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Translating and Interpreting the Letter of Rights

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Abstract: This article focuses on the implementation of Directive 2012/13 on the Right to Information with reference to foreigners arrested in the Member State of the EU. In particular, the Author analyses whether foreigners provided with a Letter of Rights receive the same information despite their handicap of not understanding the language. Special attention is given to how the Netherlands and Poland deal with the Letter of Rights for foreigners. The picture that emerges concerning foreigners is that providing them with a Letter of Rights in their language is seriously handicapped in almost all aspects: the timing (availability), the linguistic quality, the accessibility and simplicity. This situation creates severe risks concerning the right to a fair trial for foreigners. They may not invoke rights because they do not know them. They may not come to their own trial because they did not understand.

1. Introduction

With the advent of Directive 2012/13 on the Right to Information, the Union legislature has introduced an obligation to inform suspects and accused of their rights by making use of a Letter of Rights. In this contribution I focus on what that means for suspects and accused who do not understand the local language. How can it be safeguarded that foreigners will receive the same information despite their handicap of not understanding the language? Whereas ideally a study would be conducted in all relevant Member States, this has not been possible due to the fact that the translations are not made publicly available. I will therefore limit myself the two states of which

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I have sufficient information for a first impression: the Netherlands and Poland. Article 2, paragraph 1 Directive 2012/13 on the Right to Information states that the right to information about rights entails:

(a) the right of access to a lawyer;
(b) any entitlement to free legal advice and the conditions for obtaining such advice;
(c) the right to be informed of the accusation, in accordance with Article 6;
(d) the right to interpretation and translation;
(e) the right to remain silent.

The right to information can be regarded as the key to all other rights. If you do not know what your rights are, how can you then claim these rights? Article 3 stipulates that this information must be provided promptly and in a manner that allows those entitled to exercise their right effectively. On this urgency, the Court held:

> persons suspected of having committed a criminal offence must be informed as soon as possible of their rights, from the moment when they are subject to suspicions which justify, in circumstances other than an emergency, the restriction of their liberty by the competent authorities by means of coercive measures and, at the latest, before they are first officially questioned by the police.[1]

The obligation to give information may be fulfilled when Member States give the information orally or in writing, in simple and accessible language, taking into account any particular needs of vulnerable suspects or vulnerable accused persons.[2] This highlights immediately one of the weaker elements of the right as envisaged in the Directive. Can we expect all accused that have been told about their rights to understand? This has been compensated for by the introduction of the Letter of Rights in Article 4. This Letter must be given in a written form and the accused shall be allowed to keep it in possession.

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1 CJEU Judgement of 19 September 2019, Rayonna prokuratura Lom, KM, HO v. EP, Case C-467/18, ECLI:EU:C:2019:765, para. 53.

2 See also: Preambular, para. 38.

Paragraph 3 of Article 4 adds that the Letter of Rights must also give basic information about any possibility of challenging the lawfulness of the arrest; obtaining a review of the detention or making a request for provisional release. Paragraphs 4 and 5 of Article 4 address the language in which the letter must be drafted:

> The Letter of Rights shall be drafted in simple and accessible language. An indicative model Letter of Rights is set out in Annex I. Member States shall ensure that suspects or accused persons receive the Letter of Rights written in a language that they understand. Where a Letter of Rights is not available in the appropriate language, suspects or accused persons shall be informed of their rights orally in a language that they understand. A Letter of Rights in a language that they understand shall then be given to them without undue delay.

In an annex to Directive 2012/13 on the Right to Information, published in the Official Journal, the suggested model Letter of Rights has been published.[3]

As far as I can see, there has not yet been a single case decided by the Court on the interpretation of Article 4(5) and translation of the Letter of Rights, other than that the Court held that Article 4 does not apply to persons subject to an European Arrest Warrant their Letter of Rights.[4] However, there is case law in which the Court has underlined the importance of informing the suspect of his rights, especially in view of the larger context of the right to a fair trial.

The Court has stated that the Letter of Rights must be provided as soon as possible:

> Recital 19 of Directive 2012/13 also makes clear that the right to be informed of one's rights must be observed 'at the latest before the first official interview of the suspect or accused person by the police'. Furthermore, under recital 22 of Directive 2012/13, 'where suspects or accused persons are arrested or detained, information about applicable procedural rights should be given by

3 OJ 2012, L 142/8. See further: André Klip, *European Criminal Law. An Integrative Approach*, 4th ed. (Cambridge: Intersentia, 2021), 312–314 and 325–327.

