



**JUSTICIA**

EUROPEAN RIGHTS NETWORK

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# REPORT ON THE IMPLEMENTATION OF THE RIGHT TO INTERPRETATION AND TRANSLATION SERVICES IN CRIMINAL PROCEEDINGS

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## ABOUT THE JUSTICIA EUROPEAN RIGHTS NETWORK

This report was commissioned by a trans-European legal entity, called the **JUSTICIA** European Rights Network<sup>1</sup>, of which the Irish Council for Civil Liberties is the lead organisation. The Network is comprised of 11 Network Member organisations at present: Bulgarian Helsinki Committee, European Center for Human and Constitutional Rights (Germany), Greek Helsinki Monitor, Helsinki Foundation for Human Rights (Poland), Human Rights Monitoring Institute (Lithuania), Hungarian Civil Liberties Union, Irish Council for Civil Liberties (ICCL), Latvian Centre for Human Rights, League of Human Rights (Czech Republic), Open Society Justice Initiative (Hungary) and Statewatch (UK). The Network is funded by the Criminal Justice Programme of the European Commission.

The **JUSTICIA** European Rights Network has commissioned this report in order to examine six of its Network Member jurisdictions' – Czech Republic, England & Wales, Ireland, Latvia, Lithuania and Poland – implementation of the Directive on the Right to Interpretation and Translation in Criminal Proceedings.

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# INTRODUCTION

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This report assesses the current situation in relation to the implementation of the right to interpretation and translation services in criminal proceedings across six EU Member jurisdictions, namely; Czech Republic, England & Wales, Ireland, Latvia, Lithuania and Poland. It analyses whether these six Network Member jurisdictions are complying with the EU Directive on the Right to Interpretation and Translation, which must be transposed by 27 October 2013<sup>2</sup>.

This report considers both primary and secondary sources of International and EU Law. Empirical research is essential in order to ascertain whether Network Member jurisdictions are in practice complying with the right to interpretation requirements provided by the EU Directive, the ECHR and the case law of the ECtHR. This empirical research has taken the form of a carefully-drafted questionnaire having regard to the minimum standards laid out in the Directive and practical issues faced by accused and suspected persons in relation to the right to interpretation and translation in criminal proceedings.

In November 2012, this questionnaire was sent out to six Network Member organisations within the **JUSTICIA** European Rights Network in six jurisdictions. The answers received to the questionnaire are based on the practical experience and knowledge of the six research participants, all of whom work in the criminal justice and human rights sector in their respective jurisdictions. The questionnaire was followed up with additional communications by the principal researcher with the six country researchers in the form of telephone interviews and e-mails.

Chapter 1 of this report outlines the background to the Directive on the Right to Interpretation and Translation in Criminal Proceedings. Chapter 2 provides an overview of the legal and judicial systems of the six jurisdictions. Chapter 3 analyses the jurisdiction-by-jurisdiction situation with regard to the topics covered by the Directive. Lastly, Chapter 4 presents some general observations and conclusions.

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<sup>2</sup> 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.

# CHAPTER I

## BACKGROUND

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For an accused or suspected person who does not understand the language of the criminal proceedings in which they are involved, the right to interpretation and translation is a fundamental element of their right to a fair trial. The Directive on the Right to Interpretation and Translation in Criminal Proceedings is one of a number of measures taken to facilitate the principle of mutual recognition of judgments between Member States<sup>3</sup>. In order for this principle to be effective, EU Member States must be able to trust decisions reached in other Member States. Having the same procedural standards is a means of enhancing this trust.

### 1.1 IMPORTANCE OF THE ROLE OF THE INTERPRETER

It is long-established internationally that the right to have a fair trial includes the right to interpretation and translation where the defendant does not speak the language of the trial<sup>4</sup>. The right to interpretation and translation for those who do not speak or understand the language of the proceedings is enshrined in Article 6(2) of the European Convention on Human Rights which states that everyone charged with a criminal offence has the right to ‘the free assistance of an interpreter if he cannot understand or speak the language used in court’. Any trial in the absence of an interpreter for the benefit of a defendant who does not speak the language of criminal proceedings is a clear breach of EU and International Law.

Not only is the provision of an interpreter, where one is required, an essential element of any trial in due course of law, the importance of accurate and professional interpreting to ensure a fair trial cannot be over-estimated.

As Len-Roberts Smith has succinctly put it:

“Competent interpreting in court is fundamental to justice. The lack of competent interpreting in a criminal trial where an accused person does not speak any, or insufficient, English, may amount to denial of a fair trial and result in the quashing of a conviction. Where the inadequacy of the interpretation is not recognised, the result may be wrongful conviction or acquittal.”<sup>5</sup>

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<sup>3</sup> 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, Recital 1.

<sup>4</sup> Article 14.3 of the UN’s International Covenant on Civil and Political Rights ICCPR, 1966

<sup>5</sup> Len Roberts-Smith ‘Forensic Interpreting’ in *The Critical Link 5 Quality in interpreting – a shared responsibility* edited by Sandra Hale, Uldis Ozolins and Ludmila Stern (2009) John Benjamins.

A stark example of such an injustice is *R v. Iqbal Begum*<sup>6</sup>, an English case which took place in 1981. The defendant did not speak English and was provided with an interpreter. It subsequently emerged that the interpreter did not speak the same language dialect as the defendant. The defendant had not understood that she was entering a plea of guilty to murder. She was released on appeal in 1985. Tragically, however, she then took her own life as her family had disowned her.

It is clear that an error in interpreting can be fundamental to the whole proceedings. An illustration of where this occurred is the U.S. case of Juan Ramón Alfonzo where the defendant believed himself to be entering a guilty plea to stealing a toolbox but found himself sentenced to 15 years in jail for stealing a dump truck.<sup>7</sup>

## 1.2 LEGAL BASIS FOR A DIRECTIVE

The Stockholm Programme is the European Union's plan in the areas of freedom, security and justice for the period, 2010 to 2014<sup>8</sup>. The programme promotes fundamental rights as enshrined in the Charter of the Fundamental Rights of the European Union and the ECHR. The Stockholm Programme identified the protection of the rights of the accused persons in criminal proceedings, among others, as a fundamental right within the European Union<sup>9</sup>.

On the 30 November 2009 under the Swedish Presidency, the Council of the European Union adopted a Resolution on a Roadmap for Procedural Rights<sup>10</sup> with the aim of laying the foundation for a set of common basic procedural rights for accused persons across EU Member States and ensuring certain minimum standards in relation to these rights.

The Roadmap<sup>11</sup> provides for six steps to strengthen the rights of the individual in criminal proceedings:-

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6 *R v Begum* (1991) 93 Criminal appeal Reports 96

7 de Jongh, E.M., (2008). Court Interpreting: Linguistic Presence v. Linguistic Absence. *The Florida Bar Journal*, 82(7). Available at <https://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf>.

8 *Council of the EU, The Stockholm Programme – An open and secure justice serving and protecting the citizens* (Official Journal 2010/C 115/01) Available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF> > [Last accessed 18<sup>th</sup> December 2012] [Hereafter *Stockholm Programme*]

9 *Ibid*, *Stockholm Programme* at para 2.1

10 *Supra*. at 10.

11 *Stockholm programme*, para 2.4, *supra* note 2

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Measure A: Translation and Interpretation

Measure B: Information on Rights and Information about the Charges

Measure C: Legal Aid & Legal Advice

Measure D: Communications with Relatives, Employers and Consular Authorities

Measure E: Special Safeguards for Vulnerable Persons

Measure F: A Green Paper on the Right to Review of the Grounds of Detention

The Directive on the Right to Interpretation and Translation relates to Measure A of the Roadmap<sup>12</sup>. The Directive was adopted and published in the Official Journal of the European Union in October 2010. Member States have until 27 October 2013 to transpose it into their domestic laws. Adopting a Directive (and ensuring its implementation) on the Right to Interpretation and Translation in Criminal Proceedings is arguably the only effective means of ensuring that minimum standards are applied consistently across the European Union.

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<sup>12</sup> *Supra* at 10.



## CHAPTER II

# COUNTRY REPORTS OVERVIEW

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Six completed questionnaires have been received from Network Member researchers in the following countries: Czech Republic, England & Wales, Ireland, Latvia, Lithuania and Poland. Network Member States have been assessed via minimum standards as laid out by the Directive on the Right to Interpretation and Translation in Criminal Proceedings.

Before compliance with the Directive can be analysed and assessed, it is first necessary to present a general overview of the domestic legal systems in place and outline relevant existing domestic legislation in relation to the right to interpretation and translation in criminal proceedings, as well as the official languages in respect of each jurisdiction.

### 2.1 CZECH REPUBLIC

The Czech Republic is a civil law jurisdiction and criminal proceedings are inquisitorial. Czech is the only official language. Under Article 10 of the Czech Constitution, human rights treaties, for example the European Convention on Human Rights, are part of the constitutional order, i.e. the treaty takes precedence over a domestic statute.

Article 37 (4) of the Czech Charter of Fundamental Rights and Freedoms provides that a person who does not speak the language of the proceedings has a right to an interpreter. In addition, Article 2(14) of the Criminal Procedure Code no. 140/1916 Coll stipulates that a person has the right to use their mother tongue in criminal proceedings. In relation to documents in criminal proceedings where the accused does not speak the language of the proceedings, Article 28(1) provides that the accused is entitled to the services of an interpreter to interpret the content of the documents while Article 28 (2) provides that particular decisions shall be translated.

Under Article 28 (1), of the Criminal Procedure Code, where the accused wishes to use a language pursuant to Article 2 (14) for which there is no interpreter on the list of registered interpreters, or if the matter is urgent and a registered interpreter cannot be sourced, the criminal justice authority shall assign an interpreter for

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the official language of the country of the defendant's citizenship or, in the case of stateless persons, of the country of the defendant's residence. The foregoing provisions apply in relation to proceedings for the execution of a European Arrest Warrant and also where the accused or suspected person has speech or hearing difficulties.

## **2.2 ENGLAND & WALES**

England & Wales is a common law jurisdiction and criminal proceedings are adversarial. English and Welsh are the two official languages. England & Wales does not have a written constitution. The European Convention on Human Rights was incorporated into domestic law by the Human Rights Act 1998. Article 6 of the Act obliges the judiciary to act in accordance with the rights contained in the Convention. In addition, Article 2 of the Human Rights Act 1998 obliges the judiciary to take into account decisions by the European Court of Human Rights.

The right to interpretation and translation is not set out in legislation but in a policy document published by the Ministry of Justice, namely, the National Agreement on Arrangements for the Use of Interpreters, Translators and Language Service Providers in Investigations and Proceedings within the Criminal Justice System. A National Agreement Rider which amended the previous policy was published when a contract for court interpreting was awarded to Capita/ Applied Language Solutions on 30 January 2012.

