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**Neoliberal governance vs expert  
authority in Danish legal interpreting:  
Issues of social justice**

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# Neoliberal governance vs expert authority in Danish legal interpreting: Issues of social justice

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## Abstract

Access to interpreters is essential for a well-functioning legal system and for the rule of law. At the same time, contrary to other important institutional participants such as judges and prosecutors, interpreters are self-employed freelancers. In this paper, we discuss what happened to legal interpreting in Denmark after it was outsourced to a private company in 2018/2019. The private company promised to ensure *quality* through *new technology*, *efficiency*, and *measurability*. It also announced that it would reduce the interpreters' payment. The company was met with anger from the former legal interpreters, and hundreds of them refused to join. As a result, the courtrooms experienced tremendous difficulties with cases in need of interpreting assistance. Some of the former interpreters also began reporting from cases involving the often inexperienced new legal interpreters, focusing on errors and mishaps. Thus, what was originally presented as a way to increase quality in legal interpreting (engaging a new company to take it over) ended up as a challenge to (social) justice and the rule of law. Through the lenses of neoliberal governmentality (Martín Rojo & Del Percio 2019), language commodification (Heller 2010) and social justice (Fraser 2003), we analyze the case as the confrontation between two fundamentally different understandings of the organizational basis of the area: one based on ideas of neoliberal governance and one based on professional expertise. We draw on newspaper articles, homepages, interviews with court interpreters, field notes from various encounters and courtroom observations.

## Introduction

In Denmark, the Administration of Justice Act §149,1 states that “(t)he language of the court is Danish”. Although there is a legal option to use a “foreign language” in court (ibid.), the standard procedure is to call an interpreter when there is a linguistic mismatch between the language of the institutional domain and that of the accused, the defendants or the witnesses. Access to reliable and skilled interpreters is thereby treated as essential for a well-functioning legal system and for the rule of law. At the same time, contrary to other important institutional participants such as judges and prosecutors, interpreters are self-employed freelancers, not public employees. This type of institutional organization may have important consequences. In this paper, we will discuss what happened to legal interpreting in Denmark after it was outsourced to a private company in 2018/2019.

The overall situation includes the following. Until 2019 the National Police had been in charge of administering legal interpreting. This basically consisted in keeping a list of approximately 1200 freelance interpreters who were booked on an individual basis through a telephone call, by the legal institution in need of their assistance. However, several reports (e.g. from the National Audit Office (*Rigsrevisionen*) 2018) concluded that there were severe (perceived) problems in the domain of legal interpreting. Particularly the quality of interpreting (more or less equal to translation accuracy)

and so-called interpreter ethics were problematic. In response, the National Police aggregated legal interpreting into a single legal tender and thereby avoided engaging with the problems themselves. Six bids were received and the tender was won by the private company EasyTranslate.

EasyTranslate were to deliver 98% of legal interpreting in the country, and they promised to ensure 'quality.' Quality was defined through different measures, including the implementation of modern technology, the insistence on efficiency, and a drive for measurability. In addition, EasyTranslate said that they would reduce the interpreters' rates. In response, almost seven hundred legal interpreters announced that they would not accept to work for the company. The interpreters disagreed with EasyTranslate, as well as with the National Police, on several issues. These include the new (neoliberal) logic of governance, a new logic of quality, and a new moral economy. The interpreters did not want an intermediary between themselves and the legal institutions, nor did they believe EasyTranslate would be the right company to manage interpreting; they found it unfair that they should receive less money for their work, and that professionals with long-term experience should pass a test; and they pointed out a number of possible negative consequences of the new organization.

The court interpreters' strong resentment resulted in chaos in the court rooms when EasyTranslate took over. Court cases were cancelled because no interpreters were available; interpreters assigned for a case did not turn up at the appointed time or at all; interpreters came across the country or even from abroad to interpret in court which caused a tremendous increase in the expenses. When no interpreters could be found, non-Danish speaking accused persons were released, and non-Danish speaking defendants in custody had to wait for extended periods of time in order to get to talk to a lawyer. Some of the more activist interpreters who did not sign up with EasyTranslate started doing observations in court, and wrote notes on what they experienced. In these notes, they documented different perceived irregularities by the (often new and inexperienced) interpreters hired by EasyTranslate. Although the notes aligned very well with prior critical reports on legal interpreting, the activist interpreters seemed to manage to create the impression that it was a new, or a seriously aggravated, situation that came with EasyTranslate. As a result, what was originally presented as a way to increase and ensure quality in legal interpreting, i.e. the engagement of a company with an enhanced focus on quality, ended up as a massive failure, not the least in terms of the public image of the National Police. In December 2019, after almost a year of struggle, the situation was (temporarily) solved. The contract with EasyTranslate was cancelled with the (for the authorities convenient) motivation that EasyTranslate had breached the GDPR regulations.

In this paper, we combine our interest in the political economy of language and in language ideologies, with consideration of the consequences for the rule of law as well as for social justice. We do this in relation to the engagement of a private interpreting company in the legal area in Denmark. We will focus on what we see as a confrontation between two fundamentally different understandings of the right organizational basis of the area, namely one based on ideas of neoliberal governance and one based on professional expertise. In this way, we discuss a recent case of how and with what effects neoliberal governmentality was exercised in a particular time and space (cf. Martín Rojo & Del Percio 2019: 3), and what other rationalities were in play at the same time.

## **Theoretical background**

### *Language commodification & neoliberal governance*

Along with e.g. the work of griots (Irvine 1989), call centers (e.g. Cameron 2000; Woydack & Rampton 2016), and commercial language teaching (Park & Wee 2012), professional interpreting is paid language work, and language is treated as an economic object. In our study, two well-known issues in the field of language commodification, *globalization* and *neoliberalism*, play central parts.

First, the current (increased) mobility of people (*globalization*) creates an increasing demand of interpreting in the public sector. This only happens under two conditions, namely *if* there is no universal *lingua franca*, *or if* there exist regulations of language choice so that a particular language needs to be used. In the Danish court, both conditions hold. Danish is the legally stipulated preferred language, and many non-Danish speaking accused or defendants do not speak English – in contrast to the institutional representatives. Globalization also entails states committing each other to ensure the rights and possibilities of (own and other states’) citizens to give them the possibility of participating in a court case in which they are charged. From this perspective, access to an interpreter can be regarded as a human right.

*Neoliberalism* is a type of political economic rationality in which it is the role of the state to maximize the potential for the market to operate, and to minimize its own intervention in social and economic life (Pujolar 2018: 488). A neoliberally oriented state will privatize public services, and the neoliberal era is characterized by a preoccupation with ideas of measurement, standardization, efficiency, and technology. We will look at the discursive preoccupation with these key notions, how they were implied in a new understanding of quality, and in the transformations in the understanding of the interpreters’ position in relation to the court (cf. Urcioli & LaDousa 2013: 176; Martín Rojo & Del Percio 2019).

