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## **Case study**

### **The right to Interpretation and Translation in criminal proceedings**

*The aim of the case study is to provide the participants with insights of the practices in neighbouring jurisdictions and put in practice Directive 2010/64.*

Mr Renard, a French citizen who moved in Ireland recently, is arrested in Ireland for suspicion of drug traffic and money laundering. For the purposes of the investigation he is brought to Dundalk police station to be detained and interviewed. Mr Renard has very limited English and the local accent makes difficult for him to understand what is happening. Mr Renard is provided with a lawyer and an interpreter.

During the interview the lawyer notes that after lengthy questions the interpreter only speaks few words to his client and does not take notes of the questions. Similarly, during the private consultation with his client the interpreter only speaks few words when his clients pronounces long sentences. During a break between a private consultation and the interview the interpreter is seen to be in the police station breakroom reserved to officers.

After the 2<sup>nd</sup> interview the lawyer raises the issue of quality of the interpretation. The policewoman in charge refuses to provide another interpreter.

During one of the interviews the suspect is asked to comment on documents written in English. The lawyer objects that his client cannot comment on the document as it is written in English. The policeman requests the interpreter to read the document to the suspect. Ultimately, the suspect makes a "no comment" interview.

- In your own jurisdiction, would Mr Renard been entitled to an interpreter if he had been resident in the MS for 5 years and had a good grasp of the language?
- Was MR Renard entitled to have the documents shown to him during the interview in English translated in French?



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- Describe how it is possible in your own jurisdiction to challenge a decision to refuse to change the interpreter.

Later, Mr Renard is charged with drug traffic and money laundering. He is brought to court where his lawyer applies for an interpreter to be present at each court appearance, consultation and for translation of documents. The Court grant the order for interpretation and translation.

The proceedings move to the next stage, Mr Renard is sent forward for trial before the Circuit Court. The book of evidence (all evidence relied on by the prosecution + statement of the charges) is served on him in English. His lawyer obtains a French translation. Further written evidence is served on the defence including invoices and bank statements. **French** translation of these documents is refused by the court as it is deemed non necessary.

On the first day of the trial Mr Renard's lawyer applies for the memo of interviews to be excluded from the case arguing that the interpretation was not appropriate. The application is denied. The Court deems that as the interpreter was sent by an agency it was proof enough of his qualification<sup>1</sup>.

Later, when the prosecution starts to rely on documents only available in English (the ones the lawyer attempted to get translated in **French**) Mr Renard 's lawyer applies for the prosecution to be prevented to do so. The Court orders the interpreter present in court to read the documents to the accused and allows a short time for the lawyer to discuss them with his client.

Mr Renard is found guilty and convicted by the jury.

- What argument could the lawyer advance in court to challenge the quality and independence of the interpretation who assisted during the interviews?
- Can the lawyer allege a breach of fair trial rights if the documents are simply read in **English** and not translated?

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<sup>1</sup> Please note that in Ireland interpretation is outsourced to private company after a tender process



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Mr Renard appeals the decision.

The 1st ground of appeal is that he had not been provided appropriate interpretation in the garda station and failure of the trial judge to have the tape of interview reviewed by an independent interpreter.

A second ground of appeal is based on the fact that the written judgment has not been provided in French to Mr Renard.

The Court of Appeal allows the appeal on the 1st ground and an independent expert interpreter reviews the tape of interview. It appears that the interpretation was wholly inadequate. The interpreter summarised the questions, missing details, and did not translated the caution. The Court of Appeal finds that the interpretation was inadequate therefore the memo of interview ought to have been excluded. A re-trial is ordered.

- In your own jurisdiction, would the Court exclude the memo of interview after finding that the interpretation did not meet the minimum standard?
- Comment on the written judgment not available in French. Would it be furnished in your own jurisdiction?

At the re-trial Mr Renard is found not guilty. Following his acquittal Mr Renard decides to move back to France. Few years later, he is arrested for various tax offences. The prosecution alleges that Mr Renard did not declare incomes linked to sell of homemade cider and did not pay the appropriate taxes. Mr Renard's defence is based on the fact that cider making is a hobby and the bottles were gifts to his friends. He intends to call his friends as witness at his trial. Ms Bonemine express the wish to give evidence in Breton, a local French language, with the assistance of an interpreter. The Court refuses on the basis that French is the only official language of the Court.

- Is Ms Bonemine entitled to give evidence in an *ethnic minority language*?



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Following heated debates Mr Renard is acquitted. To celebrate his success in court Mr Renard decides to visit his cousin, Mr Senna, who recently moved to Lithuania. Mr Senna learning about his experience with the criminal system asks him advice about his own case.

Few months ago Mr Senna has been served with a penalty order from the local court imposing a fine for a small road traffic offence. The penalty order was accompanied by a notice of instruction in French explaining the appeal process. Mr Senna had the option to appeal in writing or by oral declaration at the registry.

Unsure of the content of the penalty notice Mr Senna instructed a lawyer to act on his behalf. An appeal was lodged in time. Mr Senna's lawyer argued that the penalty notice should have been notified to his client in French. The prosecution objected that as it only concerns a minor offence and therefore is excluded from the scope of the right.

- In which language Mr Senna could have lodged his appeal?
- His Mr Senna entitled to a French translation of the penalty notice?