

***THE RIGHTS TO  
INTERPRETATION,  
AND TRANSLATION,  
INFORMATION AND  
ACCESS TO A LAWYER  
IN THE CASE LAW OF  
THE CJEU AND KEY  
JUDGMENTS OF THE  
ECTHR***



Co-funded by the Justice  
Programme of the European Union  
2014-2020

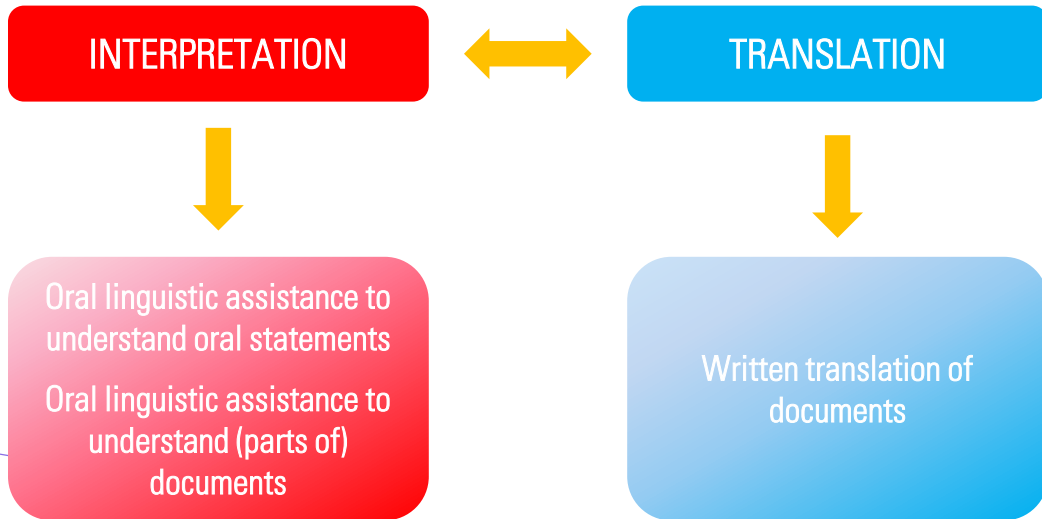
Dr. Anna Mosna  
Post-Doctoral Researcher  
KU Leuven

1 FEBRUARY 2021

## *SYNOPSIS*

- A. The right to interpretation and translation
- B. The right to information
- c. The right of access to a lawyer

## A. THE RIGHT TO INTERPRETATION AND TRANSLATION



## A. THE RIGHT TO INTERPRETATION AND TRANSLATION

### Article 6 § 3 (e) ECHR

right of everyone charged with a criminal offence to have the **free assistance of an interpreter** if he **cannot understand or speak** the language used in court

### ECtHR case-law

- **Vehicular** language acceptable (*Vizgirda v. Slovenia* § 83)
- Must be granted **whenever there are reasons to suspect** that defendant is not proficient enough (*Vizgirda v. Slovenia* § 81)
- **Does not apply to relation client-lawyer** (*X. v. Austria*, Commission decision)
- Must be **free even in case of conviction** (*Luedicke, Belkacem and Koç v. Germany* § 42, 46)
- **Must be adequate** (*Knox v. Italy*, §§ 182-186), adequacy must be controlled (*Kamasinski v. Austria* § 74, *Hermi v. Italy* § 80)
- **Does not refer to written translation** (*Kamasinski v. Austria* § 74)

## A. THE RIGHT TO INTERPRETATION AND TRANSLATION

### Directive 2010/64/EU

**Article 2** on right to interpretation extends it also to certain communications between suspected or accused persons and their legal counsel

**Article 3** establishes right to **translation of essential documents** (including decisions depriving a person of his liberty, any charge or indictment, and any judgment)

### CJEU case-law

- right to translation refers in principle to the translation of court documents towards the language the suspected or accused person understands – and not the other way around, provided document is not considered essential (**Covaci** §§ 44, 47)
- Penalty orders imposing sanctions in relation to minor offences delivered after a simplified procedure are essential documents that must be translated → because a penalty order represents both an indictment and a judgment (**Sleutjes** §§ 31, 34)

## B. THE RIGHT TO INFORMATION

### Article 6 § 3 (a) ECHR

Right of everyone charged with a criminal offence to be **informed promptly**, in a language which he understands and in detail, of the **nature and cause** of the accusation against him

### ECtHR case-law

- There is no special formal requirement as to the manner in which information is delivered (**Pélissier and Sassi v. France** § 53, **Drassich v. Italy** § 34)
- Duty to inform rests entirely on the prosecution, it is not sufficient to make information passively available without bringing it to the attention of the defence (**Mattoccia v. Italy** § 65)
- Promptly: in good time for the preparation of the defence: (**C. v. Italy**, Commission decision, contra: **Borisova v. Bulgaria** §§ 43-45)
- Information must actually be received by the accused (legal presumption of receipt is not sufficient) (**C v. Italy**, Commission decision).

