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The right to interpretation and translation in criminal proceedings

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ABSTRACT

More and more people are taking advantage of the freedom of movement of persons and the freedom of establishment within the European Union (EU). Thanks to the current situation, where movements across internal borders are no longer controlled, it has become easier to travel to another Member State (Europa: Schengen). The advent of low-budget airlines such as Easy Jet and Ryanair, among other factors, enables millions of people to go abroad for a holiday every year. Moreover, a growing group of people moves to another EU Member State to live or work there temporarily, or with the intention to settle there permanently. The increasing mobility is not limited to holidays and (labour) migration; drug trafficking, human trafficking and many forms of financial fraud also benefit from the open borders. Criminal organisations can easily move from one country to another. Judicial co-operation in criminal matters and the exchange of information are essential in order to prevent criminals and offenders who move from one Member State to another Member State from escaping punishment. Judicial co-operation in criminal matters can only work well if there is enough attention paid to the issue of safeguarding the legal rights of the suspect/defendant. An important aspect of that legal protection is the right to have the assistance of an interpreter and translator, for suspects/defendants who do not speak the language used in court. This article is all about the manner in which that right is given shape within the EU. It was completed on 17 December 2009.

KEYWORDS

Right to interpretation, right to translation, legal interpreting, interpreting assistance, EU Directives on interpretation and translation.

1. Judicial co-operation in criminal matters

Judicial co-operation in criminal matters is therefore high on the agenda within the EU. The European Council in Tampere (1999) decided that mutual recognition of judicial decisions and judgments should become the cornerstone of the judicial co-operation between authorities in criminal matters within the EU (Tampere European Council 1999). The basic principle is that Member States recognise and execute each other's judicial decisions and judgments without too much ceremony. That principle is based on the idea that there is mutual trust between Member States where it concerns the constitutionality, legitimacy and fairness of the respective penal systems. The underlying thought in that respect is that all Member States are bound by the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

Trust must be reciprocated. The enforcing Member State whose judicial co-operation is requested must have faith that the proceedings in the requesting Member State, on which the request is based, are being

conducted in accordance with the law (ECHR), and the requesting State must have faith that the procedure followed in the enforcing State is also in accordance with the law.

Mutual recognition makes harmonisation of penal systems—something that is considered a bridge too far within Europe[1]—superfluous, and should facilitate judicial co-operation in criminal matters, by preventing a thorough (and thus time-consuming) assessment of each other's penal system.[2] A problem involved in mutual recognition is that it primarily focuses on the repressive side of criminal law. It often ignores the fact that evidence in any Member State is obtained in a context of legal safeguards. That context makes the evidence either lawful and reliable, or unlawful and unreliable. The relevant rules differ from country to country and the safeguards are implemented at different stages of the procedure. By transferring an article of evidence to another country without allowing the court to look at the manner in which it was obtained, the contextual factors no longer play a role. If the lawyer in France is not in every stage of the procedure allowed to attend a witness examination, that is made up for in a later stage in the criminal proceedings. Mutual recognition compels the Member State to refrain from examining a specific aspect (the foreign evidence) concerning its compatibility with the right to a fair trial as laid down in Article 6 of the ECHR. As a result, mutual recognition can be on strained terms with Article 6 of the ECHR.

The first instrument based on the principle of mutual recognition is the European Arrest Warrant that has replaced the various extradition procedures within the EU. These rules make it much simpler to extradite, for example, an English citizen who is suspected of committing a criminal offence during a holiday in Portugal, to that country (Fair Trials International). As a result of these rules, the number of requests for extradition between Member States has risen significantly. Moreover, there are (draft) Framework Decisions regarding the obtaining of evidence in criminal proceedings and the harmonisation of the punishability of crimes such as human trafficking, money laundering, drug trafficking, and terrorist acts, as well as measures dealing with the harmonisation of victim support services, mutual recognition of sentences in default of appearance, and the enforcement of criminal sanctions.

