

EULITA: Inaugural Conference at Lessius University, Antwerp, 26 – 28 November 2009

Presentation by Catherine Heard, Policy Officer, Fair Trials International

Fair Trials International is a small London charity working to defend people's right to a fair trial. We work exclusively with non-national defendants, people involved in proceedings away from their own home country. By talking to you about some of our clients' experiences, I hope to give a human face to the urgent need for a strong EU measure guaranteeing adequate interpreting and translation facilities in criminal cases.

The injustices we encounter in our casework convince us that more must be done under the Stockholm Programme to improve the delivery of justice for the benefit of all EU citizens, wherever they happen to live, work, study or travel within the Union. In particular, our cases illustrate the importance of minimum procedural defence rights being guaranteed by law – starting with the right to interpretation and translation. In practice, it can often be more difficult for non-nationals than nationals to receive a fair trial – and this is largely for language reasons.

So we were delighted when 1 July the Swedish Presidency published a *“Roadmap with a view to fostering the protection of suspected and accused persons in criminal proceedings”*. Since then the Swedes can chalk up the further massive achievement of getting unanimous political agreement to the Roadmap and to its first measure, the framework decision proposal on interpreting and translation. Many of you here will share our view that this instrument is not yet perfect - not robust enough in some respects. But it's a good start – an important first step along the road.

This has never been more necessary than it is today. The removal of internal borders has increased cross-border criminality. As a result more individuals are finding themselves involved in foreign proceedings. This results in suspects knowing less about their rights than they would if arrested at home. Language barriers make meaningful participation in the defence more difficult.

The very cornerstone of EU values is the right of every person in the EU to be treated fairly in criminal investigations and proceedings. This entails being allowed a full opportunity to defend themselves and participate meaningfully in their trial. These rights are not variables, to be weighed in the balance with other policy considerations. They are universal rights, which should now be restored to the centre of criminal justice policy.

The importance of fair trial rights is best made by looking at cases involving real people. A single case often suffers multiple failures to respect basic rights. The lack of access to a lawyer is exacerbated by the lack of a quality interpreter. What good is a lawyer if you can't communicate with him?

The denial of timely and adequate linguistic assistance in our experience produces real and lasting damage to a person's fair trial rights. Not only fair trial rights, either. If people are denied the linguistic assistance they need, this can also lengthen their time spent in custody, their chances of getting bail, or a prison transfer – even their health and well-being while in custody can be put at risk – and diminishes their chances of good rehabilitation after release.

The following case studies will I hope demonstrate all this.

Case study 1: Teresa Daniels (TD), British national arrested in Spain

I've chosen this case because it illustrates the importance of having proper interpreting and translation facilities at every stage of a case: from initial questioning or arrest, right through to detention (whether on remand or serving the sentence) – not only to assist with appeals, transfer applications and so on – but also to get necessary medical treatment.

Teresa's case also demonstrates the need for adequate time and facilities to obtain quality translation of key materials, not just court documents, but also **evidence**. As in Teresa's case, this can mean evidence in the defendant's own language which has to be **translated for the court**. It's crucial that enough time is allowed for the defence to assess the quality of the prosecution's translations. In this case, as we will see, a private diary belonging to Teresa was heavily relied on by the court as evidence of her intention to import drugs, but one entry had been poorly translated. As a result its relevance was misunderstood by the court - with devastating consequences for Teresa.

The story begins in 1997 when Teresa was 24 and living in Tenerife. She took a holiday in Brazil with a male companion, Antonio. On their return, Antonio's luggage was found to contain 4 kilos of cocaine. Teresa's bags contained no trace of drugs. Antonio admitted the offence. He told the police that Teresa knew nothing about the drugs. But they were both charged. At this stage, an interpreter was provided by police, but the standard was so poor Teresa could barely follow what was happening. While she was on remand in Tenerife, she had no access to a qualified interpreter. She had to rely on a Dutch inmate who translated for her as best she could, to help her understand the court documents and legal papers she received.

At the trial, Teresa was asked a few questions in broken English by the prosecution, and after 1 ½ hours was told she could leave. She actually assumed she was there as a witness against Antonio, not as a defendant. With no interpreter at trial, she could not follow the proceedings or the testimony of Antonio. No simultaneous recording was made at the trial.

Both Teresa and Antonio were convicted and sentenced to 10 years. Antonio was taken to prison to start his sentence, but Teresa was released pending appeal. She continued to live in Tenerife where she needed an operation to treat a brain haemorrhage. She was not sent the court judgment when it was released some months later. She later returned to the UK and heard nothing further, so she was unaware that her appeal had failed and her sentence been reconfirmed.

Spain later obtained an extradition order, and in October 2005 Teresa was sent to serve her sentence in a maximum security jail in Madrid. Despite promises that an interpreter and a qualified medic would accompany her on her surrender flight to Spain, Interpol provided neither. Teresa was very nervous about flying after her brain operation, but had to undergo the ordeal without support.

We only got involved in her case at the extradition stage. When we got proper translations of the diary evidence we realized the court had based its decision on a

single entry in Teresa's diary about a payment she was expecting. In fact this referred to a few thousand pounds' compensation for a personal injury claim relating to a car accident she'd been in, as she could have explained and proved if she had had the chance. But the court had relied on its own unofficial – and inaccurate - 'translation' of the diary. A professional translation was supplied to the court just before trial, but was ruled inadmissible for being adduced too late.