It needs to be mentioned that the case of legal interpreting in Denmark may be akin to other types of privatization. At the same time, legal interpreting was never organized in a state-owned company, and even after the tender was effectuated, the state needed and paid for legal interpreting, although through an intermediary. Furthermore, as the interpreters were not on permanent contracts, and as they were also private entrepreneurs, we are not analyzing a case of transformation from non-market to market structure. But we are certainly looking at two different ways of organizing an economic exchange between the state and the private sector. Last, interpreters are essential for the rule of law or “formal justice” (Avineri et al 2019), and there is an interesting interaction between legal interpreting as a commercial product and legal interpreting as a corner stone in the system of justice. We will return to this point in the conclusion.

### ***Social justice***

Social justice concerns struggles over social inequality, equitable distribution of resources and power, access to being heard or being able to express oneself (Heller 2010: 102). It also has to do with values and respect. Although often analyzed in relation to dominant versus subordinate groups, where fairness and its opposite, may seem obvious, in fact what is socially just, or how social justice should obtain, often depends on the perspective taken, on (local) situatedness, and on the scaling and contextualization of a situation. Thus, questions of social justice change according to the chosen perspective or scaling of a case. Social justice is central to much critical sociolinguistic research (Avineri et al. 2019; Heller 2014; Piller 2016), and in this paper, we draw on Nancy Fraser’s approach on social justice. Fraser (2005, 2008, 2012, 2016) looks at three aspects of social justice: “what” social justice corresponds to; to “whom” social justice applies, and “how” social justice is understood to obtain, i.e. what actions are needed in order to overcome social inequality or social injustice. The “what” is further divided into three orientations:

1. Socio-economic justice, rooted in the political-economic structure of society, where solutions to conditions or situations seen as unjust, are associated with redistribution and restructuring.
2. Socio-cultural justice, rooted in social patterns of representation, interpretation and communication, where solutions to conditions seen as unjust are associated with (recognition of) group identity and the creation of cultural equality.
3. Political justice, which concerns possibilities of participating and being listened to.

Fraser acknowledges that a clear distinction between economic and cultural injustice is not reflected in experience:

“Even the most material economic institutions have a constitutive, irreducible cultural dimension; they are shot through with significations and norms. Conversely, even the most discursive cultural practices have a constitutive, irreducible political-economic dimension; they are underpinned by material supports.” (Fraser 2005: 380).

This is the case in relation to Danish legal interpreting, too. Yet, Fraser argues that the political orientation should be kept separate as its relevance has changed with globalization. ‘Justice’ used to concern fellow citizens but now we need to think of it in relation to non-co-citizens (Fraser 2005). In extension of this, the political orientation accounts for whether particular social actors are or should be included in considerations of social justice at all.

The notions of *scale* and *scaling* are central to the discussion of fairness here. As Carr & Lempert (2015) discuss, the process of scaling creates relations and similarity between phenomena which enable comparison, and scaling is often used to evaluate importance, moral character, urgency, or hierarchy, i.e. to assess and compare value, even for phenomena which cannot or cannot easily be quantified and measured outside of the act of scaling (Carr & Lempert 2015: 3, 17). Similarly to social justice, scaling is never an indisputable process, and it usually works to the advantage of some and disadvantage of others. This can be used strategically, as when social actors change the perspective or standard of comparison in a scalar configuration, something often referred to as ‘scale-jumping.’ Such changes make scaled phenomena appear hierarchically superior or inferior, more or less general, socially closer or more distant relative to each other. They are used to perform social actions and demonstrate power (or powerlessness), refinement, or (other) superiority. Furthermore, scales and hierarchies can be contested and negotiated, although the institutionalized character of some scales – such as the tiered relations between ‘individual’, ‘local’, ‘translocal’, ‘national’, ‘global’; ‘micro’ vs ‘macro’; ‘face-to-face-encounters’ vs ‘political economy’; ‘individual’ vs ‘other’; ‘now’/ ‘momentary’ vs ‘long-term’/ ‘always’; or ‘specific’ vs ‘general’ – hides this fact.

Social justice and fairness are relevant perspectives in this paper in relation to the questions of what is fair payment for work, and the availability of skilled interpreters to enable the rule of law (“what”). It concerns interpreters, the Danish population and state as such, and suspects and defendants (“who”). And it is about the prioritization of ease of booking vs securing of knowledge and expertise (“how”). At the same time, it relates to questions of what organizational regime should be drawn upon with regard to interpreting in the legal sector. Should it be regarded primarily as an economic exchange, a technological solution, or a communicative encounter? All of this concerns the institutionalized, currently popular and contested nature of certain scalar perspectives, such as the tiered relations between ‘individual’, ‘local’, ‘translocal’, ‘national’, ‘global’; ‘micro’ vs ‘macro’; ‘face-to-face-encounters’ vs ‘political economy’; ‘individual’ vs ‘institutions’; or ‘specific’ vs ‘general.’

## Data and Method

Our study of the conflict is a part of a larger project on interpreting in the public sector in Denmark, financed by the Danish Independent Research Council.<sup>1</sup> We look across three domains: police, court and health, and analyze ideologies, experiences and practices from the perspective of interpreters and interpreter users (that is, the institutional representatives that book and need interpreters) as well as discourses on interpreting that circulate in society at large. The project started officially on February 2019 and in reality, some time before. It involves multiple participants in addition to the two authors.<sup>2</sup> Data currently (February 2020) include c. 14 hours of group interviews, 15 hours of individual interviews, 12 hours of interpreted courtroom interaction, field notes, and media data about the tender and its consequences as seen by different participants.

For this contribution we draw primarily on newspaper articles, individual interviews with interpreters with long-term experience in legal interpreting, social media excerpts, regular engagement with the interpreter society, and fieldnotes from various encounters and court room observations. Furthermore, we discuss a report produced by interpreters, based on court room observations which we accessed from the website of the Danish parliament. We met the interpreters we interviewed either in court or as part of our network; Kirilova has been a freelance interpreter (Bulgarian) for more than a decade. All quotes and data have been translated by us. As may be obvious to the reader, such data invite differently scaled perspectives.

## Analyses

In this section, we demonstrate how the conflict in legal interpreting is discursively mediated, and we analyze the articulation of and struggles between the different suggested organizational regimes: of knowledge vs. governance. The section is organized according to two themes: 1) The neoliberal reconceptualization of legal interpreting through discourse; 2) Legal interpreting as a professional expertise. We will return to the theme of social justice in the conclusion.