1.1. Assistance of an interpreter or translator essential

As a result of the implementation of the above measures concerning judicial co-operation in criminal matters, more and more people get involved in criminal proceedings in Member States of which they do not or insufficiently speak the language in which the proceedings are conducted. That weakens their legal position. In criminal proceedings, language is the communication tool par excellence. Special measures

are required if any party involved in proceedings has no or insufficient command of the language in which the proceedings are conducted. A Berlitz phrase book may be enough to get by as a tourist in a foreign country, but it won't be of any help to a suspect in criminal proceedings. Misinterpreted statements may have a disastrous effect. If a suspect wants to be able to effectively exercise his rights, he must in any case be able to obtain information on his legal position in a language that he understands. That requires the assistance of an interpreter or translator. Interpreters and translators therefore have a crucial role in safeguarding a fair trial. Decisions in criminal cases are usually taken on the basis of the work done by an interpreter or translator. If the proper performance of the interpreter or translator has not been sufficiently guaranteed, this may have extremely serious implications, and may even result in the conviction of an innocent person. The protection of a suspect who does not speak the language of a prosecuting Member States is often below par (Europa: Rights of crime victims). Measures so far adopted by the EU mainly have a repressive character and create the impression of primarily serving the interests of the State. It is essential for having faith in the EU rather than a luxury The fact that Europe is countering this impression by doing something about the rights of a suspect is no unnecessary luxury, but an essential factor in strengthening the trust of Member States in the fairness of mutual recognition within the EU.

1.2. Fair trial and effective assistance of an interpreter or translator

The right to assistance of an interpreter or translator during criminal proceedings is laid down in Article 6(3) of the ECHR (Vandenberghe 2003; Vanden Bosch 2003). Pursuant to this provision, every defendant has the right to free assistance of an interpreter, if he does not understand or speak the language.

> For anyone who cannot speak or understand the language used in court, the right to receive the free assistance of an interpreter, without subsequently having claimed back from him payment of the cost thereby incurred.

In addition, there is the obligation pursuant to Article 5(2) ECHR to promptly inform anyone who is arrested, in a language which he understands, of the reasons for his arrest and of any charge against him. A defendant can only defend himself properly if he has an idea of the things he is accused of.

> [...] as to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of the events (ECtHR, Kamasinski v. Austria, 19 December 1989, Series A-168, § 74 in European Commission 2010: 7).

The starting point must be, according to the European Court of Human Rights (ECtHR) that the defendant who has insufficient command of the language

used in the court has the same right to information, to a hearing of both sides of the case and to a fair trial as the defendant who has command of the language used in the court. The defendant is entitled to take full part in the trial. There is no fair trial if no interpreter assistance is provided. That right is not limited to the situation where the defendant does not speak the language used in court, but also to defendants with hearing and speech impairments. The right to an interpreter thus comprises, where necessary, the right to a sign language interpreter.[3] The decision in the Kamasinski case cited above also contains a remark on the quality of the interpreter to be made available.

> In view of the need for the right guaranteed by paragraph 3 (c) to be practical and effective, the obligation of the competent authorities is not limited to the appointment of an interpreter but, if they are put on notice in the particular circumstances, may also extend to a degree of subsequent control over de adequacy of the interpretation provided (*ibid*.).

1.3. Quality

The logical conclusion is that the responsibility of the authorities is not limited to the appointment of an interpreter, but that it also includes the necessity of ensuring that that the interpreter is competent and that his interpretation is of sufficient quality. The reason for this is to guarantee that the right to the free assistance of an interpreter will be 'practical' and 'effective.' This is a logical consequence, as the right to the assistance of an interpreter would otherwise hardly be a safeguard.

In the Cuscani v. United Kingdom case, the ECtHR has further accentuated this line of reasoning.[4] Cuscani—a manager of an Italian restaurant whose command of English was poor—was prosecuted for tax evasion. Shortly before the hearing, the judge was informed of the fact that Cuscani had a poor command of the English language and that it would be impossible for him to understand the proceedings without the assistance of an interpreter. He then decided that an interpreter had to be present during the hearing. During the hearing, however, there was no interpreter, and Cuscani's lawyer convinced the judge to allow communications to take place via Cuscani's brother. Later, it was established that his brother had not translated anything during the hearing.

