



26 November 2009

Ladies and gentlemen,

Allow me to introduce myself: I am a practising lawyer and member of the advisory board of the ECBA.

The ECBA, the European Criminal Bar Association, is an association of independent specialist defence lawyers. Through its activities the ECBA as an independent association, free from outside interference, seeks to provide a suitable forum in relation to legal developments in order to shape future legislation with a view to ensuring that the rights of the defence are enhanced.

It goes without saying that the establishment of an international non-profit European legal interpreters and translators association is of major interest to the ECBA.

The official launch of EULITA is closely connected to an absolute need for the further implementation of the rights of defence as far as the right to interpretation and to translation in criminal proceedings is concerned.

As you know, as recently as October 23rd, the draft proposal for a framework decision on the right to interpretation and translation in criminal proceedings was made available.

The ECBA is delighted to read in the underlying documents leading to this proposal that the right to interpretation and translation for those who do not understand the language of the proceedings is considered to be

enshrined in art. 6 of the ECHR, the European Convention on Human Rights.

Much as we acclaim the initiative to draft the proposal for a council framework decision it is however our role as the ECBA to safeguard the rights of defence and to stay alert in relation to the scope and the wording of this draft.

This is especially true in the present environment of the criminal law practice and certainly with the introduction of the European arrest warrant which has significantly simplified the extradition of citizens from one member state to another.

Therefore a proposal on a framework decision on the right to interpretation and to translation in criminal proceedings must be solid and as waterproof as possible as far as the rights of defence are concerned.

The main concerns the ECBA has in relation to the proposal now at hand are as follows:

As far as the scope of the council framework decision is concerned, the right to interpretation and translation only arises from the moment that a person is made aware by the competent authorities that he or she is suspected or accused of having committed a criminal offence.

The question then remains what to do in relation to the interrogation of persons who at a certain stage of the criminal instruction are not made aware of the fact that they can be subject to a suspicion, accusation or prosecution.

Indeed, how many times are we not confronted with the fact that persons initially are interrogated in view of the gathering of information and are led to believe that they are only acting in their capacity of witness, only to be indicted at a later stage and to see their initial declarations being used against them.

The ECBA is concerned that excluding persons from the right to interpretation and translation who are not (yet) under suspicion or being

accused, but are however implicated in the criminal instruction in another capacity would lead to a practice where the official indictment will be delayed to the last possible moment in the criminal investigation.

As far as the right to translation of essential documents is concerned, it is the opinion of the ECBA that the right to translation of essential documents should not be limited to detention orders, the actual charges or indictment and the judgements.

It is clear that it is of vital importance for a person accused of a crime to have full access to the criminal file and all documents related to the criminal investigation. If these documents are not in a language which the defendant understands they should be translated.

Pursuant to art. 3 of the proposal for the framework decision, only the documents *which are essential in order to safeguard the defendant's right to fair proceedings can be considered in view of a translation*. The circumstance that the competent authorities shall decide which documents are the essential documents to be translated is of concern of the ECBA.

It is clear that it falls within the rights of defence for the defendant to decide solely together with his legal counsel which documents are to be considered vital and essential in order to safeguard his right to fair proceedings.

Also the further restriction that the right to translation can be limited to "*at least the important passages of such document*" is not very reassuring, certainly if the authority to decide what documents and what part of documents are to be considered as essential, is only vested in "the same competent authority".

Furthermore, and whereas it is not the purpose of my speech to make a detailed and complete analysis of the proposal for the council framework decision, a further concern of the ECBA must be emphasised in relation to the possibility to substitute the written translations of the documents into an oral translation or an oral summary.

It goes without saying that this contains an undeniable risk of limiting the access to essential documents and essential information in these documents which are necessary for the effective exercise of the right of defence.

Finally it is necessary to provide interpretation and translation of adequate quality.

Clearly sufficient time must be given to the translators and interpreters to prepare the file and to provide an adequate oral or written interpretation/translation in stead of, as is mainly the case, having to translate on the spot without any preparation.

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To sum up, we can only say that there is still a long road ahead of us in order to foresee adequate interpretation and translation when it comes to defending people who are involved in criminal proceedings.

The ECBA is convinced that our organisation and EULITA are complementary parties in their efforts to provide as many guarantees as possible concerning the rights of the defendant.

The decision of interpreters and translators to unite at the European level and to establish EULITA brings us closer to this common goal.

The ECBA is looking forward to a long and fruitful cooperation with EULITA and we wish you all the best for the future.

Peter ENGELS
ECBA