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The Right to Interpretation and Translation as a Procedural Safeguard of the Right to a Fair Trial in the Jurisprudence of the ECtHR and the CJEU

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SUMMARY

This article provides a comprehensive analysis of the right to a fair trial with a particular focus on the right to interpretation and translation as a fundamental procedural safeguard. It examines the multi-layered protection of this right at the international, supranational, and national levels, highlighting the key legal frameworks, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights (ECHR), and the Charter of Fundamental Rights of the European Union.

Special attention is given to the procedural guarantees enshrined in Article 6(3)(e) ECHR and Directive 2010/64/EU, and to the obligations of public authorities and courts to ensure timely and effective interpretation and translation in criminal proceedings. The study explores the practical challenges in securing these rights, particularly in the context of pre-trial detention and the execution of custodial sentences in the Slovak Republic. It addresses the legal distinction between formal procedural rights and the linguistic rights of foreign nationals in detention settings, and examines the role of ombudsman institutions in monitoring compliance.

The article also reflects de lege ferenda on possible legislative and practical measures, such as the use of English as an auxiliary language upon admission to detention and the deployment of electronic translation tools, aimed at improving the protection of fair trial rights in an increasingly multilingual and diverse society. The research applies a combination of doctrinal

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Recognition of Judicial Decisions in Criminal Matters into the Legal Order of the Slovak Republic" [Slovak: Zavedenie vzájomného uznávania justičných rozhodnutí v trestných veciach do právneho poriadku Slovenskej republiky].

legal analysis, comparative method, and case-law study, complemented by analytical and synthetic approaches to evaluate existing legal frameworks, identify shortcomings in practice, and formulate recommendations for reform.

KEYWORDS

Fair Trail, Interpreter Assistance, Procedural Safeguards, Pre-trial Detention, ECtHR and CJEU Jurisprudence.

INTRODUCTION

The right to a fair trial is more than a legal guarantee — it is a cornerstone of justice and a reflection of the moral and constitutional values on which democratic societies are built. Without this right, no judicial system can claim legitimacy, and no individual can be assured of protection against arbitrariness and abuse of power. The fair trial principle safeguards human dignity, equality before the law, and the rule of law itself.

From the ashes of the Second World War emerged an urgent call to enshrine the right to a fair trial as a universal and binding standard. What began as a fundamental aspiration has since evolved into a detailed framework of procedural safeguards enshrined in international, supranational, and national instruments — from the *Universal Declaration of Human Rights* and the *European Convention on Human Rights* to the *Charter of Fundamental Rights of the European Union* and the constitutional provisions of individual states such as the Slovak Republic.

This study takes the reader on a journey through these layers of legal protection, examining not only the abstract principles of fair trial rights but also their concrete application in practice. Special emphasis is placed on the right to interpretation and translation as an essential guarantee for accused persons, particularly in criminal proceedings where the stakes are highest. The text explores how these rights are operationalised in the context of pre-trial detention and the execution of custodial sentences — areas where linguistic barriers can mean the difference between justice and injustice.

At the same time, this contribution highlights the role of oversight institutions, such as the *European Ombudsman* and national ombudsmen, in safeguarding these rights. It reflects critically on the challenges faced by legal systems in translating principle into practice and considers avenues for reform, especially in light of contemporary phenomena such as increased migration and the growing linguistic diversity of populations.

By interweaving legal analysis with reflections on practical realities, and by applying a combination of doctrinal legal research, comparative analysis, and detailed examination of the case-law of the ECtHR and CJEU, this contribution uses analytical and synthetic methods to map the current state of the law, identify practical shortcomings, and propose de lege ferenda measures to ensure the effective protection of the right to a fair trial for all.

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THE RIGHT TO A FAIR TRIAL

The modern protection of the right to a fair trial began to develop at the end of the Second World War. The horrors of the war gave rise to the need to establish a mechanism for the protection of human rights at the international level. Within the framework of the global mechanism of this protection, the concept of the right to a fair trial was defined in the Universal Declaration of Human Rights in 1948.

A further specification of this concept occurred in 1966 through the International Covenant on Civil and Political Rights, which is legally binding on all Member States of the United Nations.

The regulation of this right has evolved not only in the international sphere but also at the regional level. The right to a fair trial is the subject of regulation by regional conventions, such as the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the American Convention on Human Rights of 1969, and the African Charter on Human and Peoples' Rights of 1979.

The modern substance of the right to a fair trial is also shaped by the norms of the supranational law of the European Union.

According to Jančát, when focusing on the context of the "Old Continent", three basic levels of protection of fundamental rights — including the right to a fair trial — come into consideration:

- International
- Supranational
- National[3]

INTERNATIONAL LEVEL OF PROTECTION OF THE RIGHT TO A FAIR TRIAL

The application of the right to a fair trial within the European area is governed by two fundamental mechanisms.