The ECtHR has established that the judge had the obligation to convince himself—having consulted Cuscani in person—of the fact that Cuscani was able to take part in full in a trial that could have serious consequences for him. The ECtHR concludes that the judge failed to meet his duty: the judge had not consulted Cuscani himself, and had relied on Cuscani's brother without testing the latter's language skills. According to the ECtHR, it is true that the defence is primarily a matter between the defendant and his counsel. However, the "ultimate guardian" for the fairness of the proceedings was the trial judge who knew about the problems that could arise for the defendant due to the

absence of an interpreter. The ECtHR has held in that respect that the domestic courts themselves have determined that judges are required to treat the interests of an accused with scrupulous care.

In the actual criminal trial, the judge will have to assess every time whether or not the assistance of an interpreter is required, and if so, whether the quality of the performance of that interpreter is deemed adequate. The judge may not excuse himself, in that respect, by shifting the responsibility for the decision to a lawyer who is too indifferent.[5]

> [...] However, the ultimate guardian of the fairness of the proceedings was the trial judge who had been clearly apprised of the real difficulties which the absence of interpretation might create for the applicant. It further observes that the domestic courts have already taken the view that in circumstances such as those in the instant case, judges are required to treat an accused's interest with 'scrupulous care' (Commission of the European Communities 2003: 28).

1.4. Co-operation

This judgment also underlines the importance of good *co-operation* (communication) between interpreters, judges, public prosecutors and lawyers. "Law is a profession of words" (Mellinkoff 1987: vii). Judges, public prosecutors and lawyers are also trained in that respect. However, there are numerous practical examples of situations in which the judge is not critical enough where it concerns the quality of the interpretation. The judge consequently sees himself saddled with a difficult task. On the one hand, he is expected to monitor the reliability of the interpretation, whereas on the other hand he usually is unable to assess the quality of the interpretation. The interpreter is responsible for his job, the judge for the trial as a whole, including the interpretation on which his ultimate decision is based. After all, the task of the judge is to arrive in the best possible way at the truth. Efficient communication creates an important condition for the judge's ability to meet this responsibility and to be able to guarantee the quality of the examination. This is only possible where communication via the interpreter proceeds smoothly, without problems. It is important that the interpreter is acutely aware of the conditions under which he is deemed to render his services: as a professional, independent and unbiased. The latter two qualities determine his position and role in the criminal trial. The manner in which the interpretation proceeds should bear no semblance of any bias towards the interests of either of the parties to the proceedings. The condition of professionalism requires specific know-how of criminal law and the procedure followed in hearing a criminal trial. The use of official judicial 'jargon' and the possibility of a difference between the parties regarding their manner of thought and expression must be sufficiently overcome. It is generally accepted that these skills can only be acquired in good interaction with the legal practice. The deployment of judges, public prosecutors and lawyers as lecturers in the education and training of court interpreters is therefore essential. It is

highly important that all those involved make arrangements in respect of their contribution towards this type of education, and that they engage in a critical dialogue among themselves on the structure of the curriculum (See the recommendations of the "EU Reflection Forum on Multilingualism and Interpreter", European Commission 2009).

1.5. A training course on dealing with interpreters

On the other hand, it is also important that judges, public prosecutors and lawyers are aware of the possibilities and limitations of working with an interpreter. Jurists often consider interpreters as a 'translation machine' that simply has to translate everything that is being said. They often do not take into account the extra effort/time involved in interpreting. In those cases, the pace of the hearing is too rapid to allow for correct interpretation, or the professionals use terms that are either hard to translate or for which the target language has no equivalent (see Filipovic 2007). Some words have two or more meanings, from which the interpreter selects one according to his understanding of the matter. The disadvantages attached to working with an interpreter can be minimised by applying the right conversation techniques. One can learn such techniques in a training course on effectively dealing with interpreters. In that respect, it is also important that judges, public prosecutors and lawyers develop skills to be able to critically assess the work of interpreters in a sufficient manner.