### *The neoliberal reconceptualization of legal interpreting*

Neoliberal rationality, and organizational and epistemological changes based on this, were central to the conflict in Danish legal interpreting. As mentioned, the conflict did not involve a change from a system where the state was the main agent to a free market system. The National Police used to buy services from a number of select interpreters, all private entrepreneurs, but with the tender, the competition moved to a higher organizational level. It involved bids received by the National Police. After they had made a choice, and EasyTranslate took over, legal interpreting became more of a monopoly. The legal system – the buyer – and legal interpreters – whose services were sold – had to engage with EasyTranslate who functioned as an obligatory intermediary between the two parties. In the beginning, some interpreters compared EasyTranslate to a competitor, but a competitor who had taken over the market. One of them used this to try to mobilise general resentment against EasyTranslate: “We are not interested in cooperating with EasyTranslate as we

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<sup>1</sup> *Interpreting in institutional interaction: Sociolinguistic challenges in Denmark as a globalized society*, Grant Number 8091-00018B.

<sup>2</sup> Central project participants include Paulina Bala, Line Højland, Solvej Helleshøj Sørensen in addition to the others.

all run our private businesses... We would get to work in a company who is in direct competition with our own” (*Radio 24/7*; April 25, 2019). This quote is from a radio program, and we documented similar understandings during our own interviews. However, it seems productive to conceptualize the relation between interpreters and EasyTranslate differently. EasyTranslate did not offer a product similar to the one of the interpreters, and therefore, the two parties were not really in a situation of competition. What EasyTranslate did was to change the product of ‘legal interpreting’ in accordance with a specific organizational commercial regime. We now turn to this product.

According to their website (February 2020) EasyTranslate offers ”solutions” (Dan. *løsninger*) to organizations in need of translation and interpreting services. The term solution suggests that the provider will take care of a specific problem of a client. Also, as a commercial term, a solution points to the problem as complex and involving a number of steps or requirements, which the provider will attend to. Accordingly, with EasyTranslate legal interpreting became more than a situation, or a social encounter, where interpreting takes place. It came to include actions prior to this encounter, the interpreter-mediated encounter itself, and actions following it. The actions following the encounter included the interpreter-users evaluating the interpreter’s services. To facilitate legal interpreting as such a process, EasyTranslate used an online platform, a well-known contemporary commercial format (Srnicec 2016).

This re-conceptualization of legal interpreting was reflected in a particular deployment of the term ‘quality.’ In the formulation of the tender, quality was defined as the most important selection criterion; price counted for much less. Overall, quality may be used in relation to a variety of things across different fields (see e.g. Martín Rojo & Del Percio 2019: 10) and with many different aims, and thereby works as a “strategically deployable shifter” (Urcioli 2003). At the same time, quality generally signals positive/high value, and it is rarely contested whether or not it makes sense to apply ‘quality’ as a measure or assessment of a service or good. In EasyTranslate’s approach, quality involved three elements: quality of delivery, quality of implementation, and quality of interpreting. Quality of delivery concerned the booking of interpreting service, the timeliness of the interpreter, and a subsequent possibility for the interpreter user to evaluate the experience online through a star point system. Quality of implementation included the procedures that had to be put in place when the organization and the conditions of legal interpreting were changed. Interpreting quality addressed translation accuracy and interpreter ethics. This was supposed to be operationalized through a series of tests, of which several were multiple choice that interpreters needed to pass within one year in order to stay in the catalogue of EasyTranslate.

Overall, quality was used in a way that concerned the needs and wishes of what is generally referred to as the interpreter user, i.e. here the legal institution, rather than the interpreter. The interpreters were taken for granted as willing participants and suppliers, although their work conditions changed dramatically within the new organization. For instance, their expertise was no longer taken for granted, as they were made objects of critical scrutiny both through initial tests and on-the-spot assessments. Furthermore, quality was defined in relation to the solution offered, and a standardized scheme. A standardized procedure – of booking, testing and evaluation – was in itself presented as a type of quality, and standardized tests of satisfaction and performance were adding to the understanding. The legal interpreters who found themselves sidetracked argued that it was a possible impediment to good interpreting, but they were contradicted by EasyTranslate.

Here is one of the CEOs in an interview in a large newspaper:

“We have no intention of complicating the lives of interpreters and translators. On the contrary, we will run all administration, all auto-coordination of tasks, calendar management, mileage reimbursement, thus securing even more efficient work with as many meetings as possible” (*Berlingske*; December 13, 2018).

The CEO articulates a new conceptualization of the product of legal interpreting: Legal interpreting is now a *process*, with *technology* as an essential part, and the technology is meant to serve the interpreters, too. Technology has a particular role to fulfill in order for the interpreters to obtain *efficiency* - through the “auto-coordination of tasks, calendar management” etc. But as far as we know, the CEO addressed a demand that did not exist. None of the interpreters quoted in the media, in reports and in our interviews expressed concerns with management and administration, and it was only when EasyTranslate took over that it became an issue at all (ironically, this happened as the promised efficiency failed to materialize). The situation is obviously very different for the interpreter user, here the National Police and the Court, to whom the number of interlocutors was reduced from more than thousand to one. Accordingly, the CEO seems to identify with interpreter users in the understanding of how their solution would be received and whether it was regarded as needed.

The new organization included lower payment to the interpreters. The CEO articulated this as an inevitable result:

### **Example 1.**

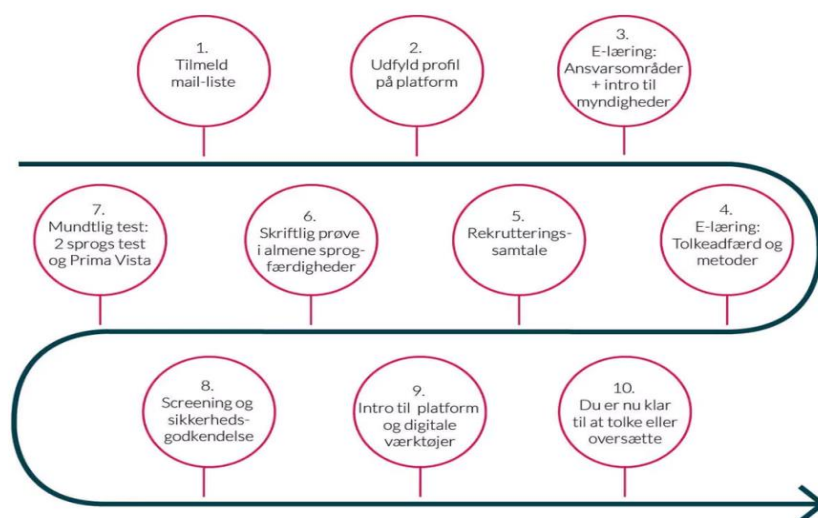
“As a natural process at a public tender the prices have been subject to competition which correctly has resulted in a salary reduction in relation to earlier prices ... We certainly do not expect that the salary reduction will affect the quality as we first and foremost have a recruitment process which is meant to secure the quality.” (*Information*; March 13, 2019)

Ladegaard does not accept that there is a straight-forward relation between quality and price. In his cost-benefit logic, competition will necessarily lead to lower payment, this is part of “a natural process” (the prices mentioned refer to the price that the interpreters could charge for their services). Ladegaard claims that the recruitment process secures the quality *regardless* of the price. This only makes sense if Ladegaard relies on a model of supply and demand where the (rather large number of) interpreters would need to accept to work for him. Remember that the interpreters found themselves in a situation of monopoly, and Ladegaard seems to believe that this is sufficient to guarantee their participation. Today we know now that he was wrong.