The first is the global mechanism arising from the *International Covenant on Civil and Political Rights* (ICCPR)[4], which guarantees the protection of fundamental civil rights and freedoms. Article 14(3)(f) defines the protection of the right to a fair trial as *"to have the free assistance of an interpreter if he cannot understand or speak the language used in court."*[5]

The second essential instrument guaranteeing the protection of the right to a fair trial is the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (hereinafter: *ECHR*)[6]. The ECHR was adopted within the framework of the Council of Europe by the foreign ministers of its Member States in Rome on 4 November 1950. It represents the most effective mechanism for the protection of human rights not only within the European

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[3] Jančát L., Právo na spravodlivý proces podľa Dohovoru a judikatúry ESĽP v Slovenskej republike (Košice: SafarikPress, 2024), 9.

[4] International Covenant on Civil and Political Rights // https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.

[5] Ibid., Art. 14.

[6] European Convention for the Protection of Human Rights and Fundamental Freedoms // https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:eu_human_rights_convention.

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Union but also globally. The right to a fair trial is enshrined in Article 6 (*Right to a fair trial*, in the French version: *Droit à un procès équitable*). Article 7 and Article 13 are also closely related to the right to a fair trial.[7]

One of the ECHR's protocols established the *European Court of Human Rights* (hereinafter: *ECtHR*). The Court embodies the principle of effective protection, which resembles the concept of *living originalism*, requiring the Court to interpret and apply legal institutions in a manner consistent with their relevance and practical applicability in both present and future contexts.[8]

The principle of subsidiarity in the application of the ECHR and the protection of the rights enshrined therein is essential in two respects:

- The *ECtHR* is not an additional post-appellate instance intended to correct decisions of domestic courts; an application may be lodged only after all effective domestic remedies have been exhausted.
- The Court does not conduct its own evidentiary proceedings but relies on the findings of domestic courts, provided that these findings are based on a correct legal assessment of the case.

Final judgments of the *ECtHR* have *erga omnes* binding effect for the Contracting Parties, not merely *inter partes*. For this reason, the *ECtHR* — but above all the Contracting Parties — are obliged, when applying the ECHR and its protocols, to take into account the prior case law of the *ECtHR*. A failure to do so exposes them to the risk of violating its provisions.[9]

SUPRANATIONAL LEVEL OF PROTECTION OF THE RIGHT TO A FAIR TRIAL

In the European context, this level of protection is ensured by the legal norms of the European Union. Its objective is to guarantee the safeguarding of fundamental rights in the creation and application of European Union law by the institutions, bodies, agencies, and offices of the European Union, as well as by its Member States.[10]

The *Charter of Fundamental Rights of the European Union* forms the basic framework for the protection of rights within the Union.[11] With the entry into force of the Treaty of Lisbon, the Charter, pursuant to Article 6(1) TEU, became an integral part of the EU's primary law. The Charter, in Title VI (*Justice*), in conjunction with Articles 47 and 52, provides the legal basis for the protection of the right to a fair trial by the bodies of the European Union. Union law may grant a broader scope of protection of the right to a fair trial.[12]

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[7] Ibid., Art. 6-13.

[8] Dorr O., Schmalenbach K., *Vienna Convention on the Law of Treaties. A Commentary* (Heidelberg: Springer, 2012), 521.

[9] Ľalík T., "Understanding the Binding Effect of the Case-Law of the ECtHR in Domestic Legal Order," *International Conference: Effectiveness of European System of Protection of Human Rights*, Warszawa, Sejm, April 18-19, 2011 // https://ssrn.com/abstract=1951830.

[10] Tichý L., *Evropské právo*, 5th rev. ed. (Prague: C. H. Beck, 2014), 13.

[11] *Charter of Fundamental Rights of the European Union* // https://eur-lex.europa.eu/legal-content/sk/ALL/?uri=CELEX:12010P001.

[12] Ibid., Art. 14-52

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With regard to EU law, it is noted that there are four specific aspects of the right to a fair trial in criminal matters: the right to information, the right to legal assistance, the right to assistance in securing exoneration, and the right to interpretation and translation.[13]

The European Union is the only international/supranational organisation that provides protection of fundamental rights against its own actions.[14]

The European Union possesses its own written catalogue guaranteeing the right to interpretation and translation in criminal proceedings. *Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010*guarantees the basic right to interpretation and translation in criminal proceedings (hereinafter: *Directive 2010/64/EU*).[15]

NATIONAL LEVEL OF PROTECTION OF THE RIGHT TO A FAIR TRIAL IN THE SLOVAK REPUBLIC

The legal basis for such protection is generally the legal norm with the highest legal force. In the Member States, this is typically the Constitution, which enumerates the fundamental rights to which the state commits itself and simultaneously establishes the mechanism for their enforcement.