2. EU initiatives

Back to the European playing field. In 2004, the European Commission presented a "Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union" (Commission of the European Communities 2004). That was preceded by a more ambitious Green Paper (Commission of the European Communities 2003). The proposal contained rules on the right to legal aid, the right to translation and access to an interpreter, the right to specific provisions for suspects with a handicap or impairment, the right to communication and consular assistance, the right to notification of their rights by way of a *Letter of Rights,* and a detailed monitoring and evaluation mechanism.

2.1. Framework Decision on procedural rights in criminal proceedings

Articles 6, 7, 8 and 9 are relevant to the right to assistance of an interpreter or translator. Under Article 6, the Member States are obliged to guarantee that a suspect who has no command of the language used in court will receive the free assistance of an interpreter or translator during the entire trial. The proposal emphasises that this is a pre-

condition for a fair trial and that this is not limited to situations where people speak/understand another language, but also applies to suspects with hearing or speech impairments (Art. 6(3)).

Article 7 provides that the Member States must take measures to ensure that the suspect who does not speak/understand the language used in court will receive translations of all relevant documents that relate to his case, free of charge. The second paragraph of this Article provides that the lawyer of the suspect may request a translation of documents.

Article 8 relates to the accuracy of the translation and interpretation. The first paragraph of this article provides that the Member States must ensure that the interpreters and translators that are retained are qualified to provide an accurate translation or interpretation. In addition, the Member States must have rules in place guaranteeing the replacement of any interpreter or translator who does not work accurately. In order to ensure the quality of interpretation, Article 9 provides that the Member States must record interpretations on audiotape or videotape.

2.2. Insufficient support

The response of the Member States to the proposed Framework Decision was mostly negative. Although there is a positive attitude towards the attention to the safeguarding of rights for suspects in criminal cases, many Member States believe that the responsibility for those rights is primarily a domestic matter. The need to give the EU a role in addition to that of the ECHR in harmonising safeguards for suspects is not endorsed by all Member States. Some countries believe that the ECHR provides enough safeguards. Moreover, many countries were concerned with the costs arising from the Framework Decision. During negotiations, the specific provisions for vulnerable suspects, such as the right to communication and consular assistance, the *letter of rights,* and a monitoring and evaluation mechanism, were abolished. The most ardent opponent of the proposal was the United Kingdom. According to this Member State, the text was not clear enough and did not specify where the proposal was in line with the ECHR and where it differed and/or had further implications.[6] The United Kingdom suggested as a compromise to limit the Framework Decision to cross-border procedures such as the European Arrest Warrant. However, the parties could not reach consent, and the proposal was withdrawn from the European agenda.

2.3. Framework Decision on the right to interpretation and translation

On 8 July 2009, the European Commission made a new attempt. That day, the proposal for a Framework Decision on the right to translation

and interpretation in criminal cases was published (Commission of the European Communities 2009). After an informal consultation with the Swedish presidency, a revised version of the proposal followed on 31 August 2009 (Eulita 2009). In the explanation, the European Commission wrote that it had realised, due to the lack of support for the earlier proposal, that a step-by-step approach would be an acceptable way to achieve procedural safeguards in criminal proceedings. The first—in the opinion of the European Commission least controversial—step to be taken is safeguarding the right to interpretation and translation for suspects.

2.4. Minimum standards

The proposal just contains minimum standards, and the Member States therefore are at liberty to give suspects more protection (Article 6). The rights laid down in the proposal apply to any persons suspected of a criminal offence, as of the moment that the charge is brought against them until the end of the trial (Article 2(1)).The Member States must put a procedure in place to ascertain whether the suspect speaks the language used in court. Individuals with hearing or speech impairments are also entitled to the assistance of an interpreter.