Where an accused is not provided with an interpreter where necessary and as a result is unable to know the case made against him or her and to put forward a response to this case, it is likely that any proceedings will be in breach of the basic tenets of public law fairness. The proceedings will, therefore, be vulnerable to challenge on appeal or by way of a claim for judicial review in the High Court.

Section 22(1) of the Welsh Language Act 1993 provides the right for a party to speak Welsh in criminal proceedings in Wales and Monmouthshire. As soon as it is known that the defendant wishes to speak Welsh at the hearing, the Courts and Tribunals Service Welsh Language Unit will arrange a Welsh interpreter to attend. There is a list of interpreters who have successfully sat examinations in simultaneous interpretation.

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## 2.3 IRELAND

Ireland is a common law jurisdiction and criminal proceedings in Ireland are adversarial. Under Article 8 of the Irish Constitution<sup>13</sup>, both Irish and English are official languages.

The European Convention on Human Rights (ECHR) was ratified by Ireland in 1953 and given further effect in Irish law through the European Convention on Human Rights Act 2003. Thus Irish Courts are obliged to interpret Irish laws in a way that gives effect to Ireland's obligations under the European Convention on Human Rights.

The obligation to provide free interpretation services to those unable to understand the language of the proceedings has not been specifically enshrined in Irish law, apart from indirectly through the European Convention on Human Rights Act 2003<sup>14</sup>. However, while there is no explicit constitutional right to use any non-official language, the constitutional right to due process<sup>15</sup> and the principles of natural justice entail a right to interpretation and translation for an accused who does not speak the language of the proceedings<sup>16</sup>. In 1929, in *Attorney General v. Joyce and Walsh*, the Chief Justice held that giving evidence in one's vernacular is a 'requisite of natural justice, particularly in a criminal trial'<sup>17</sup>.

The Criminal Justice Act 1984 (Treatment of Persons in Garda Síochána Stations Regulations 1987) refers throughout to the need for information to be provided to an accused person 'in ordinary language', but does not provide for any specific right to an interpreter<sup>18</sup>. There has, however, been express provision made for interpreters in criminal law for persons with hearing difficulties<sup>19</sup>.

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13 Bunreacht na hÉireann, see [http://www.taoiseach.gov.ie/attached\\_files/Pdf%20files/Constitution%20of%20IrelandNov2004.pdf](http://www.taoiseach.gov.ie/attached_files/Pdf%20files/Constitution%20of%20IrelandNov2004.pdf), accessed on 22.Dec.12.

14 I. Bacik, *Breaking the Language Barrier: Access to Justice in the New Ireland*, (2007) Judicial Studies Institute, page 118.

15 Article 38.1, Bunreacht na hÉireann Constitution of Ireland.

16 Hogan & Whyte, *J.M. Kelly: The Irish Constitution* (4<sup>th</sup> ed. Butterworths 2003), p1080.

17 *Attorney General v. Joyce and Wallace* [1929] I.R. 526, at 531 (S.C.).

18 Criminal Justice Act, 1984, S.I. No. 119 of 1987.

19 Regulation 12(8) of the Criminal Justice Act 1984 (Treatment of Persons in Garda Síochána Stations) Regulations 1987.

The Rules of the Superior Courts state that interpreters should 'be available to attend those Courts as required for the hearing of any cause or matter'<sup>20</sup>. Under section 13(4) of the European Arrest Warrant Act 2003, a person must be informed of their right to the services of an interpreter.

The EU Race Directive<sup>21</sup> was incorporated into Irish law in the form of the Equal Status Acts 2000-2004 (as amended by the Equality Act 2004). Failure to appoint an interpreter could contravene the Equal Status Acts<sup>22</sup>.

## 2.4 LATVIA

Latvia is a civil law jurisdiction. Criminal law proceedings in Latvia are inquisitorial. Latvian is the only recognised official language but a significant proportion of the population speaks and understands Russian<sup>23</sup>. The European Convention on Human Rights was ratified in 1997 at a sub-Constitutional level<sup>24</sup>. In certain situations, under Section 13 of the Law on International Agreements of the Republic of Latvia, the European Convention on Human Rights takes precedence over the Latvian laws<sup>25</sup>.

Criminal proceedings in Latvia are regulated by the Criminal Procedure Law, CPL, (*Kriminālprocesa likums*)<sup>26</sup>. The provisions which apply where an accused or suspected person does not speak or understand the language of the proceedings are applicable where a person has speech or hearing difficulties.

Section 11 of the CPL is relevant in relation to the right to interpretation and translation services. Section 11, paragraph 2 provides that an accused or suspected

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20 Order 120, Rules of the Superior Courts. Available at <http://www.courts.ie/rules.nsf/SuperiorRules?OpenView&Start=146>, last accessed 31 December 2012.

21 Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, *Official Journal L 180*, 19/07/2000 P. 0022 – 0026.

22 National Consultative Committee on Racism and Interculturalism,(2008) Developing Quality Cost Effective Interpreting& Translating Services, page 7.

23 Ethnic Russians make up 27.6% of the population. Official data, available at: <http://latvia.lv/library/ethnic-minorities-latvia>

24 Law On the 4 November 1950 European Convention on Human Rights and its Protocols Nos. 1, 2, 3, 4, 7 and 11. Official data, available in Latvian at: <http://www.likumi.lv/doc.php?id=43857>

25 Law on the International Agreements of the Republic of Latvia. Official data, available in Latvian at: <http://www.likumi.lv/doc.php?id=57840>

26 Criminal Procedure Law. Official data, available in English at: <http://www.likumi.lv/doc.php?id=107820>

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person and others who are involved in criminal law proceedings who do not speak or understand Latvian have the right to use interpretation and translation services free of charge during procedural actions. A procedural action includes any action undertaken under the CPL. This does not include advising the suspect or accused person.

Under paragraph 3 of Section 11, in cases provided for by law, procedural documents issued to a person who does not speak or understand Latvian must be translated into a language the person understands. Section 406, paragraph 8 of the CPL stipulates that an accused must receive a copy of any charge against them in a language they understand. Under Section 412, paragraph 12, once the pre-trial criminal proceedings have been completed an accused has the right to read the documents received in a language they understand with the assistance of an interpreter free of charge.

Under Section 413, paragraph 4, the public prosecutor must ensure that an accused receives a written translation of a decision on the transferring of a criminal case to a court. Section 337, paragraph 7, guarantees the right of an accused or suspected person to submit a complaint in relation to the proceedings in a language they understand.

In relation to the European Arrest Warrant, clause two of Section 698, paragraph 2, (in conjunction with Section 715, paragraph 1) of the CPL provides that a person has the right to use a language they understand in proceedings for the execution of a European Arrest Warrant. However, there is no provision in the law that the Arrest Warrant has to be translated in a written form.

## **2.5 LITHUANIA**

Lithuania is a civil law jurisdiction and criminal proceedings in Lithuania are inquisitorial. Lithuanian is the only official language. The European Convention on Human Rights has supremacy over national laws but not over the Constitution.

The Code of Criminal Procedure (No IX-785) establishes the right to translation and interpretation in criminal proceedings. Under Article 44, paragraph 7, of

the Code every suspect or accused in criminal proceedings has the right to interpretation and translation services, free of charge, where the person does not speak or understand Lithuanian.

Lithuanian law does not lay down any specific provisions concerning the European Arrest Warrant. The Code of Criminal Procedure (CCP) lays down general principles instead, which apply to all stages of the criminal proceedings, including proceedings concerning the EAW. In addition, Article 8, paragraph 2, of the CCP outlines that every participant of criminal proceedings, who does not know Lithuanian, has a right to use the services of an interpreter/translator (it is the same word in Lithuanian) throughout the criminal proceedings, including when accessing the case files.

## **2.6 POLAND**

Poland is a civil law jurisdiction and criminal proceedings are inquisitorial. Polish is the only official language<sup>27</sup>. Under Article 91(2) of the Constitution, the European Convention on Human Rights has been ratified at a sub-Constitutional level and takes precedence over statutes.

The right to an interpreter under Polish law is dealt with by the Code of Criminal Procedure 1997 (as amended in 2003). Under Article 72, paragraph 1, an accused or suspected person who does not have a sufficient command of Polish may avail of the services of interpreter or translator free of charge. Article 72, paragraph 2, provides that an interpreter must be summoned whenever any procedural action requiring the presence of the suspect or accused person takes place. A procedural action is any action governed by the Code of Criminal Procedure 1997. Article 72, paragraph 3, relates to documents that must be translated for the accused.

Article 204 of the Code also provides that an interpreter must be summoned whenever it is necessary to examine a person who has speech or hearing difficulties, where attempts at communicating in writing have not sufficed. An interpreter must

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<sup>27</sup> Article 27 of the Constitution of the Republic of Poland. Available at: <http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>, last accessed 31 December 2012.

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be summoned if there is a need to present to an accused or a suspected person, who does not have a sufficient command of Polish, the results of the investigation and evidence gathered in relation to that person<sup>28</sup>.

Article 204, paragraph 3, states that provisions relating to court experts also apply to interpreters. Article 197, paragraph 1, of the Code specifies that all experts appearing before the court are obliged to carry out their duties impartially.

The Act of 25 November 2004 on the Profession of Sworn Translator contains provisions in relation to records that must be kept by the interpreter or translator about work undertaken. The Act also lays down provisions in relation to the requisite criteria for an interpreter or translator to be included on the national register of qualified interpreters.

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<sup>28</sup> Article 204 paragraph 2 of the Code of Criminal Procedure.

## CHAPTER III COUNTRY ANALYSIS

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It is clear from chapter 2 that all of the jurisdictions surveyed have provisions related to the right to interpretation and translation. However, they have different practices in place. This chapter examines the effectiveness of the national provisions related to the right to interpretation and translation, and thus jurisdictions' accordance with the EU Directive on the Right to Interpretation and Translation in Criminal Proceedings.

### 3.1 THE RIGHT TO INTERPRETATION IN PRE-TRIAL AND TRIAL STAGES

The right to interpretation and translation services in criminal proceedings applies where an accused or suspected person does not speak or understand the language of the proceedings or where an accused or suspected person has speech or hearing difficulties<sup>29</sup>. The Directive relates to both criminal proceedings before a criminal court and to proceedings for the execution of a European Arrest Warrant<sup>30</sup>.

The rights in the Directive are applicable from the very first time a person is made aware of the offence by official notification or otherwise until the conclusion of the proceedings<sup>31</sup>. The right to interpretation applies to any communication between an accused or suspected person and their legal counsel in connection with any questioning or hearing during the proceedings or lodging of appeal or any other procedural application, where necessary to safeguard the fairness of proceedings<sup>32</sup>.

The following tables are intended to give a brief overview of the status of this right in the respective jurisdictions in relation to their provision of an interpreter at different stages of criminal proceedings.

