

Directive 2010/64/EU on translation and interpretation services in criminal proceedings: A new quality seal or a missed opportunity?

On its implementation in Germany, Poland and Spain

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ABSTRACT

About ten years ago, the European Parliament and the Council of the European Union adopted Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings. The Directive initially inspired high hopes, mainly because it explicitly addressed the issue of quality in interpretation and translation services. Its implementation in the EU Member States, however, has tended to be disheartening. Some even fear that current standards may be inferior to those that prevailed before the Directive was implemented. This article analyses the implementation of the Directive in Germany, Poland, and Spain and – taking the changes made to the relevant national legislation in 2013 (Germany and Poland) and 2015 (Spain) as a starting point – sheds light on early tendencies in the judicial interpretation of domestic law. It concludes that to this day, neither Germany nor Poland nor Spain has fully complied with the Directive's quality standards for interpretation services. With respect to translation – especially the translation of judgments – it concludes that a rather restrictive interpretation of the amended national laws appears to be taking root.

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Legal proceedings involving the services of interpreters and translators are part of judicial daily life in the EU. Legal interpreters and legal translators, whose professions took shape during the Nuremberg trials, have become integral to the functioning of courtrooms and police stations. No other intergovernmental institution uses anything close to the number of official languages used by the EU¹ (namely, 24), and the quantity of spoken languages in the bloc is vaster still: about 450 languages are spoken across the EU's Member States today. The EU is more multilingual than ever before – a fact almost no one seriously questions. Multilingualism is one of the fundamental principles of the EU and applies of course to, among other things, criminal proceedings: it is self-evident that every person suspected or accused of a crime must be able to understand what they are suspected or accused of, irrespective of which Member State they are in. But a variety of challenges stand in the way of the universal and effective enforcement of this right. In October 2010, the European Parliament and the Council adopted Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings.² It was the first attempt in history to guarantee through EU law minimum standards for language services in criminal proceedings.³ In addition, the Directive explicitly addressed the issue of the quality of translation and interpretation services in criminal proceedings – likewise a first in EU history. This article analyses the implementation of Directive 2010/64/EU in Germany, Poland and Spain, and – taking the changes made to the relevant national legislation in 2013 (Germany and Poland) and 2015 (Spain) as a starting point – sheds light on early tendencies in the judicial interpretation of the implementation of the Directive in domestic law. It will become evident that to this day, none of these three countries has fully complied with the Directive's quality standards for interpretation services. The analysis will also reveal that a rather restrictive interpretation of the amended national laws appears to be taking root with respect to translation – especially the translation of judgments.

I. Background

By the early 2000s, research by the European Commission had found that, while Member States were aware in theory of their obligation to provide cost-free interpreters and translators in criminal proceedings, they were not adequately fulfilling this obligation in reality. The reasons for non-compliance were cost, bureaucracy and the more complex logistical demands in cases of less common languages.⁴ This situation prevailed despite the fact that, at that time, there was already a roughly fifty-year history of international and European agreements emphasising that every person who does not understand the language of their criminal proceedings must be supported at no cost to them by interpreters and translators. This right is set out in, *inter alia*, the European Convention on Human Rights (ECHR), the International Covenant on Civil and Political Rights (ICCPR) and the EU Charter of Fundamental Rights (CFR). The European process of unifying standards for criminal proceedings in the EU Member States picked up steam in 1999 with the Tampere conclusions, and in 2009 with the Stockholm Programme, which built upon the Tampere conclusions. The Stockholm Programme included the Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings – part of a Resolution adopted likewise in 2009, shortly before the Programme itself, and designed to be implemented in stages between 2010 and 2016 through a total of six measures.⁵ In October 2010, the first of these Directives was adopted: Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings. Along with requiring that the costs of interpretation and translation services incurred throughout the entire criminal proceeding be covered by the state, the Directive also requires that it be ensured that services are of sufficient quality to guarantee fair proceedings. In addition, the Directive underscores the importance of training for judges, prosecutors and judicial staff that places particular emphasis on the topic of interpretation services, so that communication can be organised more efficiently and effectively. The measure also emphasises the importance of official registers of interpreters and translators, which today can be found in 17 EU Member States.⁶

II. State examinations and laws governing interpreters and translators in Germany, Poland and Spain

In the broader public, knowledge of the legal interpreter and/or legal translator professions remains surprisingly limited. In common parlance, and to some extent also in the jargon of the language services field, the distinctions between these two professions are blurred, despite the fact that interpreters and translators perform markedly different tasks⁷ and require different training and abilities. Interpreters work in the simultaneous or consecutive mode (that is, sitting in a booth and listening to someone speak over headphones, or standing next to the speaker with pen and notepad at the ready), accurately transferring the meaning of spoken utterances into other languages under intense time pressure and more or less in real time. Translators, in contrast, work with static, written texts, producing translations that they can revise, scrutinise, and make improvements to – all the way up until the final version is submitted to the client. Because the terms ‘translator’ and ‘interpreter’ enjoy almost no legal protection as professional titles anywhere in the world, people with foreign language skills but no professional training in interpretation or translation can work as interpreters/translators. This keeps the industry young and dynamic, but it also frequently presents challenges for the industry.

