

**Case-law of the European Court of Human Rights on language assistance in
criminal proceedings
Summaries by James Brannan, April 2012¹**

Article 5 § 2 Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.

Article 6 § 3 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; ...

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Akbingöl v. Germany (decision), 2004, no. 74235/01

After conviction the applicant was made to pay for the cost of translating his telephone conversations recorded during the investigation (for the prosecution).

Court: The translation did not concern a matter for which the free assistance of an interpreter was required under Article 6 § 3 (e).

Complaint inadmissible

Amer v. Turkey, 2009, no. 25720/02

The applicant, an Arabic speaker, had no interpreter in police custody.

Court: Even though the applicant understood the foreign language (Turkish) to some extent – enough to be able to express himself – he was not capable of reading texts. So he should have had an interpreter at least to retranslate his statements back to him.

The authorities did not make sure that he understood the statements.

Violation of Article 6 § 1 in conjunction with Article 6 § 3 (e)

Baka v. Romania, 2009, no. 30400/02

Hungarian national complained that interpreting in one court hearing was done by a court clerk, and that not everything said by the participants had been translated – the Government said that the applicant had waived his right to a sworn interpreter. No written translation of judgment.

Court: No unfairness in proceedings; applicant had not requested translation of judgment, which could in any event have been explained orally by lawyer.

No violation of Article 6 § 3(a) or (e)

Berisha & Haljiti v. “the former Yugoslav Republic of Macedonia” (decision), 2007, no. 18670/03

In a court hearing the second applicant, mother-tongue Albanian, did not have an interpreter but relied on the first applicant’s language assistance, as she spoke neither Macedonian nor Serbian. The Government accepted that the second applicant had not known the language of the court, but claimed that it had been her decision not to have the assistance of an interpreter.

¹ James Brannan is an official of the Registry of the European Court of Human Rights, but any emphasis made or opinions expressed in these summaries are those of the author; for full texts of judgments and decisions (in French and/or English), see <http://www.echr.coe.int/echr/en/hudoc>

Court: The fact that one of the applicants served as interpreter for the other did not invalidate proceedings, about which they had not complained at the time.

Complaint inadmissible

Brozicek v. Italy, 1989, no. 10964/84

A Czech man living in Germany was prosecuted in Italy and received the judicial notification of proceedings only in Italian – he requested a translation into his mother tongue or a UN language, but this was refused.

Court: Where translation is requested, the burden of proof is on the (judicial) authorities to prove that the defendant sufficiently understands the language of the court and not for the defendant to prove he does not.

Violation of Article 6 § 3 (a)

Coban v. Spain (decisions), 2003 and 2006, no. 17060/02

Turkish national had been convicted in Spain for drug trafficking and complained, among other things, about the choice of interpreter/translator. He also stated that the prosecution had relied on intercept evidence which had been translated from Turkish in summary form by an “unregistered” translator.

Court: Even a non-official translator is adequate if he has a “sufficient degree of reliability as to knowledge of the language interpreted”; the Spanish Code of Criminal Procedure did not require an official qualification for that task and a summary translation was acceptable. In fact only the conversations in Spanish had been relied on by the court, not the translated evidence.

Application inadmissible

Čonka v. Belgium, 2002, no. 51564/99

Group of Roma from Slovakia arrested pending deportation.

Court: A variety of factors contributed to a violation of the right to liberty, including the fact that only one interpreter was available to assist the large number of Roma families in the police station and he did not stay with them at the closed centre; however the level of information was sufficient for the purposes of 5 § 2.

No violation of 5 § 2 but of 5 § 1

Cuscani v. the United Kingdom, 2002, no. 32771/96

Italian national convicted of fraud. Judge had instructed that an interpreter be found for the sentencing hearing but none was present. Instead of adjourning the hearing the judge was prepared to rely on the applicant’s brother to interpret if need be.

Court: Although aware of the applicant’s difficulty in following the proceedings, the judge was persuaded by the barrister, without consulting the applicant, that it would be possible to make do with the “untested language skills” of the applicant’s brother in a hearing that led to a four-year prison sentence and a 10-year disqualification as company director; no award of just satisfaction, however, as Court could not speculate as to what the sentence would have been if an interpreter had been present.

Violation of Article 6 § 1 in conjunction with 6 § 3 (e)

Diallo v. Sweden (decision), 2010, no. 13205/07

French national sentenced to ten years’ imprisonment for drugs offence without having had the assistance of an authorised interpreter during her initial questioning by a customs officer, who subsequently gave evidence against her; and that evidence allegedly led to increase in prison sentence. Under Swedish law no registered interpreter was necessary if the officer could speak the foreign language.

