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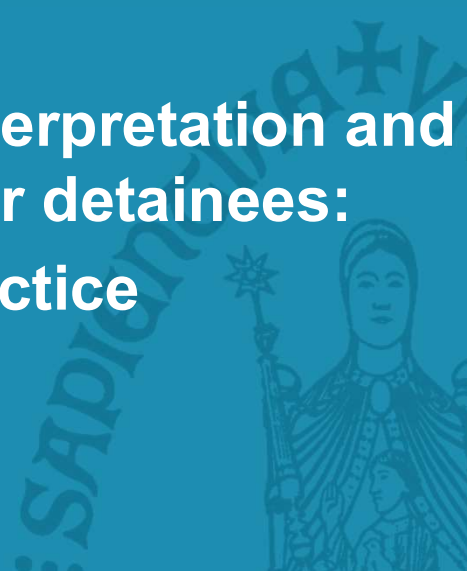
Applying Procedural Rights under the Case Law of the CJEU



Dr. Katalin Balogh
Prof. Dr. Heidi Salaets

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The right to interpretation and information for detainees: theory and practice



Outline

- **Theory**
- The TransLaw project
- Practice – Semi-structured interviews with detainees
- Conclusion

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Legal basis > EU right to interpretation and translation in criminal proceedings

- European Convention on Human Rights
- Directive 2013/48/EU: the right of access to a lawyer...
- Directive (EU)2016/1919: on legal aid for suspects and accused persons in criminal proceedings ...
- Directive (EU) 2016/343: on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings
- ...
- **Directive 2010/64/EU: the right to interpretation and translation in criminal proceedings**



PS: the exact way in which Member States transpose this directive is up to each country ...

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Legal basis for the right to interpretation and translation in criminal proceedings - Belgium

Belgian Language Act of 1935: language and interpreting rights of persons suspected or accused of crime

= a concretisation of Article 30 of the Belgian Constitution:
“The use of languages spoken in Belgium is free; only the law can rule on this matter, and only for acts of the public authorities and for judicial affairs.”

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Theory and practice



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The TransLaw project - funded by DG Justice nr 760157 (2017-2019)

Project partners:

University of Vienna (coordinator)
University of Trieste (IT)
KU Leuven (BE)
University of Maribor (SI)

JUST-AG-2016/JUST-AG-2016-06

<http://translaw.univie.ac.at>



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Workpackages and activities

1. Deskresearch, which explored the complex service paths of persons suspected or accused of crime (PACs) who need an interpreter.
2. Interviews with **ALL** stakeholders during a service path: LP (Legal professionals), LI (Legal interpreters) and PACs
3. Joint training and workshops for interpreters and legal professionals
4. Transcultural law clinics for law students and interpreting students who will work together to support PACs who do not have sufficient command of the language of the jurisdiction.

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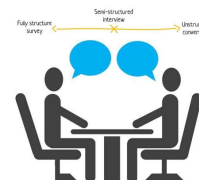


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Interviews with ALL stakeholders

Semi-structured interviews with all stakeholders (LP=4, LI=3, PAC=9) about:

- ✓ general description of the quality of the service path of PACs
- ✓ **Presence of LI** in service path
- ✓ Formal **quality** of interpreting and degree of experience
- ✓ Configuration of the language assistance
i.e. **spatial interactions** in the physical setting
- ✓ **Effectiveness** and impact of the LI



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Semi-structured interviews (methodology)

- All interviews were:
 - ✓ recorded (audio)
 - ✓ transcribed
 - ✓ manually and individually coded by three researchers
 - ✓ according to SMEC rules of KU Leuven (Social and Societal Ethics Committee) and ethical clearance (informed consent)

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Situation Penitentiary Institutions in Belgium – a small ‘excursion’

- The population of the Penitentiary Institutions*:
 - Belgian: 56%
 - Foreigners: 44% (from more than 130 countries)
- Belgium: 9th place out of 56 entries in Europe regarding foreign populations in prisons**.