In the Slovak Republic, the right to a fair trial is enshrined in two fundamental documents: the *Constitution of the Slovak Republic* and the *Charter of Fundamental Rights and Freedoms*.

The *Constitution of the Slovak Republic* defines this right in several provisions, with the core to be found in Articles 46 to 51.[16]

From the perspective of application, the *Charter* stands behind the *Constitution*; according to legal doctrine, its significance is rather historical. Nevertheless, it cannot be disregarded.[17]

The national level of protection of the right to a fair trial is further ensured through laws that specify this right in greater detail. These include procedural rules for various types of judicial proceedings[18], as well as other legal norms governing the organisation of the judiciary and related matters.

The mechanism for overseeing compliance with this fundamental right at the level of the Slovak Republic is ensured by the judicial power of the Slovak Republic. At its apex stands

[13] Spronken T., Vermeulen G., "Fundamental Procedural Rights in Criminal Proceedings throughout European Union," in *Study on Procedural Rights: Existing Level of Safeguards in Member-States 2008 Update* (Maastricht: Maastricht University/IRCP Ghent University, 2008).

[14] Spronken T., *An EU-Wide Letter of Rights in Criminal Proceedings: Towards Best Practice* (Antwerp: Intersentia, 2010), 69-75.

[15] *Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings*, OJ L 280, 26.10.2010, 1 // https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010L0064.

[16] *Constitution of the Slovak Republic*, Art. 46-51.

[17] Orosz L., "Listina základných práv a slobôd ako súčasť ústavného systému Slovenskej republiky [The Charter of Fundamental Rights and Freedoms as Part of the Constitutional System of the Slovak Republic]," in Jirásek J., ed., *Listina a současnost* (Olomouc: Iuridicium Olomoucencse, 2010), 15.

[18] For example Criminal Code of Slovak republic, Civil Procedure Code of Slovak republic, Administrative Court Code of Slovak republic etc.

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the *Constitutional Court of the Slovak Republic*. The ordinary courts participate indirectly, as they are obliged to apply the law in a manner that does not result in a violation of this right.

THE RIGHT TO A FAIR TRIAL: ITS SCOPE AND CONTENT

The right to a fair trial imposes partial requirements on public authorities, particularly in the area of ensuring:

- access to a court or another competent authority,
- the quality of the court and of the judge,
- the quality of the proceedings,
- the right to compensation for damage caused by improper conduct of the state and redress for such improper conduct.

From the constitutional, supranational, and national protection of the right to a fair trial, it follows that this right must:

- be guaranteed in proceedings before all bodies of state authority,
- be governed by law as regards the procedural rights of individuals,
- comply, at a minimum, with the standards arising from the case law of the highest judicial authorities and the jurisprudence of the ECtHR and the Court of Justice of the EU.

THE RIGHT TO A FAIR TRIAL IN CRIMINAL MATTERS

Where a court decides on a criminal offence of which a person is accused, the matter is classified as criminal. In order to determine whether a particular case falls within the civil or criminal category, it is necessary to refer to the case law of the *ECtHR*, which provides interpretation of these concepts.

The concept of a *criminal matter* necessarily presupposes an understanding of the term *criminal offence*. The decisive factor in determining whether a particular case is covered by the right to a fair trial guaranteed by the *ECHR*, in conjunction with the case law of the *ECtHR*, is the fulfilment of the so-called *Engel criteria*.[19] These criteria, formed by the jurisprudence of the *ECtHR*, derive their name from the judgment in *Engel and Others v. the Netherlands*, where the *ECtHR* defined them for the first time as[20]:

- the legal classification of the offence under national law,
- the nature of the offence,
- the nature and severity of the potential penalty.

[19] Jančát L., Právo na spravodlivý proces podľa Dohovoru a judikatúry ESĽP v Slovenskej republike (Košice: SafarikPress, 2024), 24.

[20] Engel and Others v. the Netherlands, no. 5100/71 et al., ECtHR, 8 July 1976.

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If at least one of these criteria is fulfilled, it is necessary to ensure the application of the rights enshrined in the *ECHR*.

The general guarantees of the right to a fair trial applicable in criminal matters — which are also applicable in civil matters — include:

- the right of access to a court *per se*,
- the right to legal assistance,
- the right to a decision on the merits of the case and to the enforcement of an enforceable decision,
- the right to an independent and impartial tribunal established by law,
- the right to equality of arms and adversarial proceedings,
- the right to be present at the hearing,
- the right to a public hearing,
- the right to a reasoned judgment,
- the right to a hearing within a reasonable time.