At time the Directive was adopted, the legal regulations governing the translator and interpreter professions looked very different in Germany, Poland and Spain. In Germany, laws governing translators and interpreters currently exist only at the level of the federal states (the *Bundesländer*). As part of legislation aimed at modernising criminal procedure, the German federal government passed in late 2019 the Court Interpreters Act (*Gerichtsdolmetschergesetz*, or GDolmG), which will take effect on 1 January 2023.⁸ But, as its title suggests, the law applies only to interpreters. Poland adopted a progressive law (*Ustawa o zawodzie tłumacza przysięgłego*) all the way back in 2004 that has been described by some as the best law on interpreters and translators in Europe,⁹ but which cannot be effectively implemented because it has not been sufficiently codified into the Polish Code of Criminal Procedure (*Kodeks postępowania karnego*, or Kpk) and the Polish Law on Courts (*Prawo o ustroju sądów powszechnych*). In Spain, there are still to the present day no laws on translators and interpreters, neither at the national level nor the level of the autonomous communities, nor is there any comprehensive regulation of the professions. This is surprising because Spain has witnessed a large increase in the last 20 years in the number of proceedings that involve the services of interpreters and translators.¹⁰ In all three countries, courts can ultimately bring in anyone to provide interpretation services as long as the person they bring in has the necessary language skills – though the laws barely define which skills, precisely, are required, nor do they establish a specific language proficiency threshold. For translation, however, more strict criteria apply: in all three countries, only sworn translators are authorised to use the certification stamp that attests to the accuracy of translations provided to courts and other authorities.

Pathways to the legal interpreter and legal translator professions vary widely. In many EU countries, aspiring translators and interpreters can take state examinations (i.e. exams authorised or administered by government bodies) that certify that they possess sufficient language proficiency, interpreting and/or translating skills, and – to varying degrees, depending on where the exam is administered – knowledge of terminology specific to law. The aspiring legal interpreter or translator must pass the examination to become eligible to take an official oath and use the professional title authorised by the administration of the oath.¹¹ Unlike some national authorities and ministries or the CJEU, courts in countries such as Germany and Poland do not have in-house language service departments.¹² As a result, most of the legal interpreters and legal translators in such countries are freelancers and must be contacted or summoned via the officially established databases. This process is relatively cumbersome and, in all three countries examined in the present article, frequently outsourced to agencies (i.e. companies that provide language services). Outsourcing this task to agencies not only creates the potential for financial tension, as agencies and language professionals jostle

for their share of the fees collected for the language services – fees that in EU countries are not particularly lavish to begin with – but also makes it more difficult to verify whether a given translator or interpreter is truly qualified.¹³ A Spanish investigative journalist reported in 2016, for example, that despite not knowing a word of Arabic, he was able to apply to be a freelance Arabic interpreter for an agency in Madrid and receive a court interpreting assignment the very next day, as the agency did not assess his language skills.¹⁴

To what extent Directive 2010/64/EU changed anything about this situation is the subject of much debate. Initially, the seven-page legislation fuelled high hopes. Many European professional organisations representing lawyers, interpreters and translators actively participated in the development of the Directive and, after it was adopted, advocated for a comprehensive implementation of the Directive in national legislation. The implementation process, however, was generally sluggish across the EU. To many observers, the result remained ‘unsatisfactory’,¹⁵ and some have even described it as ‘failed’¹⁶ or as a missed opportunity.

III. The implementation of the Directive in Germany, Poland and Spain

Under the Directive, implementation by the Member States was supposed to be concluded by 27 October 2013.¹⁷ The Directive also required that one year after that date, on 27 October 2014, the European Commission issue a Report on the status of the implementation.¹⁸ The process was severely delayed, however, and the Commission’s Report was not issued until late 2018. The Report’s conclusion was sober, but overall positive.¹⁹ Human rights organisations criticised that the implementation of the Directive varied significantly from country to country, and that in some cases, even when implementation into domestic law had been exemplary, the judicial and administrative reality lagged severely behind: in the daily reality of police officers’ and lawyers’ work, the organisations observed, full implementation was ultimately hindered by financial and bureaucratic factors and factors related to occupational practice.²⁰ These organisations demanded improvements to substantive and procedural law, and to administrative processes.

At present, Germany, Poland and Spain are only partially meeting the requirements of the Directive. If one looks at whether the obligations have been met, a strikingly high degree of overlap between the three countries comes into view: the right to cost-free interpretation and translation services (required in Art. 2[1,2]; Art. 4 Directive 2010/64/EU), for example, was codified in law in all three countries, although in Poland there is still a debate as to when exactly this right can be asserted²¹ and how costs should be borne in the case of convictions.²² Legislation in all three countries also addressed the importance of confidentiality among interpreters and translators (required in Art. 5[3] Directive 2010/64/EU).