Court: No evidence of shortcomings in the language assistance provided; and “the Appeal Court did exercise a sufficient degree of control of the adequacy of the interpretation [*sic*]”. However, the Court confirmed here the right to an interpreter at the earliest investigative stage of the proceedings, drawing a parallel with the right to a lawyer in police interviews, as established in *Salduz v Turkey*.

Inadmissible

Erdem v Germany (decision), 1999, no. 38321/97

Applicant complained about the refusal by the courts to order the translation into Turkish of the investigation files and a 900-page judgment which, according to him, was “the accusation against him” in the framework of the appeal proceedings.

Court: No general right of the accused to have the court files translated, since Article 6 § 3 protects rights of the defence in general and not those of the accused considered separately. “It therefore suffices that the files are in a language that the accused or his lawyer understands”.

Complaint inadmissible

Galliani v. Romania, 2008, no. 69273/01

Applicant was arrested with a view to deportation and had no interpreter to explain reasons for arrest.

Court: The applicant could engage in dialogue with police officers and had no difficulty in understanding what was said to her and expected from her.

No violation of Article 5 § 2

Güngör v. Germany (decision), 2001, no. 31540/96

Turkish national convicted of drug dealing. He complained that the German courts had not assigned him an interpreter for communication with counsel.

Court: German courts had considered before various hearings whether he needed an interpreter: in one, his lawyer said he did not need one, in another it was mentioned that he spoke German to his wife. The charges were not particularly complex such as to require more in-depth knowledge of German; his knowledge was thus sufficient.

Inadmissible

Hacioglu v. Romania, 2011, no. 2573/03

Alleged lack of assistance of an interpreter and failure to translate decisions.

Court: An interpreter had actually been provided throughout the proceedings. Applicant had not requested translations of decisions and in any event his counsel must have explained them, in particular as he appealed against them.

No violation of Article 6 § 3 (e)

Hermi v. Italy (Chamber), 2005, and (Grand Chamber), 2006, no. 18114/02

The applicant (a defendant of Tunisian origin in a drugs case) had not received a written translation of a document in the criminal proceedings, i.e. the notice of an appeal court hearing, allegedly entailing his non-appearance.

Court: Chamber found a violation of Article 6 for non-translation of notice, which it described as “a legal document of some complexity”, noting that the applicant’s knowledge of Italian had not been established. The Grand Chamber, however, pointed out that there was no automatic right to written translation (citing *Husain*) and in any event, Mr Hermi could be considered to understand Italian, especially as he had been in the country for 10 years. Recognised importance of translating indictment.

No violation of Article 6

Hovanesian v. Bulgaria, 2010, no. 31814/03

Applicant had been charged for interpretation costs.

Court: Inconsistency in case-law of Bulgarian Supreme Court; applicant should not have been charged.

Violation of Article 6 § 3 (e)

Husain v. Italy (decision), 2005, no. 18913/03

The applicant, an Arabic speaker, was tried *in absentia* as one of the organisers of the attack in 1985 on the Italian cruise liner *Achille Lauro* by a Palestinian terrorist commando. A few years later he was arrested and extradited to Italy where a committal warrant was read to him with an interpreter at a police station. He complained under Article 6 § 3 (a) and (e) that there had been no written translation of that warrant; and that there had been no control over the quality of the interpretation.

Court: The interpreter had been able to translate the document orally (and applicant was assisted by counsel). The Court stated for the first time: “it should be noted that the text of the relevant provisions refers to an ‘interpreter’, not a ‘translator’. This suggests that oral linguistic assistance may satisfy the requirements of the Convention”. As regards quality, the fact that he had not complained at the time “may have led the authorities to believe that he had understood the content of the document concerned”.

Inadmissible

Işyar v. Bulgaria, 2008, no. 391/03

Applicant had been charged for interpretation costs.

Court: Inconsistency in case-law of Bulgarian Supreme Court; applicant should not have been charged.

Violation of Article 6 § 3 (e)

Horvath v. Belgium (decision), 2012, no. 6224/07

Hungarian national complained under 6 § 3 (a) about the lack of a written translation of a summons indicating the charges.

Court: This had not hindered the applicant’s defence; no request had been made during the proceedings.

Inadmissible

Kajolli v Italy (decision), 2008, no. 17494/07

Albanian defendant complained that court documents had not been translated into his language; and no interpreter had been provided.

Court: He had been entitled to translation of documents, there being no evidence that he spoke Italian and such translation having been requested by lawyer, but in the particular circumstances of the case there was no issue because he had absconded and notices could not be served on him personally, only on his lawyer. Applicant had not taken part in proceedings, so had not needed an interpreter.

