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Niklas Torstensson¹, Barbara Gawronska²

DISCOURSE DISFLUENCIES IN BILINGUAL COURT HEARINGS

ABSTRACT: In about 9% civil and criminal cases that are settled in Swedish District courts every year, i.e. in roughly 10 000 court hearings, an interpreter is employed when at least one of the involved parties speaks another language than Swedish. In this paper, aspects of interpretation in the courtroom are discussed in general, and examples from court proceedings are used to analyse disfluent situations. The role of the interpreter is viewed, and compared to that of other participants' in the discourse. Aspects of legal rights for the individual are discussed in relation to examples from other language communities. The results show that the confusing situations and misinterpretations are not only dependent on the decisions made by the interpreter. The attitudes and the linguistic behaviour of all discourse participants may contribute to the disfluencies.

KEY WORDS: Interpretation, Disfluencies, Courtroom, Discourse

1. Introduction

Every year, more than 130 000 civil- and criminal cases are settled in Swedish District Courts. In about 9 % of these cases, i.e. in approximately 10 000 court hearings, the help of an interpreter is required, since at least one of the involved parties speaks another language than Swedish. According

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to the Swedish law, all court hearings must be held in Swedish, even if all involved parts understand the other language spoken in the courtroom. The motivation is that any Swedish citizen shall have the right to attend and to understand a Swedish court hearing. The interpreters are ideally summoned from an agency that provides certified interpreters. If no such person can be found, someone with sufficient knowledge of both source and target language can function as an interpreter.

No matter how well the interpreter performs, disfluencies in the discourse are bound to arise from time to time. In our paper, we study discourse disfluencies and discourse techniques aimed at disfluency correction and prevention. By discourse disfluencies we mean not only phenomena traditionally defined as speech disfluencies (self-corrections, hesitation marks etc.), but also disruptions of the interpretation process, and of the dialogue as a whole.

The base for this study consists of recorded hearings from a Swedish District court. We focus on hearings interpreted between Swedish and Polish. Parts of the dialogues are translated, studied and discussed more in detail with respect to theories of translation and discourse.

2. The interpreter's dilemma

Focusing on the translation process, it is unavoidable to deal with the question of what shall be translated, and what shall be emphasised in the translation. Since Nida (1964), translation theorists distinguish between formal and dynamic equivalence. In translation oriented towards the *formal equivalence*, the source language structures are maintained - as far as it is possible - in the target language. The obvious drawback of this strategy is that the original illocutions of the source language may be lost. The other approach, *dynamic equivalence*, has a stronger focus on the receptor: "the relationship between the receptor and the message should be substantially the same as that which existed between the original receptors and the message" (Nida 1964:159). This implies that it often is necessary to deviate from the form of the source text to retain the meaning of the message.

A similar distinction is expressed by Newmark (1988) in the terms of *semantic* and *communicative* translation. Semantic translation resembles Nida's formal equivalence: the focus is on the thought processes of the sender. This type of translation is rooted in the source language culture,

which means that the result is close to the original, and does not adapt foreign elements into the target language culture. This type of translation, however faithful to the source language, has a tendency to be complex, very detailed and with a risk for “overtranslation” (Munday 2001:45). Communicative translation is more oriented towards the receiver and the culture of the target language society. It transforms foreign elements, e.g. metaphors and idioms, into the target language culture, hereby deviating from the literal translation but gaining in illocutionary force and clarity for the target language speaker.

Along with the demands for linguistic accuracy, the translator should ideally both literally and figuratively be invisible, i.e. to translate so idiomatically correct that an illusion of transparency is created (Venuti 1995). The ideal translator should in other words perform his task in a manner that renders him/her invisibility.

The theoretical notions mentioned above are primarily concerned with translation of written texts, but of high relevance also for interpreting spoken language. There are several factors working against the court interpreter, as compared to the translator. The perhaps most crucial of these is the time factor. The interpreter has little or no time to decide on what strategy to use to achieve equivalence in a particular situation. He or she is very much present in the court room, making the invisibility aspect yet more complicated. To add to this complex situation are the cultural differences between speakers and idiosyncratic speech styles.

The aim of this work is to study and define the types of discourse disfluencies that occur in court hearings when the dialogue is interpreted. The discourse is analysed with respect to the interpreter’s role and the roles of addressor and addressee to find the main causes of disfluencies.