IV. Legislative changes made in Germany, Poland and Spain to implement the Directive

To implement the Directive, Germany adopted on 2 July 2013 the Act to Strengthen the Procedural Rights of Accused Persons in Criminal Proceedings (*Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren*).²³ The largest changes made by this legislation were to section 187 of the German Courts Constitution Act (*Gerichtsverfassungsgesetz*, or GVG). Subsection (1) implements the requirement to provide free interpretation and translation services for the entire duration of the criminal proceeding, with the state covering the costs of the services regardless of the outcome of the proceeding. Subsection (2) sets out the types of judicial document for which, in order to protect the criminal procedural rights of the accused, ‘as a rule’, a written translation must be provided. Subsection (3) addresses the Directive’s requirement that the accused person be made fully aware of the implications of waiving their rights to interpretation or translation

services. Subsection (2) in particular has been controversial: a question has been raised as to whether, through the implementation, more leeway has been granted to the courts and public authorities than was intended in the EU Directive. The Directive provides in Article 3 that *all essential* documents must be translated and that written translations can be replaced in only exceptional cases by oral translations or oral summaries on the condition that it 'does not prejudice the fairness of the proceedings.' In contrast, section 187 subsection (2) of the GVG states that, 'as a rule', translations are required. Critics complain that in view of this language, there are 'serious doubts as to whether the implementation complies with the Directive.'²⁴ Another cause for significant concern is the frequency with which sight translation (i.e. the extemporaneous interpretation of written texts) occurs: whereas Article 3 of the Directive states that 'an oral translation or oral summary' may be permitted in exceptional circumstances, in section 187 subsection (2) of the GVG this restriction is largely eliminated for cases in which the accused persons have defence counsel. Critics have characterised this part of the German law as a 'breach of the rule-exception principle'²⁵ and have also pointed to weak spots in how the legislation treats the issue of the assumption of the costs for language services.²⁶ Despite these criticisms, German courts have deemed section 187 of the GVG compliant with the Directive.²⁷ An official register of interpreters and translators (required in Art. 5[2] Directive 2010/64/EU) was already in place three years before the transposition deadline. The nationwide 'database of [...] officially authorized, appointed and sworn-in translators and interpreters', run by the Federal State of Hessen on behalf of all the federal states, has been online since the start of 2010.²⁸

The situation in Poland is contradictory. As mentioned above, Poland had already enacted a modern interpreter/translator²⁹ law six years before the Directive was adopted, and the country fulfilled many of the Directive's requirements from day one, including the requirement that language services be of sufficient quality (Art. 2[8]; Art. 3[9]; Art. 5[1] Directive 2010/64/EU).³⁰ Art. 196 §3 Kpk provides the foundation for the lodging of challenges when translations/interpretations are believed to be deficient in quality or when translation/interpretation services are not provided. According to Art. 143, Art. 147 and Art. 205 §3 Kpk, there exists a duty to document when interpretations/translations have been provided (required in Art. 7 Directive 2010/64/EU). An official database of sworn interpreter/translators has been in operation since 2004 and is administered by the Ministry of Justice in Warsaw.³¹ To implement the Directive, several articles of the Kpk were amended in 2013: Art. 72 on the right to the assistance of an interpreter/translator; Art. 195 on the obligation to act as an expert; Art. 196 on the disqualification of experts; and Art. 205 on the oath that specialists appearing before the court are required to take.³² To this day in Poland, however, there is no effective obligation to give priority to sworn interpreters³³ – a state of affairs that has been upheld again and again by the courts, most recently by the Katowice Court of Appeal in a ruling of 13 September 2011.³⁴ Accordingly, the high standards of quality introduced in 2004 are by no means the day-to-day reality in the judicial system.

In order to implement the Directive, Spain adopted the *Ley Orgánica* (LO) 5/2015 on 28 April 2015. The legislation provided for a broad expansion of the right to interpretation and translation services in court and in communication with public authorities, adding a new chapter entitled 'On the right to translation and interpretation' (*Del derecho a la traducción e interpretación*) to the Spanish Code of Criminal Procedure (*Ley de Enjuiciamiento Criminal*, 'LeCrim' for short). The chapter consists of five articles: 123, 124, 125, 126 and 127 LeCrim. Art. 123 fulfils the Directive's requirements that, *inter alia*, free interpretation services be provided throughout the entire criminal proceeding and all essential documents be translated at no cost. Art. 123 also codifies the duty to keep records, while Art. 124 addresses the requirement to provide a register of interpreters and translators. Art. 126 regulates the waiver of rights to interpretation and translation services and the provision of legal advice regarding the consequences of waiving these rights. While these provisions are a formal representation of Spain's full implementation of the Directive, the country's apparent compliance with the Directive must be viewed with scepticism, as the expansion of rights was not accompanied by increased funding: the First Supplementary Provision of the LO 5/2015 states explicitly that 'the measures contained in

this legal regulation must not necessitate additional funding for personnel, nor higher salaries, nor increases in other personnel costs.’