In prison in Spain, Teresa continued to suffer for want of a qualified interpreter. One example stands out. With no detailed medical notes about Teresa's brain haemorrhage and previous surgery, prison officers sent Teresa for an MRI scan when she became ill. This could have killed her because of the surgery she'd had. Somehow she managed to explain the situation to the doctors and they did not do the scan.

During her entire time in prison Teresa was never once offered a qualified interpreter or translator: like many other foreign prisoners, she relied on inmates, but even those inmates who spoke English and Spanish often had trouble translating complex legal or medical information for Teresa.

Eventually Teresa received a royal pardon, again with our support. She was released in January. But sadly, her ordeal continues. She used to be a care worker, but has been unable to get employment since her release. Despite her pardon, she still has a criminal record and it doesn't reflect the fact that she's been pardoned. She's training to be a drug and alcohol counsellor but even this work is severely constrained by her status as a former convict. So, what lessons can we learn from this case?

1. that if there had been an interpreter in court throughout trial and if Teresa had been allowed time to adduce official translations of key evidence, a gross miscarriage of justice could have been prevented. Instead, a young life has been derailed by a catalogue of injustice.
2. On top of this, while in prison, Teresa endured risks to her health and a lack of information about her case and legal situation, because of the absence of interpreter and translation facilities.

Case study 2: Andrew and Graham Stow (A and G), British nationals arrested in Portugal

A and G were considering opening a diving school. In July 1999 their dive boat was subjected to a thorough routine search by Portuguese customs officers in Faro and nothing was discovered. A few days later the Harbour Master in Faro asked the brothers to move their boat 250 metres down the wharf to make way for a larger boat. The next day one of the men dived below the boat and discovered boxes scattered over the sea bed. He began bringing the boxes up and around 15 minutes later officers from the Polícia Judiciária arrived. A and G assisted the police in bringing up the boxes. They maintain they were completely unaware of their contents. Shortly thereafter they were arrested at gunpoint and accused of importing hashish into the harbour.

Immediately after their arrest, they were interrogated in Portuguese with no interpreter or legal adviser present. They were pressurised into signing confessions in Portuguese.

They did not see the charges against them in writing until a whole year after their arrest. The charges were in Portuguese. As their defence lawyer did not speak English, A and G had to rely on other remand prisoners to help them understand the document. Throughout the trial, the court-appointed interpreter only worked for the benefit of the court; the court proceedings were not translated for A and G; and only their responses to the judge were translated into Portuguese.

They eventually won a retrial only for the appeal to uphold the original decision. They served six years in jail in Portugal and nine months in a British prison following a transfer. They brought their case to the European Court of Human Rights under Article 6, but this was deemed inadmissible on the grounds of non-exhaustion of domestic remedies.

Case study 3: Garry Mann (GM), British national detained in Portugal

On 15 June 2004 GM, a British national, was with friends in a bar in Albufeira, Portugal, when a riot took place in a nearby street. GM was arrested along with other suspects some 4 hours after the alleged offences. He was tried and convicted – along with 13 other defendants – less than 24 hours after his arrest. He had been attending the Euro 2004 football tournament and was arrested under temporary legislation in place at the time. The object of the legislation had been to allow for a fast track procedure to convict and deport foreign nationals caught “red-handed”. This was clearly inappropriate in GM’s case, where identification was in issue.

GM was sentenced to 2 years’ imprisonment on 16 June 2004 but, two days later, voluntarily agreed to be deported after being told he would not have to serve his sentence provided he did not return to Portugal for a year.

The trial was grossly unfair in a number of ways but perhaps the most striking is that GM had no time to prepare his defence, instruct a lawyer of his own choosing, or seek legal aid to help pay for his own lawyer - or an interpreter to help get detailed advice in his own language and run an effective defence.

In fact, there were only two court-appointed lawyers for the 14 defendants and they were not given the time or opportunity either to cross-examine prosecution witnesses or to call witnesses for their own clients who could support their alibis and offer character evidence. The court-appointed interpreter translated for all 14 defendants, communicating with one, who would then convey the information to the others as best he could.

GM is now threatened with extradition to serve his sentence, having been served with a European Arrest Warrant in March 2009, despite never having returned to Portugal and having been in no trouble since. His attempts to challenge his extradition have all failed.

GM will now have to serve a jail sentence in Portugal for a crime he did not commit. His conviction was branded by English Judge Stephen Day¹ as having been “*obtained in circumstances that are so unfair as to be incompatible with the Respondents’ right to a*

¹ In an unsuccessful application for a football banning order brought by the Commissioner of Police against Garry Mann in July 2005

fair trial under Article 6 ... [inter alia, because they] ... had inadequate time to instruct lawyers to conduct their defence appropriately”.

Further reading

To learn more about our campaign for minimum procedural safeguards for all who face charges in the European Union see

http://www.fairtrials.net/campaigns/article/justice_in_europe/

To see press coverage of Teresa Daniels’ case see, for example,

<http://www.telegraph.co.uk/news/uknews/4187731/Womans-plight-fans-row-over-EU-arrest-warrant.html>

To see press coverage of Garry Mann’s case see, for example,

<http://www.guardian.co.uk/uk/2009/aug/18/football-fan-extradition-portugal>