Beyond these general guarantees, the following specific guarantees must be applied in criminal cases:

- the right not to incriminate oneself,
- the right to the presumption of innocence,
- the right to be informed promptly, in a language which one understands, of the nature and cause of the accusation against oneself,
- the right to adequate time and facilities for the preparation of one's defence,
- the right to defend oneself in person or through legal assistance of one's own choosing, and to be provided with legal assistance free of charge if one does not have sufficient means to pay for it, where the interests of justice so require,
- the right to examine or have examined witnesses against oneself and to obtain the attendance and examination of witnesses on one's behalf under the same conditions as witnesses against oneself,
- **the right to the free assistance of an interpreter and to the translation of documents if one does not understand or speak the language used in the proceedings,**
- the right to the application of the principles of *nullum crimen sine lege* and *nulla poena sine lege*,
- the right to appeal in criminal matters,
- the right to the application of the principle of *ne bis in idem*,
- the right to compensation in the event of a miscarriage of justice in a criminal case.

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THEORETICAL FOUNDATIONS OF THE RIGHT TO INTERPRETATION AND TRANSLATION AND THE JURISPRUDENCE OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

The right of the individual under Article 6(3)(e) *ECHR* to the free assistance of an interpreter if the individual does not understand or speak the language used in court overlaps with the right provided in Article 6(3)(a) and Article 5(2), and at the same time constitutes a specific provision in relation to the general prohibition of discrimination in the exercise of the right to a fair trial under Article 14 in conjunction with Article 6(1) *ECHR*.[21]

čThis right is an essential prerequisite for enabling the accused to exercise the rights guaranteed by a fair trial even in a foreign-language environment. It must be guaranteed from the very beginning of the criminal proceedings, not only during the trial stage, and must also be ensured in appellate proceedings. The accused may waive this right at any time, but such a waiver must be made personally by the accused. Beyond the right to an interpreter, this guarantee also encompasses the right to the translation of documents and documentary evidence that the accused must understand. This refers to the translation of documents from the language of the proceedings into a language the accused understands, as well as the translation of essential defence documents into the language in which the proceedings are conducted. The determination of which documents must be interpreted or translated must be assessed in light of the circumstances of the accused. It is necessary to examine whether the accused understands the substance of the proceedings, can follow them, and is capable of presenting his or her defence in the language of the proceedings. Established case law indicates that, at a minimum, the indictment, the decision on bringing the accused before a judge, and the decision on pre-trial detention must be translated into a language the accused understands. The essential aim of this right is that interpretation and translation assistance must enable the accused to understand and follow the case and proceedings brought against him or her. The body responsible for verifying whether the accused understands the language of the proceedings is the national court. It is the court's duty to assess whether the accused comprehends and is proficient in the language, understands its meaning, and can effectively defend himself or herself in that language. The court also decides on a case-by-case basis which documents should be translated for the accused, while always ensuring that the proceedings as a whole can be considered fair.[22]

The national court is responsible for ensuring the quality of the interpretation and translation provided. According to the case law of the *ECtHR*, the accused does not have a right to interpretation and translation into his or her mother tongue, but into a language he or she understands sufficiently to grasp the meaning of the criminal proceedings and to defend himself or herself effectively.

A final key requirement of this guarantee is its free-of-charge nature. According to *ECtHR* case law, free assistance means assistance provided by the state without any requirement for reimbursement. This means that even if the accused is found guilty, he or she is

[21] Schabas W. A., *The European Convention on Human Rights: A Commentary* (Oxford: Oxford University Press, 2015), 312.

[22] Rako P., *Právo na spravodlivý proces v prameňoch trestného práva* (Bratislava: C. H. Beck, 2021), 282.

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not obliged to pay the costs incurred by the national court for interpretation or translation. However, if the accused is responsible for the failure to carry out an act for which an interpreter was engaged, the court may impose an obligation to pay.

Another legal basis for the protection of this procedural guarantee is *Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings*.[23] This Directive constitutes one of the first instruments adopted under the *Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings*[24] and represents a key step towards harmonising procedural safeguards across the European Union.