The processual focus (or: legal interpreting as a ‘solution’), the introduction of technology, a focus on efficiency, and the reconceptualization of the interpreters’ position could be seen in different materials produced by EasyTranslate. A flow chart below (Example 2) depicts the process of onboarding for interpreters. This was sent to prospective applicants, i.e. the interpreters on the National Police’s list. Before becoming a part of EasyTranslate’s permanent group of interpreters, an interested applicant needed to go through a ten-step employment procedure. It included brief e-learning modules on the legal system and on interpreting techniques, strategies and methods. There were two written tests, both focused on Danish, one in “general language proficiency” and one multiple choice test on “words and terminology”. Following this came two oral tests: a *prima vista* test where documents were to be rendered in Danish and the interpreting language, and one where a text was to be read sentence by sentence and translated accordingly, from Danish to the interpreting language, and vice versa. All was done online through the platform. Other elements included a job interview, also mediated by the platform, a security clearance for the police, and as the last element (ironically), an introduction to the online platform and digital tools.

### **Example 2.**



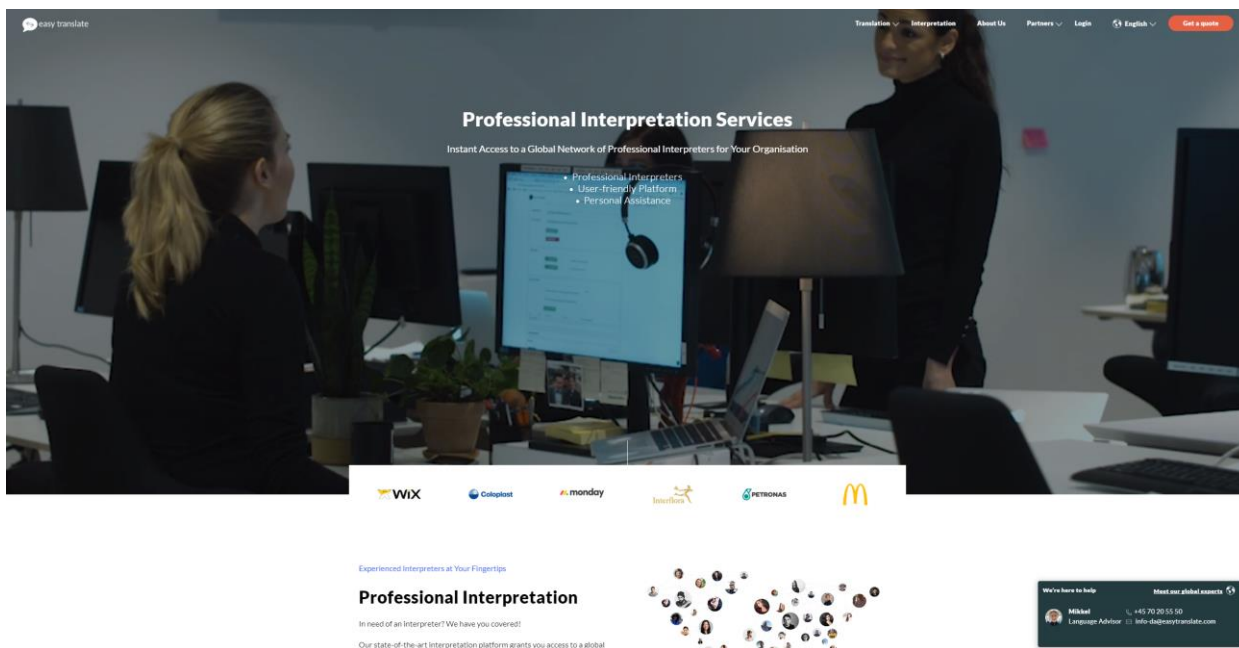


Flow chart text: 1 Join the mailing list; 2 Fill in your profile on the platform; 3 E-learning: Areas of Responsibility + Intro to authorities; 4 E-learning: Interpreting ethics and methods; 5 Recruitment interview; 6 Written test in general language skills; 7 Oral test: 2 Languages and Prima Vista; 8 Screening and security clearance; 9 Intro to platform and digital tools; 10 You are now ready to interpret and translate

The flow chart gives the impression of a smoothly operating, well-organized company, where one would be led effortlessly through each step. A solution-oriented company, in other words. The chart aligns with the general presentation of EasyTranslate on their website.<sup>3</sup> Here the (potential) customer meets a color scheme dominated by blue and white where well-dressed young professionals are represented as working with head-sets in front of large screens, or walking corridors in modern (glass, wood and steel) offices (Example 3). There is a choice between 11 languages, and logos of a number of well-known global companies, supposedly customers of EasyTranslate, are displayed. The website includes small texts, such as “Immediate access to our global network of more than 10.000 expert linguists”, and a small chat box carried the label “we are here to help you” and presents a personalized contact to a named “Language advisor.” When choosing “Interpreting” on the top menu, a loop video with two young women chatting over their computers forms the background of the text: “Experience the most efficient interpreting solutions to your public or private organization.” Also, one is offered “Instant interpreting by means of EasyTalq”, combining the first part of the company name with an unconventionally spelled word that indexed an essential part of the product (“talk”), perhaps signaling creativity, a future oriented mindset, and youthfulness. Together key words such as “efficiency” and “solutions”, a service orientation, and innovative orthography, a contemporary, simple aesthetics etc., suggest that EasyTranslate provides easy and smooth services, and that the company is therefore a safe and obvious choice in a new era of legal interpreting.

### Example 3.

<sup>3</sup> <https://www.easytranslate.com/en/interpretation/>, accessed February 21, 2020



### *Interpreters as professional expert authorities*

In this section, we focus on those interpreters who were on the original list of the National Police and who decided not to join EasyTranslate. We use professional expertise and professional authority as key words to discuss the line taken by the interpreters. Professional expertise and authority suggest a particular relation between an individual and an organization in terms of paid and skilled work, as well as epistemic superiority in relation to other participants (Metz 1978, Pace & Hemmings 2007). The concepts receive additional meaning when compared to the neoliberal regime promoted by EasyTranslate, as we will show.