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29 Article 2.1 and Article 2.3 of the Directive.

30 Article 1.1 of the Directive.

31 Article 1.2 of the Directive.

32 Article 2.2 of the Directive.



<b>Availability of Interpreter-Pre-Trial, Trial and Appeal Stage</b>			
<b>Countries</b>	<b>When a person is made aware by official notification or otherwise that they are suspected of committing an offence</b>	<b>Arrest &amp; Caution</b>	<b>Questioning by police</b>
Czech Republic	Yes	Yes	Yes
England & Wales	Yes	Yes	Yes
Ireland	Yes	Yes	Yes
Latvia	Yes	Yes	Yes
Lithuania	Yes	Yes	Yes
Poland	Yes	Yes	Yes

  

<b>Countries</b>	<b>Consultation with a lawyer in Police Station</b>	<b>First court appearance</b>	<b>Communication with lawyer during proceedings</b>
Czech Republic	Yes <sup>33</sup>	Yes	Yes <sup>34</sup>
England & Wales	Yes	Yes	Yes
Ireland	Yes	Yes	Yes
Latvia	No	Yes	No
Lithuania	Yes	Yes	Yes
Poland	Yes	Yes	Yes

<b>Availability of Interpreter-Pre-Trial, Trial and Appeal Stage</b>			
<b>Countries</b>	<b>Hearing of proceedings</b>	<b>Judgment given in the proceedings</b>	<b>Sentencing</b>
<b>Czech Republic</b>	Yes	Yes	Yes
<b>England &amp; Wales</b>	Yes	Yes	Yes
<b>Ireland</b>	Yes	Yes	Yes
<b>Latvia</b>	Yes	Yes	Yes
<b>Lithuania</b>	Yes	Yes	Yes
<b>Poland</b>	Yes	Yes	Yes

  

<b>Countries</b>	<b>Communication with lawyer about the lodging of an appeal</b>	<b>Lodging of appeal</b>	<b>Hearing of appeal</b>
<b>Czech Republic</b>	Yes <sup>35</sup>	Yes	Yes <sup>36</sup>
<b>England &amp; Wales</b>	Yes	Yes	Yes
<b>Ireland</b>	Yes	No	Yes
<b>Latvia</b>	No	Yes	No
<b>Lithuania</b>	Yes	Yes	Yes
<b>Poland</b>	Yes	Yes	Yes

33 However, there is no legal provision specifying that an interpreter should be present for consultations with a lawyer.

34 However, there is no legal provision specifying that an interpreter should be present for communication with a lawyer during proceedings.

35 However, there is no legal provision specifying that an interpreter should be present for consultations with a lawyer.

36 However, there is no legal provision specifying that an interpreter should be present for communication with a lawyer during proceedings.

Availability of Interpreter-Pre-Trial, Trial and Appeal Stage		
Countries	Resolution of appeal	Execution of European Arrest Warrant
Czech Republic	Yes	Yes
England & Wales	Yes	Yes
Ireland	Yes	Yes
Latvia	Yes	Yes
Lithuania	Yes	Yes
Poland	Yes	Yes

In the Czech Republic an accused or suspected person must be made aware of their rights of defence, which includes the right to an interpreter<sup>37</sup>. The responsibility for providing the interpreter lies with criminal justice authority (police, prosecutor, court), depending on the stage of criminal proceedings. The relevant criminal justice authority adopts a decision (“*usnesení*”) by which it appoints an interpreter from the list of interpreters held by the relevant Regional Court<sup>38</sup>. It is important to note that at present the Code of Criminal Procedure does not expressly provide for interpreter services during a consultation, however, in practice when an interpreter is appointed, the interpreter is at the accused person’s disposal for the consultations between the accused and their lawyer, and this applies to all occasions during the proceedings where there is communication between the accused and their lawyer.<sup>39</sup> Moreover there is a proposed amendment to the Code of Criminal Procedure, relating to the transposition of the Directive, which includes an express provision guaranteeing interpretation services during lawyer consultations in all procedural stages<sup>40</sup>.

37 Under Article 2(14) of the Criminal Procedure Code no.140/1961 Coll. (hereinafter „CPC”)

38 This procedure is covered by Articles 135-137 CPC.

39 Based on information provided by the country researcher.

40 Based on information provided by the country researcher.

In England & Wales if there is a doubt in relation to an accused or suspected person's ability to understand English or Welsh, the custody officer must summon an interpreter, and any failure to do so would not be only a breach of the Codes of Practices under the Police and Criminal Evidence Act 1984, but also would undermine any evidence the prosecution wished to rely upon which arose from the defendant's period in the custody<sup>41</sup>. When the accused or suspected person has speech or hearing difficulties, the custody officer in the police station is also obliged to summon an interpreter<sup>42</sup>. Unless a defendant fully comprehends the charge which he or she faces, i.e. the full implications of it and the ways in which a defence may be raised to it, and is able to give full instructions to his or her solicitor and counsel, a proper plea will not have been rendered to the court<sup>43</sup>. This is to ensure that the court can be sure that he or she has pleaded with a full and understanding mind. If the above requirements have not been fulfilled then a subsequent trial is declared a nullity<sup>44</sup>. The accused or suspected person must not be interviewed in the absence of an interpreter unless they give their prior consent in writing<sup>45</sup>. The decision as to whether an interpreter is required at the investigative stage in the police station is made by a member of the police force, whereas the judge will make the decision in relation to interpreter provision at the trial stage<sup>46</sup>.

In Ireland, police station interpreters are generally provided on request or where it becomes apparent that the accused or suspected person does not speak or understand the language. When a person is to be questioned and does not understand either the Irish or English language, it is necessary to acquire the services of an interpreter<sup>47</sup>. The person should be questioned through the interpreter who should record the statement in the language in which it is made<sup>48</sup>. Although there is a right to an interpreter in the police station, the right to an interpreter is not specified in the notice of rights, which is given to an accused or suspected person after they are cautioned<sup>49</sup>.

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41 Under paragraph 3.12 of Code C of the Codes of Practice issued under the Police and Criminal Evidence Act 1984.

42 Under paragraph 3.12 of Code C of the Codes of Practice under the Police and Criminal Evidence Act 1984.

43 Based on information provided by the country researcher.

44 *R v Iqbal Begum* 93 Cr. App.R 96 in Court of Appeal

45 Based on information provided by the country researcher.

46 Based on information provided by the country researcher.

47 Garda Manual of Crime Investigation Techniques (1994), available from <http://www.garda.ie/controller.aspx?page=1579>.

48 The Garda Racial and Intercultural Office, Intercultural Ireland Your Changing Community excerpt available from: <http://www.cslstudies.com/legislation.html>, accessed 31st December 2012.

49 M. Phelan, (2011) *Legal interpreters in the news in Ireland*. Translation & Interpreting, 3 (1). pp. 76-105, page 78.

Currently in Latvia interpreters or translators are provided for accused or suspected persons who do not speak or understand the language of the proceedings, as well as for persons who have speech or hearing difficulties, in relation to all procedural actions in front of investigative and judicial authorities, including during police questioning, court hearings and interim hearings<sup>50</sup>. Interpreters are also provided in relation to proceedings for the execution of the European Arrest Warrant. However Latvian law does not provide for interpreter services free of charge when an accused or suspected person is consulting with their lawyer in connection with the proceedings<sup>51</sup>. There is, however, a proposal<sup>52</sup> to rectify this situation partially by allowing for the provision of free of charge interpreter services up to two hours per consultation between the accused or suspected person and their lawyer. Under the Sections 11 and 27 of the CPL, the person directing the proceedings is responsible for ensuring the presence of an interpreter when necessary. Persons who are responsible for directing the proceedings are regulated in Section 27 of the CPL and vary according to the stage of the criminal proceedings. During the initial investigative period it is an investigator, but when the case is transferred to the public prosecutor to initiate criminal proceedings, it becomes the public prosecutor's responsibility. During a court trial it becomes the judge's responsibility to ensure the presence of an interpreter, where necessary.

In Lithuania, a suspected or accused person is entitled to interpretation and translation services throughout the entire criminal proceedings, including where an accused or suspected person has speech or hearing difficulties and to proceedings for the execution of a European Arrest Warrant<sup>53</sup>. There are, however, no specific provisions for each stage of the proceedings. According to Article 187 of the Code of Criminal Procedure, the official notice of suspicion against a person must also contain a list of their procedural rights. Accordingly when a suspect or accused person is first arrested they receive this written advice as to their rights, including their right to an interpreter or translator where necessary. This written advice is available in Lithuanian however, if a person does not understand Lithuanian,

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50 Based on information received from the country researcher.

51 Annotation to the Draft law on Amendments to the Criminal Procedure Law (*Likumprojekts 'Grozījumi Kriminālprocesa likumā'*), 06 September 2012, p.6. Official data, available in Latvian at <http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/0/817CDDA19F760AD2C2257A7100388DD9?OpenDocument>

52 <http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/0/817CDDA19F760AD2C2257A7100388DD9?OpenDocument>

53 Under Article 44, paragraph 7 of the Code of Criminal Procedure.

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the notice must be translated to a language that is understood by the person. There are no specific languages in which the list is pre-prepared<sup>54</sup>. Any language which is understood by the accused or suspected person, even if it is not their native language, can be used<sup>55</sup>. During the pre-trial stages, it is responsibility of the investigating officer (police) to procure an interpreter, where necessary<sup>56</sup>. In relation to the trial proceedings, the presiding judge should ensure the presence of an interpreter prior to the first hearing<sup>57</sup>.

In Poland, under Article 72 of the Code of Criminal Procedure, interpreters must be made available for accused or suspected persons during any procedural actions. Interpreters are made available to accused or suspected persons, in criminal proceedings or proceedings for the execution of a European Arrest Warrant, who do not have sufficient command of Polish. Interpreters or translators are available from the time an accused or suspected person is first made aware that they are suspected of committing an offence until the conclusion of the proceedings<sup>58</sup>. During the preliminary proceedings in the police station, the decision as to whether a suspected person requires the services of an interpreter or translator is made by the prosecutor or police officer<sup>59</sup>. At trial, this decision is made by the judge<sup>60</sup>. The accused or suspected person can also request an interpreter but it is the responsibility of police officer, prosecutor or judge to ensure that an interpreter is present when required under Article 72.

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54 Based on information received by the country researcher.

55 Under the Article 8 paragraph 2 of the Code of Criminal Procedure.

56 Based on information received by the country researcher.

57 Under Article 233 of the Code of Criminal Procedure.

58 Based on information received from the country researcher.

59 Based on information received from the country researcher.

60 Based on information received from the country researcher.

### 3.2 PROVISION CRITERIA AND DURATION OF INTERPRETER SERVICES

Under Recital 21 of the Directive, ‘Member States shall ensure that a procedure or mechanism is in place to ascertain whether suspected or accused persons speak and understand the language of the criminal proceedings and whether they need the assistance of an interpreter’ and the competent authority can make this assessment ‘in any appropriate manner’. This may include consulting with the accused or suspected person to ascertain whether they speak or understand the language of the proceedings<sup>61</sup>. In the majority of the researched jurisdictions, neither a time-limit, nor established criteria enabling a fair assessment of the need for an interpreter, are currently prescribed by domestic law. This is presented in the table below.