In all three countries, there is a lack of clarity with regard to individuals’ ability to formally challenge substandard-quality translations/interpretations or the non-performance of translation/interpretation services (required in Art. 2[5], Art. 3[5] Directive 2010/64/EU).³⁵ Though the right to challenge is, theoretically, set out in each country’s relevant legislation,³⁶ it is unclear how the provision and/or quality of interpretation and translation services can actually be assessed and, if necessary, challenged. In multilingual court proceedings, interpreters are, after all, usually the only people in the courtroom who can understand the accused, and foreign-language utterances are not included in the court record. Judges, prosecutors or judicial staff are often able to make only an indirect assessment of interpreters’ performance, as they have little background knowledge on interpreting and are not familiar with best practices for the evaluation of language proficiency and language comprehension. With an eye to quality assurance, some call for the judicial system to adopt a practice of always using two interpreters, with the interpreters monitoring each other’s work and correcting each other as needed.³⁷ Others demand that audio-visual recordings become standard practice.³⁸

Two components of the Directive that remain unfulfilled in all three countries are those requiring that interpretation and translation services be of sufficient quality and that judges, prosecutors and judicial staff receive training focused on the topic of interpretation (Art. 6 Directive 2010/64/EU). At present, there is no obligation in Germany, Poland or Spain to give priority to interpreters who have formal qualifications. As a consequence, the practice of swearing people in on an ad hoc basis to render interpretation services has become more routine than exceptional. There can thus be no assurance that interpretation services before courts or other public authorities are performed by only qualified interpreters, and a criticism articulated over sixty years ago continues to apply to this day:

In reality [...], the public has in no way a guarantee that everyone who offers their professional services as an interpreter and translator possesses the requisite skills. A variety of experiences in recent years have shown, to the contrary, that a large number of people call themselves interpreters and translators while failing to fulfil even the minimum prerequisites for practicing this profession. [...] The primary cause of this dismal state of affairs is the completely free and unimpeded use of the professional titles that has prevailed to date [...].³⁹

Beyond these examples, additional deficiencies persist in these countries. Polish law does not regulate the waiver by suspected or accused persons of rights to interpretation and translation services. Spain, meanwhile, has to this day failed to comply with the requirement to set up an official database of interpreters and translators.⁴⁰ APTIJ, the Spanish Professional Association of Court and Sworn Interpreters and Translators (*Asociación Profesional de Traductores e Intérpretes Judiciales e Jurados*), notes that countries without an official register are generally dependent on companies ‘that neither guarantee that the translators and interpreters with whom they contract have the appropriate training, nor preserve in all cases the confidentiality of court records, and, on top of it all, pay the translators and interpreters inadequate wages.’⁴¹

V. Early tendencies in the judicial interpretation of the amended legislation

In the first few years that have passed since the implementation of the Directive in Germany, Poland and Spain, a restrictive interpretation of the amended national laws appears to have taken root with respect to translation – especially the translation of judgments. In all three countries, a practice can be observed

whereby accused persons who are supported by defence counsel and an interpreter during judicial proceedings do not receive translations – in some cases even when translations have been explicitly requested. What's more, the CJEU case-law to date on the interpretation of the Directive has not encouraged countries to rethink this practice.⁴² Two cases have been argued before the CJEU thus far, and both resulted in the finding that courts in the EU are allowed, in principle, to decide for themselves which documents are essential – with the exception of the documents mentioned explicitly in Art. 3 of the Directive (i.e. decisions depriving persons of their liberty, charges or indictments, and judgments).⁴³ This approach drew criticism.⁴⁴ But another phenomenon must be noted, too: an analysis of the case-law developed in recent years in Germany, Poland and Spain reveals patterns in these countries that validate the impression that, as one scholar put it, the implementation of the Directive – which took place in the context of the economic aftermath of the global financial crisis – was 'more stingy'⁴⁵ than it might have been in different times.

In their interpretation of section 187 of the GVG, courts in Germany imposed ever-tighter constraints on the right to have judgments translated.⁴⁶ The judgments of the Federal Court of Justice (*Bundesgerichtshof*, or BGH) of 22 January 2018 and 13 September 2018⁴⁷ demonstrated that it has become regular practice to replace translations of judgments with interpretations or oral summaries, even though judgments are among the documents explicitly classified as essential in Art. 3 of the Directive. Some even fear that Germany may be falling short of the standards of the ECHR.⁴⁸

After 2013, Polish courts examined with striking frequency the question what level of Polish proficiency is necessary in order for a person to go through criminal proceedings without interpretation or translation services, and at what level of language proficiency does the right to such services no longer apply.⁴⁹ Of particular note is the large number of appellate proceedings.⁵⁰ One reason for this large number might be the fact that Polish law is silent on the issue of the waiving of one's rights to translation/interpretation services: often, and especially among native speakers of Slavic languages, a waiver is indirectly inferred, with this waiver being no longer subject to challenge at a later point in time.⁵¹ It remains to be seen whether this tendency will persist in the coming years.