To the interpreters, the new organization was alienating. Skills and expertise were important elements in the interpreters' professional identity, and they wanted recognition for it. One sign of the loss of recognition was the reduction of the hourly rates. In the beginning phases of the conflict (from November 2018) this came up in numerous news stories as an important theme:

#### **Example 4.**

“But the agreement is met with criticism in the Danish interpreter community, because EasyTranslate lowers the interpreters’ payment... According to the critics, it will make many of the well-educated interpreters search for greener pastures” (*Berlingske*; December 12, 2018)

#### **Example 5.**

“The value of the contract is estimated to approximately 520 million D.kr. but the interpreters are unsatisfied with the fact that the charges for their support have been lowered, and therefore they do not want to work with EasyTranslate” (*Finans.dk*, March 7, 2019)

#### **Example 6.**

“It is not about the specific company, but the whole culture of creating tenders, which we think will cause to deteriorate the interpreting quality because the most competent interpreters will flee’, says Farida Christensen, who is part of the initiative The Interpreters’ Platform, which has been in charge of collecting more than 600 signatures. One of the primary causes for the defection is the decrease in payment” (*Information*; March 15, 2019).

As the media excerpts show, the reduced payment was formulated as a direct consequence of the tender. It was compared to the high contract value, implying that in comparison it was unfair that the interpreters should be paid less. The interpreters did not want to “cooperate” with EasyTranslate under these conditions. Partly this was because of everyday concerns of how to make a living, and in addition, such reductions had a symbolic dimension. Less money meant less respect. Furthermore, the quotes suggest that the most well-educated will go elsewhere. This of course introduces a relation between payment and quality, as well as between level of expertise and attitude towards EasyTranslate. The interpreter in Example 6 addresses the contemporary political tendency to create tenders out of former state-owned institutions as the real source of the misery. EasyTranslate was just a piece in a much larger game. Many interpreters also blamed EasyTranslate directly, and many saw the National Police as being principally responsible.

Another early reaction to the reduced payment was the petition against EasyTranslate (mentioned in the quote from above) where interpreters expressed their dissatisfaction:

#### **Example 7.**

“For many years we have been developing our competences and experiences within translation and interpreting while working for the police, the court, and behind the desk. Unfortunately, experience shows that delegating translation and interpreting tasks to a third party contributes to deterioration in quality and to dissatisfied clients because lower rates and impaired conditions are incompatible with high quality and professionalism” (online petition<sup>4</sup>; December 1, 2019)

Whereas the CEO of EasyTranslate naturalizes the lowering of the payment (Example 1), a line of argumentation which points to the neoliberal understanding of production, distribution and circulation of values and resources, the interpreters’ argumentation is based on experience, that is, social realities and a human factor. This demonstrates two opposing ideas of the optimal organization of legal interpreting: one based on interpreting expertise and experience, and one based on an administrative and standardized neoliberal regime. Furthermore, the CEO argued that *lower payment* was a result of the tender, while the interpreters claimed that a *lower interpreting quality* would result from the introduction of an *intermediary* (“delegating ... tasks to a third party”). Again, two perspectives on (what is represented as) an endpoint of a chain of causation (lower payment; lower quality) are juxtaposed. Furthermore, in the interpreters’ representation, the lower payment is erased (Irvine & Gal 2000) as a step in the chain of causation: the victims are the “clients”, i.e. the court and police, and consequently the judicial system. In the representation by EasyTranslate, a lowering of quality is denied, and although suffering from lower income, the interpreters are represented as beneficiaries rather than victims. Notice that quality is emphasized by both parties, but quality is understood in different ways. We shall see in the next section that to the interpreters, ‘quality’ concerns language skills, knowledge of legal vocabulary, court room experience, and interpreter ethics.

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<sup>4</sup> [https://www.skrivunder.net/forenede\\_tolkes\\_erklaring?fbclid=IwAR2Hvhg-jQSa9IipmOfAOjL5Xim5oVtrsQqjO1yiF\\_ic6NrH84agHeXltrY](https://www.skrivunder.net/forenede_tolkes_erklaring?fbclid=IwAR2Hvhg-jQSa9IipmOfAOjL5Xim5oVtrsQqjO1yiF_ic6NrH84agHeXltrY)

In addition to the lower payment, and whatever effects this could have, some interpreters emphasized that in the new organization they were denied the direct contact with the interpreter users and the legal institutions, police and court. We had heard how interpreters preferred working in courts to other social domains because there, they felt reduced to unskilled labor. In contrast, in courts, they did not have to fight to get their money and they felt recognized. They saw police and court as both clients and close collaborators, and to deny them direct contact was regarded as another sign that the interpreters had lost the respect that they deserved. Rather than experts and professionals they were now becoming mere loose contractors. In the interview excerpt below, a certified, state-authorized translator and experienced court interpreter, originally educated in Law Studies, responds to our question about the problem why he did not want to work for EasyTranslate:

### Example 8.

- |  |   |
|--|---|
| 1. RES: men hvad tænker du er det <u>reelle</u> problem                | RES: but what do you think is the <u>real</u> problem         |
| 2. ved at tolkning bliver uddelegeret der                              | about interpreting now being outsourced                       |
| 3. ud over at ja   | there besides yeah  |
| 4. INT: det reelle problem er at det reelle problem er                 | INT: the real problem is that the real problem is             |
| 5. ikke tak[ster   | not the [fees   |
| 6. RES [nej  | RES [no   |
| 7. INT: det kan det godt være for nogle af mine                        | INT: it could be for some of my                               |
| 8. koll[eger   | collea[gues   |
| 9. RES: [ja det forstår jeg mhm mhm                                    | RES: [yes I understand that mhm mhm                           |
| 10. INT: det <u>kan</u> det (.) der er nogle af mine kolleger          | INT: it <u>could</u> be (.) some of my colleagues             |
| 11. RES: mm mm   | RES: mm mm  |
| 12. INT: der har miste[t det eneste ind[tægt                           | INT: have los[t their only income                             |
| 13. RES: [ja   | RES: [yes   |
| 14. INT: <u>nej</u> noget af det vigtigste <u>det vigtigste</u> af det | INT: <u>no</u> some of the most important (.) the <u>most</u> |
| 15. vigtigste (.) det er en følelse af                                 | of the most important (.) it's a feeling of                   |
| 16. hvem ens herre er (.)  | who one's master is (.)                                       |
| 17. RES: mhm mhm   | RES: mhm mhm  |
| 18. INT: jeg er <u>stolt</u> at arbejde for domstolene                 | INT: I am <u>proud</u> of working for the court               |
| 19. RES: mhm   | RES: mhm  |
| 20. INT: jeg er <u>stolt</u> at arbejde for politiet og                | INT: I am <u>proud</u> of working for the police              |
| 21. hvad du nu kunne du finde på (.)                                   | and other things around that (.) I do                         |
| 22. jeg gider (.) ikke (.) arbejde                                     | (.) not (.) want to work                                      |
| 23. for et privat firma på det område                                  | for a private company in that area                            |
| 24. RES: mhm   | RES: mhm  |
| 25. INT: jeg er (3.2) <i>officer of the court</i> [eng]                | INT: I am (3.2) <i>officer of the court</i>                   |
| 26. RES: okay  | RES: okay   |
| 27. INT: og ikke (.) EasyTranslate lad os nu sige at                   | INT: and not (.) EasyTranslate let's say that                 |
| 28. det er et fantastisk firma der betaler dobbelt                     | it's a great company that pays twice as                       |
| 29. så meget (.)   | much (.)  |
| 30. RES: ja  | RES: yeah   |
| 31. INT: det er en anden følelse                                       | INT: it's another feeling                                     |