The Directive sets out binding minimum rules concerning the right to interpretation and translation to ensure that suspects and accused persons who do not speak or understand the language of the proceedings are able to exercise their defence rights effectively.[25] Its scope explicitly covers both criminal proceedings and proceedings relating to the execution of a *European Arrest Warrant*.[26]

The Directive guarantees:

- the right to interpretation during criminal proceedings, including during police questioning, all court hearings, and essential meetings between suspects or accused persons and their legal counsel;[27]
- the right to the translation of essential documents, such as the decision depriving the person of liberty, the charge sheet or indictment, and any judgment.[28]

Importantly, *Directive 2010/64/EU* clarifies that interpretation and translation must be provided in a language that the person understands in order to enable the effective exercise of defence rights.[29] This does not necessarily mean the person's mother tongue, but rather any language in which they are capable of comprehending the proceedings and defending themselves effectively. The quality of interpretation and translation must be sufficient to safeguard the fairness of the proceedings.[30] Furthermore, suspects or accused persons have the right to challenge a decision finding that interpretation or translation is not necessary and to complain about the quality of the provided services.[31]

Finally, the Directive obliges Member States to ensure that interpreters and translators possess appropriate qualifications to guarantee the required quality, and encourages the establishment of registers of independent and appropriately qualified professionals.[32]

A crucial element in ensuring the effective implementation and consistent interpretation of *Directive 2010/64/EU* across Member States is the role of the *Court of Justice of the European Union* (CJEU). The Court plays a central part in clarifying the provisions of the Directive so as

[23] Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ L 280, 26.10.2010, p. 1.

[24] Council of the European Union, Resolution on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings, OJ C 295, 4.12.2009, p. 1.

[25] See Directive 2010/64/EU, Article 1(1).

[26] Ibid., Article 1(2).

[27] Ibid., Article 2(1)–(2).

[28] Ibid., Article 3(1).

[29] Ibid., Article 2(4).

[30] Ibid., Article 5.

[31] Ibid., Article 2(5) and Article 3(5).

[32] Ibid., Article 5(2)–(3).

to secure the mutual recognition of judicial and other decisions, which is the cornerstone of judicial cooperation in criminal matters within the European Union. Through its case law, the CJEU provides guidance that strengthens procedural safeguards and upholds fair trial rights in line with the objectives of both EU law and the *Charter of Fundamental Rights of the European Union*.

The Court addressed significant aspects of interpretation and translation rights in **Case C-242/22, TL**.[33] In this case, the Court examined Article 2(1) and Article 3(1) of Directive 2010/64/EU in conjunction with Article 3(1)(d) of *Directive 2012/13/EU*. The CJEU ruled that these provisions preclude national legislation that imposes a preclusive time limit for invoking a breach of rights where such a time limit begins to run before the person concerned has been informed — in a language they understand — about the existence and scope of their right to interpretation and translation, as well as the content and legal effects of the relevant basic document. The judgment highlighted the need for effective communication as a prerequisite for exercising procedural rights and for the principle of effectiveness in EU law.

Building on this, the Court in **Case C-278/16, Frank Sleutjes**[34] addressed the definition of "basic document" under Article 3 of Directive 2010/64/EU. The Court held that a penal order issued in simplified unilateral proceedings to punish minor offences constitutes such a document. Accordingly, suspects or accused persons who do not understand the language of the proceedings must receive a written translation of this document to enable them to exercise their defence rights and ensure the fairness of the proceedings. This judgment was key in extending the scope of translation obligations to certain simplified procedures that might otherwise escape scrutiny.

In **Case C-25/15, István Balogh**,[35] the Court clarified the limits of the Directive's scope. It ruled that Directive 2010/64/EU does not apply to a national procedure by which a court of one Member State recognises a final criminal judgment from another Member State. Here, the Court emphasised that the mutual recognition of criminal judgments under EU instruments such as *Framework Decision 2009/315/JHA* and *Council Decision 2009/316/JHA* takes precedence, and national legislation cannot introduce procedures that undermine this framework.

Further refinement came in **Case C-264/14, Covaci**,[36] where the Court considered whether EU law precludes national provisions that limit the languages in which a suspect can lodge an objection against a penal order. The Court concluded that Articles 1 to 3 of Directive 2010/64/EU do not prevent national law from requiring that such an objection be submitted in the language of the proceedings, provided that the objection is not considered a basic document requiring translation. Additionally, the Court upheld the possibility for national law to require a non-resident accused to appoint an agent for service of the penal order, as long as the accused can effectively use the period prescribed for lodging an objection.

Taken together, these rulings illustrate how the CJEU ensures that the right to interpretation and translation under Directive 2010/64/EU is applied in a manner that gives real effect to defence rights, while respecting the balance between procedural guarantees and the functioning of judicial cooperation instruments. They also demonstrate the Court's nuanced approach in distinguishing between situations where translation is essential for a fair trial and those where other considerations of procedural efficiency and mutual recognition prevail.