In light of the recommendations of the EU Reflection Forum on Multilingualism and Interpreter Training, the Commission has already acknowledged the right to the assistance of an interpreter from the moment at which someone is arrested. The starting point is that 'all reasonable efforts are made to ascertain whether the suspect understands and speaks the language of the criminal proceedings' (Article 2(3)). If it is decided that assistance of an interpreter is not necessary, the suspect must be offered an opportunity to request an assessment (a 'review') of this decision Article 2(4)).[7] If *necessary,* the assistance of an interpreter must also be guaranteed when the suspect confers with his lawyer (Article 2(2)). The term 'necessary' must be construed, according to the explanation, in conformity with ECtHR case law. In that respect, the judgment in the Hermi v. Italy case is relevant (ECtHR 2007).

> In addition, paragraph 3(e) of Article 6 states that every defendant has the right to the free assistance of an interpreter. That right applies not only to oral statements made at the trial hearing but also to documentary material and the pre-trial proceedings. This means that an accused who cannot understand or speak the language used in court has the right to the free assistance of an interpreter for the translation or interpretation of all those documents or statements in the proceedings instituted against him which it is necessary for him to understand or to have rendered into the court's language in order to have the benefit of a fair trial.

Moreover, the Member States must guarantee that any essential document is translated. Those include, in any case, the order of

depriving someone of his liberty, the indictment, and the judgment (Article 3(2)). Article 3(3) provides that the lawyer of a suspect may submit a reasoned request for translation of further documents, including legal written advice from the suspect's lawyer. Again, it should also be possible to request an assessment ('review') of a decision to refuse translation of any documents (Article 3(4)). All cost of interpretation and translation must be borne by the Member States, which also arises from the provisions of Article 6 ECHR and ECtHR case law where it concerns the assistance of an interpreter. The Member States have the obligation to safeguard the quality of interpretation and translation (Article 5(1)). Members of the judiciary, lawyers and public prosecutors and court personnel must be offered training courses in working with interpreters (Article 5(2)). It is rather striking that the police is not listed. The Member States are given two years (i.e.: 24 months after publication of the Framework Decision in the Official Journal) to meet the obligations arising from the Framework Decision.

3. Gradually strengthening the procedural rights

It is clear that the European Commission has considerably adjusted the original level of ambition. It is not feasible to realise a package of procedural safeguards in criminal proceedings at once. The step-by-step approach chosen shows a political sense of reality. In doing so, the European Commission knows that the non-stop flow of judgments on the right to a fair trial rendered by the ECtHR in the long run will only endorse this approach. An example is the judgments rendered at the end of 2008 by the ECtHR in the Salduz v. Turkey case and the Panovits v. Cyprus case on the sensitive subject of an accused having the right to legal aid during police interviews.[8] These judgments clearly show that it is necessary for Member States to put rules in place granting a person arrested on suspicion of a criminal offence the right to have a consultation with a lawyer prior to the police interview. At a later stage, the ECtHR has taken a position on the right to a lawyer in a number of cases, most recently in the Pishchalnikov v. Russia case. In this case, the suspect, despite his request to that effect, was not represented by a lawyer when he delivered a statement of confession to the police. Russia argued that Pishchalnikov had waived his right to legal representation. The ECtHR, however, deems the fact that Pishchalnikov had been told that he had the right to remain silent and had been given a form stating his rights, was not enough to assume that he had waived his right to legal representation.