This interpreter acknowledges the problem of lower payment but at the same time emphasizes the importance of working for the right ‘master.’ He describes himself as ‘an officer of the court,’ code-switching into English and using a dramatic long pause to underline the point. Thereby he demonstrates alignment with the interpreter user, and he reveals an understanding of him being a vital participant for the institution. The new organization certainly does not live up to his ideals. His account reflects ethical issues as well. The interpreter does not want to work for a private company – in fact, regardless of what they pay – “in that area”, i.e. the legal area. He hints at a paradox

between performing tasks which are essential to the legal system and having a private company as responsible for this.

However, several of his colleagues introduced moral issues as a theme. Although they usually referred to the lower payment as one reason for resentment, they argued that the lower payment was less important than moral issues. These merged with concerns regarding professional identity and belonging, as also mentioned by the interpreter above. One presented it as “humiliating” if she would have to work for EasyTranslate: “I do not want to work for the company which I do not trust and which I do not respect (...) I do not want someone to make money of me”. The fact that this was a commercial company for whom she was supposed to create value and profit was introduced as negative. This reappears in Example 9. Here an experienced interpreter with more than 30 years of practice, explained how she was provoked by the company’s lack of insight into the professional area of interpreting and search for profit:

### Example 9.

- |   |   |
|---|---|
| 1. INT: mit min største aver[s]ion                  | INT: my my greatest anti[pathy                      |
| 2. RES: [mm ja                                      | RES: [mm yeah                                       |
| 3. INT: øh (.) bygger på at at det e:r at det her   | INT: ah (.) builds on that that it i:s that this    |
| 4. firma styres af to personer som                  | company is led by two people who have               |
| 5. in-tet   | no-thing  |
| 6. RES: hmm   | RES: hmm  |
| 7. INT: har øh at gøre med tolk[ning                | INT: ah to do with inter[preting                    |
| 8. RES: [mm   | RES: [mm  |
| 9. INT: de har ingen begreb (.) om hvordan          | INT: they have no notion (.) of how                 |
| 10. tolkning foreg[år                               | interpreting is con[ducted                          |
| 11. RES: [mm  | RES: [mm  |
| 12. INT: de he:r mm den her dynamik er er for       | INT: that thi:s dynamics is is too                  |
| 13. for højt for dem men                            | too high for them but                               |
| 14. men de har ingen begreb om                      | they have no notion of                              |
| 15. hvad det betyder                                | what it means                                       |
| 16. RES: mm   | RES: mm   |
| 17. INT: og og (.) og og og det den måde de tager   | INT: and and (.) and and and the way they deal      |
| de har taget opgaven [på                            | they have dealt with the [task                      |
| 18. RES: [mm  | RES: [mm  |
| 19. INT: generer mig                                | INT: bothers me                                     |
| 20. RES: ja   | RES: yeah   |
| 21. INT: i ganske høj grad fordi for mig ser det ud | INT: to a very high extent because to me it looks   |
| 22. som om øhh for dem er det kun et firma          | like as if ahh to them it is only a company         |
| 23. som skal tjene penge                            | that earns money                                    |
| 24. RES: hmm  | RES: hmm  |
| 25. INT: og de har ikke øhm også i lyset af de      | INT: and they have not ahm also in the light of the |
| 26. seneste hæ- afsløringer så så så ser du ud      | latest he- disclosures then then then it looks      |
| 27. som de ikke har haft nogen øhm (.)              | like as if they don't have any ahm (.)              |
| 28. moralske forpligtelser                          | moral obligations                                   |
| 29. RES: mmm  | RES: mmm  |
| 30. INT: og en eller anden øh højere øh moral       | INT: and some kind of ah higher ah well ethics      |
| 31. altså erhvervsmoral på                          | work ethics to                                      |
| 32. RES: ja   | RES: yeah   |
| 33. INT: hæ og det kan jeg ikke altså jeg kan ikke  | INT: ha and well I cannot well I cannot             |
| 34. have (.) øh nogen som <u>helst</u> sympati for  | have (.) ah any sympathy whatsoever to              |
| 35. RES: nej nej                                    | RES: no no  |
| 36. INT: selvfølgelig og de:t er det kommer         | INT: of course and thi:s is this comes              |
| 37. virkelige på andenplads                         | really in second place                              |
| 38. RES: ja   | RES: yeah   |
| 39. INT: øh så så er det de forringede vilkår       | INT: ah then then it is the impaired conditions     |

The interpreter insists that EasyTranslate is led by “two people” who have “nothing to do with interpreting”, “have no notion of how interpreting is conducted”, and “have no notion of what it means”. That they are outsiders and only interested in profit-making is her “greatest antipathy”. It is hard to find a clearer illustration of how much value is put by the interpreters on professional expertise as an organizational basis. It returns in various ways in our material. For instance, in social forums for interpreters, spelling mistakes on EasyTranslate’s website, and job adds saying that EasyTranslate needed interpreters in “Pakistani” or “Iranian”, were quoted as examples of lack of linguistic expertise.

The lack of professional and linguistic expertise by EasyTranslate also became linked to the critical issue of a new test. This did not fare well with those who had been working for the court for many years:

### **Example 10.**

“But for interpreters who – just like me – have worked for many years for the police and the court, it is a humiliating requirement. This year I’ve been asked to show up 73 times at all kinds of interrogations, hearings and various investigations. What is the idea behind making me or others with the same experience take a test?” (*polennu.dk*; sourced on November 11, 2018).

The test was interpreted as a political statement that questioned the long-term expertise of the interpreters. Many interpreters ridiculed it as a multiple choice test, which could be taken as many times as one liked. The *prima vista* test was also administered by people who, again, were not professionally respected by many of the interpreters. More so than the test itself, the interpreters disapproved of the fact that they were tested by business people who did not even know that there was no Pakistani language. A test could in fact be a good idea – ‘the more you test, the more you can improve’ – as the interpreter in Example 9 said. A good test, however, would be a state matter, not linked to a private company’s business.