* source: Belgian Directorate General of Penitentiary Institutions (2017)

** source: World Prison Brief

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Population journalière moyenne par nationalité - Gemiddelde dagelijkse bevolking per nationaliteit												
Pays dont le drapeau possède la nationalité			Land waarvan de vlaggen de nationaliteit bezit									
	2017	2018	2019									
4. Afghanistan	52,8	35,5	45,0	59. Gibraltar	6,1	4,1	6,6	Gambia	18. Pausen			
5. Afrique du Sud	1,2	0,9		60. Ghana	36,9	36,9	70,0	Ghana	19. Pays-Bas	28,2	29,2	30,4
6. Albanie	21,4	20,6	20,0	61. Grèce	6	6,4	9,1	Ghana	20. Pérou	2,7	3,3	3,5
7. Algérie	405,4	403,8	405,2	62. Guatemala	0			Ghana	21. Philippines	3,7	3,0	3,1
8. Allemagne	18,4	24,2	21,2	63. Haïti	11	10,1	8,8	Ghana	22. Pologne	0,0	0,0	0,0
9. Angleterre	18,6	18,1	20,4	64. Honduras	0,1	0,1	0,1	Ghana	23. Portugal	9,1	10,0	10,0
10. Antilles néerlandaises	0,5	0,6	1,0	65. Indonésie	42,6	44,3	46,8	Ghana	24. Qatar	0,0	0,0	0,0
11. Argentine	0,5	0,1	0,3	66. Israël	0,1	0,1	0,1	Equatorial-Guinea	25. Roumanie	3,8	27,6	31,1
12. Australie	0,1	0,1	1,4	67. Italie	0,7	1,3	0,5	Guinée-Bissau	26. Royaume-Uni	1,6	3,3	2,6
13. Autriche	1,0	0,6	0,6	68. Jamaïque	0,0	0,0	0,0	Guinée	27. Russie	19,8	19,1	19,4
14. Bangladesh	3,5	3,9	4,8	69. Japon	0,0	0,0	0,0	Guinée-Bissau	28. Royaume-Uni	21,4	18,7	17,9
17. Bangladesh	2,5	2,3	2,0	70. Kenya	0,0	0,0	0,0	Guinée-Bissau	29. Singapour	49,8	49,0	49,0
18. Belgique	2,2	6,4	1,0	71. Kirghizistan	0	0,0	0,0	Guinée-Bissau	30. Thaïlande	19,7	7,6	6,6
19. Belgique	5843,3	3705,8	3950,0	72. Malaisie	13,6	4,2	4,7	Guinée-Bissau	31. Tchad	0,0	0,0	0,0
20. Belize	0,7	0,0	0,0	73. Mexique	26,5	16,6	17,2	Guinée-Bissau	32. Tunisie	6,5	6,6	6,6
21. Bénin	0,3	0,3	0,3	74. Népal	0,1	0,2	0,2	Guinée-Bissau	33. Turquie	10,5	10,1	10,1
22. Bolivie	0,1	0,1	0,0	75. Niger	0,0	0,0	0,0	Guinée-Bissau	34. États-Unis	1,5	10,3	10,0
23. Bosnie-Herzégovine	23,2	23,7	21,7	76. Norvège	0,0	0,0	0,0	Guinée-Bissau	35. Ouzbékistan	0,0	0,0	0,0
24. Brésil	1,1	9,0	13,9	77. Ouzbékistan	0,0	0,0	0,0	Guinée-Bissau	36. Venezuela	0,0	0,0	0,0
27. Brunei	0,4	0,4	0,4	78. Paraguay	4,1	1,7	4,0	Guinée-Bissau	37. Vietnam	4,9	4,6	2,1
28. Bulgarie	76,9	64,0	71,2	79. Pérou	149,7	139,8	145,5	Guinée-Bissau	38. Yémen	1,0	1,0	1,0