H  
O  
W

## B. THE RIGHT TO INFORMATION

- Information must contain **factual and legal basis** of the charge (**Pélissier and Sassi v. France** § 51 and **Kamasinski v. Austria** § 79, **Mattoccia v. Italy** § 59)
- Information must be **detailed enough** to allow the defendant to fully understand the charges against him in order to prepare and adequate defence (**Mattoccia v. Italy** § 60) → for example: offences must be listed, place and date of the offence, relevant articles of the criminal code and the name of the victim (**Brozicek v. Italy** § 42)

W  
H  
A  
T

## B. THE RIGHT TO INFORMATION

- **Change in legal characterisation** must be contained in the bill of indictment or at least given during the trial (**I.H. and others v. Austria**, § 34)
- **Requalification of the facts** → must allow practical and effective exercise of defence rights (**Pélissier and Sassi v. France** § 62)
- **Defect in notification** of the reformulated charge could be **cured in appeal proceedings** if the defendant can contest his conviction in front of the higher court with respect to all relevant legal and factual aspects (**Dallos v. Hungary** §§ 49-52; **Sipavicius v. Lithuania** §§ 30-33)

C  
H  
A  
N  
G  
E  
S

## B. THE RIGHT TO INFORMATION

- No need to mention evidence on which the charge is based (**X v. Belgium**, Commission decision; **Collozza and Rubinat v. Italy**, Commission decision)
- consider: in case of arrest, Article 5 § 2 ECHR applies → prompt information on the reasons for arrest and any charge against, see **Fox, Campbell and Hartley v. UK** § 40

W  
H  
A  
T  
  
N  
O  
T

## B. THE RIGHT TO INFORMATION

- If a person has mental difficulties, authorities are required to take additional steps to enable the person to be informed (**Vaudelle v. France** § 65)
- If a person does not speak the language of the court, a translation must be provided (**Brozicek v. Italy** § 41)
  - translation of an indictment should be given in written form so as to avoid a practical disadvantage for the defendant (**Hermi v. Italy** § 68, **Kamasinski v. Austria** § 79)
  - but, depending on the case, also oral translation could suffice if the defendant is still able to prepare his defence (**Husain v. Italy**, dec)
- Linguistic assistance is free (**Luedicke, Belkacem and Koç v. Germany** § 45)

E  
F  
F  
E  
C  
T  
I  
V  
E

## B. THE RIGHT TO INFORMATION

### DIRECTIVE 2012/13/EU

right to receive  
instruction about his  
procedural rights

right to be informed  
about the charge

right to access the  
case file

## B. THE RIGHT TO INFORMATION

### CJEU case-law

- Suspects must be informed as soon as possible from the moment they are subject to suspicions that justify, on therapeutic and safety grounds the restriction of their liberty; at the latest before they are first officially questioned by the police (EP §§ 45-46, 53-54)

I  
N  
F  
O  
R  
M  
A  
T  
I  
O  
N

## B. THE RIGHT TO INFORMATION

### CJEU case-law

- Can be after the lodging of an indictment that initiates the trial stage, but no later than the actual commencement of the hearing of argument on the merits of the charges (Kolev and Others §§ 92, 99)

I  
N  
F  
O  
R  
M  
A  
T  
I  
O  
N

A  
C  
C  
E  
S  
S  
I  
B  
L  
E

## B. THE RIGHT TO INFORMATION

### CJEU case-law

- Amendments to the charges must be notified at a point in time when the defence still have the opportunity to respond effectively (Kolev and Others §§ 95, 99; Moro § 55)
  - where only legal characterisation is amended: right to information does not imply the right to request a negotiated penalty after the beginning of the trial (Moro § 63)
- Actual awareness is required: where penalty order is served to authorised person → accused person must have the benefit of the whole prescribed period for lodging an objection or have his position restored to the status quo ante (Covaci §§ 66-68; Tranca and Others §§ 50-51; UY § 60)
  - Accused person cannot be held criminally liable for infringing a penalty order that has become *res iudicata* if the person did not have knowledge of that order (UY § 65)