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[33] *CJEU, TL, C-242/22, Judgment of 1 August 2022, ECLI:EU:C:2022:61.*
[34] CJEU, Frank Sleutjes, C-278/16, Judgment of 12 October 2017, ECLI:EU:C:2017:757.
[35] CJEU, István Balogh, C-25/15, Judgment of 9 June 2016, ECLI:EU:C:2016:423.
[36] CJEU, Covaci, C-264/14, Judgment of 15 October 2015, ECLI:EU:C:2015:686.

In the following text, we will focus exclusively on the practical application of the right to free assistance of an interpreter and the translation of documents, based on specific case law and in the context of pre-trial detention and the execution of custodial sentences.

THE EUROPEAN OMBUDSMAN AND HIS LEGAL STATUS

Since this area is, *eo ipso*, the subject of examination by various branches of law, it is necessary to point out that the interpretation of the term *"right to interpretation and translation"* is not always uniform. In this context, one cannot overlook the relevant case law of the *European Court of Human Rights* (*ECtHR*) in relation to the right to a fair trial in criminal proceedings, which provides precise solutions to many cases that are the subject of such proceedings. However, the issue of this right, as guaranteed by the *European Convention on Human Rights*, is not limited solely to criminal proceedings. There are frequent instances of incorrect interpretation of this right in other cases arising outside the framework of any formal proceedings. For this reason, the concluding part of this contribution will address practical cases encountered by state authorities in practice. The established practice of state authorities shows the need for a uniform interpretation of this right, as state institutions themselves often face issues concerning the right to interpretation and translation in contexts that do not fall within the scope of this right as defined by the aforementioned *European Convention on Human Rights*. At the outset, it is important to mention the institution of the *European Ombudsman*, established by the *Treaty of Maastricht*, which plays an important role in this respect. The organisation, powers, and functioning of the Ombudsman are primarily governed by *Article 228 TFEU*, *Rules of Procedure of the European Parliament* (Articles 204–206), *Decision No. 94/262 on the Statute of the Ombudsman*, as well as the *Ombudsman's Implementing Provisions*. The term of office is five years, renewable, and coincides with the term of the *European Parliament*. The *European Ombudsman* is independent in the exercise of his functions. This independence is reflected above all in the fact that he is not bound by any instructions or directives from the governments of the Member States of the European Union, nor by instructions from any of the institutions falling within the jurisdiction of the European Union. *In medias res*, it is important to note that Ombudsmen are often the recipients of various complaints, submissions, or requests from individuals who feel that their right to interpretation and translation has been violated by the action or inaction of state authorities. As an independent and impartial body, the Ombudsman is obliged to deal with every matter that is brought to his attention by an affected individual. If such an individual submits a complaint, the Ombudsman is required to seek clarification on the matter from the authority against which the complaint is directed. The Ombudsman is obliged to thoroughly investigate every complaint and lawfully decide on the subsequent procedure and outcome. Similarly, the institution of the Ombudsman functions at the national level, where the Ombudsman is likewise obliged to address every case and lawfully investigate it.[37]

PROCEEDINGS AS A MANDATORY PREREQUISITE FOR THE EXERCISE OF THE RIGHT TO INTERPRETATION AND

[37] Siman M., *Právo Európskej únie* (Bratislava: EUROIURIS, 2012), 215-216.

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TRANSLATION IN THE CONTEXT OF THE NATIONAL LEGAL FRAMEWORK OF THE SLOVAK REPUBLIC

As already noted in the definition of the theoretical aspects, an important instrument in this context is the *European Convention on Human Rights* (*ECHR*), in particular Article 5(2), which enshrines the right of everyone who is arrested to be informed promptly, in a language which they understand, of the reasons for their arrest and of any charge against them. It is clear from this provision that it concerns the right of the individual to be informed in a language they understand. In practice, arrested persons often mistakenly interpret this provision as a right to be informed in their mother tongue. Both state authorities and individuals frequently interpret this provision on two levels. The first concerns the aforementioned assumption of a right to be informed in the mother tongue. The second concerns the notion of *"proceedings"*. In this regard, it should not be overlooked that state authorities often refer to the right to interpretation and translation under Article 5(2) *ECHR* even in cases that do not concern formal proceedings.[38] An example is the placement of an accused person in pre-trial detention under the law of the Slovak Republic. In such cases, various practical problems arise, as the fundamental law of the state — the *Constitution of the Slovak Republic* — in Article 47(4) enshrines the right to an interpreter for anyone who declares that they do not understand the language of the proceedings. Here again, it is important to focus attention on the term *"proceedings"*, the meaning of which is defined in Article 47(2) of the Constitution. Literally, this refers to proceedings before courts, other state authorities, or bodies of public administration from the commencement of proceedings. For this reason, the placement of an accused person in pre-trial detention or of a convicted person in the execution of a custodial sentence cannot be subsumed under Article 47(2) of the Constitution, as this does not constitute *proceedings* within the meaning of that legal provision.