29. Burkina Faso	2	2,1	1,4	80. République centrafricaine	1,5	0,3	4,6	Guinée-Bissau	39. Zambie	0,7	0,7	0,7
30. Burundi	5,4	2,2	4,7	81. République dominicaine	0,1	0,1	0,1	Guinée-Bissau	40. Zimbabwe	0,0	0,0	0,0
31. Cambodge	1	1,0	1,0	82. République tchèque	0,0	0,0	0,0	Guinée-Bissau	41. Total	1047,8	1038,6	1059,9
32. Cameroun	17,6	21,3	21,0	83. République tchèque	0,0	0,0	0,0	Guinée-Bissau				
33. Canada	0,7	0,0	0,0	84. Roumanie	2,4	0,9	0,5	Guinée-Bissau				
34. Cap-Vert (République)	0,1	0,0	1,0	85. Royaume-Uni	23,2	23,8	23,2	Guinée-Bissau				
35. Centrafrique (République)	0,2	0,6	0,6	86. Rwanda	0,0	0,0	0,0	Guinée-Bissau				
36. Chili	15,8	9,6	9,3	87. Sao Tomé et Príncipe	0,0	0,0	0,0	Guinée-Bissau				
37. Chine	5,4	5,9	7,9	88. Sénégal	7	7,0	7,2	Guinée-Bissau				
38. Chine	16,7	15,4	14,2	89. Serbie	1,5	0,4	0,2	Guinée-Bissau				
39. Colombie	99,4	81,8	85,3	90. Singapour	13,3	11,3	11,1	Guinée-Bissau				
40. Congo (République démocratique)	4,8	7,1	11,5	91. Soudan	1,1	0,4	0,1	Guinée-Bissau				
41. Congo (République populaire)	3,0	2,0	2,3	92. Soudan du Sud	0,0	0,0	0,0	Guinée-Bissau				
42. Côte d'Ivoire	16,9	20,5	20,9	93. Thaïlande	4,6	2,5	3,1	Guinée-Bissau				
43. Cuba	3,0	6,8	9,8	94. Tchad	0,0	0,0	0,0	Guinée-Bissau				
45. Danemark	0	0,1	0,5	95. Togo	0,0	0,0	0,0	Guinée-Bissau				
46. Djibouti (République)	0	0,1	0,1	96. Tunisie	0,0	0,0	0,0	Guinée-Bissau				
47. Dominique	1,4	0,6	0,2	97. Turquie	1,5	0,4	0,2	Guinée-Bissau				
48. Égypte	24,3	27,6	24,4	98. Uruguay	0,0	0,0	0,0	Guinée-Bissau				
49. Émirats Arabes Unis	5,1	5,8	5,0	99. Venezuela	0,0	0,0	0,0	Guinée-Bissau				
50. Espagne	0,6	2,6	18,1	100. Viet Nam	3,2	3,1	4,2	Guinée-Bissau				
51. Émirats Arabes Unis	45,4	43,8	41,2	101. Yémen	0,0	0,0	0,0	Guinée-Bissau				
52. Estonie	2,7	2,8	2,6	102. Zambie	0,0	0,0	0,0	Guinée-Bissau				
53. États-Unis d'Amérique	1	2,2	1,1	103. Zimbabwe	0,0	0,0	0,0	Guinée-Bissau				
54. Éthiopie	1,6	1,4	1,3	104. Total	1047,8	1038,6	1059,9	Guinée-Bissau				
55. Finlande	2,0	2,1	1,1	105. Total	1047,8	1038,6	1059,9	Guinée-Bissau				
56. France	214,4	207,7	210,4	106. Total	1047,8	1038,6	1059,9	Guinée-Bissau				
57. Gabon			0,3	107. Total	1047,8	1038,6	1059,9	Guinée-Bissau				