Provision of an interpreter		
Countries	Time limit prescribed by law	Uniform procedure or criteria to assess the need for interpreter
Czech Republic	No	No
England & Wales	No	No
Ireland	No	No
Latvia	No	No
Lithuania	No	No <sup>62</sup>
Poland	No	No

In the Czech Republic there is no specific time limit set for the provision of an interpreter. The Code of Criminal Procedure does, however, include a general obligation for the criminal justice authorities to proceed “without undue delay”.

<sup>61</sup> Recital 21 of the Directive.

<sup>62</sup> The suspect’s or accused’s own assessment is usually the most significant factor in practice, however, it is an informal one, and thus there is no uniform or official procedure or criteria which the officers apply.

Under Article 12 of the Regulation on Experts and Interpreters<sup>63</sup>, the authority which appoints an interpreter sets out in its decision regarding whether an interpreter is to be appointed the time limit upon agreement with the interpreter. In urgent cases the authority can expressly state in the decision that the case is urgent and set a shorter time limit.

In England & Wales the length of time it takes to summon an interpreter varies according to the availability of an interpreter with the necessary linguistic skills<sup>64</sup>. There have, however, recently been serious issues in relation to the length of time taken to summon an interpreter. In the first quarter of 2012, 182 trials in magistrates' courts were recorded as ineffective because of interpreter availability issues<sup>65</sup>. This figure excludes delays that were not severe enough to cause an ineffective trial, and delays and cancellations of non-trial hearings, which were numerous<sup>66</sup>. The Justice Select Committee, a House of Commons committee which scrutinises policy and spending, is currently conducting an investigation into these issues and the standard of services provided by Capita/ALS<sup>67</sup>. There is also no dedicated training on the criteria to apply in order to make a decision in relation to interpreter provision. The judiciary is, however, provided with written guidance in relation to assessing the need for an interpreter<sup>68</sup>.

In Ireland the length of time it takes to summon an interpreter varies according to the availability of an interpreter for the relevant language<sup>69</sup>. There is, however, a constitutional guarantee to an expeditious trial<sup>70</sup> and any undue delay could fall foul

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63 No. 37/1967 Coll.

64 Based on information provided by the country researcher.

65 Report of National Audit Office 10 of September 2012) Postponing proceedings and delays resulted in individuals being held in custody for longer periods (Public Accounts Committee, report of the 6th of December 2012)

66 *Supra*.

67 Giving evidence to the Justice Select Committee on Richard Atkinson, the chairman of the Law Society's Criminal Law Committee, claimed that people are being remanded into custody for no other reason than the lack of interpreters. See <Suspect denied fair trial by shortage of court interpreters <http://www.guardian.co.uk/law/2012/oct/23/suspects-remanded-shortage-court-interpreters> >.

Capita/ALS claims that the system has since been drastically improved and claims that 96% of bookings are now being fulfilled. See Law Society Gazette, Spending Watchdog trains fire on interpreter contracting chaos, 12 of September 2012.

The investigation is ongoing and the Committee is set to publish its report on the 6<sup>th</sup> of February 2013. See <http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news/court-interpreters-ii/> MPs take evidence on Interpreting and Translation Services.

68 Based on information provided by the country researcher.

69 Based on information provided by the country researcher.

70 Article 38 (1) of Bunreacht na hÉireann.



of this provision. Although interpreters and translators are generally made available whenever requested, there is no uniform procedure or criteria for deciding whether to assign an interpreter in Garda (police) stations or in courts. Some judges will ask the defendant whether they require an interpreter, while other judges leave it up to the solicitor, barrister, Garda/police or defendant to request one<sup>71</sup>. This leads to a situation where solicitors or barristers tend to overestimate the language ability of their clients<sup>72</sup>.

In Latvia, as a large proportion of the population speak Russian, a number of Russian interpreters are retained as permanent staff of the courts. There are even, in some cases, interpreters employed on a permanent basis in the prosecutor's office or in court who speak Russian and English and/or German<sup>73</sup>. As a result, in general, there is no delay in sourcing an interpreter for Russian, English and German. In relation to the other languages, the time it takes to summon an interpreter varies<sup>74</sup>.

Lithuania has no specific provisions regarding the time period in which an interpreter must be provided. With regard to the assessment of the need for interpreter services, there are no other specific criteria currently in place to assist such a decision other than the accused or suspected person's own evaluation as to whether he or she understands the language sufficiently<sup>75</sup>. However, the final decision is left to the discretion of the officials who decide whether to assign an interpreter or not.

In Poland there is a register of sworn interpreters in Poland and this may go some way in ensuring that interpreters are summoned within a reasonable time frame. Notwithstanding this, in 2008 Poland was found to be in violation of Article 5(2) of

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71 K. Waterhouse, (2010) *The Rise and Failure of Court Interpreting in Ireland* available at <http://www.humanrights.ie/index.php/2010/08/04/guest-contribution-waterhouse-on-the-rise-and-failure-of-court-interpreting-in-ireland> accessed 31st of December 2012.

72 K. Waterhouse, (2010) *The Rise and Failure of Court Interpreting in Ireland* available at <http://www.humanrights.ie/index.php/2010/08/04/guest-contribution-waterhouse-on-the-rise-and-failure-of-court-interpreting-in-ireland> accessed 31st of December 2012.

'Some solicitors/barristers seem to overestimate the language ability of their clients, which may mean that interpreters are not always provided where they are needed. On the other hand, some judges provide interpreters even where a defendant claims to be a native speaker – just in case. Assigning interpreters lacks any protocol or procedure, which can mean that those who need them are not always getting them, but also that those who do not need them are, risking both miscarriages of justice and an inflated bill for interpreting services.'

73 Based on information provided by the country researcher.

74 Based on information provided by the country researcher.

75 Based on information provided by the country researcher.

the European Convention of Human Rights (*Ladent v. Poland*<sup>76</sup>) when the ECtHR found that the accused person, a French national, was not informed promptly, in a language he understood, of the reasons for his arrest and the charges against him<sup>77</sup>. No specific criteria are applied under the decision-making procedure regarding whether an accused or suspected person requires the services of an interpreter and whether they speak or understand Polish<sup>78</sup>. As a suspect may only be detained for questioning for a maximum period of 48 hours, after which, the person must be released or placed in pre-trial detention, it can be assumed that this means police must not delay in summoning an interpreter where one is required<sup>79</sup>.

### 3.3 CHALLENGING A DECISION

Under Article 5 of the Directive, ‘Member States shall ensure that, in accordance with procedures in national law, suspected or accused persons have the right to challenge a decision finding that there is no need for interpretation and, when interpretation has been provided, the possibility to complain that the quality of the interpretation is not sufficient to safeguard the fairness of the proceedings.’ For this right to be effective, it has to be assumed that the accused or suspected person can submit a complaint in their own language and that the accused or suspected person is made aware of this process and knows how to invoke it. Otherwise it would appear to be next to impossible for an accused or suspected person who does not have a sufficient command of the relevant language to navigate a procedure for which, by its nature, they are unlikely to have the benefit of the assistance of an interpreter. In addition, in countries where there is no formal decision given on whether to appoint an interpreter or not, this makes it more difficult to appeal a decision finding that there is no need for interpretation.

In the Czech Republic, at the pre-trial stage, under Article 157a of the Code of Criminal Procedure, any action of the police or prosecutor can be challenged before the supervising prosecutor. The decision not to appoint an interpreter can be

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<sup>76</sup> *Ladent v. Poland*, 2008, decision no. 11036/03

<sup>77</sup> The accused person, a French national, was informed, in Polish, of the reasons of said arrest and the charges against him upon his arrest, and did not learn of the charges against him in a language which he understood until his release, after 10 days in custody.

<sup>78</sup> *Supra*.

<sup>79</sup> Based on information provided by the country researcher.

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challenged in this way. At the trial stage, it is possible to challenge a decision not to appoint an interpreter by means of a complaint (*stížnost*). The quality of translation or interpretation can also be challenged by means of the general complaints mechanism or before the court, by appeal or extraordinary appeal on points of law. Ultimately, the failure to safeguard fair proceedings can be challenged before the Constitutional Court by mean of individual constitutional complaint.

In England & Wales any decision to refuse to provide an interpreter could be challenged by an accused by means of appeal<sup>80</sup> or judicial review of the decision taken.

In Ireland there is no specific mechanism by which the refusal to appoint an interpreter may be challenged. However, it may form the basis of an appeal to a court of a higher jurisdiction for review<sup>81</sup>.

In Latvia, under Section 333 of the Criminal Procedure Law, a person involved in the proceedings may, in order to ensure his/her or other person's rights and lawful interests, submit an application, submission or request to a person directing the proceedings or to another official in the cases specified in the Law who is authorised to perform criminal procedural activity, regarding any refusal to provide an interpreter. A decision must be provided in respect of any of these applications and any refusal may be appealed in accordance with the procedures specified in this Law<sup>82</sup>. A complaint regarding the actions or adjudication of an official performing criminal proceedings may be submitted by the accused or suspected. They may submit the complaint in their own language, on any finding that they do not require the assistance of an interpreter under this mechanism<sup>83</sup>. This mechanism may also be invoked in the context of proceedings for the execution of a European Arrest Warrant.

In Lithuania, an accused or suspected person may challenge any finding that they do not require the assistance of an interpreter using the general complaints procedure under Articles 62-65 of the Code of Criminal Procedure. Under these provisions,

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<sup>80</sup> *R v Iqbal Begum* 93 Cr. App.R 96 in Court of Appeal

<sup>81</sup> Based on information provided by the country researcher.

<sup>82</sup> Section 334 and 335 of the Criminal Procedure Law (Latvia).

<sup>83</sup> Under Section 343 of the Criminal Procedure Law (Latvia).

actions and decisions of an investigating officer during the pre-trial investigation phase can be appealed to the prosecutor. An appeal of the prosecutor's decision can also be lodged to the higher prosecutor, and the decision of the higher prosecutor can in turn be appealed to the court. If the decision is made by a court, it can be appealed to a higher court. However, it cannot be appealed separately: the appeal must be a part of the general appeal against the court's judgment to a higher court<sup>84</sup>.