3. The Swedish judicial system

The Swedish judiciary is organised in three different organisations; The general courts, (district courts, courts of appeal and the Supreme Court), the general administrative courts (county administrative courts, administrative courts of appeal and the Supreme Administrative Court) and the special courts (i.e. the market court, the labour court). The general courts handle criminal cases and civil disputes, e.g. disputes between individuals. Such civil disputes concern family law, divorce proceedings and custody of children.

The primary objective of the general administrative courts is to handle disputes between the public authorities and a private individual. Typical issues include tax cases, cases on treatment of drug addicts and alcoholics, treatment of mentally ill, and cases on social insurance issues.

Special courts handle civil suits where, as the name implies, special competence in a field is required. To this category of courts belong for instance the Labour Court and the Market Court.

The cases included in this work are all civil and criminal cases from district court hearings.

Table 1: Total number of civil- and criminal cases in Swedish District Courts. Statistics from the Swedish Judiciary 2006

Year	1998	1999	2000	2001	2002	2003	2004	2005
Civil	68557	65805	64563	64548	64761	66297	67080	65010
Criminal	61085	60436	62584	60861	62236	64894	68512	69215
Σ	129642	126241	127147	125409	126997	131191	135592	134225

Table 2: Total number of bilingual hearings in Swedish District Courts. Statistics from the Swedish Judiciary 2006

Year	1998	1999	2000	2001	2002	2003	2004	2005
Bilingual	9205	7953	8900	9907	10287	11676	12610	12348
Rate of bilingual hearings, per cent of all civil- and criminal hearings								
Civil	1,6%	1,6%	1,8%	2,1%	1,8%	1,6%	1,7%	1,6%
Criminal	5,5%	4,7%	5,2%	5,8%	6,3%	7,3%	7,6%	7,6%
Σ	7,1%	6,3%	7,0%	7,9%	8,1%	8,9%	9,3%	9,2%

As seen in table 2, the trend is clearly rising as for interpreted court hearings. The total number of criminal cases shows an increase over the last eight years, while the trend regarding civil cases is less clear. As for the increase regarding interpreted hearings, one explanation could be that since joining the Schengen-treaty in late 1996 it has become easier for people to move freely across borders in Europe. Without moving into socio-political discussions it goes without saying that such possibilities for movement between countries include individuals whom, for one reason or another, will get into contact with the judicial system. As a direct consequence of this, the

need for increased knowledge about, and ability to handle interpretation situations is needed.

4. Interpretation in the courtroom

According to The Swedish Judiciary, all main hearings in Swedish courts are based on the principle of orality: a case must be decided after an oral hearing. It is also stated that all hearings in Swedish courts must be held in Swedish, even if all involved parts understand the other language. One reason for this is that, according to the principle of free access to records, any Swedish citizen has the right to attend a court hearing, and understand the language spoken. This illustrates the view of the importance of language as a tool for achieving justice. It also shows the need for accurate interpretation in cases where any of the involved parts speak little or no Swedish.

In cases where other languages than Swedish are spoken, a court interpreter is summoned to the hearing. Ideally, the interpreter should be certified by the National Judicial Public Board for Land and Funds (Kammarkollegiet). The dominating interpretation method in hearings is consecutive interpreting: the interpreter listens to what is said, and gives a batch-translation when the speaker pauses. Simultaneous interpreting occurs e.g. when both addressor and addressee are Swedish speaking, and the suspect is not. In-between stages of the two interpretation strategies can be seen as an accelerated consecutive, without actually going as far as simultaneous interpretation. (c.f. Gile 2001)

5. Material and method

This study is based on material from ten criminal case hearings in one of the 95 Swedish district courts. All hearings referred to were cases where the defendant spoke a language other than Swedish, and thus had an appointed translator to make hearings possible. The most common scenario, and all the court hearings referred to in this paper, is that the suspect constitutes the non-Swedish speaking part and that the interpreter has the same first language as the suspect. Languages included in the material are Albanian, Polish, Romanian, Russian, Serbian, Thai and Vietnamese.

Even though the reason for prosecution and the possible sanction was considered as of no interest for the study, all cases viewed concerned

common petty offences, e.g. shoplifting, traffic violations or theft. This is to avoid any unintentional identification of defendants due to the nature of the crime or situation.

