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Organising a profession: The role of associations during the adoption of the new law for legal interpreting and translation (LIT) in Spain

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The establishment and consolidation of sound professional organisations is a necessary step towards the professionalisation of community interpreting, alongside the adoption of legal provisions. This contribution will firstly focus on how the community of translators and interpreters in Spain is organised professionally. Next it will analyse its role in the current process of introducing a new regulatory framework for legal interpreting and translation (LIT) and a register of court interpreters and translators. These changes respond to the obligation to transpose EU supranational legislation which aims to secure interpreting and translation quality, and the right to a fair trial in multilingual proceedings. The main features and shortcomings of the newly introduced Spanish legislation (Ley Orgánica 5/2015) will also be addressed and critically discussed in this chapter.

Key words: Legal interpreting and translation (LIT), professionalisation, stakeholders, professional associations, *colegio profesional*, quality, Spanish *Ley Orgánica 5/2015*, professional register, Directive 2010/64/EU

1. Introduction

Legal interpreting and translation (LIT) in Spain is currently at a crossroads, as a result of the introduction of a new regulatory framework originating from the implementation of European Union (EU) Directive 2010/64/EU on the right to interpreting and translation in criminal proceedings (hereafter the directive). The cornerstone of that piece of supranational legislation is the notion of quality in translation and interpreting (T&I) services. The deadline for transposing the directive into the national legislation of EU Member States was October 2013. However, in Spain, despite being technically completed, that process still has a long way to go towards the effective fulfilment of the quality mandate envisaged in the directive.

During this process both academic and professional bodies in the field of T&I in general, and LIT in particular, have been put to the test and have embarked upon several coordinated actions aimed at having their expert voices heard among decision-makers. It must be noted that in socio-professional models of interpreting, such as the one proposed by Tseng (1992: 152), the role of both academia and training, and professional associations is crucial for redressing market disorder and achieving full professionalisation.

Against this backdrop, this contribution will focus on the active role adopted by professional associations for the advancement of LIT in Spain. I will discuss ways in which the translation and interpreting¹ communities may be able to influence the process of change, firstly by providing a brief literature review followed by a description of the Spanish professional market of T&I and the existing organisational structures within the profession.

Secondly, the role played by stakeholders, primarily professional bodies, in the government-led transposition process will be discussed, leading to an examination of the innovations in the new Spanish regulatory framework for LIT. Special emphasis will be placed on the notion of quality, as understood in the directive, in order to see whether quality aspects have been effectively encapsulated in the new Spanish regulatory framework. Finally, some general conclusions regarding this prolonged (and still incomplete) journey will be drawn.

This paper is primarily based on the first-hand experience acquired by the author throughout the transposition process in Spain. It does not intend to portray the Spanish situation as a model to be followed, given its evident limitations. However, the experience gathered in Spain might provide a valuable contribution and a referential framework for those colleagues that find themselves in a similar position in other regions around the world.

2. The translation and interpreting community of practice in Spain

As Pöchhacker (1999) has pointed out, the professionalisation process of an activity such as community interpreting – meaning the shift from being considered an *occupation* to truly being seen as a *profession* in itself – is influenced by a number of

¹ All references in the text to translation and/or translators in a generic sense should be considered as inclusive of interpreting and/or interpreters.

variables: for instance, “legal provisions, institutional (and not least financial) arrangements for interpreting service delivery, a certification authority, a professional organization, a code of ethics and standards of practice, and university-level training” (Pöchhacker 1999: 131). This chapter will focus on the role played by professional organisations which, besides being able to lead a certification or qualification system, must wield “enough power to shape working conditions and professional standards” (Pöchhacker 1999: 136).

It is worth considering, therefore, whether these professional determinants are also present in Spain today. To this end, a brief analysis will be offered as to how translators in general and Legal Interpreters and Translators (LITs) in particular become involved in professional participation/representation bodies. Additionally, the question is posed, as articulated by Monzó (2006), whether translators can actually consider themselves as belonging to a professional community and if they can indeed be called professionals on a par with professionals in the fields of law or medicine. Kuznik (2008), for instance, addresses the definition and delimitation of what is deemed *an occupation* and what is deemed *a profession*, concluding that in the case of translating activity and its working context, there is a certain overlap between these two concepts. This is not the place for an in-depth analysis of the definition of profession and the features that identify it, but it is important to briefly mention that by profession I could refer to a “community that practices and exclusively holds the commercial application of an organised set of knowledge skills in a given social context” (Monzó 2006:159).² This definition is tied to the idea that members of this community must organise themselves as a group, in order to use “the delegated power they have to determine who can exercise the profession and under what conditions” and to “participate in and influence, as a group, other fields and society in general” (Monzó 2006:160).³

These considerations about what a profession is and how it is structured, seem to be clearly established in other collectives and may have a strong influence on how their members network professionally and interact or liaise with other stakeholders, as discussed below.