Poland has no dedicated procedure to allow the accused or suspected person to challenge the decision that they do not require the services of an interpreter<sup>85</sup>. However, a suspect or accused person may file a motion for reconsideration of decision taken. Such a motion is lodged on the basis of Article 9 paragraph 2 of the Code of Criminal Procedure, which in general permits the parties to file motions demanding that any procedural action, including actions the organs undertake *ex officio*, is performed<sup>86</sup>. Recording of interpretation is available to the accused or suspected person who wishes to challenge the quality of interpretation<sup>87</sup> only if the hearing was recorded. Although it is possible to complain that the quality of translation is not sufficient to safeguard the fairness of proceedings, no special procedure exists<sup>88</sup>.

### 3.4 RECORD-KEEPING

Under Article 7 of the Directive, when a suspected or accused person is questioned using an interpreter, when an oral translation or oral summary of essential documents has been used, or when a person has waived the right to interpretation a record should be kept of this. It is likely that this record must be kept by the relevant judicial or police authority to ensure the accessibility of the information and that a comprehensive set of records is kept in relation to a suspect, accused or convicted person. In relation to the researched jurisdictions, it was found that majority of them are in accordance with the Directive requirement.

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<sup>84</sup> Paragraph based on Articles 62-65 of the Code of Criminal Procedure.

<sup>85</sup> Based on information provided by the country researcher.

<sup>86</sup> Based on information provided by the country researcher.

<sup>87</sup> Based on information provided by the country researcher.

<sup>88</sup> For More information please see section 3.7 'Translation of essential documents.'

Record-keeping			
Countries	Police Station	Trial	Information given about the right to interpretation
Czech Republic	Yes	Yes	Yes
England & Wales	Yes	Yes	Yes
Ireland	Yes	Yes	Yes <sup>89</sup>
Latvia	Yes, where written record is kept	Yes	Yes, in certain situations.
Lithuania	Yes	Yes	Yes
Poland	No, not when an <i>ad hoc</i> interpreter is used	Not necessarily when <i>ad hoc</i> interpreter is used. There is also no central record kept only private records kept. Only private records are kept by individual interpreters and translator.	Yes <sup>90</sup>

<sup>89</sup> In the course of questioning or at a hearing there is record of information kept of what has been presented in the presence of the accused. So in a sense a record has been kept, however it is likely that any information given about the right to interpretation would be recorded here.

<sup>90</sup> However, there is no legal obligation to inform of right to interpretation in police station.

In the Czech Republic, there is a facility whereby interpretation may be recorded in police stations, interviews and in court during hearings. The recording is part of the file which is available to the suspected or accused person upon request. The fact that an accused or suspected person has been subject to questioning or hearings by an investigative or judicial authority with the assistance of an interpreter will be recorded in the official protocol and also in the official transcript, where relevant. These documents will also contain a record of the fact that an oral translation or summary of essential documents has been provided via an interpreter in the presence of judicial authority as well as when the accused or suspected person has waived this right to interpretation after being informed of this right. Translators and interpreters are also obliged by law to keep a repertory of details of work undertaken<sup>91</sup>.

In England & Wales the custody record should contain a record of the fact that a suspected or accused person has been subject to questioning or hearings by an investigative or judicial authority with the assistance of an interpreter. Taped interview in police stations are available to detainees. In addition, the judge's record of the proceedings should contain a record of the fact that an oral translation or summary of essential documents has been provided via an interpreter in the presence of judicial authority, as well as whether the accused or suspected person has waived their right to an interpreter after they have been informed of their right<sup>92</sup>.

In Ireland, a record will be kept on the court file of the fact that an accused or suspected person has been subject to questioning or hearings by an investigative or judicial authority with the assistance of an interpreter<sup>93</sup>. Where this occurs in the Garda station, there will be a note of this kept on the police custody record. These records will also contain a record of the fact that an oral translation or summary of essential documents has been provided via an interpreter in the presence of judicial authority<sup>94</sup>. A digital audio recording of proceedings is also kept in some courts<sup>95</sup>.

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91 This paragraph is based on information provided by the country researcher.

92 This paragraph is based on information provided by the country researcher.

93 Based on information provided by the country researcher.

94 Based on information provided by the country researcher.

95 Annual Report 2010 Courts Services, Internet, Audio Recording in 159 courtrooms, available at <http://www.courts.ie/Courts.ie/library3.nsf/pagecurrent/4C3135833D5A9863802578CB004E88B1?opendocument>, last accessed 31 December 2012.

A record of the fact that an accused or suspected person has been informed of their right to an interpreter and has waived this right will be recorded, where this has occurred, but there is no specific legal obligation to inform a suspect or accused person of their right to an interpreter<sup>96</sup>. There is a facility whereby interpretation may be recorded in police stations, interviews and in court during hearings. The recording is part of the file which is available to the accused upon request<sup>97</sup>.

In Latvia, under Section 325 of the Criminal Procedural Law, there is a provision to keep a written record when questioning takes place. The fact that a suspected or accused person has been subject to questioning or hearings by an investigative or judicial authority with the assistance of an interpreter will be recorded under this provision, where a written record of questioning is kept<sup>98</sup>. This record is usually kept by the person directing the proceedings<sup>99</sup>. Section 325, paragraph 2, of the CPL provides that the minutes of a court session shall record procedural actions performed in judicial proceedings. A record of the fact that an oral translation or summary of essential documents has been provided via an interpreter in the presence of judicial authority will be kept under this provision and also where a person has been subject to questioning with the assistance of an interpreter. In certain cases minutes shall also be recorded regarding procedural actions performed outside the courtroom<sup>100</sup>, and the content of the minutes should include the presence of the interpreter where relevant<sup>101</sup>. This would include a record of where an accused or suspected person has been informed of their right to an interpreter and has waived this right or where an accused or suspected person is subject to questioning before an investigation with the assistance of an interpreter in pre-trial proceedings.

In Lithuania there is a facility whereby interpretation is recorded in police stations and in courts. According to Article 179 of the Code of Criminal Procedure any investigative measure, such as questioning a suspect, must be recorded by

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<sup>96</sup> Guerin, *Criminal Practice: The Use of Interpreters and Translators in the Irish Courts*, paper to Bar Council conference on Criminal Procedure, Dublin, 7 February 2004.

<sup>97</sup> Based on information provided for by the country researcher.

<sup>98</sup> Sections 326 and 484 of the Criminal Procedure Law.

<sup>99</sup> Section 142, paragraph 1 and Section 484, paragraph 1 of the CPL.

<sup>100</sup> Section 482, paragraph 3 of the Criminal Procedure Law.

<sup>101</sup> Section 484 of the Criminal Procedure Law.

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the investigating officer or a person assisting him. The fact that an interpreter participated in the questioning is noted in this record. Article 179 also provides that a record is kept when an accused or suspected person has waived this right to an interpreter after he/she has been informed of their right to an interpreter. In addition a record is also kept of all proceedings before a judicial authority and is made by the court registrar<sup>102</sup>. The fact that a suspected or accused person has been subject to questioning or hearings by an investigative or judicial authority with the assistance of an interpreter is recorded, as is when an oral translation or summary of essential documents has been provided via an interpreter in the presence of judicial authority<sup>103</sup>.

In Poland, under Article 17 of the Profession of the Sworn Translator Act (25 November 2004), a sworn interpreter or translator is obliged to keep a record of any interpretation or translation done. This should include all relevant details of the work undertaken. This record should include the fact that a suspected or accused person has been subject to questioning or hearings by an investigative or judicial authority with the assistance of an interpreter. It should also record the fact that an oral translation or summary of judicial documents was provided before a judicial authority. However, the accused must confirm that he/she has received the Bill of Rights and this confirmation is included in the case-file, so in a sense a record is kept. The provisions of the aforementioned Act only apply in cases where a sworn interpreter or translator is used. An *ad hoc* interpreter is under no obligation to keep such a record.

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<sup>102</sup> The Article 261 of the Code of Criminal Procedure of Lithuania.

<sup>103</sup> The Article 261 of the Code of Criminal Procedure of Lithuania.



### 3.5 QUALITY OF INTERPRETER AND TRANSLATOR

Article 2 of the Directive states that ‘Interpretation provided under this Article shall be of a quality sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.’ According to Article 5 of the Directive, Member States must take concrete measures to ensure the quality of interpretation. As a means of achieving the necessary quality in interpretation, Member States shall endeavour to establish a register or registers of independent translators and interpreters who are appropriately qualified, and once established it will be, where appropriate, made available to legal counsel and relevant authorities<sup>104</sup>. Member States shall also ensure that interpreters and translators observe confidentiality principles<sup>105</sup>. Where the quality of interpretation is not sufficient to guarantee the fairness of the proceedings, under Recital 26, the Court must be able to replace the interpreter.

Information relating to quality of interpreter			
Countries	Type of interpreters used	Qualifications/ Requirements	Is there a register of interpreters in your jurisdiction?
Czech Republic	Sworn and <i>ad hoc</i> interpreters <sup>106</sup> .	Register requirements: Master’s degree in interpreting and translation, or a ten month course in legal terminology from a Faculty of Law, plus five years of post-qualification experience.  Requirement to be an interpreter: Master’s degree and native speakers who passed the State Language Examination.	Yes

<sup>104</sup> Article 5.2 of the Directive on Interpretation and Translation in Criminal Proceedings.

<sup>105</sup> Article 5.3 of the Directive on Interpretation and Translation in Criminal Proceedings.

<sup>106</sup> Sworn interpreters from the register are generally used. Only in exceptional circumstances are *ad hoc* interpreters used.

Information relating to quality of interpreter			
Countries	Type of interpreters used	Qualifications/ Requirements	Is there a register of interpreters in your jurisdiction?
England & Wales	Sworn and <i>ad hoc</i> interpreters	Register requirements: Diploma in Public Service Interpreting	Yes, but this register is maintained by the Chartered Institute of Linguists and it is not obligatory that an interpreter is on the register in order to work as a court interpreter.
Ireland	Sworn and <i>ad hoc</i> interpreters.	No specific qualification is required to work as a court interpreter.  Register Requirements: Sit examination set by the Irish Translators' and Interpreters' Association <sup>107</sup>	Yes, but this register is run by Irish Translators' and Interpreters' Association.
Latvia	Sworn, <i>ad hoc</i> and permanent interpreters	Requirement to be an interpreter in criminal proceedings: Three years experience working as an interpreter	No
Lithuania	Sworn and <i>ad hoc</i> interpreters	Requirement to be an interpreter in criminal proceedings: Fluency in the relevant languages	No

<b>Poland</b>	Sworn and <i>ad hoc</i> interpreters	Requirement to be an interpreter in criminal proceedings: knowledge of the relevant second language.  Requirement to be a sworn interpreter: Pass an official examination in front of a national commission	Yes
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In the Czech Republic, before an interpreter is included on the register of qualified interpreters, the Ministry of Justice and the Presidents of the Regional Courts require that the interpreter has to obtain either a Master's degree in interpreting and translation, or a ten month course in legal terminology from a Faculty of Law, as well as acquired a minimum of five years of translation and interpreting post-qualification experience<sup>108</sup>. Graduates from other Master degrees and native speakers can also become professional interpreters, but they must sit the State Language Examination for interpreters and translators. The register is publicly accessible on the website of the Ministry of Justice<sup>109</sup>. It is only in exceptional circumstances as set out by the Czech Supreme Court that an *ad hoc* interpreter can be assigned to a case<sup>110</sup>. An accused or suspected person may challenge the quality of interpretation by filing a complaint with the Ministry of Justice. The Ministry may then commence liability proceedings against the interpreter, which can result in an interpreter being removed from the register of qualified interpreters. The judge has a role in ensuring the quality of interpreting, and if he/she finds the quality insufficient, may recall an interpreter and assign a new interpreter. There is an obligation to maintain confidentiality in criminal proceedings<sup>111</sup> and any breach of

<sup>107</sup> There are guidelines, though, requiring linguistic competence, a professional attitude, an understanding of the legal process and of his/her duties to ensure impartiality and confidentiality.