In connection with the aforementioned legislation, Act No. 221/2006 Coll. on the Execution of Pre-trial Detention, as amended, must also be mentioned. This law establishes the obligation to inform the accused in a language they understand. In practice, the Prison and Court Guard Service faces additional difficulties regarding the provision of an interpreter. If the service does not have a member or employee who speaks the language the accused understands, it is obliged to provide an interpreter or otherwise ensure that the accused is informed of their rights and duties upon admission to detention. Importantly, this law does not impose an obligation that the information be provided by a certified interpreter.

On the other hand, the service faces the problem that the legislation does not impose as a condition of service the requirement of foreign language proficiency. *De lege ferenda*, it would be appropriate to consider introducing an obligation in national legislation requiring knowledge of a foreign language for senior staff within organisational units, both to ensure the rights of detainees and to uphold the principle of efficient use of public funds, as this would avoid the need to cover the cost of interpretation services from the public budget.

It must be emphasised that Article 5(2) *ECHR* terminologically refers to the arrest of a person, not to their placement in pre-trial detention: *"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."* It is clear from this provision that it concerns informing the accused within the framework of criminal proceedings, carried out by the competent law enforcement authority.

[38] Act No. 221/2006 Coll. on Pre-trial Detention, as amended, § 50(4).

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Therefore, this cannot be legally linked to the provisions of Section 50(4) of Act No. 221/2006 Coll. on the Execution of Pre-trial Detention, as amended.

Per analogiam, reference may be made to the established case law of the *ECtHR*, according to which the assistance of an interpreter must enable the accused to understand the nature of the accusation and to defend themselves against it, in particular to present their version of events to the court (*ECtHR, Kamasinski v. Austria, 19 December 1989, Series A No. 168, § 74*):

"Nothing in the Convention on human rights may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms set forth herein or at their limitation to a greater extent than is provided for in the Convention. It clarifies the extent of interpretation required in this context by securing to every defendant the right 'to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him'. Whilst this provision does not specify that the relevant information should be given in writing or translated in written form for a foreign defendant, it does point to the need for special attention to be paid to the notification of the 'accusation' to the defendant. An indictment plays a crucial role in the criminal process, in that it is from the moment of its service that the defendant is formally put on written notice of the factual and legal basis of the charges against him. A defendant not conversant with the court's language may in fact be put at a disadvantage if he is not also provided with a written translation of the indictment in a language he understands."[39]

Furthermore, with regard to the provision of interpretation, it should be noted that Section 50(4) of Act No. 221/2006 Coll. on the Execution of Pre-trial Detention, as amended, does indeed impose the obligation to inform the accused in a language they understand. However, it does not require that this be done by an interpreter under Act No. 382/2004 Coll. on Experts, Interpreters and Translators, as amended. The legislator has left it to the discretion of the responsible authority to decide how and by whom the information will be provided. Therefore, using an interpreter under Act No. 382/2004 Coll. is not mandatory for fulfilling the obligation under Section 50(4) of Act No. 221/2006 Coll. Accordingly, if the Prison and Court Guard Service did not engage such an interpreter, it would not constitute a breach of Article 47(4) of the Constitution of the Slovak Republic or of Article 5(2) *ECHR*.

CONCLUSION

1. The relevance and involvement of the Ombudsman as an institution is significant in the European context since it directly contributes to the protection of rights and legally protected interests not only of natural persons but also of legal entities. In different European countries, this institution may be referred to by other names, such as defenderor protector. Despite the differences in terminology, all these institutions share the same mission: to safeguard the rights and legally protected interests of individuals and legal entities. The institution has developed to the extent that today it functions as an independent body tasked with overseeing the proper administration of the state in connection with the observance of human rights and freedoms, including the rights of

[39] *ECtHR, Kamasinski v. Austria*, Judgment of 19 December 1989, Series A no. 168 //https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-57614&filename=001-57614.pdf.

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specific groups, such as detainees. For this reason, for example, in the Slovak Republic, alongside the Children's Ombudsman and the Ombudsman for Foreigners, an Ombudsman for the Prison Service has been established. This office exercises its powers to highlight violations of rights and legally protected interests of individuals and legal entities, whether through action or omission. The Ombudsman's involvement was particularly significant in relation to the exercise of the right to interpretation and translation during the placement of accused persons in pre-trial detention, especially during the refugee crisis in the recent past, when the Slovak prison system recorded a significant increase in the number of foreigners requiring information on their rights and obligations upon admission to detention in a foreign language.