In Spain, the right to have essential documents translated was weakened by a recent judgment of the Supreme Court (*Tribunal Supremo*).⁵² Moreover, in a landmark decision, the Supreme Court clarified that errors in interpretations are to be accepted until the defence council can prove that the errors disadvantaged the defendant – something likely to be difficult to do in practice.⁵³ And in Spain's Provincial Courts (*Audencias Provinciales*), a discernible trend has emerged since 2015: increasingly, translations must be explicitly requested, even when the documents in question are essential.⁵⁴ Translations are also in some cases replaced by creative solutions such as video recordings of sight translations.⁵⁵ These practices have been seen as an indication that the right to the translation of essential documents will be further restricted in the future.⁵⁶

VI. Outlook

The goal expressed in Directive 2010/64/EU of establishing EU-wide minimum standards for interpretation and translation services in criminal proceedings has been left at least partly unrealised – especially with respect to the beating heart of the Directive: quality. In all three of the countries examined here (Germany, Poland and Spain), after the Directive was implemented (2013 in Germany and Poland, 2015 in Spain), interpreters, translators and lawyers came to the conclusion that only a small number of changes had taken place.⁵⁷ Engagement among lawyers, judges and legal scholars with the topic of interpretation and translation in criminal proceedings has certainly intensified since 2010, as evidenced by the European and domestic case-law, as well as the many publications on the topic. But there is little sign to date that the various interests and concentrated efforts surrounding this issue have truly meshed.

If high-quality interpretation services are to become matter of course in courtrooms in the future, it will require an intensive, interdisciplinary dialogue, effective training for all parties involved, and quality control mechanisms. In this context, there must also be discussions about creating an EU-wide professional code of conduct for interpreters who work in the judicial system and regularly assessing the skills of interpreters and translators listed in official databases. The latter is already the reality in Austria, the Netherlands and Greece.⁵⁸ When it comes to the issue of cost, the much-discussed (and, in the long term, unavoidable) practice of remote interpreting – that is, the use of remote audio and/or video connections to obtain the assistance of an interpreter⁵⁹ – has major potential to ensure that interpretation services are provided by qualified legal interpreters, regardless of where the proceedings take place or how short the notice. While remote interpreting does require the proper technology and increased expenditures in the short term, if implemented in a way that adheres to certain standards,⁶⁰ it could not only ensure the quality of services and provide appropriate working conditions for interpreters but also lead to cost savings.⁶¹

Above all, it is important that information on this topic be disseminated in the industry and in the public. In view of a situation that is far from satisfactory, it must be hoped that both lawyers and language professionals follow it closely and, ideally, work together in the future to shape it.

1. R. Müller, 'Übersetzung als fester Bestandteil der EU-Rechtssetzung', in: R. Hoffmann, D. Mallon and N. Keßler (eds), *Sprache und Recht*, 2017, p. 92.↵
2. Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, OJ L 280, 20.10.2010, 1.↵
3. Denmark did not participate in the adoption of the Directive; consequently, it 'is not bound by it or subject to its application' (recital 36 of Directive 2010/64/EU).↵
4. T. Spronken and M. Attinger, *Procedural Rights in Criminal Proceedings: Existing Level of Safeguards in the European Union*, 2005, p. 11.↵
5. T. Wahl, 'Fair trial and defence rights', in: R. Sicurella, V. Mitsilegas, R. Parizot and A. Lucifora (eds), *General principles for a common criminal law framework in the EU. A guide for legal practitioners*, 2017, p. 106.↵
6. Agency for Fundamental Rights, *Rights of suspected and accused persons across the EU: translation, interpretation and information*, 2016, p. 46.↵
7. Cf. O. Kade, *Zufall und Gesetzmäßigkeiten in der Übersetzung*, 1968.↵
8. BGBl [German Federal Law Gazette] 2019 I, No. 46, p. 2124.↵
9. K. Nartowska, 'Court interpreting in Poland in the light of directive 2010/64/EU', in: M. Czyżewska and A. Matulewska (eds), *Przyszłość zawodu tłumacza przysięgłego i specjalistycznego – współczesne wyzwania*, 2016, p. 171.↵
10. Ministerio de Asuntos Exteriores, *Libro Blanco de la traducción y la interpretación institucional*, 2011, p. 62.↵
11. In Germany, the terminology used to describe the administration of this oath is still to some extent different from federal state to federal state, with terms like *Ermächtigung* (authorisation), *öffentliche Bestellung* (public appointment) and *Vereidigung* (swearing in) in use. The GDolmG will unify this terminology.↵
12. S. Olschner, 'Das Recht auf Verstehen', (2018) *Legal Tribune Online* (LTO) <<https://www.lto.de/recht/job-karriere/j/dolmetscher-uebersetzer-gericht-justiz-qualifizierung>> accessed 7.10.2020.↵
13. M. Blasco Mayor, 'Quality of Interpreting in criminal proceedings in Spain under European Directive 2010/64/EU', (2013) *Cuadernos de ALDEEU*, 165, 170.↵
14. D. Placer, 'Los juzgados me contrataron como traductor de árabe aunque no sé ni una palabra', *Economía Digital* <https://www.economiadigital.es/politica-y-sociedad/los-juzgados-me-contrataron-como-traductor-de-arabe-aunque-no-se-ni-una-palabra_183818_102.html> accessed 7.10.2020.↵
15. C. Schlüter-Ellner, 'Der Countdown läuft', (2013) 2 *MDÜ*, 50, 53.↵
16. Deutscher Anwaltverein [German Bar Association], 'Stellungnahme des Deutschen Anwaltvereins durch den Ausschuss Strafrecht zum Gesetzentwurf zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren (BR-Drs. 816/12)', Stellungnahme Nr.: 11/2013 [Position Paper No.: 11/2013], p. 3.↵
17. Art. 9(1) Directive 2010/64/EU.↵
18. Art. 10 Directive 2010/64/EU.↵
19. European Commission, 'Report from the Commission to the European Parliament and the Council on the implementation of 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', COM(2018) 857 final.↵
20. E. Lloyd-Cape, *Inside Police Custody 2. An empirical study of suspects' rights at the investigative stage of the criminal process in nine EU countries*, December 2018, p. 11 (available at: https://www.fairtrials.org/sites/default/files/publication_pdf/Inside-Police-Custody-2-JUSTICIA-Comparative-Report.pdf).↵
21. Cf. A. Wiltos, 'Prawo do korzystania z bezpłatnej pomocy tłumacza w postępowaniu karnym. Wybrane zagadnienia', (2013) 92 *Przegląd Prawa i Administracji*, 129, 142; E. Lloyd-Cape, *op. cit.* (n 20), p. 20; M. Jachimowicz, 'Tłumacz w regulacjach procesowych i jego karnomaterialna ochrona', (2019) 34 *Kwartalnik Krajowej Szkoły Sądownictwa i Prokuratury*, 27, 43.↵
22. A. Wiltos, (2013) 92 *Przegląd Prawa i Administracji*, *op. cit.* (n 21), 129, 142.↵