<sup>108</sup> Based on information provided by the country researcher.

<sup>109</sup> The register is available at [http://datalot.justice.cz/justice/repznatl.nsf/\\$\\$SearchForm](http://datalot.justice.cz/justice/repznatl.nsf/$$SearchForm)

<sup>110</sup> Czech Supreme Court (decision no. 5 Tz 137/2001) held that the appointment of *ad hoc* interpreters could be permissible in certain exceptional cases. This could be in urgent cases where witnesses who do not speak Czech are questioned or where a rare language is requested for which there are only a small number professional interpreters on the register, or where it is necessary to provide the interpretation services outside business hours. The *ad hoc* interpreter must provide interpreting services in court under the oath and has a duty to advise the court of any reasons why it would be inappropriate for the person to act as an interpreter in a given case.

<sup>111</sup> Article 10a of the Law on Court Experts and Interpreters no. 36/1967 Coll.

this obligation may lead to disciplinary sanctions and the interpreter or translator may be struck off the register<sup>112</sup>.

In England & Wales there is a Diploma in Public Service Interpreting which takes 6 months on full time basis to complete, which is recognised by the Chartered Institute of Linguists, an independent professional body of interpreters and translators with its own Code of Conduct. This qualification enables an interpreter or translator to apply for membership of the Chartered Institute of Linguists and to register on the National Register of Public Services Interpreters. The register is self-regulated by the profession but was widely recognised by courts, lawyers and civil society to provide reliable interpreters for the criminal justice system and up until 30 January 2012, courts would employ interpreters who were on this register. However, on 30 January 2012, the Government awarded an exclusive contract to Capita/Applied Languages Solutions<sup>113</sup>. Consequently court interpreters must now be booked through this sole agency and, only in the event that this agency fails to provide an interpreter, may the court endeavour to source an independent interpreter.

Interpreters who are on the register or who are members of the Chartered Institute of Linguists are bound by a strict Code of Conduct and any breach of said provisions could result in disciplinary procedures being invoked<sup>114</sup>. While the judge does not require the interpreter to state their qualifications before interpreting, the judge may decline to start a trial or stop a trial mid way if it becomes clear that the level of interpreting is not sufficient for the defendant to understand what is being said and fully participate in the proceedings<sup>115</sup>, to avoid a breach of Section 6 of the Human Rights Act 1998. In addition, solicitors and barristers, who are present at trial are also under professional obligations to alert the judge if they believe that the quality of interpretation is leading to the defendant being denied a fair trial or inaccuracies in the knowledge that it may lead to a ground of appeal or an

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112 Under Article 25a the Law on Court Experts and Interpreters no. 36/1967Coll.

113 Based on information provided by country researcher.

114 It is not clear what code applies to other interpreters provided by Capita/Applied Language Solutions.

115 This occurred in a murder trial where the judge halted the trial for a day and a half in 2012 due to concerns over the standard of interpreting <http://www.guardian.co.uk/law/2012/jul/20/mps-investigate-firm-court-monopoly>

application in the future<sup>116</sup>. Judicial review is the only means to challenge the quality of the interpretation provided.

In Ireland, currently no qualification in interpretation is required in order to work as a court interpreter. In the most recent Courts Services' call for tender for interpretation services in 2011, there were three levels of interpreter competence specified in the tender documents, none of which required a qualification in interpreting<sup>117</sup>. It has been observed that, under this criterion, it is not necessary to have secondary schooling or that either language is the interpreter's mother tongue<sup>118</sup>. Under the current regime, interpreters are interviewed but are not tested to assess their interpreting skills and only attend a basic training course organised by their agency<sup>119</sup>. It has been found that some interpreters were not interpreting crucial information to defendants, such as the facts of the case or the bail conditions; the standard of English among some interpreters was poor, with some who did not have the English for basic legal terms like "solicitor" or "sentence"<sup>120</sup>. However this has been refuted by the Courts Services<sup>121</sup>. The judge may replace an interpreter if it becomes apparent that the standard of interpreting is not acceptable and there have been reports of occasions where the judge has exercised this function<sup>122</sup>. Nevertheless, there is no national register of qualified interpreters, although the Irish Translators' and Interpreters' Association maintains a voluntary register,<sup>123</sup> and interpreters or translators are not specifically bound by any legal provision regarding the confidentiality of the proceedings.

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116 Based on information provided by the country researcher.

117 Supra.

118 Supra.

119 See M. Phelan, (2011) *Legal interpreters in the news in Ireland*. Translation & Interpreting, 3 (1), pp. 76-105.

According to the Irish Translators' and Interpreters' Association most interpreters who work in Garda Stations receive no training.

120 'No quality controls laid down for courts and Garda translators'. *Irish Times*, 7<sup>th</sup> of June 2010, based on research carried out by Waterhouse over a period of eight months on interpretation in Irish District Courts.

121 The Court Service, however, refutes these claims and stated that concerns over quality were raised in just 15 out of 10,000 cases in court last year. It says that on the vast majority of occasions where an interpreter is used, there is no issue or concern over standards. It also maintains that where an issue "of a lack of clarity or understanding arises, the dynamic of the court setting makes this apparent," and that on these occasions, the interpreter will be replaced.' See 'No quality controls laid down for courts and Garda translators'. *Irish Times*, 7<sup>th</sup> of June 2010.

122 M. Phelan, (2011) *Legal interpreters in the news in Ireland*. Translation & Interpreting, 3 (1), pp. 76-105.

123 Available at <http://www.translatorsassociation.ie/content/view/21/39/>

In Latvia, there is no national register of sworn interpreters who are appropriately qualified for court interpretation and there are no plans to establish such a register under the draft law to transpose the Directive on the Right to Interpretation and Translation in Criminal Proceedings<sup>124</sup>. As previously mentioned, the court and prosecutor's office generally employ interpreters permanently for certain languages (Russian and Latvian). In relation to other languages, interpreters are generally sourced through an agency. The Court's Administration set the requirements during the procurement process when interpreters and translators are sourced from agencies. The current requirement is that an interpreter has three years experience working as an interpreter, but not necessarily in court interpreting. Neither the judge nor any member of the legal personnel have a specific role in ensuring interpreter standards or requiring that an interpreter state their qualification when they are sworn in. Sworn interpreters and *ad hoc* interpreters are both subject to the provisions of Latvian Law in relation to criminal liability under Section 300 of the Criminal Law ("*Krimināllikums*"). Under this section, where an interpreter or translator knowingly provides false information, they may be held criminally liable. There is no provision in relation to confidentiality in court interpretation or translation. The general application, submission, requests and complaints procedures as outlined under Chapters 23 and 24 of the Criminal Procedure Law may be used to submit a complaint in relation to the quality of the interpretation provided.

In Lithuania, Article 43 of the Code of Criminal Procedure requires fluency in the relevant languages to serve as an interpreter in criminal proceedings. However, there are no specific measures relating to interpreters' or translators' duties regarding confidentiality. In addition, there is no national register of qualified interpreters and there are currently no plans to establish one. As Russian and English are the languages most commonly required in the courts, an agency will generally supply the interpreter. In the case of other languages, *ad hoc* interpreters or translators are used. A suspected or accused person can challenge the quality of the interpretation by requesting that an interpreter or translator be removed, where the interpreter demonstrates incompetence<sup>125</sup>. Under Article 58, paragraph

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124 "Annotation to the draft law on Amendments to the Criminal Procedure Law (*Likumprojekts 'Grozījumi Kriminālprocesa likumā*"), 06 September 2012, p.36. Official data, available in Latvian at <http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/0/817CDDA19F760AD2C2257A7100388DD9?OpenDocument>", last accessed 31 December 2012.

125 Article 58, paragraph 3, Code of Criminal Procedure of Lithuania.

3, and article 59, paragraph 5, of the Code, the decision on whether to remove an interpreter lies with the judge. There is no requirement under law that an interpreter states their qualification before they begin court interpretation, however, in practice, interpreters are usually required to provide documentary evidence of qualifications<sup>126</sup>.

In order to be an interpreter or translator in Poland, the requirement set down in the Code of Criminal Procedure is that an interpreter has knowledge of the relevant second language<sup>127</sup>. However, in order to qualify as a sworn interpreter, under the Act of 25 November 2004 on the Profession of Sworn Translators, a sworn interpreter must pass an official examination in front of a national commission. The interpreter is then placed on a national register of interpreters after complying with necessary formalities<sup>128</sup>. The register of sworn interpreters and translators is a public register and is available on the website of the Ministry of Justice<sup>129</sup> and is published in the Official Journal of the Ministry of Justice each year<sup>130</sup>. In 86% of cases sworn interpreters or translators from the national register are used in court proceedings<sup>131</sup>. Interpreters are bound by the provisions of Article 197, paragraph 1, of the Code of Criminal Procedure, which provides that they must carry out their duties impartially<sup>132</sup>. Where an *ad hoc* interpreter is used, the judge will inform the *ad hoc* interpreter of the requirement to carry out their duties impartially, as well as the duty to inform the court as to any reason why they are not suitable to act as an interpreter in the case<sup>133</sup>. If the quality of interpretation or translation is poor, the judge has a power to replace the interpreter or translator. An accused or suspected person can challenge the quality of the interpretation provided by means of a motion for reconsideration. There is no legal binding provision which relates to interpreters regarding the confidentiality of proceedings<sup>134</sup>.

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126 Based on information provided by the country researcher.

127 Article 193 paragraph 1 Code of Criminal Procedure applied on the basis of Article 204 paragraph 3 Code of Criminal Procedure.