The dialogue situations studied fall into three categories;

1. Swedish interpreted into a foreign language.
 - a. the sender speaks Swedish, and the addressee speaks some other language (e.g. a prosecutor questions a non-Swedish speaking suspect)
 - b. the sender and the addressee speak Swedish, while some of the hearers is not Swedish-speaking (e.g. a Swedish-speaking witness is questioned and a non-Swedish speaking suspect should be able to understand)
2. Some other language is interpreted into Swedish
3. Swedish is the only language spoken in the courtroom.

As will be shown and discussed, most of the dialogue-related difficulties have other sources than the interpreter, even if he/she often at first glance appears to be part of the problem rather than part of the solution.

6. Case study

Out of the studied hearings, one was judged as being the most interesting from a dialogue-structure point of view, and viewed more in detail. Examples from the other hearings are found in the discussion section. The suspect in the hearing analysed here was a Polish citizen with no knowledge of Swedish, accused of shoplifting at a supermarket. Except for the interpreter, no one in the courtroom had any knowledge of Polish, so the dialogue was totally dependent on the interpreter.

The initial stages of the proceedings consisting of formalities such as personal particulars, presentation of the legal staff, and statement of the criminal act charge, are interpreted without any problems. The suspect is then asked to account for his view of the incident at hand. This part of the hearing proves to be the most challenging for all discourse participants. The suspect starts his story by telling about events leading up to the trip to Sweden, what he and his friends brought to sell in Sweden and who was in the car. The interpreter tries to keep up, but the average length of the suspect's utterance batch contains 30 – 40% more words than the Swedish version. After two minutes, the judge points out that the story should *concern*

the event that is the subject for this hearing, the events at supermarket X and not the background, and this is explained to the suspect. This is followed by a conversation between the judge, the prosecutor and the interpreter, where the judge says that “as you as an interpreter know, it is important that the court understands what is said, and you must translate everything that is said without asking the suspect any questions” The interpreter agrees (*mmm yes, exactly, and keep to the point, right*), and the interpretation process continues for about three more minutes.

The suspect’s story is then interrupted by the judge, and a dialogue between the judge [J] and the interpreter [I] takes place (authors’ translation):

[J] I get the impression that the suspect is telling much more than you are translating. Polish is perhaps a little longer than Swedish, but...

[I] Oh, well yes, but you know, he...he....

[J] Yes, but we want to hear everything that he...if you say that he...it’s what he says that....

[I] Yes, but you know he repeats things and....

[J] Yes, but then you should really repeat that too.

[I] But I can not talk like he does

[J] No...

[I] You can all hear how he talks!

[J] Yes, but we cannot understand anything of it!

[I] I can not stutter and (overlapping) [J] No no, not stutter, that’s not what I’m asking....

[I] It is...well it is him, it is him you know...

[J] Well if that is the case it should not be interpreted, but it is important that we get to know also if he is unsure about anything, and hesitating about where he was or such... It is not up to you to make it clearer

[I] Yes but I did say that he said that he went past the media department and that he looked at two cans of shaving foam that he did not know if he wanted to take, but I say it fluently, right?

[J] Mmm....hmmm....right....

After this argument, the interpreter changes his strategy. He goes from a consecutive approach to something in between an accelerated consecutive and a simultaneous interpreting style. The interpretation comes in shorter batches and the whole dialogue is characterised by lots of overlapping speech and incomplete phrases and sentences as the suspect makes no, or just very short pauses in his narrative.

The hearing continues with two witness statements. The witnesses are Swedes employed as shop surveillance personnel. This part of the hearing passes without any disturbances worth mentioning.

A closer look reveals several reasons for the confusion in the initial stages of the hearing. Told by the interpreter to “tell the story from the beginning” the suspect starts out with a long description about buying a certain amount of beer and brandy in Poland to sell in Sweden. His concept of “telling from the beginning” is clearly different from what the court sees as the beginning, namely arriving at the store where the alleged shoplifting incident is claimed to have taken place.

The suspect is probably uncertain about what the hearing really concerns. He is in a foreign country, in a foreign language community, in an authoritarian environment, and he knows that bringing alcoholic beverages into the country to sell is not legal. He starts by spontaneously admitting what he believes is the crime. What the hearing is really about is the shoplifting charge, but this has to be explained to him by the interpreter.

