

The rights to information, interpretation and translation under the case-law of the CJEU



Dr. Sławomir Buczma
Lisbon, 28 February 2020

The rights to information, interpretation and translation

- Directive 2010/64/EU of 20 October 2010 on the right to interpretation and translation in criminal proceedings
- Directive 2012/13/EU of 22 May 2012 on the right to information in criminal proceedings
- Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 – living instrument ([ECtHR](#) *Tyrer v. United Kingdom* (1978))



Relation to the Council of Europe's standards

- Directives 2010/64 and 2012/13 set minimum rules (higher level of protection possible also in situations not explicitly dealt with by these Directives).
- The level of protection should never fall below the standards provided by the ECHR or the Charter as interpreted in the case-law of the [ECtHR](#) or the CJEU.
- The provisions of this Directive that correspond to rights guaranteed by the ECHR or the Charter should be interpreted and implemented consistently with those rights, as interpreted in the case-law of the [ECtHR](#).



Right to a fair trial



- Article 6.1 of the ECHR: In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. (...)
- Rights to be granted in pre-trial stage, incl. police examination ([ECtHR *Salduz v. Turkey; Foti and others v. Italy*](#))

Right to a fair trial



- Article 6.3 of the ECHR: Everyone charged with a criminal offence has the following minimum rights:
 - (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - (b) to have adequate time and facilities for the preparation of his defence;
 - (...)
 - (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.
- *Criminal proceedings* – three criteria to assess if the person is subject to a criminal charge ([ECtHR Engel v. Netherlands](#)); regulatory offences (*Öztürk v. Germany*, No. 8544/79, 21.02.1984), road-traffic offences (*Lutz v. Germany*)

Right to a fair trial



- ‘*Criminal charge*’ (Directives refer to suspects in criminal proceedings)
 - the official notification given by competent authority to an individual of an allegation that he has committed criminal offence, regardless of any formal charges ([ECtHR *Dewer v. Belgium*](#); *Eckle v. Germany*; *Brusco v. France*)
- Right to information on the nature and cause of accusation to be interpreted in the light of the right to a fair trial (*Sejdovic v. Italy*, 56581/00) or the right to have adequate time and facilities for the preparation of defence (*Dallos v. Hungary*, 29082/95)

The rights to interpretation and translation



- Directive 2010/64 applies in criminal proceedings and proceedings for the execution of a European arrest warrant (Article 1.1.) - criminal offences (minor offences covered under Article 1.3)
- Directive 2010/64 applies from the time that the defendant was made aware by the competent authorities of a Member State, by official notification or otherwise, that they are suspected or accused of having committed a criminal offence until the conclusion of the proceedings, which is understood to mean the final determination of the question whether they have committed the offence, including, where applicable, sentencing and the resolution of any appeal
- Directive 2010/64 seeks to ensure, for suspected or accused persons who do not speak or understand the language of the proceedings, the right to interpretation and translation by facilitating the application of that right with a view to ensuring that those persons have a fair trial.
- A special procedure, which has as its purpose the recognition of a final judicial decision handed down by a court of another Member State, takes place, by definition, after the final determination of whether the suspected or accused person committed the offence and, where applicable, after the sentencing of that person (*István Balogh*, C-25/15).

The rights to interpretation and translation



Determination of the term 'judgment'

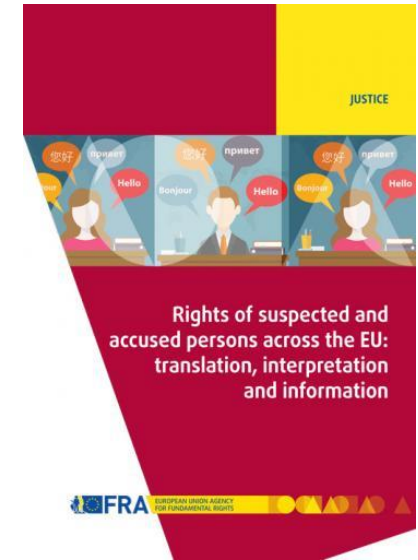
- Article 3(1) of Directive 2010/64 provides for the right of suspected or accused persons who do not understand the language of the criminal proceedings in question to obtain a written translation of all 'documents which are essential'
- Article 3(2) of Directive 2010/64 states that such documents are to include any decision depriving a person of his liberty, any charge or indictment, and any judgment.
- According to Article 3 of Directive 2010/64, **an order** provided for in national law for imposing sanctions in relation to minor offences and delivered by a judge following a simplified unilateral procedure, constitutes a 'document which is essential', of which a written translation must, in accordance with the formal requirements laid down in that provision, be provided to suspected or accused persons who do not understand the language of the proceedings in question, for the purposes of enabling them to exercise their rights of defence and thus of safeguarding the fairness of the proceedings (*Sleutjes*, C-278/16).