128 Article 6 of the Act of 25 November 2004 on the Profession of Sworn Translator

129 See <http://bip.ms.gov.pl/rejstry-i-ewidencje/tlumacze-przysiegli/lista-tlumaczy-przysieglych/index.html>

130 Article 9(1) of the Act of 25 November 2004 on the Profession of Sworn Translator

131 Presentation by Anna Mendel of Polish National School of Judiciary and Public Prosecution, presentation given on 25 of November 2011

132 Article 197 paragraph 1 refers to 'experts' and not 'interpreters' specifically, however, Article 204 paragraph 3 states that provisions within the Code referring to court 'experts' include 'interpreters'.

133 *Supra*.

134 However it should be noted that it is a criminal offence to reveal publicly information from preliminary proceedings without permission (Article 241 paragraph 1 Criminal Code) and to reveal publicly the information from the hearing before court held in camera (Article 241 paragraph 2 Criminal Code).

### 3.6 COSTS

The Directive states, under Article 4, that the costs of interpretation and translation in criminal proceedings are to be borne by the State regardless of the outcome of the proceedings. This provision extends to pre-trial proceedings. In *Luedicke, Belkacem & Koç v. Germany*<sup>135</sup>, the Court held that the term free (*gratuitement*) could be interpreted as a “once and for all exemption” from paying costs. The Court rejected any argument that this did not extend to pre-trial proceedings. In order for this right to be effective, it may be necessary that an accused or suspected person is expressly made aware of the fact that they are entitled to interpretation and translation services free of charge.

Interpreter and translator cost						
Countries	Czech Republic	England & Wales	Ireland	Latvia	Lithuania	Poland
Free of charge	Yes	Yes	Yes	No <sup>136</sup>	Yes	Yes

In the Czech Republic the costs of translation and interpretation services are borne by the State in criminal proceedings and in proceedings for the execution of the European Arrest Warrant, as required under the Directive<sup>137</sup>.

In England & Wales interpreter and translator services are available to an accused or suspected person free of charge and the accused or suspected person should be informed of this by their solicitor or by custody officer<sup>138</sup>. This applies to criminal proceedings and to proceedings for the execution of a European Arrest Warrant.

In Ireland the State pays resulting costs via the police budget when requested by the police, and via the Courts Services when requested by the courts<sup>139</sup>.

<sup>135</sup> *Luedicke, Belkacem & Koç v. Germany* (1978) decision no. 6210/73

<sup>136</sup> Free of charge only during procedural actions.

<sup>137</sup> Based on information received from the country researcher.

<sup>138</sup> Based on information received from the country researcher.

<sup>139</sup> Based on information provided by the country researcher.



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In Latvia, interpretation services are made available free of charge during criminal proceedings. As previously discussed, this does not include during consultations with lawyers. Currently translation services are provided free of charge in two situations. Firstly, under Section 413 of the Criminal Procedure Law, the decision to transfer a criminal case to a court may be translated free of charge. In addition, under Section 321 of the CPL, a decision relating to the accused person being held under arrest, house arrest or in a social correctional educational institution must also be interpreted.

Interpreter and translation services are made available free of charge to a suspected or accused person who does not understand the language of the criminal proceedings in Lithuania. They are also provided free of charge in proceedings for the execution of a European Arrest Warrant. The fact that the services are available free of charge is set out in the written notice of rights that the accused person receives upon arrest<sup>140</sup>.

In Poland, Article 72, paragraph 1, of the Code of Criminal Procedure provides for the assistance of an interpreter or translator free of charge. This provision also applies to proceedings for the execution of a European Arrest Warrant. The suspect or accused person receives a Letter of Rights during the pre-trial investigation. This Letter is available in a number of different languages<sup>141</sup> and contains a reference to their right to interpretation or translation services free of charge, though Article 300 of the Code of Criminal Procedure does not oblige to include the information about the right to interpreter<sup>142</sup>.

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<sup>140</sup> Based on information received from the country researcher.

<sup>141</sup> See official Police website - <http://www.policja.pl/portal/pol/346/>

<sup>142</sup> Although there is no formal requirement to do so, in practice during presentation of charges and initial questioning of a suspect, the prosecutor or police officer will go through the Bill of Rights with the suspect or accused person and explain each of the rights to them, including the right to interpretation and translation services free of charge.

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### 3.7 TRANSLATION OF ESSENTIAL DOCUMENTS

In relation to the right to translation of essential documents, under Article 3 of the Directive, an accused or suspected person is entitled to receive translations of all essential documents within a reasonable time so they are able to exercise their right of defence and to safeguard the fairness of the proceedings. An essential document includes any decision depriving a person of their liberty, any charge, indictment and any judgment. A person subject to European Arrest Warrant proceedings is entitled to a written translation of the European Arrest Warrant. An oral translation or oral summary of essential documents may be provided instead of a written translation, as an exception to the general rule, on condition that such oral translation or oral summary does not prejudice the fairness of the proceedings<sup>143</sup>. The accused has the right to challenge a decision that there is no need for the translation of documents or passages as well as to make a complaint regarding the quality of the translation, if the quality is not sufficient to safeguard the fairness of the proceedings<sup>144</sup>. Under Article 3, paragraph 8, the accused or suspected person must first receive prior legal advice or have otherwise obtained full knowledge of the consequences of a waiver before a waiver may be accepted. As required in relation to interpretation, the quality of the translation must be sufficient to safeguard the fairness of the proceedings, in particular by ensuring that suspected or accused persons have knowledge of the case against them and are able to exercise their right of defence.

In the Czech Republic, under Article 28(2) of the Criminal Procedure Code, the decision to initiate criminal proceedings, the decision on detention, the indictment, the judgment and any decision on appeal must be translated for the accused where they do not speak or understand the language of the proceedings. In addition, the European Arrest Warrant is translated where necessary to safeguard the fairness of the proceedings and the authority that issued the document will make the necessary arrangements to have it translated. The proposed amendment to transpose the Directive includes a provision under which an oral translation of additional documents will be possible upon request or *ex officio* if their translation would be in the interest of a fair trial<sup>145</sup>. There is no specific mechanism by which an accused

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143 Article 3.7 of the Directive.

144 Article 3.5 of the Directive.

145 Based on information provided by the country researcher.

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or suspected person can challenge any finding that there is no need to translate documents or passages thereof. However, the general complaints mechanism can be used to challenge a decision of a prosecutor to the supervising prosecutor. The proposed amendment of the Code includes an express provision that where a criminal justice authority decides not to translate additional documents, it has to issue a decision which can be subject to a complaint.

In relation to the England & Wales, written translations are provided of all documents which are essential and defence solicitors and counsel can obtain funding from the Legal Services Commission to obtain translations of essential documents. If the documents are very lengthy they may have to obtain prior authority from the Legal Services Commission to do so. In relation to any decision depriving a person of their liberty, any charge, indictment or judgment or European Arrest Warrant provided by way of translation, these documents may be translated orally in court for the defendant by the interpreter, however defence solicitors and counsel may also obtain written translations. In relation to an appeal of a decision not to translate documents or that the quality of translation was insufficient, an accused may appeal any decision by the Legal Services Commission not to provide funding and if this appeal fails they may bring a claim for judicial review against the Legal Services Commission<sup>146</sup>.

In Ireland, the “Book of Evidence” contains a summary of the charge, along with the evidence against the accused. The Book of Evidence will be translated for the accused person. In general, there are no written judgments issued in criminal proceedings. Where an interpreter is appointed, they will give an oral interpretation to the accused of any sentence handed down by the judge in court. There is no specific mechanism by which an accused or suspected person can challenge any decision that there is no need to translate documents or passages thereof or the quality of the translation. However, an appeal or judicial review of the decision could be taken<sup>147</sup>.

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<sup>146</sup> Based on information provided by the country researcher.

<sup>147</sup> This paragraph is based on information provided by the country researcher.

In Latvia, under Section 406, paragraph 8, of the CPL the accused may receive a translation of any charge against them. Under Section 413, paragraph 4, of the CPL, a translation of the decision to send a criminal case to court is provided to the accused. Upon completion of pre-trial criminal proceedings, an accused has the right to read the materials of the criminal case and the evidence against them with a help of an interpreter. Under Section 321, paragraphs 2 and 3, an accused may familiarise themselves with the adjudication with assistance of an interpreter, though a written translation is not necessarily provided. In relation to the European Arrest Warrant a person due to be extradited has the right to use a language that he or she understands in the extradition proceedings<sup>148</sup>, however, there is no provision requiring the EAW to be translated in a written form. The general complaints procedure allows the accused or suspected person to challenge any finding that there is no need to translate documents or passages of the documents as well as to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings<sup>149</sup>.

In Lithuania, Article 8, paragraph 3, provides that all documents which are presented to the suspect or accused under the Code of Criminal Procedure, must be translated. When accessing other documents of the case, the suspected or accused person is entitled to the help of an interpreter, who translates the essential parts of the document orally. Although written translations are provided of the official notice that the person is a suspect, of the bill of indictment, of judgments and decisions of the courts, no written translation is provided of the European Arrest Warrant as it is not presented to the suspect. However an oral translation of the EAW is provided for under the Code of Criminal Procedure. Currently, there is neither a mechanism by which an accused or suspected person can challenge any decision finding that there is no need to translate documents or passages thereof nor the possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of the proceedings<sup>150</sup>.

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148 Clause two, Paragraph two of Section 698 (in conjunction with Paragraph one of Section 715) of the CPL.

149 Under Section 336 of CPL.

150 Based on information provided by the country researcher.

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The law in Poland establishes, under Article 72, paragraph 3, of the Code of Criminal Procedure, that any decision depriving a person of their liberty, any charge, indictment or judgment or European Arrest Warrant is provided by way of written translation. A suspected or accused person is served with a translation of a decision to charge, change or supplement charges, a bill of indictment and all decisions and judgments subject to appeal or conclusion of the proceedings. There is no mechanism by which an accused or suspected person can challenge any decision that there is no need to translate documents or passages, however, there is a possibility to complain that the quality of the translation is not sufficient to safeguard the fairness of proceedings, but there is no special procedure in place to do that.

### **3.8 TRAINING**

Under Article 6 of the Directive, without prejudice to the independence of the judiciary, Member States shall request those responsible for training judges, prosecutors and judicial staff to pay particular attention to particularities of communicating through an interpreter so as to ensure efficient and effective communication.

In the Czech Republic, the person who makes the decision as to whether an interpreter is required does not receive training in assessing whether a person is in need of an interpreter<sup>151</sup>.

In England & Wales, written guidance is provided for the judiciary in relation to assessing the need for an interpreter via an Equal Treatment Bench Book<sup>152</sup> issued to all members of the judiciary by the Judicial Studies Board deals with the question of interpreters and their proper use in court. The Board also deals with interpretation in its paper issued in November 2010 to the judiciary on Fairness in Courts and Tribunals: A Summary of the Equal Treatment Bench Book. The issue of interpreting may also be addressed in “judge craft” sessions in the continuing professional development courses which judges have to attend on a regular basis.