2. At the conclusion of this contribution, it is also appropriate to address the possibility that an accused person might hinder the efforts of the state authority by refusing to state which language they understand, thereby obstructing the course of the process. De lege ferenda, it could be considered that immediately upon admission to pre-trial detention the accused could be informed in English, as it is an internationally recognised language and there is a high probability that the person will understand it. However, it must be stressed that such a measure cannot be presumed to fulfil the legal obligation. It would merely represent an auxiliary tool for providing necessary assistance, not compliance with the statutory duty.
3. The Prison and Court Guard Service has sought to address the language barrier by acquiring electronic translators, which are actively used in communication with foreign nationals. This represents significant technical progress in communication, particularly given that current legislation does not require prison staff to speak a globally recognised language. However, legislation must continuously adapt to societal changes, and thus the acquisition of such devices is a practical solution to this issue. In practice, repeated instruction of the accused is often carried out using these electronic translators. The situation is simplified where the Prison and Court Guard Service is informed by the law enforcement authorities of the language understood by the accused, as this eliminates any reasonable doubt regarding the language the accused understands.
4. Finally, it is essential to emphasise that the treatment of accused persons in relation to the exercise of their right to interpretation and translation must always be conducted in accordance with the Universal Declaration of Human Rights, other United Nations conventions, and national legislation governing pre-trial detention. In addition to international documents and ratified international treaties on human rights and fundamental freedoms, and treaties directly creating rights or obligations for individuals or legal entities, the Constitution of the Slovak Republic in its Second Chapter clearly defines the protection of fundamental human rights and freedoms within the territory of the Slovak Republic.
5. *Ratione materiae*, it should be noted in conclusion that all acts outside formal proceedings within the meaning of Article 5(2) ECHR must obligatorily be carried out strictly in accordance with the legal order of the respective state and with full respect for and compliance with international legal instruments governing the protection of fundamental human rights and freedoms.

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SANTRAUKA

Teisė į vertimą žodžiu ir raštu kaip teisės į teisingą teismą procesinė garantija EŽTT ir ESTT jurisprudencijoje

Šiame straipsnyje pateikiama išsami teisės į teisingą bylos nagrinėjimą analizė, ypatingą dėmesį skiriant teisei į vertimą žodžiu ir raštu kaip pagrindinei procesinei apsaugos priemonei. Straipsnyje nagrinėjama daugiasluoksnė minėtos teisės apsauga tarptautiniu, tarpvalstybiniu ir nacionaliniu lygmenimis, išskiriamos pagrindinės teisinės sistemos, įskaitant įtvirtintas Visuotinėje žmogaus teisių deklaracijoje, Tarptautiniame pilietinių ir politinių teisių pakte, Europos žmogaus teisių konvencijoje (EŽTK) ir Europos Sąjungos pagrindinių teisių chartijoje.

Nemažai dėmesio skiriama procesinėms garantijoms, įtvirtintoms EŽTK 6(3)(e) straipsnyje ir Direktyvoje 2010/64/ES, taip pat valdžios institucijų bei teismų įsipareigojimams užtikrinti veiksmingą ir operatyvų vertimą žodžiu ir raštu baudžiamosiose bylose. Tyrime nagrinėjami praktiniai iššūkiai, susiję su šių teisių užtikrinimu, ypač atsižvelgiant į kardomąjį kalinimą ir laisvės atėmimo bausmių vykdymą Slovakijos Respublikoje. Straipsnyje analizuojamas teisinis skirtumas tarp oficialių procesinių teisių ir užsienio piliečių kalbinių teisių sulaikymo įstaigose bei nagrinėjamas ombudsmeno institucijos vaidmuo, prižiūrint reikalavimų laikymąsi.

Straipsnyje taip pat de lege ferenda (liet. k.: „pagal būsimus įstatymus") aptariamos galimos teisėkūros ir praktinės priemonės, pavyzdžiui, anglų kalbos kaip pagalbinės kalbos vartojimas asmens pristatymo į sulaikymo įstaigą metu, elektroninių vertimo priemonių diegimas, kuriomis siekiama sustiprinti teisės į teisingą teismą užtikrinimą, atsižvelgiant į daugiakalbystės ir įvairovės visuomenėje plėtrą. Tyrime taikomas doktrininės teisinės analizės, lyginamojo ir teismų praktikos tyrimo metodų derinys, papildytas analitiniais ir sintetiniais metodais, kuriuos pasitelkus siekiama įvertinti galiojančias teisines sistemas, nustatyti praktinius trūkumus ir pateikti rekomendacijas teisėkūros reformoms.

RAKTINIAI ŽODŽIAI

Sąžiningas teismo procesas, vertėjo pagalba, procedūrinės garantijos, sulaikymas, EŽTT ir ESTT jurisprudencija