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THE RIGHT TO LINGUISTIC ASSISTANCE IN CASE OF A LEGAL ACTION

This article deals with the importance of linguistic mediation for people involved in a legal action and analyses some recent European and Italian Decrees.

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Linguistic assistance, in other words, the receipt of linguistic help for non-native speakers, so that they may speak freely without linguistic restraint, is a specific right that legislation should guarantee to everyone who does not speak the language used during legal action. It is an essential right, present in every Declaration of Human Rights, since it assures the right to legal counsel. Thanks to the mediation from an interpreter, the person concerned in the lawsuit can participate actively and consciously, being informed about his or her accusation, in order to choose the proper strategy to demonstrate his or her innocence.

In order to achieve this specific aim, the European Council have introduced the directive 2010/64, concerning the right to linguistic interpretation and translation in case of legal action, with the purpose of establishing "basic common rules to apply in the field of linguistic mediation and interpretation in case of lawsuits, in order to strengthen the partnership among the members of the European Union. In addition, this piece of legislation simplifies the concrete application of the right to linguistic assistance, which is declared in the Section 6 of the ECHR (European Court of Human Rights). More importantly, it should be taken into account that this right can be applied in case of criminal trial and European Arrest Warrant. In these cases, anyone who does not speak the language of the country from which the legal action originates, or is not a fluent speaker is to receive free linguistic assistance until the end of the trial, and then afterwards during the administration of penalty as well. More precisely, according to the ECHR, the accused is guaranteed the right to interpretation; if the accused does not speak the language of the foreign country in which the trial takes place, they are to be given the right to translation, just in case the accused does not understand the language fully, despite being aware of what is happening.

Recently, the Italian Government has passed a Legislative Decree (4 March 2014 n.32), which provides significant modifications in the Code of Criminal Procedure. Among these changes, the most important is that of Section n. 143, concerning the right to linguistic mediation and translation of legal acts. In addition, legal authorities are asked to prove the requirement to apply that decree, that is to say, they have to prove that the accused is not able to speak and to understand the Italian language.

Unfortunately, in most cases and not only in Italy, the role and the importance of interpretation in legal prosecutions is often underrated and as a consequence, the role of legal interpreters and translators is not valued as required. Actually, linguistic mediation is an essential element and a human right, as it guarantees concrete advocacy.

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