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<sup>151</sup> Based on information provided by the country researcher.

<sup>152</sup> Paragraph 1.2.4 and Appendix 1 of the Equal Treatment Book.

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In Ireland, no specific training is provided to Gardai (police) or judges regarding the assessment of whether to summon an interpreter or not. In April 2008, the Courts Services issued a *Protocol for Guidance to Judges and Practitioners*. The document outlines interpreters' and judges' responsibilities but does not deal with the issue of how to decide whether a defendant needs an interpreter<sup>153</sup>. Irish Translators' and Interpreters' Association have suggested that a National Centre or Authority for Translation and Interpretation be established<sup>154</sup>. This Centre, if established, would operate a national register of qualified interpreters, provide training courses for translators, interpreters and the legal profession and possibly operate an accreditation system<sup>155</sup>.

In Latvia, the person who makes the decision in relation to whether an interpreter is required does not receive training in assessing whether an accused or suspected person is sufficiently disadvantaged from a language point of view so as to require an interpreter<sup>156</sup>.

In Lithuania, the person who makes the decision as to whether an interpreter is required does not receive training in assessing whether a person is in need of an interpreter<sup>157</sup>.

In Poland neither the prosecutor, police officer nor court receive any specific training in assessing the accused or suspected person's level of Polish and whether they understand legal vocabulary<sup>158</sup>. However, a training day concerning the whole area of interpretation and translation services in criminal proceedings was organised on 20 December 2012 by the Prosecutor General for legal staff and professionals, but apparently this was a once-off event and there is no regular training on the issue<sup>159</sup>.

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153 M. Phelan, (2011) *Legal interpreters in the news in Ireland*. Translation & Interpreting, 3 (1), pp. 76-105.

154 ITIA, (2003) Submission on Procedural Safeguards for Suspects and Defendants in Criminal Proceedings Throughout the European Union (2003), available at [www.translatorsassociation.ie/component/option.com.../Itemid,16/](http://www.translatorsassociation.ie/component/option.com.../Itemid,16/), Accessed 31<sup>st</sup> December 2012

155 Supra.

156 No official data available. Data gathered through interviews with two judges, a representative from the State Police, a chief prosecutor, and a representative of the Judicial Training centre.

157 Based on information provided by the country researcher.

158 Based on information provided by the country researcher.

159 Based on information provided for by country researcher.

## CHAPTER IV

# GENERAL OBSERVATIONS AND CONCLUSIONS

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The study has highlighted certain weaknesses and the gaps in the six jurisdictions examined in relation to the implementation of the Directive on the Right to Interpretation and Translation in Criminal Proceedings. This section provides some general observations and conclusions in the light of these findings.

### 4.1 AVAILABILITY OF INTERPRETER

#### *4.1.1 Interpreter available for consultation between a suspect or accused person with a lawyer*

The Directive requires that interpretation and translation must be available during all the proceedings. Only Latvia fails to respect this requirement since an interpreter is not provided for the accused person's consultation with their lawyer in the police station or during proceedings. Although the Czech Republic already allows for the practice of providing an interpreter for consultation between a suspect or accused person with their lawyer, this is not yet provided for by law.

#### *4.1.2 Notice about the right, the availability and the cost*

Notifying the accused about his right to an interpreter and translator is essential to guarantee the observance and use of this right. Some of the jurisdictions examined (Czech Republic, Ireland, Lithuania) do not have a systematic procedure of notifying the accused or suspect about his right to an interpreter or translator and his right to challenge a decision. It is important that jurisdictions which give written advice provide it in different languages to ensure that from the beginning the suspect or accused are fully aware of their right to interpretation and translation. In relation to cost of interpretation and translation services, it may be necessary to set out in law the means by which it can be ensured that an accused or suspected person is made aware that this right is available to them free of charge. In Ireland the inclusion of the right to an interpreter in the Notice of Rights could remove any ambiguity and ensure that suspected or accused persons are aware of their right to an interpreter. In Lithuania and the Czech Republic the problem is related to the notice of the right to challenge the decision about the provision of an interpreter or translator. Thus, it may also be necessary to ensure that an accused or suspected person is made aware of this right and equipped to follow proceedings in a language they understand.

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## **4.2 LENGTH AND CRITERIA TO PROVIDE AN INTERPRETER**

### *4.2.1 Time limit prescribed by law*

The length of time it takes to provide an interpreter in the six jurisdictions does not appear to be problematic; however, the lack of a time limit prescribed by law should be noted. None of the six jurisdictions researched have a specified time limit prescribed by law, within which an interpreter must be provided to the suspect or accused person. Although some of the domestic legislation prohibits undue delay, it may be necessary to set out in law a definition of a reasonable time within which interpreters should be available to the accused or suspected person.

### *4.2.2 Uniform criteria for assessment*

A procedure in which uniform criteria are applied to assist a decision-maker when deciding whether the accused or suspected person requires the assistance of an interpreter is necessary for all the researched jurisdictions. It is important that jurisdictions have a procedure, formulated by experts, which will assist police officers, prosecutors and judges when assessing the need for interpreters and translators. Lithuania uses the person's own evaluation as the main criteria for making the decision. This may be an effective tool for assessment, however it is important that the authorities themselves can evaluate the necessity. England & Wales provide written guidance which may assist the judiciary to determine this issue in a consistent manner.

## **4.3 TRAINING**

In all six jurisdictions, there is a lack of regular and effective training for judges, legal staff and police in working with interpreters. Such training is essential to sensitise them to factors which may influence the quality of interpretation, such as, for example, people speaking too quickly, and to highlight the need for interpreters to be given advance notice in relation to the specialist terminology that will be required in a given case.



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#### **4.4 CHALLENGING A DECISION**

There should be a simple and straightforward procedure whereby an accused or suspected person can challenge any decision not to appoint an interpreter and the person should be able to invoke the procedure in their own language. Although all six jurisdictions have a general mechanism which may be used to challenge a decision not to provide an interpreter, the prompt provision of an interpreter is essential to ensure the fairness and proper development of the proceedings, and a simple and efficient procedure which would comply with the Directive requirements.

#### **4.5 COSTS**

The full costs associated with interpretation and translation should be borne by the State. Most of the researched jurisdictions fulfil this requirement. In the Czech Republic and Latvia interpretation and translation should be made available free of charge in relation to the consultations between the accused or suspected person and their lawyer without any temporal limits imposed, where the consultations are in direct connection with any questioning, hearing, lodging of an appeal or other procedural applications.

#### **4.6 QUALITY OF INTERPRETER AND TRANSLATOR**

##### *4.6.1 Requirements for the service*

The requirements to allow people to work as an interpreter and translator vary in the jurisdictions examined. In some, it is assumed that knowledge of two languages is sufficient to provide adequate court interpreting. It is necessary to take into account interpretation skills, knowledge of legal vocabulary, comparative law and the legal process of the relevant country, as well as knowledge of cultural sensitivity and ethics required to deliver interpretation of the standard necessary to ensure the fairness of proceedings. Stricter regulation of the area and more State supervision as to interpreter qualification and standards is required in order to comply with the Directive. The issue of quality stands out as the most significant issue regarding interpretation and translation that could prejudice the fairness of proceedings

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and also undermine the purpose of the Directive, which is to ensure a common, basic standard of fairness in criminal proceedings across all Member States. Thus, stipulations in relation to adequate qualification to work as a court interpreter are necessary. Adequate checks on interpreter qualification and skills are necessary.

#### *4.6.2 Register*

Establishing a register of qualified interpreters would contribute to ensuring the requisite standard for interpreting and translation under the Directive is met in criminal proceedings. A national register from which court interpreters are selected would be a means of ensuring quality and regulating the area.

#### *4.6.3 Confidentiality*

In relation to the quality of the services provided, a measure binding interpreters and translators in relation to the confidentiality of the proceedings must be adopted. None of the jurisdictions researched had specific provisions imposing obligations on interpreters and translators in relation to the confidentiality of the proceedings.

### **4.7 RECORD-KEEPING**

All of the six jurisdictions surveyed have a system of record-keeping that could be characterised as adequate. However, in Latvia, provisions concerning adequate records kept must extend to all relevant situations.

### **4.8 TRANSLATION OF ESSENTIAL DOCUMENTS**

Regarding the translation of essential documents, the six jurisdictions surveyed apparently provide the necessary translation in relation to the judgment and charges against the accused. However, it is necessary to ensure that jurisdictions also provide for the written translation of the European Arrest Warrant and also additional documents that are deemed essential. In relation to oral translation, the jurisdictions must ensure they will only be used in circumstances where the fairness of the proceedings would not be compromised. In addition, the accused must be able to challenge any decision not to translate a certain documents or passages thereof or to complain about the quality of the translation provided.

#### 4.9 OVERVIEW OF WEAKNESSES WITHIN SIX RESEARCHED JURISDICTIONS

Overview of weaknesses within six researched jurisdictions			
Weakness in:	Quality of interpretation/ translation and qualification of interpreter/translator	Training	Free of charge - cost
Czech Republic	No	Yes	Yes
England & Wales	Yes	Yes	No
Ireland	Yes	Yes	No
Latvia	Yes	Yes	Yes
Lithuania	Yes	Yes	No
Poland	Yes	Yes	No

Overview of weaknesses within six researched jurisdictions			
Weakness in:	Challenge mechanism	Right to be informed of the right	Written translation
Czech Republic	Yes	No	Yes
England & Wales	Yes	No	No
Ireland	Yes	Yes	No
Latvia	Yes	Yes	Yes
Lithuania	Yes	Yes	Yes
Poland	Yes	Yes	No

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#### **4.10 CONCLUSION**

It is clear from the results of this study, that none of the six jurisdictions surveyed (Czech Republic, England & Wales, Ireland, Latvia, Lithuania and Poland,) currently meet all the minimum standards as required by the Directive on the Right to Interpretation and Translation in Criminal Proceedings. As previously noted, several weaknesses have been exposed; some common across all the researched jurisdictions, such as absence of provisions relating to confidentiality and absence of procedure or mechanism to ascertain whether an interpreter is necessary; others are more country-specific, such as issues relating to costs or record-keeping.

Examining the transposition of the Directive in isolation, it has been found that none of the six jurisdictions have, as yet, formally amended their laws. It should be noted, however, the mere fact that no new law has been enacted does not necessarily mean that the jurisdiction's practices are not in accordance with Directive. In this regard draft laws are already emerging in some jurisdictions such as the Czech Republic and Latvia to address several of the issues arising from the Directive, which are not already addressed by their respective domestic laws.

As the date for transposition (27 October 2013) approaches, all EU Member States that have yet to meet the minimum standards outlined by the Directive, either in whole, or in part, should carefully consider the measures that they will need to take in order to ensure that they do not become subject to possible infringement proceedings instigated by the European Commission.

# ANNEX. I

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## **LEGISLATION**

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