The right to translation of essential documents



- the ECtHR case-law - compliance with the requirements relating to a fair trial merely ensures that the accused person knows what is being alleged against him and can defend himself, and does not necessitate a written translation of all items of written evidence or official documents in the procedure (ECtHR, *Kamasinski v. Austria*, 19.12.1989).
- Articles 1 to 3 of Directive 2010/64 must be interpreted as not precluding national legislation, which in criminal proceedings, does not permit the individual against whom a penalty order has been made to lodge an objection in writing against that order in a language other than that of the proceedings, even though that individual does not have a command of the language of the proceedings, provided that the competent authorities do not consider, in accordance with Article 3(3) of that directive, that, in the light of the proceedings concerned and the circumstances of the case, such an objection constitutes an essential document (*Covaci*, C-216/14)

The rights to interpretation and translation



- ECtHR and CJEU case law on translation and interpretation rights covered in Directive 2010/64
 - Ascertaining the necessity of interpretation, including timeline for providing interpretation (Article 2) - assessment of language skills
 - ECtHR Cuscani v. the United Kingdom, No. 32771/96, 24.09.2002,
 - K v. France, No. 10210/82, 7.12.1983
 - Hermi v. Italy [GC], No. 18114/02, 18.10.2006
 - Defining 'essential documents' (Article 3) - those which facilitate the exercise of the right to defence and allow participation in proceedings
- CJEU C-216/14, Criminal proceedings against G. Covaci, 15.10.2015 C-25/15, Criminal proceedings against I. Balogh, 9.06.2016
- ECtHR Hermi v. Italy [GC], No. 18114/02, 18 October 2006
 - Quality of the translation and interpretation (Article 5) - use of non-official, nonprofessional translators and interpreters may be sufficient to satisfy requirements
 - ECtHR Cuscani v. Italy, No. 32771/96, 24 September 2002 Gungor v. Germany (dec.), No. 31540/96, 17 May 2001 Kamasinski v. Austria, No. 9783/82, 19 December 1989
 - Access to remedies (Articles 2(5) and 3(5)) Complaints that quality of the interpretation is not sufficient to safeguard the fairness of proceedings
 - ECtHR Kamasinski v. Austria, No. 9783/82, 19.12.1989

Right to information about legal remedy



- Articles 2, 3(1)(c) and 6(1) and (3) of Directive 2012/13 must be interpreted as not precluding legislation of a Member State, which in criminal proceedings, makes it mandatory for an accused person not residing in that MS to appoint a person authorised to accept service of a penalty order concerning him, provided that that accused person does in fact have the benefit of the whole of the prescribed period for lodging an objection against that order (*Covaci*, C-216/14)
- Article 6 of Directive 2012/13 requires that when the penalty order is enforced, as soon as the person concerned has actually become aware of the order, he should be placed in the same situation as if that order had been served on him personally and, in particular, that he have the whole of the prescribed period for lodging an objection, where necessary, benefiting from having his position restored to the *status quo ante* (non-discrimination principle).
- It is for the referring court to ensure that the national procedure for the accused person's position being restored to the *status quo ante* and the conditions to which the exercise of that procedure is subject are applied in a manner consistent with those requirements and that that procedure thus permits the effective exercise of the rights provided for in Article 6 (*Tranca and Others*, C-124/16)

Information about the accusation



- The objective of Articles 6 and 7 is to allow for an effective exercise of the rights of the defence and to ensure the fairness of the proceedings (*Tranca and Others*, C-124/16, C-188/16 and C-213/16).
- The person accused must receive detailed information on the charges and have the opportunity to acquaint himself with the case materials in due time, at a point in time that enables him to prepare his defence effectively, as is moreover laid down in Article 7(3) of Directive 2012/13 in relation to access to the file, it being specified that the sending of incomplete information and the granting of partial access to the case materials are in that regard insufficient.
- Information about the cause of accusation (the material facts) as well as the nature of accusation (the legal qualification of the material facts) – [ECTHR](#) *Mattocia v. Italy*

Information about the case-material



- Directive 2012/13 does not require the point in time when detailed information on the charges is disclosed and the point in time when access to the case materials is provided to be identical.
- That point in time may, depending on the specific circumstances and the type of proceedings in question, be prior to or contemporaneous with the time when the court is seised, or even after that time. Disclosure should take place, and that the opportunity to have access to the case materials should be afforded, no later than the point in time when the hearing of argument on the merits of the charges in fact commences before the court that has jurisdiction to give a ruling on the merit (*Kolev and Others*, C-612/15)
- Article 6(3) of Directive 2012/13 must be interpreted as not precluding the disclosure of detailed information on the charges to the defence after the lodging before the court of the indictment that initiates the trial stage of proceedings, but before the court begins to examine the merits of the charges and before the commencement of hearing of argument before the court, and after the commencement of that hearing but before the stage of deliberation, where the information thus disclosed is the subject of subsequent amendments, provided that all necessary measures are taken by the court in order to ensure respect for the rights of the defence and the fairness of the proceedings (*Kolev and Others*, C-612/15)