The interpreter in Example 9 further connects EasyTranslate’s lack of professional expertise to a lack of “work ethics”. The “latest disclosures” refer to a recent news story that the police made a considerable number of complaints about interpreters failing to show up which had been denied or kept secret until then. This alleged moral flaw is a much more important reason for her resentment than “the impaired conditions”, by which she means the reduction in payment: they are “really in the second place”. Although she here agrees with the interpreter in Example 8, by presenting it through this discursive move, she manages to position herself as morally superior to EasyTranslate. An obvious inference here is that in contrast to them she is not preoccupied with money but concerned with the essential part of legal interpreting. Ethics and morality were associated with other elements, too. Some interpreters mentioned the company’s previous ill-managed interpreting contracts, several of which had been cancelled prematurely. Others introduced the father of one of the managers as a moral problem. This father was a famous business entrepreneur but also a convicted tax fraud who had recently done prison time. Many interpreters immediately associated this relation with trouble, deceitful and even “deeply frivolous” behavior, and so this family relationship made the company vulnerable to distrust by interpreters – as well as to the general public and the legal system.

As the last part of this section, we will discuss a report produced by some of the interpreters who refused to work for EasyTranslate. The report came about in several steps. When EasyTranslate took over, a number of activist interpreters started doing observations and taking

notes in court, in particular in Copenhagen. They called themselves ‘peace guards’, recalling situations of labor conflicts where there is a formal strike, while at the same time insisting that they were not employed by EasyTranslate and therefore this was an entirely different situation. Their notes were published daily on social media platforms such as LinkedIn and Facebook. Several journalists and lawyers followed the developments through the closed fora, and some were e-mailed the notes.<sup>5</sup> By June 2019, an edited and compiled version – without the most controversial comments – was published online on the website of the Danish Parliament. The publisher was the newly established *The Interpreter Society* “Tolkesamfundet”, and the editors were key members of the organization. The new version, a 60-page long document, was entitled: *Documentation of interpreting services in the Court of Preliminary Hearings [DOMMERVAGTEN] in Copenhagen under the “Framework agreement on foreign language interpreting services” effectuated from 1<sup>st</sup> of April 2019*. Regardless of the title, which aligns with the naming of legal texts and thereby suggests objective neutrality, the report is far from being such an objective document. It aims to question the linguistic expertise and professional ethics of EasyTranslate and their hired interpreters. This is done through examples of language use and behavior represented as deviant, wrong and inadequate. Overall, the report is a strong metapragmatic statement about appropriate ways to use language in the courtroom context, and it is a heavy indication of the position that the former legal interpreters wanted to assume: as (the most qualified, most professional) experts on court room interpreting. At the same time, the authors invite readers to reach their own conclusions by suggesting, rather than imposing, an understanding by not stating their opinion explicitly. Thereby they do not themselves become an obvious target of disagreement.

The observing interpreters did not always speak the languages used during their observations, and so they often had to focus on the general performance and behavior of the EasyTranslate interpreter. This included pointing out that the EasyTranslate interpreters were unaware of court room formalities, e.g., that there is a designated seat for the interpreter: “The interpreter asked: ‘Where should I sit?’ (p. 36)” and “The interpreter had to be shown to the right chair after he sat at the chair shackled to the floor, and which was where the foreigner was supposed to sit” (p. 11). *The foreigner* (Dan: udlændingen) is a term used in court by the institutional representatives for accused persons with a non-Danish background. By using this term, the note-taking interpreters again demonstrate alignment with court room practices and thus professional expertise. They showed how the interpreting EasyTranslate interpreters were often unsure of themselves, here asking the judge: “What if I don’t understand?” or “Do I have to interpret concurrently?” (p. 36). They indicated that some interpreters had an unprofessional attitude, e.g., not maintaining the appropriate physical distance to the accused, causing unease, and blaming the accused when things went wrong: “(The interpreter) sits very close to the foreigner who tries to move a bit away and create some distance but the interpreter moves along. The communication goes awry but the interpreter blames it on the foreigner’s English” (p. 6). The authors erased themselves in the text by using (more or less) direct quotations from the court officials, often the judge, as here where different judges explain to the interpreters when, how and what to interpret: “You need to interpret everything” (p. 36) “You need to interpret continuously ... come on you need to interpret” (p. 14), “You have to interpret now” (p. 13). These examples are used to indicate both the interpreter’s lack of competence *and* the frustration of the institution.

In terms of language skills, the authors point out inappropriate, omitted or simplified (legal) terminology, and incomprehensible or accented Danish: “The interpreter made a lot of mistakes

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<sup>5</sup> We followed these fora, but as they were closed, we cannot cite from the original material.

concerning birth dates and numbers. In addition, ‘entrance nr 9’ was translated as ‘building number 9’, ‘expulsion’ was translated as ‘travel out of the country’. The interpreter asked the prosecutor to explain the meaning of ‘delaying effect’” (p. 38). In other examples an interpreter is quoted for referring to the area of Copenhagen named *Vesterbro* as "that area" and to ‘passers-by’ as "different people". With regard to this specific instance, the authors describe how “during the whole session the defense lawyer looks up at the ceiling and performs an upward gesture with his arms in despair” (p. 6). The EasyTranslate interpreters are repeatedly criticized for using 3<sup>rd</sup> prs.sg. rather than 1<sup>st</sup> prs.sg., when this is used by the people that they interpret for, as a strong norm for interpreters dictates. It is also noticed that some produce noticeably shorter utterances in one of the languages. This deviates from the norm of denotational equivalence and transparency (Haviland 2003) whereby turns in each language ought to be of equal length: “When the interpreter interprets, it is done consecutively and consistently in 3<sup>rd</sup> person. The length of the Arabic part is somewhat shorter than the Danish [part].” (p. 32)

Another theme relates to the institutional frustration over EasyTranslate. Reported conversations concern errors in EasyTranslate’s booking system which result in interpreters not showing up or showing up too late for a case. This is from a case where an interpreter fails to turn up: “The Judge: Isn’t it the new system where the interpreter will simply be here on time?” (p. 3). In general, the booking system is treated as inflexible, and thus, the promise of efficiency fails to materialize in practice.

As readers we are invited to question EasyTranslate’s morality in several respects. For instance, EasyTranslate summons interpreters from across the country. This leads to extremely expensive and time-consuming trips from distant areas to Copenhagen. It is suggested that EasyTranslate abuses this as a way to increase their profit, and in any case, this has made the situation “not tenable in the long run” (p. 13), as several judges comment.