23. Translator's note: The German term *Beschuldigter*, which occurs in the title of this Act as well as in the text of the German Courts Constitution Act (*Gerichtsverfassungsgesetz*, or GVG), is often translated as 'accused' or 'accused person', but it does not neatly correspond to these English terms. The German term can refer to a person under criminal investigation who has not been formally charged (what English speakers would likely call a 'suspect') but can also refer more generally to a person subject to criminal proceedings (ranging from what English speakers would likely call a 'suspect' to what they would call a 'defendant'): C.E. Dietl, E. Lorenz, S.H. Kettler (eds), *Fachwörterbuch Recht, Wirtschaft und Politik / Dictionary of Law, Commerce and Politics*, Band 2: Deutsch – Englisch [Vol. 2: German – English], 6. Auflage [6th Edition], 2020, p. 148; B. Garner (ed), *Black's Law Dictionary*, Eleventh Edition, 2019, pp. 27, 1747; K. Linhart, *Wörterbuch Recht*, 2. Auflage [2nd Edition], 2017, p. 199; K. Weber (ed), *Creifelds Rechtswörterbuch*, 23. Auflage [23rd Edition], 2019, pp. 221, 1370; section 157 of the German Code of Criminal Procedure (*Strafprozeßordnung*, or StPO); 'German Code of Criminal Procedure' [English translation of StPO] <https://www.gesetze-im-internet.de/englisch_stpo/index.html> accessed 26.6.2021. In this article, where German law is discussed, the terms 'accused' and 'accused person' have been used to gloss the German term *Beschuldigter*, following, *inter alia*, a translation of the GVG available from the platform 'Gesetze im Internet' ('Courts Constitution Act' [English translation of GVG] <https://www.gesetze-im-internet.de/englisch_gvg/index.html> accessed 26.6.2021.). Other translations of the term, however, may be possible. Illustrating this point, the title of the *Gesetz zur Stärkung der Verfahrensrechte von Beschuldigten im Strafverfahren* was translated in a 2015 document submitted to the European Union Agency for Fundamental Rights as the 'Act on Strengthening Procedural Rights of Suspected Persons in Criminal Proceedings' (H. Rabe / German Institute for Human Rights, *The right to interpretation and translation and the right to information in criminal proceedings in the EU* [responses to questions from the European Union Agency for Fundamental Rights], 2015, pp. 3–4. <https://fra.europa.eu/sites/default/files/fra_uploads/rights-suspected-persons-country_de.pdf> accessed 26.6.2021.), while the same title was translated as 'German Act on Strengthening Procedural Rights of Accused Persons in Criminal Proceedings' in Bajčić, Martina, 'The Way Forward for Court Interpreting in Europe', in: Susan Šarčević (ed), *Language and Culture in EU Law: Multidisciplinary Perspectives*, 2016, 219–238.↵
24. Ü. Yalçın, 'Das Stigma des Finanzierungsvorbehalts – Stärkung der Beschuldigtenrechte im Strafverfahren', (2013) 4 *Zeitschrift für Rechtspolitik*, 104, 106.↵
25. Ü. Yalçın, (2013) 4 *Zeitschrift für Rechtspolitik*, *op. cit.* (n 23), 104, 106.↵
26. Deutscher Anwaltverein Stellungnahme Nr.: 11/2013 [German Bar Association Position Paper No.: 11/2013], *op. cit.* (n 16), p. 10.↵
27. T. Wahl and A. Oppers, 'Country reports on Germany', in: R. Panizza (ed), *Criminal procedural laws across the European Union – A comparative analysis of selected main differences and the impact they have over the development of EU legislation. Annex I – Country reports*, 2018, pp. 4, 20.↵
28. Hessisches Ministerium der Justiz [Hessian Ministry of Justice], *Dolmetscher- und Übersetzerdatenbank* [Database of translators and interpreters], <<http://www.justiz-dolmetscher.de/>> accessed 7.10.2020.↵
29. The Polish language uses the word *tłumacz* for both 'interpreter' and 'translator'. *Tłumacz* is the masculine form and *tłumaczka* the feminine form. Only by adding *ustny/ustna* (oral) or *pisemny/pisemna* (written) can the distinction be made. This feature of the Polish language will be signalled in the rest of the text by the use of the designations 'interpreter/translator' and 'interpretations/translations'.↵