2.1 Overview

Firstly it should be noted that, given the profession’s high degree of fragmentation and lack of regulation, it is not easy to determine the number of people comprising the professional community of translators. According to the sources consulted (Spain’s National Statistics Institute (INE);⁴ ASPROSET, one of the industry’s main entrepreneurial associations; and RITAP and APTIJ (2011)), in 2017 the Spanish T&I professional market would include:

- 7,700 self-employed independent contractors (420 of them reportedly have either 1 or 2 employees).
- 9,000 companies officially stating that their area of business is translation (120 of them could be considered true companies given that 8,000 really correspond to self-employed translators set up as a company with no employees and the rest

² Original Spanish quotation translated by the author.

³ Original Spanish quotation translated by the author.

⁴ <http://www.ine.es/dyngs/INEbase/listaoperaciones.htm>

are SMEs).⁵

- 600 staff translators in the public sector, i.e. civil servants or persons having a regular employment contract with a governmental body (Justice Administration, Ministries of Foreign Affairs, Home Affairs and Defence, a wide range of health care services, and regional governments) (data from 2011).

In addition to all of these translators, there are also those who work in other types of private companies as translators, whether hired as such or under other job titles, and who collaborate with the companies subcontracted by the different administrations to provide language services either as company employees, self-employed or ad-hoc collaborators with different types of employment contracts and varying levels of commitment to translation or interpreting assignments.

If we focus more closely on the LIT sector it becomes even more difficult to determine the exact number of professionals operating in this sector. The only official data on this subject can be found in the number of professionals accredited as Sworn Translator-Interpreters,⁶ by either the Ministry of Foreign Affairs (MAEC) or in the regions with a co-official language and an accreditation system in place, as presented in Table 1. It is not possible to determine how many accredited sworn translators engage in T&I activities, sworn or otherwise, on a regular basis; and furthermore, many of the accredited individuals reside outside of Spain. Nor is it possible to determine how many of the practising translators, whether employees or self-employed, have found their main niche in the legal/court translation market. It is well established, however, that the legal translation sector has considerable weight in the translation market, both in Spain (cf. Rico & García 2016) and internationally (cf. EUATEC et al. 2017).

Table 1. Sworn Translators-Interpreters in Spain

Accreditation body	No. of professionals	No. of languages
MAEC	11,630	39
Catalonia	1,006	8
Galicia	305	3
Basque Country	198	2

Regardless of the lack of concrete figures, a community of individuals who perform the same activity tends to bring with it certain organisational structures that contribute to the professionalisation process. The specific situation in Spain is examined below.

2.2 Professional structures: colegios vs. associations

⁵ According to ASPROSET sources in the private sector a typical Spanish translation company with a minimal structure might be an SME with 13 employees (4 translators, 4 reviewers, 5 project managers and 1 engineer). It would also work with about 88 non-staff collaborators in Spain and about 49 collaborators abroad.

⁶ Sworn translators have been accredited and sanctioned by the authorities to perform official translations; by legal translators I refer to those professionals who engage in legal translation but are not required to hold any specific qualification or accreditation. It must be noted that many legal translators may have qualified as sworn translators but this not always the case. As a result of market disorder, in Spain it is possible that professional legal translators and even ad-hoc translators produce official translations, despite the existence of sworn translators.

This section looks at the two most common professional participatory channels existing in Spain, namely *colegios* and associations. Generally speaking, membership in these institutionalised professional collectives — and the evolution of such collectives — has followed a pattern similar to the one described by Pym (2014). These legal bodies tend to serve a gate-keeping function, since they both vouch “for the professional trustworthiness of several thousands of members, thus implicitly speaking to clients and other professions” (Pym 2014: 466). Membership in such bodies can be either mandatory or voluntary; each having significant repercussions, as will be discussed in the following section. The case of Australia could serve as an illustration. In that country, the Recommended National Standards for Working with Interpreters in Courts and Tribunals, among the many questions addressed, suggests that LITs, in addition to being accredited, should be members of AUSIT, the national professional association (Judicial Council on Cultural Diversity 2017).

2.2.1 *The colegio profesional*

In Spain, there is a long historical tradition of professional organisations in the form of what are known as *colegios profesionales* (professional societies), which began to take shape in the second third of the 19th century (cf. Universia 2017) and which are currently regulated by a law that dates back to 1974 (*Ley 2/1974*, last amended in 2012). In short, one of their defining features is that they are bodies created by law (either a national law or a law enacted by a regional parliament with jurisdiction in this area) and that they are public-private entities. Their essential objectives, as indicated by Unión Profesional (2016:3), include:

- regulation of the practice of the professions
- exclusive institutional representation of the professions when membership is mandatory
- defending the professional interests of the members
- protection of the interests of consumers and users of the services provided by the members

It is also interesting to note that, according to Article 2.2 of *Ley 2/1974*, the *colegios profesionales*:

must issue a report on the bills or provisions of any rank that pertain to the general conditions of the professional functions, including the official qualifications required, incompatibilities with other professions and the framework of fees, when they are governed by official fees and pay scales.⁷

This advisory function that the legislator attributes to the *colegios* is especially significant for us in the current moment in Spain where there are approximately 1,000 *colegios profesionales* representing over 1,500,000 professionals, and these bodies are organised into 33 General Councils and nationwide *colegios* (Unión Profesional 2017). The professions for which membership in a *colegio* is mandatory are primarily in the realm of the health sciences, architecture, engineering, law and property administration; in short, these are fully consolidated and organised professions. Herein lies their

⁷ Original Spanish quotation translated by the author.

strength as a collective.