In sum, through this report the observing interpreters positioned themselves as high-skilled professionals, while the interpreters working for EasyTranslate were constructed as amateurs with no knowledge of (even rudimentary) court procedures. As a metapragmatic statement, the document demonstrated how the interpreters who refused to work for EasyTranslate claimed a superior knowledge position in relation to the National Police, the company itself, and perhaps even the legal system. They claimed to be expert authorities who were able to evaluate what they saw and heard, and who argued that their insight needed to be taken seriously. The report is a testimony that negates the neoliberal rationality as superior and puts professional language expertise in its place.

## **Concluding remarks**

This paper has treated legal interpreting as a commercial product and social phenomenon. We have focused on what we see as a confrontation between two regimes in the organization of legal interpreting in Denmark: a regime of neoliberal governance and a regime of professional expert authority. The regime of neoliberal governance, articulated in the process of outsourcing legal interpreting to the private company EasyTranslate, targets interpreting as a process and a technology – a business solution where prices are estimated accordingly. The neoliberal logic was well represented in our data through the recurrent use of well-known entrepreneurial key words such as “quality”, “efficiency”, “innovation”, “quality”, and “flexibility” (cf. Martín Rojo & Del Percio 2019: 13).

In contrast, the regime of expertise constructs interpreting as a professional practice based on language competences, domain specific experience, and an important work ethic. This was represented through the insistence on the combination of linguistic and court expertise and



experience as foundational for providing the legal system with the best quality. The two regimes had different understandings of governance, quality and morality, which, not surprisingly, resulted in a conflictual situation. What we learned from this is that neoliberal rationality is obviously just one form of rationality (Martín Rojo & Del Percio 2019: 9), and that it can – still – be contested.

How does all of this chime with the theme of fairness and social justice? Of Fraser's three types, the interpreters' struggle for economic and professional recognition concerned socio-economic justice. To them, the reduced influence and economic profit was unjustified and came with no acceptable motivation. They were freelancers with no job security and no long-term engagement, and they could only see EasyTranslate as an intermediary that would take money out of the chain of production without adding value. It would corrupt the system that they knew, and they certainly alluded to aspects of socio-cultural justice, too. Interpreters found themselves not recognized societally, as language skills were being devalued in general (we return to this in a moment). However, they found an important role in the legal system, and they also found that here they did receive some degree of recognition for their professional work. This was mentioned by many. Now this would also disappear. They did not feel heard when the decision about the outsourcing was taken, and they did not find that they had an equally central position represented in the new system. So, as a result, they could only see unfair degradation of themselves and their profession. Socio-economic justice could be achieved through a better payment and better work conditions, and, if an intermediary was to be introduced, socio-cultural justice could perhaps be better achieved by having professional experts – people with language and interpreting expertise – taking charge of legal interpreting.

There is another side to the case. This concerns legal interpreting as a corner stone in the system of justice, and has several aspects, of which we can only mention a few.

Interpreting is provided in order to enable the participation of people without Danish skills in cases of relevance to them. Interpreting gives the legal system access to essential information in order to make the correct decisions (verdicts etc.), and it gives the accused or the defendants a possibility of being heard as well as of understanding what others say. It should thus be obvious that good interpreting is essential for the rule of law as well as for what Fraser termed “political participation.” Yet, in Denmark, this element faces several obstacles. Some of these emerged, or were severely aggravated, during the conflict between the National Police and the interpreters, and some just became more visible.

The ones that emerged concerned the difficulties in getting interpreters. As more than half of the interpreters on the original list used by the National Police refused to work for EasyTranslate, the company found itself short of interpreters. They had promised to deliver 98% of the required interpreters – but that became very hard to live up to. As a result, court cases were delayed, defendants were waiting in prisons for extended periods of time, some accused persons were even let loose. This was because there is a legal requirement to present any detained person before a judge within 24 hours, and if no interpreter was to be found, there was no other option. This created a societal uproar. But what we want to point out here, perhaps a bit polemically, is that this untenable situation, initiated by the tender, was accentuated and thereby co-created by the decision of so many interpreters not to work for the private company. By saying this we do not want to blame the interpreters for what happened. But we do want to point out that the new situation was far from fair and just, seen from the perspective of the detained persons, or even from the general public. Whereas the non-cooperating interpreters were certainly weak participants relative to the National Police and to EasyTranslate, they were strong and powerful in relation to those detained by the authorities. Strong and weak, justice and fairness, are often relative to particular situations and to a particular scale. For the individual interpreter, or detained person, the situation was very

different from how it looked from a more general perspective where standardization, measurability and efficient administration seemed to have more currency.

The other issue we want to draw out concerns the general devaluation of interpreting as a profession. Actually this tragic situation concerns language skills in general, and it is reflected by a general decline in language studies in higher education and particularly by the current lack of availability of training, education and certification for professional interpreters (Verstraete & Øhrgaard 2017). Today (2020), the vast majority of legal interpreters have no diplomas in language, nor any kind of interpreter training. In 2018 the National Audit Office estimated that this applies to approximately 77%. Almost all full programs in interpreting are gone, and even the protection of the title *state-authorized translator* (or *sworn translator*) based on an MA degree in a language + translation studies from the business university was abandoned (2016). This was facilitated by a liberal-conservative government, the same government that agreed that legal interpreting should be put out to tender partly because of problems with interpreting/interpreter quality. Thus, as it is, the interpreter is conceptualized as in charge of his/her own enskillment, and (what is regarded as) insufficient linguistic skills for the job are still blamed uniquely on the interpreter. The institutional side to this – focusing on the responsibility of the authorities to make available interpreter training – is much less in focus. We believe that this societal failure to provide training and certification, and thereby secure the possibilities for people with no or little Danish skills to get good interpreting, is also a vital question of social justice. And in fact, for a brief period of time, the chaos that emerged after hiring EasyTranslate seemed to make both politicians and the general public aware of the serious problems. One should not be able to engage just who ever claims to speak a particular language as a professional interpreter. Yet, now (May 2020) this seems to have been erased from the collective memory again. Legal interpreting has returned to the status quo before the tender: The National Police administers all legal interpreting by maintaining a list of interpreters, the skills, education and experience of whom are almost completely opaque.

So, to conclude: in this paper we have tried to add some perspectives to recent discussions on the political economy and commodification of language. We have focused on professional language workers and the court, including the general valuation of professional multilingualism and the ways in which non-Danish speakers charged with a criminal offense are offered possibilities for active participation in their case. And we end by suggesting that social justice, for interpreters, accused and defendants and the court in general, can only be achieved through a social change in which language skills are societally recognized, where interpreting becomes a certified profession, and where interpreter and language training is available.

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## Transcription conventions

[	overlap
<u>underline</u>	emphasis
:	prolonged vowel
(.)	pause less than 0.5 seconds
(3.7)	pause of 3.7 seconds
<i>officer of the court</i> [[eng]]	Code-switch to English