> 78 […] the Court strongly indicates that additional safeguards are necessary when the accused asks for counsel because if an accused has no lawyer, he has less chance of being informed of his rights and, as a consequence, there is less chance that they will be respected.
> 79. Turning to the facts of the present case, the Court is not convinced that by giving replies to the investigator's questions the applicant, in a knowing, explicit and unequivocal manner, waived his right to receive legal representation during

> the interrogations on 15 and 16 December 1998. The Court firstly reiterates its finding in the case of *Salduz* v. *Turkey* (cited above, § 59) that no inferences could be drawn from the mere fact that the applicant had been reminded of his right to remain silent and signed the form stating his rights. A caution given by the investigating authorities informing an accused of the right to silence is a minimum recognition of the right, and as administered it barely meets the minimum aim of acquainting the accused with the rights which the law confirms on him]..[. ..In the Court's view, when an accused has invoked his right to be assisted by counsel during interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated interrogation even if he has been advised of his rights…].
> 80. On the basis of the parties' submissions and the materials presented by them, the Court finds that the interrogations on 15 and 16 December 1998 were performed at the instigation of the authorities. The fact that the police proceeded to questioning the applicant in the absence of counsel occurred neither at the applicant's suggestion nor at his request. There is no evidence that the confessions made by the applicant during those interrogations were initiated by him. Furthermore, the Court does not rule out that, in a situation when his request for assistance by counsel had been left without adequate response, the applicant who, as it follows from the case file, had had no previous encounters with the police, did not understand what was required to stop the interrogation. The Court is mindful that the applicant may not have had sufficient knowledge, experience, or even sufficient self-confidence to make the best choice without the advice and support of a lawyer. It is possible that he did not object to further questioning in the absence of legal assistance, seeing the confession (true or not) as the only way to end the interrogation. Given the lack of legal assistance the Court considers it also unlikely that the applicant could reasonably have appreciated the consequences of his proceeding to be questioned without the assistance of counsel in a criminal case concerning the investigation of a number of particularly grave criminal offences...].

The relevance of the Salduz, Panovits and Pishchalnikov cases cited above is mainly the fact that the right to the assistance of an interpreter or translator in practical terms 'joins in' with the right to legal representation. After all, for the right to legal representation to be practical and effective, the suspect who does not speak/understand the language used in court must be able to talk to his lawyer with the help of an interpreter. The provision of the assistance of an interpreter or translator is part of a fair trial. Having access to translated documents and the presence of an interpreter for the purpose of communicating with a lawyer during crucial stages of the preliminary investigation are important conditions for the protection of the rights of the suspect and the right to a fair trial. Without the assistance of an interpreter or translator, the right to legal representation for a suspect who does not speak/understand the language used in court will easily become an illusion. In brief, the right to the assistance of a lawyer and an interpreter are inseparable. All we have to do is to wait for an active lawyer to submit this matter to the ECtHR.

3.1. What is the next step?

In the autumn of 2009, intense negotiations on the Framework Decision

on the right to interpretation and translation were held under the aegis of the Swedish EU presidency. Important subjects for debate were the remit of the right of a defendant to the written translation of documents. In particular the question as to what court documents were essential was a point of debate. A large number of Member States wanted to limit that right to an oral translation of such documents. An obligation to provide translations in writing would significantly delay the criminal proceedings (awaiting the availability of the translations) and would lead to a disproportional increase in costs which is not provided for in the budget. According to many Member States, it is not possible to conclude, on the basis of the case law of the ECtHR, that there is an extreme obligation to provide translations in writing under the ECHR. There are also Member States—such as the Netherlands—that have generous rules for providing the assistance of an interpreter in order to allow a suspect to talk to his lawyer. In practice, such an interpreter usually renders an oral translation of the outlines of any document during meetings between the suspect and his lawyer. These countries believe too that a full translation of all written documentation is not necessary and that an oral translation is sufficient. Only a few Member States took the position that a suspect did not require the assistance of an interpreter for the purpose of communicating outside the trial.

On 23 October 2009, a compromise was reached during a meeting of the Ministers of Justice in Luxembourg. The right to translation of written documents was limited to the arrest warrant, the indictment or accusations and the judgment of the court. A lawyer may submit a reasoned request for translation of other documents.