However, there is no specific *colegio profesional* for translators in Spain, despite some serious attempts to create one by TRIAC (Traductores e Intérpretes Asociados pro Colegio) which for years promoted the creation of a regional *colegio profesional* in Catalonia.⁸ Their efforts were frustrated by the approval of new regional legislation establishing that only regulated professions fulfilling functions of special social relevance could form new *colegios*. This could be clearly linked to the profession-occupation debate referred to earlier. In Spain, translators are not specifically required to have formal qualifications to market their services but one can hardly deny that the services provided serve a social function, especially in the legal sphere.

Curiously enough, the EU considers Spanish sworn translators accredited by the MAEC to be practicing a *regulated profession*, understood, according to Article 3.1a of Directive 2005/36/EC, as follows:

a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit.

The EU Single Market Regulated Professions Database includes 19 translation/interpreting categories, from a total of 12 Member States.⁹ It would be interesting to explore whether this special legal status allows for the creation of a specific *colegio profesional*, at least, for MAEC-accredited sworn translators.

Curiously enough, despite the regulatory and social differences, in some Latin American countries, such as Argentina, Uruguay, Venezuela and Peru, *colegios profesionales* for the so-called *traductores públicos* (sworn translators) do exist (cf. Mayoral 2003: 117–119; Nafá 2003; Pym 2014: 7). In the case of Argentina, the creation of the

Colegio de Traductores Públicos responded to the tangible needs of society [...]. Organising as a *colegio*, despite all of its imperfections, made it possible to organise this reality and it has been the cornerstone of the consolidation and hierarchization of the profession in Argentina. This model has had to gradually adapt to the new realities it has faced over time (Nafá 2003: 323–324).¹⁰

However, at this time there is no *colegio profesional* of translators in Spain and, in its absence, many of the sector's professionals have chosen to organise themselves into professional associations.

2.2.2 Professional associations

Associations are private bodies; they can be created freely, and membership is

⁸ In 2009 TRIAC and ATIP merged and established a new Catalan association, APTIC. Cf. Massana and Busqué (2008) for further information about TRIAC's activities to promote a *colegio*.

⁹ <http://ec.europa.eu/growth/tools-databases/regprof/index.cfm?action=homepage>

¹⁰ Original Spanish quotation translated by the author.

voluntary, under the constitutional principle of freedom of association. This of course strongly influences the degree of penetration in a given professional sector. Thus, although their aims may be very similar to those of a *colegio profesional*, associations do not have a legally recognised capacity to exclusive representation of the profession and represent private interests (Unión Profesional 2016: 2). This is undoubtedly very important in relation to their capacity to influence the law-making and regulatory processes affecting the profession and the dialogue with public administrations, as discussed in Section 3.2.

The move towards forming professional associations of translators in Spain has followed, as pointed out earlier, the trajectory identified by Pym (2014) at the international level: creation of general, centralised associations in the first phase (the case of APETI in 1954; dormant since the early 1990s), configuration of independent entities for conference interpreters also in the first phase, division into subject-matter specialist associations in a second phase with an important presence of literary translators, and the appearance of new associations in the 1990s and 2000s to respond to new needs, as shown in Table 2.

Thus, according to the Spanish Ministry of Home Affairs National Register of Associations,¹¹ there are about 50 legally constituted associative entities related to translation which can be considered to be of a professional nature (student, academic and cultural associations have been excluded). However, in our experience, the most representative ones nowadays are those that comprise the Red Vértice network, an informal forum in which members cooperate, exchange information and carry out joint activities. Table 2 shows the membership of the associations belonging to Red Vértice as of January 2018, according to information obtained on their web pages and from informal contacts with association representatives.