Inadmissible

Kamasinski v. Austria, 1989, no. 9783/82

Applicant was a US citizen arrested on suspicion of fraud in 1980, ultimately convicted; did not speak German. Complaints: system of court-certified interpreters did not provide effective assistance; no written translation of indictment or pre-trial witness statements; the interpretation during the trial was insufficient, and in

particular neither the written depositions nor certain oral testimony nor the questions put to witnesses were interpreted into English; save for its operative part the judgment was neither interpreted on the spot nor translated thereafter. Some of the interpreting had been done by a police officer, and even a prisoner had interpreted for a police interview in the absence of a sworn translator.

Court: As regards choice of interpreter, it was “not called upon to adjudicate on the Austrian system of registered interpreters as such, but solely on the issue whether the interpretation assistance ... satisfied the requirements of Article 6”. As regards quality, it was not substantiated on the evidence taken as a whole that applicant was unable because of deficient interpretation either to understand the evidence being given against him or to have witnesses examined on his behalf.

The Court established the principle that Article 6 covered written material, not just oral statements, but set limitations: it does not require translation of all documents, only those necessary for the defendant to have knowledge of the case and defend himself (in particular the indictment). But a written translation of the indictment is unnecessary if sufficient oral information as to its content is given to the accused (at admissibility stage, some dissenting members of Commission had disagreed with this). Translation of the judgment itself: not necessary and oral explanations, with assistance of a lawyer, sufficient for an appeal. Principle that authorities’ obligation may also extend to a degree of subsequent control over the adequacy of the interpretation provided, but requirement satisfied in present case.

No violation in respect of Article 6 complaints concerning language assistance

Katritsch v. France, 2010, no. 22575/08

Russian national convicted in France of theft, illegal immigration and forgery. He had an interpreter in police custody, before the investigating judge, and at an initial hearing; but at a subsequent Court of Appeal hearing confirming his conviction, no interpreter was present.

Court: There was no evidence he had requested an interpreter and as his last request went back 5 years, during which time he had lived and worked in France, it was not certain that he still needed one. The charges were not particularly complex such as to require more in-depth knowledge of French.

No violation of Article 6 § 3(e)

Khatchadourian v. Belgium (decision), 2010, no. 22738/08

Applicant (Lebanese national, defendant in proceedings conducted in Dutch) complained about poor quality of an Armenian translation of the public prosecutor’s submissions against him; and failure to translate police investigation files.

Court: Article 6 § 3 (e) did not require translation of all documents. According to an expert’s report, the applicant had understood the “gist” of the submissions, even though the translation was somewhat inaccurate. Overall, he had sufficient information in a language he understood in order to conduct his defence. Related Article 14 (discrimination) complaint not sufficiently substantiated. Article 13 complaint about lack of effective remedy also rejected.

Inadmissible

Kuvikas v. Lithuania, 2006, no. 21837/02

Lithuanian applicant (a border guard) complained that his conviction was based on written complaints by foreigners that had not been translated into national language.

Court: There was no evidence that the applicant’s conviction was based on any document in a foreign language which had not been translated into Lithuanian.

Complaint inadmissible, but violation of Article 6 § 1 (length of proceedings)

Ladent v. Poland, 2008, no. 11036/03

French national, upon his arrest was informed about the reasons for it and the charges against him in Polish; he was released after 10 days in custody.

Court: He was not informed promptly and in a language which he understood of the reasons for his arrest and the charges against him until his release.

Violation of Article 5 § 2

Lagerblom v. Sweden, 2003, no. 26891/95

Finnish applicant complained that a lawyer, who could speak Finnish, was not appointed to replace a lawyer assigned to him, who could not. Case more about choice of lawyer than interpretation as such.

Court: He was able to speak and understand “street Swedish” and so was able to communicate to some extent with assigned lawyer. In general, language assistance was adequate.

No violation of Article 6 § 3

Luedicke, Belkacem & Koç v. Germany, 1978, no. 6210/73

Germany had tried to obtain the reimbursement of interpreting costs from the applicants after their conviction (as then provided for by domestic law).

Court: Article 6 guaranteed free assistance and “it does not follow that the accused person may be required to pay the interpretation costs once he has been convicted”. The term free (*gratuitement*) could be interpreted as a “once and for all exemption” from paying costs. Rejected argument that 6 § 3 (e) did not extend to pre-trial proceedings.

Violation of Article 6 § 3 (e)

Mann v the UK and Portugal, 2011, no. 360/10

Football fan convicted in Portugal but allowed to leave country pending enforcement of sentence, then arrested in UK under an EAW. Challenged extradition on grounds that he had been denied a fair trial, compounded by poor quality of interpreting.

Court: The fairness of the proceedings in Portugal was a “matter of dispute” - UK judges had reached different conclusions. No evidence of a flagrant denial of justice or a risk of one if extradited.

Inadmissible

Osmani and Others v. “the Former Yugoslav Republic of Macedonia” (decision), 2000, no. 50841/99

The first applicant complained about a lack of interpretation into Albanian.