30. K. Nartowska, 'Ustawa o zawodzie tłumacza przysięgłego a tłumaczenie sądowe w Polsce', (2018) 13 *Rocznik Przekładoznawczy*, 171.↵
31. Ministerstwo Sprawiedliwości, 'Lista tłumaczy przysięgłych'. <<https://arch-bip.ms.gov.pl/rejstry-i-ewidencje/tlumacze-przysiegli/lista-tlumaczy-przysieglych/search.html>> accessed 7.10.2020.↵
32. Legal Experts Advisory Panel, *The Quality of Interpretation in Criminal Proceedings. Leap Survey Report*, 2016, p. 19.↵
33. M. Jachimowicz, (2019) 34 *Kwartalnik Krajowej Szkoły Sądownictwa i Prokuratury*, *op. cit.* (n 21), 27, 43.↵
34. Katowice Court of Appeal (*Sąd Apelacyjny w Katowicach*), 13 September 2011, II AKa 210/11, KZS 2012, nr 1, poz. 65.↵
35. E. Lloyd-Cape, *op. cit.* (n 20), p. 26.↵
36. Germany: section 185 subsection (1) of the GVG; Poland: Art. 196 §3 Kpk; Spain: Art. 123 para. 6 and Art. 124 para. 3 LeCrim.↵
37. C. Kranjčić, „... dass er treu und gewissenhaft übertragen werde“, 2010, pp. 217–220.↵
38. Cf. B. Vidal Fernández, 'Derecho a una interpretación y traducción fidedigna y de calidad. Artículos 8 y 9 de la Propuesta de Decisión Marco sobre las garantías procesales de los inculcados en procesos penales en la Unión Europea', in: A. Arangüena Fanego (ed), *Garantías procesales en los procesos penales en la Unión Europea*, 2007, 214–231; M. J. Blasco Mayor and M. Del Pozo Triviño, 'La interpretación judicial en España en un momento de cambio', (2015) 7 *MonTI. Monografías de Traducción e Interpretación*, 9–40.↵
39. MDÜ, (1958) 4 MDÜ, 2. As quoted in: M. Cebulla, *Sprachmittlerstrafrecht: Die strafrechtliche Verantwortlichkeit der Dolmetscher und Übersetzer*, 2007, p. 21.↵
40. Since 2009, a PDF managed by the Ministry of Foreign Affairs, European Union and Cooperation (*Ministerio de Asuntos Exteriores, Unión Europea y Cooperación*; known prior to July 2020 as the *Ministerio de Asuntos Exteriores y de Cooperación*) has existed. The PDF is available to the public and organised by language. However, there is no distinction made in the PDF between interpreters and translators, and the document – which is over fifteen hundred pages long – has no filter function: Ministerio de Asuntos Exteriores y de Cooperación, *Lista actualizada de traductores/as-intérpretes jurados/as nombrados por el Ministerio de Asuntos Exteriores y de Cooperación*, <<http://www.exteriores.gob.es/Portal/es/ServiciosAl-Ciudadano/Documents/Listado%20actualizado%20%2019%20enero%202021.pdf>> accessed 20.1.2021.↵
41. The quote, translated here into English, is from the German version of the APTIJ's website: Asociación Profesional de Traductores e Intérpretes Judiciales y Jurados, 'Die häufigsten Probleme im Alltag eines Gerichtsübersetzers und -dolmetschers' <<http://www.aptij.es/index.php?l=de&s=eb>> accessed 7.10.2020.↵
42. B. Vidal Fernández, 'Interpretación y aplicación del derecho a la traducción de documentos esenciales por los tribunales penales en España', (2019) 1 *Revista de Estudios Europeos*, 79, 86.↵
43. CJEU, 15 October 2015, Case C-216/14, *Gavril Covaci*; CJEU, 12 October 2017, Case C-278/16, *Frank Sleutjes*.↵
44. Cf. T. Wahl and A. Oppers, *op. cit.* (n 26), p. 22.↵
45. C. Arangüena Fanego, 'La elaboración de un estatus procesal del investigado/ acusado en la Unión Europea. Balance del plan de trabajo del Consejo ocho años después', in: C. Arangüena Fanego, M. De Hoyo Sancho and B. Vidal Fernández (eds): *Garantías Procesales de Investigados y Acusados: Situación Actual en el Ámbito de la Unión Europea*, 2018, pp. 21, 26.↵
46. Higher Regional Court of Braunschweig [OLG Braunschweig], 11 May 2016, 1 Ws 82/16; Higher Regional Court of Hamm [OLG Hamm], 26 January 2016, 1 Ws 8/16; OLG Hamm, 11 March 2014, 2 Ws 40/14; Higher Regional Court of Stuttgart [OLG Stuttgart], 9 January 2014, 6-2 StE 2/12; Higher Regional Court of Hamburg [OLG Hamburg], 6 December 2013, 2 Ws 253/13-1 OBL 88/13.↵
47. Federal Court of Justice [BGH], 22 January 2018, 4 StR 506/17; BGH, 13 September 2018, 1 StR 320/17.↵

