

European Court of Human Rights case-law on the right to language assistance in criminal proceedings

James Brannan, European Court of Human Rights

The Convention provides for the right of an accused person to a translator and/or interpreter, free of charge, in the context of his or her Convention rights to liberty and security (Article 5) and to a fair trial (Article 6). The two Articles cover various stages in criminal proceedings: arrest, police custody, investigation, trial ... The European Commission, which has been seeking to protect these same rights in a Framework Decision on procedural safeguards, rightly stated in its Green Paper of 2003: “The difficulty is not in establishing the existence of this right, but is rather one of implementation”. The guarantees at issue concern not only the right to have access to translation services but also the right to certain safeguards once such services are provided.

The presentation will address various aspects of practical implementation, starting with some of the principles enumerated in the Green Paper and moving on to issues of quality and status, illustrated by specific cases to show how the Strasbourg Court has responded to such questions.

A. Level of provision

1. What is the extent of the authorities' duty?

Kamasinski v. Austria, 1989

Husain v. Italy (decision), 2005

Hermi v. Italy [GC], 2006

2. When may language assistance be refused?

Brozicek v. Italy, 1989

Lagerblom v. Sweden, 2003

3. Should such assistance be free of charge?

Luedicke, Belkacem & Koç v. Germany, 1978

Isyar v. Bulgaria, 2008

B. Quality issues

1. Choice of translator/interpreter (language skills and status)

Cuscani v. the United Kingdom, 2002

Coban v. Spain (decisions), 2003 and 2006

2. Quality control

Panasenko v. Portugal, 2008

3. Impartiality and independence

Ucak v. the United Kingdom (decision), 2002

The following general principles emerge from the Strasbourg case-law:

An applicant complaining before the Court of a translation/interpreting issue must normally have informed the domestic authorities of the problem at the appropriate time in the proceedings. In any event, it will be necessary to show before the Court exactly how he or she was adversely affected by the problem in question. These obligations do not undermine the basic rights, but are necessary to ensure that this type of issue is not raised improperly. Admittedly, as regards problems of quality and impartiality, it will often be difficult to carry out an objective assessment *ex post facto*. As to problems of status and independence, they appear to be secondary aspects in the case-law.

The authorities, for their part, have a duty upstream to ensure that an accused is provided with language services if he or she so requests, unless they have evidence that the request is unjustified. If they refuse, the burden of proof will be on the Government in proceedings before the Court to show that language services were not essential. Downstream, if a translator/interpreter is provided but the accused complains of a lack of quality or impartiality, etc., the authorities will usually be required to have addressed the problem, unless of course the complaint is improper or belated.