Table 2. Professional associations affiliated to Red Vértice¹²

Association	Business	Established in	Members
AICE	National conference interpreters	1968	82
ACEC	Specialised regional literary translators	1980 (1993)	199
ACE	Specialised national literary translators	1983 (2013)	546
EIZIE	Generalist regional translators & interpreters	1987	342
ATIJC	Specialised regional sworn translators & interpreters	1992	185
APTIC	Generalist regional translators & interpreters	1994/95 (2009)	635
AVIC	Regional conference interpreters	1998	7
Espaiic	National conference interpreters	1999	82
AGPTI	Generalist regional translators & interpreters	2001	123
FILSE	National sign language interpreters	2001	219
ASATI	Generalist regional translators &	2002	75

¹¹ <https://sede.mir.gob.es/nfrontal/webasocia.html>

¹² Only professional full members have been considered. Associations established outside Spain (AIPTI, AATI, MET) which also participate in Red Vértice have not been included, despite having members who work in Spain.

	interpreters		
Asetrad	Generalist national translators & interpreters	2003	1,154
Xarxa	Generalist regional translators & interpreters	2003	97
Tremédica	Specialised national Health Sciences translators and technical writers	2005 (2017)	120
UniCo	Specialised national: proof-readers	2006	255
APTIJ	Specialised national court, police and sworn translators & interpreters	2007	100
ATRAE	Specialised national audiovisual translators	2010	223
		Total	4,444

The data in Table 2 provides valuable information on the degree of associationism in the sector. It also reflects the impetus of the movement starting in the late 1990s and early 2000s, when most of the currently active associations were founded. Focusing on the field of LIT, only ATIJC (Asociació de Traductors i Intèrprets de Catalunya) and APTIJ (Asociación de Traductores e Intérpretes Judiciales y Jurados) specialise solely in the legal sphere, although the other, non-specific associations also welcome professionals working in the LIT area. In any case, the associative movement in Spain is in a good state of health and brings together a representative sample of the profession as a whole, including the legal sector.

In the next section, I will discuss the basis for the new regulatory framework for LIT in Spain and the role played by these professional associations.

3. Guiding principles and stakeholders' involvement in the configuration of the new Spanish LIT regulatory framework

Before delving into the particularities of the Spanish regulatory framework for LIT in the realm of criminal proceedings it may be helpful to address one of the key concepts underlying it. This is the concept of quality, a recurring notion in Directive 2010/64/EU and the basis of important instruments intended to change the way the profession is perceived, as discussed below.¹³ Quality is one of the key principles that has guided the endeavours of professional stakeholders during the transposition process.

3.1 The mandate for quality

There is no single definition of interpreting quality (cf. Ortega-Herráez 2013). In their work on quality in conference interpreting, Collados and Gile (2002: 323) describe the concept as “a polymorphous entity, whose shape changes depending on the situation and the users”¹⁴. However, there has also been a certain tendency to analyse the quality of interpreting as a product. Therefore, in an area such as community interpreting it becomes necessary to analyse “the overall process of communicative interaction”

¹³ Cf. Del-Pozo-Triviño (this volume) for further considerations about quality in legal instruments regulating LIT.

¹⁴ Original French quotation translated by the author.

(Pöchhacker 2001: 412). In this process the expectations and preconceived ideas — for example, those held by the authorities in charge of regulating and providing interpreting services — can take on special importance. Quality is certainly a subjective concept which, in a professional context, will necessarily be defined by what the parties involved in the provision of the service agree will satisfy their respective needs (cf. UNE-EN ISO 9000).¹⁵

In the context of court or police interpreting, the notion of quality is related to the effective fulfilment of the function that LITs are supposed to fulfil and which I summarise using three quotations from the professional, regulatory and academic sectors, respectively:¹⁶

To remove the language barrier to the extent possible, so that [minority-language speakers'] access to justice is the same as that of similarly-situated [majority-language speakers] for whom no such barrier exists (NAJIT 2010).

Speakers of languages other than the language of service used in legal settings can only have access to fair-trial standards when legal interpreting services of a sufficiently high quality are systematically provided (ISO 20228: 2019 Legal Interpreting).

Faithful rendering of the original utterances: to remove the language barrier and place the minority language speaker in as similar a position as possible to someone who speaks the mainstream language (Hale 2007: 66).

In this particular sphere, T&I quality is of utmost importance, considering that what is at stake is nothing less than a fundamental right: the right to defence. While it can be argued that such a right is guaranteed by the presence of a lawyer, in the case of citizens who do not speak the language of proceedings, the assistance of an interpreter is crucial. But mere provision of the service it is not enough. The right to understand and be understood, and by extension the right to T&I, by analogy with the right to have legal counsel assigned, must be real and operative, as established by the Spanish Supreme Court.¹⁷ This is also expressed in the jurisprudence of the European Court of Human Rights, which in *Kamasinski v. Austria* (1989) found that the responsibility of the authorities did not end with the appointment of an interpreter but in fact went further, to include verifying the quality of the service provided by that interpreter.¹⁸

At EU level, and within its project to create and further an area of freedom, security and justice, the procedural guarantees in multilingual and multicultural criminal proceedings have taken on a new relevance. The objective here is not to describe and analyse the long, complex process which took place over the past 20 years and which has led to some of the suggested measures taking material form in specific instruments.