The suspect talks a variant of Polish that signals a rather low level of education. His speech is full of self-corrections and repetitions. He uses, with a very high frequency, Polish demonstrative pronouns and pronominal adverbs (*to, to tego, ten, taki, tam...*), i.e. semantically empty markers that Polish elementary school pupils are trained to avoid in oral presentations. His speech tempo is fairly high with a high frequency of filled pauses, even to a non-Polish speaker signalling a high stress level. What to the court sounds like a fairly long and extensive piece of information that eventually is translated with *...and then we went from the car to the shop* could be something along the lines of *...and well, we sort of well, we went out of the car, and we were in the car and well weeh...we left the car and the shop, we went to the shop when we left the car all of us.*

Considering the importance of language and linguistic ability reflected in the “principle of orality”, the suspect is an example of an individual in a double linguistic limbo. His task is to account for a course of events with the limited verbal capabilities he is in possession of, reflected in poor performance of his mother tongue and to do this through an interpreter.

7. Conclusions and discussion

The sources of communication errors in an interpreted discourse vary, and cannot be ascribed to any single participant. How well trained the interpreter, there is no guaranty for a smooth and well functioning discourse if the other involved parties lack insight in the linguistic and cultural differences. As these factors generally are unknown, or at least not reflected upon by the legal staff, the witnesses, and the suspects, the occurrence of disfluencies in court hearings is unavoidable.

During periods of consecutive interpretation, disfluencies are due to the behaviour of the foreign language (here: not-Swedish) speaking addressor in the following discourse situations:

a. no, too short or too few pauses in the narrative; this does not give enough time for the interpretation process.

b. repetitions, self-corrections, hesitations and incomplete syntactic structures c. context insufficient for disambiguation, e.g. in the case of differences in semantic fields between source language and target language. One example observed is a case of describing how toothpaste was wrapped when investigating a case of shoplifting (Swedish – Thai). The interpreter says that *the tubes were packed in a container, or rather a case, or like a box*. It takes some reasoning between the parties before establishing that each tube of toothpaste sits in an individual box, and that these individual boxes were placed in a bigger case, sitting on the store shelf.

When the foreign language speaker is the addressee during consecutive interpretation, other reasons for the disfluencies emanate:

a. Problems with understanding of “legalese” and culture specific concepts. Legal jargon can prove complicated enough in a monolingual setting, and even more so in a bilingual situation. An example of this is when the prosecutor in a case interpreted between Swedish and Arabic demands that the consequence of a criminal act should be *30 dagsböter* (literally ‘day-fine’, proportional to ones’ daily income) and the accused gets the impression that he has to pay everything he earns in a month.

b. Problems with understanding particular illocutions, e.g. when the suspect and the judge have different concepts of “the beginning”

c. Cross-cultural differences in politeness conventions. If a simple “yes” or “no” is expected from one part and the other part feels the need to give the background to an answer, the discourse is bound to collapse. One example

of intercultural and sociolinguistic consequences is the gratuitous use of the word “yes” by young aboriginal Australians in answer to any question, this regardless of whether the speaker agrees with the given statement or not (Eades 2002). Other examples of the same phenomenon come from more informal discussions with lawyers during visits to the district court. A speaker of Arabic could reply to a yes/no-question with a long narrative starting with a story about parents and family to indicate the serious approach to answering the question (House 1998).

The disfluencies occurring in simultaneous or close-to-consecutive interpretation when the addressor and addressee are Swedish-speaking are of a different nature:

a. When addressing another Swedish speaker, the addressor makes no, too short or too few pauses. The most common disturbance here, when interpreting interaction between the legal staff, is uncertainty on where/when to pause for interpretation. This is also evident when the atmosphere gets a bit excited for some reason, and someone is eager to convey a message or a question. Some cases of problems with wording and self corrections are found here, both from the interpreter and from court staff. This causes the interpreter to lag behind in interpreting.

b. Sudden changes of addressee is another critical factor. It happens that the addressor changes addressee without any notice, e.g. turning from the suspect to address the interpreter with questions or remarks on the interpretation. This leaves the former addressee hanging in mid-air, probably adding to the insecurity.