3.2. Treaty of Lisbon

After reaching the political agreement on 23 October 2009, the next step—until the Treaty of Lisbon was to enter into force—was giving the European Parliament the opportunity to present its view on the text at hand. Late in November 2009, the European Parliament appointed Baroness Sarah Ludford as rapporteur, and it also decided to postpone the discussion of the text at hand until 17 December 2009. That meant that there was no chance of the Framework Decision being formally adopted before the Treaty of Lisbon entered into force. This implies that the European Commission will present a new proposal for a Directive on interpretation and translation, which at best will be exactly the same as the text on which political agreement has been reached. Alternatively, elements will be added to that proposal that had been left out of the European Commission's proposal for the Framework Decision during the negotiations. Consider elements such as written translations of essential court documents.

The European Parliament has already intimated that the text on which

political agreement had been reached in Luxembourg is not ambitious enough, and that it expects the European Commission to present a more ambitious proposal. If that is still not good enough, the European Parliament will no doubt try to tighten the text by way of amendments.

4. Conclusion

Due to increased mobility and the fast development of judicial co-operation in criminal matters within the EU, more and more people are faced with criminal proceedings without sufficiently speaking/understanding the language used in court. As a result, their legal position is weakened. Where someone is suspected of a criminal offence and is prosecuted, the right to the assistance of an interpreter or translator is an essential pre-condition in guaranteeing that a fair trial takes place. This right is interpreted in different ways by the various Member States. That also applies to the conditions regarding the quality of interpreters and translators. Practice contrasts sharply with ECtHR case law. Therefore, it is highly important that EU legislation is drafted to better safeguard both the right to assistance of an interpreter or translator and the quality thereof. Given the differences within the EU, the step-by-step approach taken by the European Commission seems the best possible strategy to ensure that the ultimate goal is reached.

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Biography

Evert-Jan van der Vlis was born in the Netherlands in 1953. He studied Law at the University of Rotterdam and Public Management at the TiasNimbas Business School in Tilburg. From 1975 to 1991 he worked for the Legal Aid Centre in Rotterdam and the National Board for Legal Aid Centers in The Hague. In 1992 he joined the Ministry of Justice in the Netherlands. Currently he is policy adviser on the Access to Justice Unit responsible for policy making in the field of legal aid and de legal profession (advocates, notaries, bailiffs and legal interpreters and translators). The department is responsible for government policy on legal aid, the legal professions of advocates, notaries, bailiffs and legal interpreters and translators.

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[1] In all Member States, national penal law has been developed in a process that has taken centuries; it symbolises a national identity and culture. Each Member State attaches importance to its unique features.

[2] Mutual trust is also the essence of the judgment in the joined cases C-187/01 (Gözütok) and C-385/01 (Brügge). According to the Court, there is a necessary implication "that the Member States have mutual trust in their criminal justice systems and that each of them recognises the criminal law in force in the other Member States even when the outcome would be different if its own national law were applied."

[3] Further to the opinion of the ECtHR in the case Luedicke, Belkacem and Kog, the free assistance of an interpreter or translator in criminal cases is arranged in Germany for anyone 'who is deaf or dumb or not conversant with the German language'. C.f. the reference in EHtRM 21 February 1984, Series A 73.

[4] EHRM 24 September 2002, application n° 00032771/96 (Cuscani v. United Kingdom).

[5] In the Hermi v. Italy case, the ECtHR also held that the trial judge has the duty to guarantee the effectiveness of the defence for the defendant, even when the defendant has not informed the competent authorities and has not contacted counsel himself. ECtHR 18 October 2006, application n° 18114/02.

[6] "Power without precision is very dangerous" according to the comments of the

delegates of the United Kingdom.

[7] The Senate of the Czech Republic recommended by resolution dated 7 October 2009 to reconsider the scope of the State's obligation to bear the cost of interpretation and translations. The Senate does not see the need for the provisions in the proposal for the Framework Decision that grant a right to review against the decision that no interpretation or translation is necessary. See http://europapoort.eerstekamer.nl/9345000/l/i9tvgaicovz8izf_vvgy6i0vdh7th/vgbwr4k8ocw2/f=/vi9ve0cgxxu4.pdf

[8] Salduz (application n° 36 391/02) and Panovits (application n° 4268/04).