48. J. Bockemühl, 'Übersetzungspflicht von Unterlagen nach § 187 Abs. 2 GVG – Anmerkung zu OLG Stuttgart – 6-2 StE 2/12 – vom 9.1.2014; OLG Hamburg – 2 Ws 253/13 – vom 6.12.2013 und OLG Hamm – 2 Ws 40/14 – vom 11.3.2014', (2014) 9 *Strafverteidiger*, 537–539.↵
49. Supreme Court (*Sąd Najwyższy*), 7 June 2017, III KK 101/17; Warsaw Court of Appeal (*Sąd Apelacyjny w Warszawie*), 7 March 2016, II Aka 3/16; Rzeszów Court of Appeal (*Sąd Apelacyjny w Rzeszowie*), 16 June 2014, II Aka 111/13; Zamość Court of Appeal (*Sąd Apelacyjny w Zamościu*), 30 September 2013, II Ka 625/13. Almost all courts take their cue from a landmark decision of the Supreme Court (*Sąd Najwyższy*) of 22 April 1970 (KR 45/70), in which the following is stated: 'Not being proficient in a language [...] does not mean, of course, that the person being questioned does not understand the language at all, but rather applies to situations in which the person does not understand to a sufficient degree the questions they are asked or, as a result of a lack of language proficiency, [...] is not able to express their thoughts on the matters with which the questioning is concerned.' [Translation into English from the author's German translation of the original Polish text.]↵
50. Supreme Court (*Sąd Najwyższy*), 7 June 2017, III KK 101/17; Warsaw Court of Appeal (*Sąd Apelacyjny w Warszawie*), 7 March 2016, II Aka 3/16; Rzeszów Court of Appeal (*Sąd Apelacyjny w Rzeszowie*), 16 June 2014, II Aka 111/13; Zamość Court of Appeal (*Sąd Apelacyjny w Zamościu*), 30 September 2013, II Ka 625/13.↵
51. Legal Experts Advisory Panel, *op. cit.* (n 31), p. 19.↵
52. Supreme Court (*Tribunal Supremo*), 29 June 2017, 489/2017.↵
53. Supreme Court (*Tribunal Supremo*), 26 January 2016, 516/2015.↵
54. Provincial Court of the Balearic Islands (*Audiencia Provincial Illes Balears*), 18 January 2018, 28/2018; Provincial Court of Barcelona (*Audiencia Provincial Barcelona*), 7 June 2017, 471/2017; Provincial Court of Madrid (*Audiencia Provincial Madrid*), 13 December 2016, 750/2016.↵
55. Provincial Court of Barcelona (*Audiencia Provincial Barcelona*), 24 March 2017, 28/2017.↵
56. B. Vidal Fernández, (2019) 1 *Revista de Estudios Europeos*, *op. cit.* (n 41), 79, 94.↵
57. Germany: cf. T. Wahl, A. Oppers, *op. cit.* (n 26); Spain: cf. C. Valero Garcés, B. Schnell, N. Rodríguez and F. Cuñado, 'Estudio preliminar sobre el ejercicio de la interpretación y traducción judicial en España', (2015) 26 *Sendebär*, 137–166; Poland: K. Nartowska, (2018) 13 *Rocznik Przekładoznawczy*, *op. cit.* (n 29).↵
58. K. Nartowska, (2018) 13 *Rocznik Przekładoznawczy*, *op. cit.* (n 29), 171, 184.↵
59. Verband der Konferenzdolmetscher im Bundesverband der Dolmetscher und Übersetzer [German Association of Conference Interpreters within the German Federal Association of Interpreters and Translators], 'Remote Interpreting – Leitlinie für Auftraggeber' <<https://vkd.bdue.de/fuer-auftraggeber/remote-interpreting>> accessed 7.10.2020.↵
60. International Association of Conference Interpreters, 'Leitlinien der AIIC für das Ferndolmetschen (*Distance Interpreting*). (Version 1.0)' <<https://aiic.de/wp-content/uploads/2019/08/aiic-leitlinien-ferndolmetschen-20190802-2.pdf>> accessed 7.10.2020.↵
61. Cf. A. Rojo Chacón, 'La transposición al derecho nacional de la Directiva Europea 2010/64/UE en España, Francia, Bélgica y Luxemburgo: "Lost in transposition"', (2015) 2 *FITISPos international Journal: Public Service Interpreting and Translation*, 94–109.↵

Author statement

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