is the interpretation of low quality, it is necessary to provide proofs of the unsatisfactory interpretation immediately in the course of judicial proceedings. Such position is correct, because of it is necessary to prevent abusive acts and manipulations with provisions of Articles 6 and 14 of the Convention. Absence of such proofs casts aspersions in respect of lawfulness of disagreement with quality of translation and interpretation of the persons, who are not satisfied by the final judgement of the court.

4. The ECHR states that it is necessary to ensure supervision over quality of translation and interpretation by competent authorities. In the first turn, this recommendation states that it is necessary to engage only qualified interpreters and ensure administration of oath by these interpreters. In addition, it states that judge must be ensured in understanding essence of the case by the relevant person, understanding the presented proofs and possibility of presentation of own version of events by the relevant person.

At the same time, not all these recommendations are presented in the existing legislation, which determines specific features of various kinds of judicial proceedings. The unsatisfactory features, which were listed in this paper, must be corrected in accordance with the systemic approach and they can be the subject of subsequent scientific investigations.

Summarizing the above-mentioned statements, it is worth to note that analysis of the judicial practice of the ECHR confirms guarantees for the person to use the mother tongue (or another language, which the person is capable to understand) in the course of judicial proceedings. In this case, assurance of this right has certain specific features in respect of the scope of translation of the necessary information in order to ensure understanding the essence of the case, as well as in respect of quality of translation. Therefore, in the case of improper translation, the person must inform the court on the difficulties in understanding relevant circumstances under investigation.

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Сліпенюк В. В. Визначення обсягу та якості перекладу судового процесу в рішеннях ЄСПЛ

У даній статті автор досліджує обсяг та якість перекладу судового процесу у рішеннях Європейського Суду з прав людини. Метою даного дослідження є аналіз рішень ЄСПЛ та вироблення на їх основі рекомендацій щодо визначення достатнього обсягу та належної якості перекладу під час провадження різних форм судочинства з метою забезпечення конституційного права особи на використання в судочинстві рідної мови або мови, якою вона володіє.

У статті розтлумачено положення Конвенції про захист прав людини і основоположних свобод, що спрямовані на гарантування та захист права особи на використання в судочинстві рідної мови або мови, якою вона володіє. Також автором визначено основні судові рішення ЄСПЛ, які стосуються забезпечення мовної рівності та проаналізовано основні правові висновки в них щодо визначення обсягу та якості перекладу судового процесу.

За результатами проведеного дослідження розроблено низку рекомендацій щодо визначення достатності обсягу перекладу та його належної якості. Визначено, що достатнім обсягом перекладу в судовому процесі може вважатися лише усний переклад за умови його достатності для розуміння обвинувачення, подальшого захисту та можливості висвітлювати власну версію подій через перекладача, при цьому письмовий переклад процесуальних або інших офіційних документів, що є у провадженні, не є обов'язковим. Встановлено, що для визнання перекладу неякісним необхідні докази незадоволення перекладом безпосередньо під час судового процесу. Також, автором з'ясовано, що пункт «е» частини 3 статті 6 Конвенції в більшій мірі охоплює відносини між суддею та особою, яка обвинувачується у вчиненні кримінального правопорушення, попри це суд має контролювати якість здійснення перекладу судового процесу.

Встановлено, що основні судові рішення ЄСПЛ, в яких відображено визначення обсягу та якості перекладу мають важливе значення для вітчизняної практики та знайшли своє відображення в українському законодавстві. Окрім того, за результатами дослідження виявлено недоліки українського законодавства щодо забезпечення обсягу та якості перекладу судового процесу, його часткову невідповідність практиці ЄСПЛ та вказано на напрями його вдосконалення.

Ключові слова: *обсяг перекладу, якість перекладу, судовий процес, практика ЄСПЛ, право особи на використання в судочинстві рідної мови, або мови, якою вона володіє.*