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Semi-structured interviews with PACs

PAC#	Mother tongue or preferred language	Languages spoken during the procedure/used by the interpreter	Prison location
1	Arabic	French/Spanish >< Dutch	Beveren-Waas
2	Berber	Dutch only	
3	Arabic Standard & French	Moroccan Arabic/Palestinian-Syrian varieties of Arabic >< Dutch	
4	Berber	Arabic Standard >< Dutch	
5	Moroccan Arabic	Egyptian Arabic >< Dutch	
6	Russian	Russian >< Dutch	
7	Bulgarian	Bulgarian >< Dutch	
8	Arabic & French	French >< Dutch	Mechelen
9	Italian	Albanian >< Dutch	

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First contact and communication issues

- 8/9 PACs: **no interpreter** => no communication during the specific situation of their arrest (in another country like Bulgaria, Luxemburg, in the car) or during first contacts.
- Later in the service path: **wrong interpreter** (see table)

“The police back in 2006 said that living in Belgium means I had to learn Dutch. I could speak Moroccan Arabic but no Berber. They gave me an Egyptian interpreter, when I told the judge, he said he was the only one available.” (#5)

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Communication issues in the next phase (1)

- Was there somebody present who spoke another language?
 - 6/9: Wrong interpreter
 - #6: Good Russian – poor Dutch ☹️
 - #7: bad interpreter ☹️
 - #8: used his second language (French) 😊

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Communication issues in the next phase (2)

PAC#	Mother tongue or preferred language	Languages spoken during the procedure/used by the interpreter	Prison location
1	Arabic	French/Spanish >< Dutch	Beveren-Waas
2	Berber	Dutch only	
3	Arabic Standard & French	Moroccan Arabic/Palestinian-Syrian varieties of Arabic >< Dutch	
4	Berber	Arabic Standard >< Dutch	
5	Moroccan Arabic	Egyptian Arabic >< Dutch	
6	Russian	Russian >< Dutch	Mechelen
7	Bulgarian	Bulgarian >< Dutch	
8	Arabic & French 😊	French >< Dutch	
9	Italian	Albanian >< Dutch	

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Communication issues in the next phase (3)

- Was the interpreter introduced?
 - #2: didn't remember
 - #1&3: "a woman" who introduced herself
 - #4: yes
 - #6: deduction from the fact, she spoke Russian
 - #8: introduction only to to the police
- The choice out of necessity for French or Dutch?
 - Only #8: French *"key to making the process work"*

"I didn't understand anything in my file. There was no impact at all of anything. Only that they made it more difficult. They ruined my life." (starts crying). #2

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Complexity of the Service Path – one or multiple interpreters

- Different interpreters: between 2-6

The reason of preference of different interpreters :

"to avoid bad quality" (#7)

"I don't care [about having different interpreters]: the only thing I hope is that every individual gets a professional interpreter who does his job in giving the person the possibility to speak his own language. There is a big difference in quality, their way of working and dealing with things. Sometimes they act like a police officer". (#5)

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Position: Seating arrangements

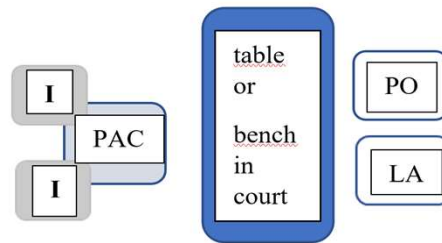


Figure 1: I = interpreter/ PO = Police officer/ LA = Legal Actor

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Position: Neutrality (1)

- #3,5,8: Interpreter works with the police
- #1: sympathy from the interpreter (*“standing next to me”*)
- #2: person who comforted the detainee: (*“punishment was too severe”*)
- #7: Trust in the interpreter: “[the interpreter told]’I don’t have to worry’. She told me Belgians were just like that. That everything would be ok, that there was no evidence.”
- #4&5: clear views on what the interpreter is supposed to do:
“We are 2019, not 2012: human rights become clearer, it is not like before anymore. They introduced a new system in Belgium, and I think it is very good. If you go to the police, then an interpreter and lawyer is present. Everything that has been said, is also recorded”. #4

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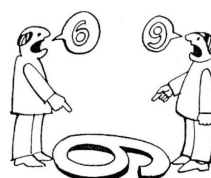
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Position: Neutrality (2)

"Once they hired an Egyptian interpreter who thought I did not speak a word of Dutch. He made an addition towards the police, saying: 'What he says, is not correct' Then I have protested and told him: this is a conversation between myself and the police. If I don't tell the truth, it is up to the policeman to discover, it is not your task!" (#5)



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Performance of the legal interpreter (1)