Court: An interpreter must be competent in order for the applicant’s right under Article 6 § 3 (e) to be practical and effective. The applicant had the benefit of free interpretation by four qualified registered interpreters of Albanian ethnic origin who worked as official interpreters for the court, but had complained about their interpretation and started speaking fluent Macedonian, which induced the court to conclude that he did not need any interpretation.

Inadmissible

Özkan v. Turkey (decision), 2006, no. 12822/02

Kurdish applicant complained that he was deprived of the assistance of an interpreter during some court hearings and the interpreter provided in others lacked impartiality as he was a police officer.

Court: The applicant had apparently waived his right to a new interpreter when asked; he could have been expected to request a change of interpreter if he had really doubted his impartiality, as his lawyer had claimed. In one hearing he decided to submit his arguments without an interpreter and the judge verified that the applicant had sufficient language skills to participate effectively in the criminal proceedings.

Complaint under Article 6 § 3 (e) inadmissible

Öztürk v. Germany, 1984, no. 8544/79

Turkish national convicted of road traffic offence; charged for costs of interpretation at an administrative hearing.

Court: Article 6 was applicable to such situations and he should not have been charged for costs.

Violation of Article 6 § 3 (e)

Panasenko v. Portugal, 2008, 10418/03

The applicant, a Ukrainian national (on trial for murder of a taxi driver), complained that his interpreter worked into Russian, not Ukrainian, and that even in Russian he was incompetent. During the trial he tried to express his complaints through the interpreter but the presiding judge told both of them not to engage in a discussion.

The Court: On the basis of a recording supplied by the applicant, the interpreting was admittedly not perfect but “the applicant failed to indicate how the interpreting problems had affected the fairness of the proceedings as a whole. The material in the case file shows that he was able to understand the oral proceedings in essence and present his version of the facts”. There was a violation, however, because of a lack of legal assistance on appeal to Supreme Court: he had missed the deadline partly because the time-limit ran from service of the judgment in Portuguese, not that of the translation.

No violation of Article 6 § 3 (e) but of Article 6 §§ 1 and 3 (c)

Protopapa v. Turkey, 2009, no. 16084/90 (and *Strati v. Turkey*)

Cypriot national tried for participation in anti-Turkish demonstration. Complained of poor translation of proceedings.

Court: Although the Court had “no information on which to assess the quality of the interpretation provided”, it was apparent from the applicant’s own version of the events that she understood the charges against her and the statements made by the witnesses; it did not appear that she challenged the quality of the interpretation before the trial judge, requested the replacement of the interpreter or asked for clarification concerning the nature and cause of the accusation. She did not request a translation of written documents and there was nothing to suggest that such a request would have been rejected.

No violation of Article 6

Şaman v. Turkey, 2011, no. 35292/05

The applicant (Kurdish) complained that she could not understand Turkish well enough and that her defence rights had been violated during her police custody as she was deprived of the assistance of an interpreter (and a lawyer).

Court: Taking into account the importance of the investigation stage, it was not established that the applicant had a sufficient understanding of the questions she was being asked or that she was able to express herself adequately in Turkish, and certainly not to a level which would justify reliance on her statements as evidence against her. The Court has to assess whether the accusations are sufficiently complex to require a detailed knowledge of the language: she was charged with “particularly grave criminal offences”. The absence of an interpreter (and a lawyer) during her police custody irretrievably affected her defence rights.

Violation of Article 6 § 3 (e)

Sandel v. “the former Yugoslav Republic of Macedonia”, 2010, no. 21790/03

Complaint about failure to provide Hebrew interpreter after a certain point in proceedings. The case appeared to have been delayed mainly because there were no suitably authorised interpreters and it was prohibited to recruit a court interpreter from a foreign country.

Court: The authorities had wasted time (two and a half years) trying to find a Hebrew interpreter, when it was clear from the outset that an interpreter in English, Serbian or Bulgarian would have been sufficient at that stage of the proceedings. Written translation of indictment not necessary.

No violation of Article 6 § 3 (e) but of 6 § 1 (length of proceedings)

Uçak v. the United Kingdom (decision), 2002, no. 44234/98

Mr Uçak complained that Ms O., a Turkish interpreter in Scotland, did not speak his language (Kurdish) and was prejudiced against him. Crucially for him, she was not appointed independently of the police and the prosecution. As he associated the interpreter with the police, he claimed that this intimidated him and made him unable to talk freely with his solicitor. He also discovered, after the trial, that the interpreter was listed as a witness by the prosecution.

Court: No evidence of unfairness – the applicant had not complained at the time and some of his allegations were clearly unfounded. There is no formal requirement that an interpreter be independent of the police or other authorities, but the assistance provided must be “effective” and “not of such a nature as to impinge on the fairness of the proceedings”.

Inadmissible