¹⁵ Please note that while there are consolidated international quality standards and certifications for the provision of translation services (for instance, ISO 17100:2015), interpreting has only very recently seen the approval of a series of guidelines for community interpreting (ISO 13611:2014), interpreting in general (ISO 18841: 2018) and legal interpreting (ISO 20228: 2019). Cf. <https://www.iso.org/standards-catalogue/browse-by-ics.html>

¹⁶ Emphasis is mine.

¹⁷ Cf. STC 13/2000, de 17 de enero. ECLI:ES:TC:2000:13

¹⁸ *Kamasinski v. Austria*, 9783/82 (1989) ECLI:CE:ECHR:1989:1219JUD000978382

However, mention should be made of some of these instruments which expressly address the right to translation and interpreting, in particular Directive 2010/64/EU, and Directives 2013/48/EU on legal assistance, 2012/13/EU on the right to information and 2012/29/EU on the rights of victims.

It is true that, during the long process of enacting the aforementioned instruments, a process plagued by numerous obstacles, the initial, more ambitious intentions may have faded. However, concern about the quality of interpreting and translation has remained strong. Directive 2010/64/EU draws a connection between the right to interpretation (Article 2) and translation (Article 3) and quality as a necessary element to guarantee the equity of the proceedings. It even devotes a specific article to quality (Article 5) although a definition is not provided. This article is the touchstone of the entire directive, since it links the attainment of said quality to the existence of “registers of independent translators and interpreters who are appropriately qualified.” Interestingly, this register is not imposed upon member States but rather highly recommended (“shall endeavour to establish a register or registers”). This may be the result of a deliberate constructive ambiguity, that often characterises the EU legislation drafting process in order to accommodate the many different traditions, existing structures or views the various Member States may have on a specific matter. That would give them greater room for maneuver when transposing a directive, for instance.¹⁹ Therefore, quality also needs to be understood in connection with concepts such as due process and the right of defence, as explained earlier.

In her comparative analysis of LIT registers in the EU and the US, Wallace (2015: 130) strongly supports the idea of these registers being conceived as a “weapon against market disorder and as an aid to transparency and building the public trust, [and it also has] professionalising capabilities”. According to this author’s proposal, registers need to be carefully designed and constructed so that they

can acknowledge the importance of and lead to compliance with a series of minimum standards to which all practitioners must adhere, including mandatory training (before legitimately offering the service), official recognition of academic qualifications in translation or interpreting, and documented areas of competence” (Wallace 2015: 134).

Only under those conditions would LIT registers be a suitable tool towards the achievement of quality, both at product and process level, as pointed out above.

Another important quality-related aspect covered by Directive 2010/64/EU is training (Article 6). One would expect that interpreter training be addressed. However, that is not the case, and provisions are instead specifically aimed at enhancing efficient and effective communication skills of legal practitioners in interpreter-mediated encounters.

Therefore, I can clearly see that in the supranational sphere there is a mandate for quality to safeguard a fundamental right, which should be fulfilled by national authorities. This is clearly a top-down movement although in the early stages it also drew upon feedback from practitioners and academia. European legislators did not undertake these reforms without learning about the day-to-day reality in the member States or without consulting stakeholders. Following a number of public calls for

¹⁹ Opinion expressed by some EU Commission officials when analyzing Directive 2010/64/EU during the TRAFUT training seminars, organised by EULITA.

proposals issued by the European Commission's Directorate General of Justice, different research projects were funded. These projects generated considerable feedback which, ultimately, sought not only to support and inform the legislative process but also to bring change to the socio-professional plane in the member States. Amongst other things, one of these projects contributed to the creation of a professional association, EULITA (European Legal Interpreters and Translators Association) (cf. Hertog 2015) for further information about EU LIT projects). As a European umbrella association bringing together 33 national associations from 22 Member States, EULITA allows for the LIT community of practice to speak as one in their interactions with European and even national authorities. This is a clear example of the important role assigned to professional stakeholders by the EU authorities.

After this brief contextualisation of the mandate for quality in LIT and before delving into the new Spanish regulatory framework that arose from the transposition of EU regulations, the following section will look at the role that different stakeholders, mainly from the professional and academic fields, have played in the process.

3.2 The role of stakeholders

As discussed earlier, the professional participation instruments of translators in Spain differ somewhat from those of other consolidated professions. This has had an impact on the response to the challenges the sector has faced and has also contributed to the communication difficulties that arose during the establishment of a new legal framework. This process was significantly impacted by the leadership of the executive branch, which was responsible for presenting to Parliament a bill that would be passed by the legislative body as an Organic Law (*Ley Orgánica*), supposedly during the time frame established by the Directive 2010/64/EU itself.