- #2,5,6,7,8,9: quality is **insufficient - non-existent**
- #2,3: it is not the interpreter's responsibility if **the judge speaks too fast** or in a complicated way:
- *"I don't see any difference with or without an interpreter in the communication with the authorities. Even if he translates, in what way can I check it? If he leaves things out? Everything goes very fast, so...?" (#3)*
- *"During the criminal proceeding, I almost wanted to stop the court hearing because I didn't understand anything!" (#2)*

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Performance of the legal interpreter (2)

- The perception of the interpreter is rather negative. The following elements were highlighted:
 - **Weak linguistic** competence (one of the languages)
 - **Lack of accuracy** *“She summarizes what I was saying in Russian. It was much shorter. So, information was lost. I didn’t dare to say something back then, now I would” (#6)*
 - **Choice of language based on nationality:**

“I didn’t understand. The interpreter didn’t listen to my questions and needs. I needed an interpreter in Italian, not Albanian. So, I didn’t have the right interpreter(s). Their intervention was completely useless [...] I had 6 interpreters for Albanian, none in Italian [...] I asked the police officer, lawyer, magistrates for an Italian interpreter. Didn’t receive it. Only incomprehension. (#9).

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Performance of the legal interpreter (3)

- Interpreters of the **wrong language and/or regional variant** (Standard Arabic><Berber, Dutch><French, Albanian><Italian or third languages like Spanish or French)
- **Lack of respect for gender and/or cultural and/or religious aspects:** *“For me [male] it was a young woman, and it didn’t feel good because of her age, sex and as experienced by my religion. I had to tell her things and had to hear some things from her that felt as a humiliation to me. Since I was feeling uncomfortable, it didn’t feel like an assistance. They don’t take that into account.” (#6).*
- ☺ Only two detainees are positive: *“key to making the process work” (#8) “to know somebody was standing next to me” (#1).*
- ☹ Others: *‘not ok’ #5; indifferent #3,6,9; “no comprehension of the case” #2; “You may have rights, but you don’t get them. Also, in prison you have rights, but they are not respected”. #4*

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Interest in Transcultural Law Clinic

- All are positive
 - *“I am very positive. If it had existed before, a lot of people wouldn't have the problems I have. This would lead to a better linguistic situation. I would certainly make use of it. The interpreter can do whatever he wants, there is no control!”*
- #2

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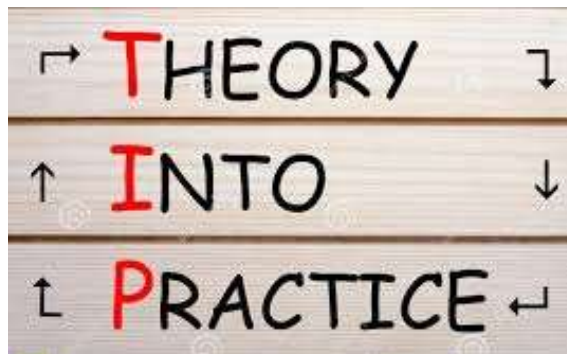
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Conclusion and recommendations

We cannot generalize but apparently there exists

- a more structural, deep-rooted denial of (the right to) the interpreter because every other right seems to come first: the right to a lawyer, the right to information etc. **these rights are non-existent if you cannot understand them due to linguistic barriers.**

“linguistic isolation of foreign prisoners further accentuates their vulnerability and leads to inequality. It also risks jeopardizing their chances of release and social integration.” (Gallez 2018:752).

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Recommendations

- **Be aware of possible linguistic barriers (LBs)** from the **arrest** up to the **court** and eventually in **prison**
- If there is a LB: try to work as much as possible with **professional interpreters** in all stages of the criminal procedure meaning
 - set-up a reliable National Register!
- If you (need to) work with ad-hoc interpreters (personnel, passers-by, or even: inmates) **be aware of all the risks**: no linguistic knowledge, no interpreting skills, no ethical code (neutrality, impartiality, professional secrecy etc.)

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Recommendations (2)

- Don't automatically think: nationality = (1) language
- **THINK about all possible consequences in the legal procedure if the right to a fair trial has been denied!**
- Organize interprofessional trainings
 - Also in an early stage, already at university!

Transcultural Law Clinics



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https://www.arts.kuleuven.be/english/rg_interpreting_studies/research-projects/translaw

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