

# The rights to interpretation and translation and information: status quo

Procedural Rights in the Context of Evidence Gathering

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## The rights to information, interpretation and translation



- Charter of Fundamental Rights of the EU
  - Article 47 right to a fair trial and Article 48(2) the right of defence
- 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
  - Directives 2010/64 and 2012/13 set minimum rules -higher level of protection possible also in situations not explicitly dealt with by these Directives
  - Article 82.2 of TFEU - to the extent necessary to facilitate mutual recognition of judgments, minimum rules may be established with respect to [the rights of individuals in criminal procedure](#)

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## Relation to the Council of Europe's standards



- Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 – living instrument ([ECtHR Tyrer v. United Kingdom \(1978\)](#))
- 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 (non-regression)
- The provisions of both Directives 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](#)

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## Right to a fair trial



- Article 6.1 of the ECHR: In the determination of civil rights and obligations or of any criminal charge against a defendant, 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](#))

- 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.

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## Right to a fair trial



- **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**)
- **'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**)

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## 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.)
- In general with respect to criminal offences but also to minor offences in the proceedings before the court following an appeal (if sanctions imposed by an authority other than a court having jurisdiction in criminal matters, which may be appealed to such a court)
- 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 they have a fair trial.

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## The rights to interpretation and translation

- 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 he is 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 he has committed the offence, including sentencing and the resolution of any appeal
- 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*).

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## The right to interpretation



- Suspected or accused persons who do not speak or understand the language of the criminal proceedings concerned are provided, **without delay**, with **interpretation** during criminal proceedings **before investigative and judicial authorities**, including during police questioning, all court hearings and any necessary interim hearings.
- Interpretation is available for communication between suspected or accused persons and their **legal counsel in direct connection** with any questioning or hearing during the proceedings or with the lodging of an appeal or other procedural applications, where necessary for the purpose of safeguarding the fairness of the proceedings.
- **Procedure or mechanism** to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter.
- Suspected or accused persons have the **right to challenge a decision finding that there is no need for interpretation** and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.

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## The right to translation



### Determination of the term 'essential documents'

- 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 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).

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## The right to translation of essential documents



- 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 - criminal proceedings that 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, 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)

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## Transposition



- Directive 2010/64 transposition period by 27 October 2013 (DK not bound)
- REPORT from the Commission on the implementation of Directive 2010/64/EU of 18.12.2018
- The evaluation highlights that there are still difficulties on key provisions of the Directive in some Member States.
- This is particularly the case for communication between suspected or accused persons and their legal counsel, the translation of essential documents and the costs of interpretation and translation
- FRA Report on *Rights of suspected and accused persons across the EU: translation, interpretation and information* shows that certain safeguards are not fully granted
- Guidance on assessing whether interpretation and translation are necessary, and on the appropriate timeline for providing these services; • effective translation of essential documents; • safeguards to ensure that suspects and accused persons can effectively communicate with their legal counsel; • quality of interpretation and translation

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## Right to information



- Letter of Rights (Article 2- 4) in simple and accessible language
- Needs of vulnerable persons are to be taken into account (e.g. hearing and speech impediments, mentally disabled, learning disabilities, over 75, pregnant women, single parents raising minors, etc. - Commission's Recommendation of 2013 on procedural safeguards of vulnerable persons)
- 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. Sending of incomplete information and the granting of partial access to the case materials are in that regard insufficient.
- 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 right to have adequate time and facilities for the preparation of defence (*ECTHR Dallos v. Hungary*, 29082/95)

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## Information about accusation



- Act of accusation (nature and legal classification & nature of participation)
- Rules of criminal proceedings that make 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 do not violate Article 2, 3 and 6 of Directive 2012/13/EU, 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; UY C-615/18)
- 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, benefiting from having his position restored to the *status quo ante* (non-discrimination principle).

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## Information about accusation



- Right to information on the nature and cause of accusation to be interpreted in the light of the right to a fair trial (**ECtHR** *Sejdovic v. Italy*, 56581/00)
- 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 changes of accusation
- Article 6(4) of Directive 2012/13/EU and Article 48 of the Charter must be interpreted as meaning that they do not preclude national legislation according to which the accused person can, during the trial proceedings, **request imposition of a negotiated penalty** where the acts on which the accusation is based have been modified, but not where the legal classification of the acts to which the accusation relates has been modified (*Moro*, C-646/17)

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## 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)

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## Access to essential documents for challenging the arrest or detention



- 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).

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## Access to materials of the case



- Article 7(2) and (3) of Directive 2012/13 - 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***)

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## Rights related to EAW



- Article 4 (in particular Article 4(3)), Article 6(2) and Article 7(1) of Directive 2012/13/EU must be interpreted as meaning that the rights referred to therein **do not apply to persons who are arrested** for the purposes of the execution of a European arrest warrant (*IR*, C-649/19)
- 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)

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## Transposition

- Transposition period by 2 June 2014 (DK not bound)
- REPORT from the Commission on the implementation of Directive 2012/13/EU
- The evaluation highlights that there are still difficulties regarding key provisions of the Directive in some Member States.
- This is particularly the case as regards the Letter of Rights in criminal proceedings and European arrest warrant proceedings, the right to information about the accusation and the right to access to materials of the case
- FRA Report on *Rights of suspected and accused persons across the EU: translation, interpretation and information* shows that certain safeguards are not fully granted
- The main issues have been identified with respect to:
  - accessibility of information about the rights of suspected and accused persons, including those arrested or detained;
  - effective and practical access to materials of the case;
  - availability of effective remedies;
  - existence of effective measures to take into account particular needs of suspects and accused persons who are vulnerable.

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## The way forward

- Training of practitioners
- Directive (EU) 2016/800 of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings
- Council conclusions 'The European arrest warrant and extradition procedures - current challenges and the way forward' of 4 December 2020
- The Council calls for improvement in the transposition of both Directives
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