The Directive's coming into effect in 2010 was a turning point in the demands that professional and academic sectors had been making in Spain for some years, primarily concerning translating and interpreting in courts. The prospect of being able to influence the transposition process brought together a wide range of actors on new collective platforms, and also gave a common objective to pre-existing platforms, both professional and academic. It is safe to say that they all aim to heighten the visibility of LIT and raise awareness about the precarious situation of this professional market, while at the same time informing authorities that they are willing to serve as expert interlocutors in the field and engage in actions that can be considered lobbying.

In the professional arena, the leading role played by APTIJ, alongside the support of other associations belonging to Red Vértice, and that of RITAP (Red de Intérpretes y Traductores de la Administración Pública) deserves special attention. On the academic side, special mention must go to the engagement of the researchers comprising the Red Comunica network, and the solid institutional support of AUnETI (Spanish Association of University Translator and Interpreter Training Centres).

Space precludes a detailed description of each and every one of the actions undertaken by the different stakeholders, however, they can be grouped into four main phases. The first lasted from 2010 to approximately mid 2013. This phase is characterised by the lack of a representative on the authorities' side who could be easily approached, and also by the lack of foresight and initiative by the government to transpose the directive within the stipulated period (before October 2013). Quite unlike other EU member states, where the authorities were pro-active in the gathering of

stakeholder opinions, in Spain the movement was the other way round and stakeholders were the ones to take the initiative in making their requests known to the authorities. Especially noteworthy among the initiatives of this first phase, is the drafting of several documents setting forth the position of the professional collective on different questions related to the transposition process. The documents are the *Declaración de Barcelona* (Red Vértice 2012), and the White Paper on Institutional T&I in Spain (RITAP and APTIJ 2011).

During this phase, multiple meetings between academics and professionals were held with representatives from the Ministries of Justice and Home Affairs, members of Parliament serving on the Justice and Home Affairs Committees, and representatives of the General Council of the Judiciary, among others. The most noteworthy result of this phase was putting the topic on the table and starting to raise awareness among legislators and ministerial representatives about the issue of LIT and the opportunity offered by the transposition of the directive for appropriately regulating this professional activity. As a result, the Congress of Deputies (the lower chamber of the Spanish Parliament) passed various non-legislative proposals related to LIT. Among the measures suggested we can find minimum training requirements for police interpreting, urging the government to transpose the directive creating a training programme for the specialty of legal and sworn T&I, and creating a register of LITs, legal experts and psychologists.

The second phase lasted from mid-April 2013 to approximately September 2014. Of particular interest here is that direct contact began with the Ministry of Justice's Directorate General for the Justice Administration, the body responsible for transposing Directive 2010/64/EU. The professional associations set up a working group on the transposition process. The academic sector did the same and was even commissioned by the Ministry of Justice to prepare a report including aspects such as the register, accreditation and training of LITs (cf. Blasco Mayor et al. 2013).

In November 2013 the Ministry of Justice presented the draft bill of the Basic Law governing the Statute of Victims, through which, by virtue of its fourth final provision and second additional provision, the government intended to transpose Directive 2010/64/EU. This draft bill was then sent to various bodies, such as the General Council of the Judiciary and the General Council of Spanish Lawyers, as well as various social groups, so that they could issue their reports on it, as part of the mandatory procedure. Curiously, in the reports about the draft bill there is not a single mention of the meetings held between the Ministry of Justice and the academic and professional translation sectors (cf. Ministerio de Justicia 2014). Technically, these sectors were not formally invited to issue any report about the content of the draft bill. In comparison, many associations and NGOs linked to victims (Stop Accidentes, Save the Children, CERMI), did receive formal requests to do so and were indeed mentioned in these reports. Here it becomes evident that the T&I/LIT profession, despite the efforts made and the formal meetings held, was made invisible by the authorities. The explanation for this may be found in the discussion of professional organisations in Section 2.2, namely the lack of a *colegio profesional*, with legally established advisory duties related to any instrument aimed at regulating the profession.

The General Council of the Judiciary's report expressed a negative view of the draft bill (cf. Fernández 2014), based on the fact that the law on victims' rights was being used to transpose a directive about the rights of accused and investigated parties. The government followed this recommendation, amended its initial proposal (detaching

the transposition from victims legislation) and on 1 August 2014 the Council of Ministers adopted the bill amending the Spanish Law of Criminal Procedure in order to transpose Directives 2010/64/EU and 2012/13/EU (*Proyecto de Ley Orgánica por el que se modifica la LECr para transponer la Directiva 2010/64/UE y la Directiva 2012/12/UE*).