Access to materials of the case



- Article 7(2) and (3) of Directive 2012/13 is to be exercised, that in the event the person accused or his lawyer has been summoned in order to obtain access, as requested, to those case materials during the pre-trial stage of the proceedings but where, for legitimate reasons or for reasons outside their control, they have not been able to attend on the day they are summoned to do so, respect for the rights of the defence and the fairness of proceedings, to which that provision is designed to give effect, requires that the prosecuting or judicial authorities, as appropriate, take the measures necessary to ensure that that person or his lawyer is given a further opportunity to become acquainted with the case materials.
- Deprivation of the right to access to case file may lead to a breach of the principle of equality of arms ([ECtHR: Kuopila v. Finland](#)), the same effect if a suspect has limited access to the case file on the grounds of public interests ([ECtHR: Matyjek v. Poland](#))

Access to essential documents for challenging the arrest or detention

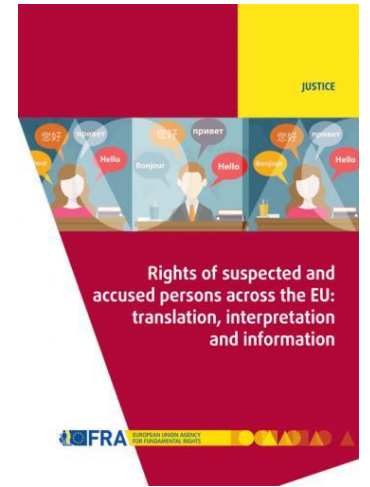


- **ECtHR judgments:** it is not excluded that part of the case materials could be kept secret in order to prevent suspects from tampering with evidence and undermining the course of justice (ECtHR, 9.07.2009, *Mooren v. Germany*, n°11364/03).
- Such denial of access cannot be pursued at the expense of substantial restrictions on the rights of defence. Therefore, information which is essential for the assessment of the lawfulness of detention should be made available in an appropriate manner to the suspect's lawyer' (ECtHR 9.01.2003, *Shishkov v. Bulgaria*, No38822/97).
- In some cases reference is made to the presence of 'counterbalancing factors' which should ensure that the person or their lawyer have the possibility to effectively challenge the detention (ECtHR 20.02.2014, *Ovsjannikov v. Estonia*, n° 1346/12; 13.04.2017, *Podeschi v. San Marino*, n°66357/14).

Right to information

- CJEU and ECtHR case law on right to information covered in selected Articles of Directive 2012/13
- Providing information on procedural rights ([Article 3](#)) - when does the obligation to inform suspects and accused persons about their rights arise?
[ECtHR](#) judgments: Adolf v. Austria, No. 8269/78, 26.03.1982 Deweer v. Belgium, No. 6903/75, 27.02.1980 Eckle v. Germany, No. 8130/78, 15.07.1982 Engel and Others v. the Netherlands, No. 5100/71, 5101/71, 5102/71, 5354/72, 8.06.1976
- Providing information on procedural rights upon arrest ([Article 4](#)) - extent of information provided
- HB v. Switzerland, No. 26899/95, 5.04.2001
- Form of information provided - Panovits v. Cyprus, No. 4268/04, 11.12.2008 Saman v. Turkey, No. 35292/05, 5.04.2011
- Promptness of information provided Murray v. the United Kingdom, No. 14310/88, 28.10.1994
- Providing information on the accusation ([Article 6](#)) C-216/14, Criminal proceedings against Gavril Covaci, 15.10.2015
- The right of access to case materials ([Article 7](#)) - type of material evidence that can be accessed and form of access Kremzow v. Austria, No. 12350/86, 21.09.1993
- Applicable grounds for refusal and their review - Rowe and Davis v. the United Kingdom [GC], No. 28901/95; 16.02.2000 Kremzow v. Austria, No. 12350/86, 21.09.1993
- Vulnerable persons ([Article 3\(2\)](#)) - Accommodating needs of persons with hearing impairments

[ECtHR](#) Timergaliyev v. Russia, No. 40631/02, 14.10.2008





Rights related to EAW



- Right to be heard/ Right of the defence – Articles 47 and 48 Charter - EAW cannot be refused on the sole basis that the requested person was not heard in the issuing State (*Radu*, C-396/11)
- Right to an effective judicial remedy - Article 53 Charter - Member States' constitutions (*Melloni*, C-399/11)
- Right to be heard by an independent judicial authority (*LM*, C-216/18)
- The holding of the requested person in custody (*Lanigan*, C-237/15)