During periods of simultaneous interpretation, e.g. when a Swedish-speaking witness is questioned, yet other types occur:

a. Situations like this are interpreted simultaneously in a low or whispered voice. This causes the interpretation process to be “forgotten” unless someone points out that the interpreter needs time to perform his task.

b. Other disfluencies in this modus are to be seen as channel-related. When a witness is heard over a telephone line, he/she does not have access to the visual cues of turn taking normally used in dialogues. As the telephone witness can not see, and in many cases not even hear the interpreter, it is not surprising that the interpretation process is forgotten from time to time and pauses do not occur as frequently as necessary. An interpreter has, by definition, a “third-part” function in a conversation. The interpreter’s task in these situations is very much dependent on how the

dialogue is structured. It is very important that the accused understands what a witness claims to have seen or heard. It is however not uncommon that as a dialogue between a witness and the prosecutor or judge evolves, the interpreter is forgotten or overlooked, leaving him/her with too little time to perform the translation task.

Other problems, not really disfluencies but still with a negative impact on the discourse are observed in the hearings as well. These include:

a. slips of the tongue. The only purely interpreter-related problems are at the same time the hardest to spot. This concerns misinterpretations and interpretation errors, impossible to detect without knowledge of both languages. It is not obvious how common such mistakes are, but in one of the hearings used for this paper two such errors were detected. In one case, the interpreter translates the phrase *...and I turned left* as *...and I turned right*. The other mistake is when the suspect describes a person as blonde, and the interpretation is *dark-haired*. In this particular shoplifting case, the misinterpretations did not have any significance for the outcome, but it is still an alarming fact that such things pass unnoticed. It does not take too much effort to imagine scenarios where misinterpreted words could mean all the difference to a suspect's story.

b. lexical and grammatical interference. An illustrative example is a Polish interpreter using the Swedish *mobil* ('mobile phone', 'cell phone') instead of the Polish *komórka* ('cell') when interpreting a question to a Polish suspect.

A case where the lack of basic linguistic knowledge has had severe consequences for an individual is described by Rodman (2002). A suspect was accused of, and convicted for a serious drug-related crime based on a surreptitious recording of a drug deal. The suspect's accent was, compared to the accent spoken in the recording, of such different nature that it, according to the author, could not possibly be the same speaker. He argues that if the court had possessed some basic linguistic training, the conviction of a man innocent of the crime at hand could have been avoided, and the search for the actual perpetrator could have continued.

Agreeing with Rodman (*ibid.*) that some sort of basic linguistic knowledge should be administered to court personnel and, ideally, to other people appearing in courts. Examples of such are for instance shop surveillance personnel, security- and police officers and other occupational branches that can be expected to appear in court settings as part of, or consequence of, their

work. If some basic knowledge about communication through an interpreter was delivered to both witnesses and suspects, many of the smaller but still at best annoying disturbances should be avoided. Even though the examples in this paper are not of such dramatic scale as the aforementioned, they still point out the importance of the oral communication and the significance of the interpretation process.

Yet another fact to bear in mind at the end of this discussion is the debate on attitudes towards accented speech. Previous research suggests a correlation between foreign accented speech and negative evaluation, preconceived notions and stereotypical attributions on factors like credibility, perceived guilt etc. (Cunningham-Andersson & Engstrand 1988, 1989; Doeleman 1998; Abelin & Boyd 2000; Bayard et al. 2001) This has been shown to have impact e.g. on judgment in court hearings (Rodman 2002) and witness statements (McAllister 2000). A research question to investigate is whether the same attitudes occur when someone is interviewed or interrogated using an interpreter. In a vast majority of interpreted court hearings, the interpreter is a native speaker of the same language as the suspect and thus speaks the target language in a more or less accented way. This could imply that an individual appearing in court without knowledge of the language spoken has a disadvantage from the start. This is said keeping in mind that in most cases the interpreter has an accent, too. We leave to the reader to consider how a “dynamic” or “communicative” interpretation of hesitation markers and low-education markers could affect the professional career of the interpreter.

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Diskursdisfluenser i tvåspråkiga rättsförhandlingar

Svensk sammanfattning

Artikeln behandlar de diskursdisfluenser som uppstår i rättegångsförhandlingar förda med tolk. Olika aspekter av rättegångstolkning diskuteras och exemplifieras utifrån studerade tingsrättsförhandlingar. Tolkens roll granskas och jämförs med övriga diskursdeltagares. Resultaten visar att disfluenser, missförstånd och feltolkningar har olika orsaker beroende på deltagarnas roller och diskursstrategier.