The third phase coincided with the parliamentary procedure by which the new bill was passed. In this phase the academic and professional sectors united and in January 2015 a new joint AUnETI-Red Vértice working group was created. The actions undertaken include the presentation of amendments to the bill through the left-wing parliamentary group Izquierda Plural, and the remission of observations to other parliamentary groups. Unfortunately, the fact that the governing party had an absolute majority in the Parliament prevented most of the amendments from being adopted. However, during the phase of the second reading of the bill in the Senate (the Spanish second reading chamber of Parliament), some changes were in fact made to the original text, thanks to a meeting held by the joint working group and experts from the Ministry of Justice. Following its approval in the Senate the text returned to the Congress of Deputies to be finally approved as *Ley Orgánica 5/2015* (LO 5/2015) with the only favourable votes coming from members of the parliamentary group that supported the government.²⁰

Last of all, after the approval of LO 5/2015, a fourth phase began and continues to this day. The objective of this phase is two-fold. On the one hand, there is a need for pedagogical action so that the stakeholders are educated how to apply or interpret the new law. On the other hand, since LO 5/2015 provides for the creation ex novo of an official register of court interpreters and translators in a subsequent Law,²¹ efforts are being made to maintain the channels of communication with the corresponding authorities and thus influence its regulatory implementation. In this way the future register can satisfy the demands of the academic and professional sector, who are not satisfied by the law currently in force.²² However, due to the complex political situation in Spain as will be discussed later in this paper, the Ministry of Justice has not yet submitted the draft bill regarding the register, although channels of communication with the ministerial staff and with the different parliamentary groups remain open.

The next section will analyse the main features of the new law regulating T&I in criminal proceedings and see whether the efforts expended by professional stakeholders have had tangible results.

4. Practical results: The new Spanish law for legal interpreting and translation in criminal proceedings

The transposition of Directive 2010/64/EU offered the possibility of updating the

²⁰ Yes votes were 180 (178 from the ruling centre-right party, People's Party, and 2 from centre-right regional parties affiliated to the ruling party); No votes were 26 (primarily from left-wing parties and the main Basque and Catalan centre-right nationalist parties); Abstentions reached 102 votes (primarily from the main opposition party, the centre-left Socialist Party, and other centre-left parties). 42 deputies were absent or did not cast their votes.

²¹ The new register would co-exist with the existing official lists of accredited sworn translators and interpreters referred to in Section 2.1.

²² Legislation covers both police and court proceedings, but the register, which will be under the jurisdiction of the Ministry of Justice, only refers to court interpreters and translations. Supposedly it will also serve to appoint professionals to police proceedings.

regulatory provisions governing the practice of LIT in criminal proceedings, which in Spain dated back to the late 19th century. Generally speaking, the transpositions have been implemented in quite a literal manner—that is, the new articles that LO 5/2015 introduces into the Law on Criminal Procedure are very similar to the provisions of the directive. Thus, in the view of some academic experts in procedural law, the transposition, while correct, is a bare-minimum transposition and no effort seems to have been made to take advantage of the moment and go beyond what the directive indicated.²³ Below I will look at some of the most striking aspects of the new law. It is beyond the scope of this paper to present a detailed technical analysis of all its articles, but it is recommended that interested readers consult, among other sources, Del-Pozo-Triviño (this volume), Ortega-Herráez and Hernández (2018) and Gascón (2017).

Perhaps the most relevant aspect of the new regulatory framework is the change in perspective regarding the role of LITs, who are no longer considered merely as helpers for the judge; they become an operator directly linked to the right to defence and a fair trial.

Under the new law, the right to T&I applies to all stages of criminal proceedings, including the conversations that the accused and the investigated parties have with their lawyers in preparation of a defence. This is an important new feature, at least theoretically, with respect to the situation in existence until very recently. Similarly, the right to interpretation extends to the trial, where language assistance is guaranteed at each and every stage, not just during the questioning of the accused, as was usually the case previously (Arumí et al. 2017; Ortega-Herráez 2010: 231–237). The new legislation states that the preferred mode of interpreting during the trial is simultaneous, precisely in order to guarantee that interpreting is provided throughout the entire trial; consecutive interpreting can be used when it is not possible to offer simultaneous interpreting. Although it may be true that this is a qualitative improvement, it is also true that the approach, apart from logistical issues, does not take into account that simultaneous interpreting requires specific skills and previous training that, unfortunately, not all LITs currently providing services in courts have.

The second significant innovation is the express regulation, for the first time, of the written translation of documents, or more specifically, of the documents essential to guaranteeing the right to defence. Thus, Article 123.1d of the law identifies the documents considered essential, which are: court orders depriving a defendant of their freedom, the indictment and the judgment. Additionally, as an alternative to written translation, it provides for the possibility of an “oral summary”.

The third important feature is the express regulation of the use of videoconference, which is incorporated into Spanish procedural legislation for the first time, although it has been a common practice for some time (cf. Braun et al. 2016: 101–114).

Fourth, it should be mentioned that the new law introduces, albeit very timidly, the obligation of LITs to act in accordance with ethical principles, of which the only one cited is confidentiality. However, no specific code of ethics is endorsed, referred to or enacted in this law.

