



# Comment on Patrícia Jerónimo's 'Legal Translation and the Challenges of Overcoming Language Barriers in Court Practice: Evidence from Portuguese Courts'

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## Abstract

This commentary is a response to Patrícia Jerónimo's article 'Legal translation and the challenges of overcoming language barriers in court practice: Evidence from Portuguese courts', which appears in this special issue. The commentary focuses on the potential of machine translation tools to overcome many of the obstacles that courts currently face in trying to provide adequate translation and interpretation services.

**Keywords** Right to interpretation and translation in criminal proceedings · Directive 2010/64/EU · Machine translation tools · Portugal

As I write these words, in May 2025, the fundamental principles of the rule of law and due process are being challenged in the US, the country that became independent at least in part in a struggle to uphold those principles. It is not known if and how the US courts will be able to defend them (or if and when the US Congress will finally realise that it is ultimately its own constitutional powers that are being nullified by the Executive's practice), but one thing is certain: sooner or later, what happens in the US will reverberate around the world, especially the Western world. It is therefore of the utmost importance to reaffirm the importance of the rule of law, of due process and of each of its specific realizations. This is the case with the right to a fair trial and, more specifically, with the right to understand the language used in court.

If persons with standing in a court of law cannot understand the language used in the proceedings, it certainly increases the chances that the trial will not be fair.

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And this applies, as Patricia Jerónimo rightly points out in the introduction to her paper, to any kind of trial, whatever the actors and whatever the subject matter.

There are numerous points of interest in Patrícia Jerónimo's paper. This text provides a comprehensive overview of the significant improvement in European legal standards regarding the right to interpretation and translation in criminal proceedings resulting from the implementation of Directive 2010/64/EU, including a detailed account of the content of these rights as recognised by the Directive. Also of interest is the description of how the case law of the European Court of Human Rights (which, as is well known, is not an institution of the European Union, but of another international organisation, the Council of Europe) has been positively impacted by the Directive (which expressly states that its purpose is to facilitate the application of Article 6 of the European Convention on Human Rights). This is a very interesting example of inter-jurisdictional dialogue. Jerónimo's paper also provides a thorough account of the shortcomings in Portuguese law concerning the enforcement of these rights, and the positive developments in the case law of the Portuguese courts. The study specifically examines the Portuguese Code of Criminal Procedure's approach to the failure to appoint an interpreter, which is treated as a relative nullity that can be rectified if not pleaded in time. The paper correctly highlights how this approach is contrary to the case law of the European Court of Justice and is ostensibly in breach of the rights of defence and fair trial. Finally, the results of the empirical research project on the right to linguistic assistance in the practice of the Portuguese courts must be considered. This project yielded results from individual and group interviews with the key stakeholders, which are very instructive as to the concrete difficulties encountered in the courts in enforcing the right to interpretation and translation.

I would like to emphasise an additional interesting point. When I read the paper, I was struck by a strong impression: although it would be better for everyone involved, not only for suspects or accused persons, but also for the state, the courts, and the entire criminal justice system, if they could fully understand what happens in the criminal procedure, from the first note of suspicion to the final verdict, there are a number of obstacles that prevent that from happening, despite all the progress made at the legislative and practical levels. What I found interesting is that there seems to be an obvious solution to these problems, although this depends on technological development.

In her paper, Patrícia Jerónimo describes those obstacles very well: the shortage of qualified interpreters, especially for certain language combinations; judge's feeling of lack of control over the accuracy of the interpretation provided; and some interpreters' avowed lack of neutrality. One can also infer other obstacles, such as the cost of hiring interpreters and translators, and the procedural delays caused by simultaneous interpretation and document translation.

It seems to me that these obstacles could be overcome, at least in part, by using machine translation for the translation of legal documents. In other words, computers could be used to translate from one language into another. Machine translation has evolved tremendously in recent years, first through statistical machine translation (since the early 2000s) and then through neural machine translation (since 2015) [6: 143–144]. This is also true of the translation of legal texts,

including challenging language pairs such as Chinese–English [2: 114–116] and Arabic–English [3].

In the not-so-distant future, it is conceivable that the translation of legal documents and even simultaneous interpretation in criminal proceedings could be partly automated using machine translation tools. If and once this becomes a reality, the aforementioned obstacles will be overcome. Firstly, there would be no meaningful procedural delays, which is especially important with regard to document translation, since machine translation tools would complete the task in seconds. Second, the need for human translators and interpreters would be greatly reduced, resulting in substantial cost savings, although the costs of customising machine translation tools for legal translation and interpretation would have to be factored in. Third, the shortage of qualified interpreters for certain language combinations would no longer be an issue, provided the machine translation tools can translate and interpret any language combination. It may take longer to overcome this obstacle for less common language combinations. This would ensure the rights of any suspect or accused of committing crimes, regardless of their native language. Fourth, using machine translation tools would ensure accurate interpretation, giving the judges and other judicial actors more confidence in upholding this right in criminal proceedings. Finally, the lack of neutrality of some interpreters would cease to be a problem, since no human interpreters would be involved. However, the widely recognised biases that affect AI tools would still need to be addressed.

In reality, the question remains as to 'whether AI tools can replace human translators or if they can just be employed as adaptive technology that aids human translators' [3]. Current literature converges in concluding that, while automatic translations of legal texts have improved with the advent of neural machine translation, limitations remain in terms of terminological precision, legal phraseology, and adaptation to the target legal system [1: 77–79; 3; 5]. The literature strongly recommends hybrid approaches that combine machine translation with specialised human post-editing to ensure quality and legal certainty. Therefore, the sole use of machine translation currently seems severely limited. Even so, there is potential to overcome the aforementioned obstacles when used alongside human translators or with robust human supervision.

The picture is even less optimistic when it comes to legal interpretation, which is, of course, much more demanding. A recent parliamentary report stated that, among other issues, 'it is not appropriate to introduce AI interpretation in the courts, due to insufficient accuracy of available AI interpretation services' [4: 49]. Although AI tools can support preliminary or administrative tasks in court interpretation, they are not yet reliable for stand-alone use in hearings or trials, due to the risk of critical errors and a lack of legal contextual awareness.

Taking all these caveats into account, it is possible that a hybrid approach to some of the referred obstacles, especially with regard to the translation of legal documents, could yield positive results even now.

First, the time taken by human translators to translate legal documents can be reduced with the aid of machine translation, since they only have to verify and correct the original machine translation, and that original translation takes only a few seconds. Second, human translators can spend less time on each legal document, which could

lead to cost savings when using machine translation. Third, this could enable fewer qualified translators to translate more legal documents per hour, thus mitigating the shortage of qualified interpreters in certain language combinations. Fourth, machine translation tools could allow judges and other legal professionals to easily verify the accuracy of translations, although the verification of accurate interpretations could prove to be more challenging. As regards the potential lack of neutrality among some interpreters, this can be mitigated by making them aware that their intervention will be recorded, as is prescribed by Article 7 of the Directive and emphasised in Patrícia Jerónimo's paper. Machine translation and other tools could then be used to transcribe the recordings and translate them back into the judges' language for verification.

Patricia Jerónimo's paper sheds light on the current state of the right to interpretation and translation in criminal proceedings under European and Portuguese law and case law, as well as the practical difficulties encountered by those involved in enforcing this right. I believe that some of these difficulties could be mitigated, and potentially resolved in the future, by utilising machine translation, machine interpretation, and other artificial intelligence tools.

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## Declarations

**Competing interest** The author has no competing interests to declare that are relevant to the content of this article.

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