I  
N  
F  
O  
R  
M  
A  
T  
I  
O  
N

## C. THE RIGHT OF ACCESS TO A LAWYER

### Article 6 § 3 (C) ECHR

right of everyone charged with a criminal offence to **defend himself in person or through legal assistance of his own choosing (...)**

### ECtHR: Salduz v. Turkey

- right to be effectively defended by a lawyer is **fundamental feature of fair trial**
- access to a lawyer should be provided as **from the first interrogation of a suspect by the police**
- Unless: **compelling reasons** to restrict this right → such restriction must not unduly prejudice the rights under Article 6

(Salduz v. Turkey §§ 51, 55)

## C. THE RIGHT OF ACCESS TO A LAWYER

- Even **before the start of the trial** if trial fairness could be seriously prejudiced by initial failure to comply with Article 6 ECHR (**Öcalan v. Turkey** § 131, **Ibrahim and Others v. UK** § 253, **Magee v. UK** § 41)
- As soon as there is a **criminal charge** (**Simeonovi v. Bulgaria** § 110) → no need for a formal charge: plausible reasons for suspecting the person of a crime suffice (**Truten v. Ukraine** § 66)
- **Two minimum requirements**: a) right to contact and consultation with a lawyer prior to interview, including confidential instructions to the lawyer; b) presence of the lawyer at police interview and any further questioning in the pre-trial proceedings (**Beuze v. Belgium** §§ 133-134)
- Application of this right in the **pre-trial phase** depends on special features of national proceedings (**Ibrahim and Others v. UK** § 253, **Brennan v. UK** § 45, **Berliński v. Poland** § 75).
- Also application of this right in **appellate and cassation proceedings** depends on special features of the proceedings involved (**Meftah and Others v. France** § 41)

S  
C  
O  
P  
E



## C. THE RIGHT OF ACCESS TO A LAWYER

- R. to **access**: only for **compelling reasons**: exceptional circumstances, temporary in nature and based on the assessment of the particular circumstances of the case → general risk of leaks is not a compelling reason (**Ibrahim and Others v. UK** §§ 258-259)
- R. to **choose**: if there are **relevant and sufficient reasons** for holding that this is necessary in the interest of justice (**Meftah and Others v. France** §§ 45, 47)
- R. of **confidential communications** between the accused and his lawyer → only in **exceptional circumstances** (**Sakhnovskiy v. Russia** § 102): e.g. to prevent a risk of collusion or in case of issues concerning the lawyer's professional ethics or unlawful conduct (**S. v. Switzerland** § 49, **Rybacki v. Poland** § 59)

R  
E  
S  
T  
R  
I  
C  
T  
I  
O  
N  
S

## C. THE RIGHT OF ACCESS TO A LAWYER

- must satisfy the "**knowing and intelligent waiver standard**" (**Ibrahim and Others v. UK** § 272)
- it is a **trial court's duty to verify** that waiver was voluntary – failure to do so would deprive the defendant the possibility to remedy the situation (**Türk v. Turkey** § 53-54)

W  
A  
I  
V  
E  
R

## C. THE RIGHT OF ACCESS TO A LAWYER

- Effectiveness of legal assistance → must be “practical and effective” (**Artico v. Italy** § 33)
- States’ responsibility is limited as the conduct of the defence is a matter between the accused and his lawyer (**Imborscia v. Switzerland** § 41)
- privately hired lawyers → only if **manifest failure** to provide effective representation, considering the circumstances of the case: e.g. accused’s young age, seriousness of charge, contradictory allegations against him, failure of the lawyer to attend multiple hearings, accused’s many absences from the hearings (**Güveç v. Turkey** § 131)

E  
F  
F  
E  
C  
T  
I  
V  
E

## C. THE RIGHT OF ACCESS TO A LAWYER

### CJEU case-law

- Directive 2013/48/EU applies also to judicial proceedings triggered by the commission of an offence and which authorise, on therapeutic and safety grounds, the **committal to a psychiatric hospital** of persons who, in a state of insanity, have committed acts representing a danger to society (**EP** §§ 54, 63)
- Grounds for **restrictions** of the right of access to a lawyer are **exhaustively listed** under Article 3 §§ 5 and 6 Directive 2013/48/EU – **no delays are allowed for suspects or accused who have failed to appear** (**VW** §§ 42-43, 48)
- The right to be assisted by a **lawyer of his own choosing** may be **restricted** where that lawyer is instructed also by another accused person and there is a **conflict of interest** between the two defendants (**Kolev and Others** §§ 106, 111)

Article 47 § 2  
Charter

Directive  
2013/48/EU

THANK YOU FOR YOUR ATTENTION!

[annamosna@yahoo.de](mailto:annamosna@yahoo.de)