Finally, when it comes to the subject of quality, an official register has been created, as discussed at the end of Section 3.2. What is more, the new law provides that

²³ Opinion expressed by Dr. Coral Arangüena (U. Valladolid) during her address at APTIJ’s 10th Anniversary Conference, held in Madrid, November 3rd, 2017.

only translators who are named in the official register will be assigned to work in criminal proceedings, with some exceptions. The problem is that the law does not specify which exceptional circumstances would allow the intervention of individuals not appearing in the registry, and what is more, it makes the creation of the register dependent upon a subsequent Law which has not yet been tabled. Additionally, there is the matter of how to regulate inclusion in the register. Within the professional and academic collective, many have defended the idea that inclusion should be based on passing certification tests designed in accordance with objective, valid and reliable criteria (cf. Giambruno 2014: 27–67). However, LO 5/2015 says nothing about this and leaves the door open to inclusion in the register being based on documents proving academic-professional qualifications (or even that it may not be necessary to have any qualifications in certain languages) and on professional experience, plus knowledge of legal concepts and compliance with ethical standards.

Thus, at first glance, the introduction of a register may seem like a step forward, but caution should be exercised, because questions still need to be answered. These include the possibility of establishing differentiated qualification requirements depending on the language in question, which is inconsistent with the ultimate purpose of LITs as a tool to guarantee the right to defence. The issue of previous professional experience also poses a problem, given the current lack of quality control in the provision of legal translation services, often meaning that anybody who says that they know a language can end up interpreting in a criminal case. This, in fact, has been the matter of a complaint submitted to the Spanish Ombudsman by the APTIJ (cf. APTIJ 2016).

The new Spanish law on LIT also includes specific provisions for the training of legal operators on effective communication via an interpreter, a crucial element towards quality monitoring. By way of illustration, Del-Pozo-Triviño (this volume) describes one of the training initiatives that have already been organised against this backdrop. Unfortunately, no specific provisions are made for interpreter training. However, this has not been an obstacle for some universities to offer new training courses as described by Blasco Mayor (this volume).

A further concern is the fact that the LO 5/2015 does not repeal the articles which up to that time had been regulating the appointment of LITs in criminal cases. So, from a technical perspective, at this time there are different models for the appointment of LITs: one for the accused and the investigated parties (Articles 123 and 124 LECr.), another for witnesses (Articles 440, 441 and 442 LECr.), and a third for victims (Article 9 of *Ley 4/2015 del Estatuto de la víctima del delito*—law on the standing of victims of crime).

This last example is indicative of how, despite the substantial improvement the new law brings, an opportunity has been lost to take advantage of the transposition of the directive to also unify the regulation of the appointment of LITs in criminal proceedings, which is what professional and academic stakeholders have been calling for. In addition, it seems there is still a certain reluctance to establish an adequate professional certification and registration system in the medium or long term to achieve quality in LIT services, as mandated in Directive 2010/64/EU.

5. Conclusions

To close, I believe that within the broader translation and interpreting community in

Spain, Legal Interpreting and Translation is still in transition towards full professionalisation. No one can deny that the new regulatory framework derived from the transposition of Directive 2010/64/EU has introduced a qualitatively significant change in the conceptualisation of the role of LITs, the main aspect being the shift from their identification as helpers of legal operators to becoming a tool directly linked to the right of defence and a fair trial. However, as already described above, the new regulations still present some inconsistencies and, more importantly, will need time to become effectively internalised in the processes followed by legal practitioners. On top of that, real change will only come into effect when the official register, mandated by the *Ley Orgánica 5/2015*, is legally set up and in place. Unfortunately, the draft bill aimed at creating this gatekeeping and quality tool has not yet been presented by the ministerial department in charge of the matter. There is also a great deal of concern, in academic and professional circles, regarding the criteria that would regulate inclusion in the register and the perceived reluctance to introducing certification tests that comply with objective, valid and reliable criteria.

Despite the general feeling in academic and professional circles that the many opportunities brought by the transposition have not been fully utilised, such as the opportunity to regulate for quality in LIT, this process has evidenced the usefulness of the channels for professional participation at the disposal of Spanish translators. In an attempt to bring LIT forward this process has allowed practitioners and academics to deploy joint and co-ordinated action. It is true that such participation channels depart significantly from those traditional bodies (*colegios profesionales*) that would be legally better placed to have a say and have their opinions heard when it comes to the legal regulation of the profession. However, the efforts of professional associations have served their purpose. They have managed, with the support of academia, to put the topic on the table, open up a dialogue with the government, introduce some changes in the proposed legislation and raise awareness among the authorities and legal operators about the need to adequately regulate LIT in order to guarantee quality and, subsequently, ensure the right of suspects or the accused to a fair trial and thereby equality before the law. As already mentioned, entry into to the profession, i.e. inclusion in the professional register, will be key in addressing market disorder and achieving full professionalisation. There is still an opportunity, however small, to trigger effective change in the right direction in the realm of legal interpreting and translation. Professional stakeholders will seize that opportunity. Will the authorities show the necessary political will to do so? That is the question that remains to be answered. To be continued.

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