4 CJEU Judgement of 28 January 2021, Criminal proceedings against IR, Case C-649/19, ECLI:EU:C:2021:75.

> means of a written Letter of Rights drafted in an easily comprehensible manner so as to assist those persons in understanding their rights. Such a Letter of Rights should be provided promptly to each arrested person when deprived of liberty by the intervention of law enforcement authorities in the context of criminal proceedings'. It follows from the above that persons suspected of having committed a criminal offence must be informed as soon as possible of their rights, from the moment when they are subject to suspicions which justify, in circumstances other than an emergency, the restriction of their liberty by the competent authorities by means of coercive measures and, at the latest, before they are first officially questioned by the police.[5]

More than 3,5 years later than prescribed in Article 12 Directive, the Commission reported on the implementation in the Member States.[6] It established that Member States still need to make an effort on compliance. The Commission did not see a need to revise the Directive.

2. The Quality of the Translation of the Letter of Rights in the Netherlands

In dealing with translation of the Letter of Rights, it is relevant to see that both Directives 2012/13 and 2010/64 apply. The Court has interpreted Article 5(1) of Directive 2010/64 that:

> [it] provides that Member States must take concrete measures to ensure that the interpretation and translation provided meets the quality required under Article 2(8) of that directive, with that latter provision specifying that interpretation must 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.'[7]

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5 CJEU Judgement of 19 September 2019, Rayonna prokuratura Lom, KM, HO v. EP, Case C-467/18, ECLI:EU:C:2019:765, para. 51–53.

6 Report of the Commission to the European Parliament and the Council on the implementation of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, Brussels, 18.12.2018, COM(2018) 858 final.

7 CJEU Judgement of 23 November 2021, Criminal proceedings against IS, Case C-564/19, ECLI:EU:C:2021:949, para. 109.

The Court further stated that:

> in order to ensure that the suspect or accused person who does not speak and understand the language of the criminal proceedings has nevertheless been properly informed of the allegations against him or her, the national courts must review whether he or she has been provided with interpretation of a 'sufficient quality' in order to understand the accusation against him or her, so that the fairness of the proceedings is safeguarded. In order to enable national courts to carry out that verification, those courts must, inter alia, have access to information relating to the selection and appointment procedure for independent translators and interpreters.[8]

These judgements emphasise the importance of a perfect translation that is available almost as fast as the text in the national language.

Good translations are especially important as non-understanding of Letter of Rights or summons may lead to the accused not attending his own trial, so the Court held:

> Article 2(5) of Directive 2010/64 and Article 4(5) and Article 6(1) of Directive 2012/13, read in the light of Article 48(2) of the Charter, must be interpreted as precluding a person from being tried in absentia when, on account of inadequate interpretation, he or she has not been informed, in a language which he or she understands, of the accusation against him or her or where it is impossible to ascertain the quality of the interpretation provided and therefore to establish that he or she has been informed, in a language which he or she understands, of the accusation against him or her.[9]

It is this link with the right to a fair trial as a whole that emphasises the importance of conveying the information on rights to the accused in a language he can understand.[10] It is therefore relevant to investigate to

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8 CJEU Judgement of 23 November 2021, Criminal proceedings against IS, Case C-564/19, ECLI:EU:C:2021:949, para. 115.

9 CJEU Judgement of 23 November 2021, Criminal proceedings against IS, Case C-564/19, ECLI:EU:C:2021:949, para. 137.

10 Unfortunately, two references from the Okresný súd Bratislava concerning the question what the consequences are of providing an accused with an incomplete Letter of Rights was struck from the Court's list, see: Order of the President of the Court of 12 June 2019, R.B. v Krajská prokuratúra v. Bratislave, Case C-149/19, ECLI:EU:C:2019:532; and

what extent Member States can deliver good translation to foreigners arrested in their country.

In the course of the preparation of a report on the role of language and translations for the Dutch-Flemish Association of Criminal Law, the Nederlands-Vlaamse Vereniging voor Strafrecht,[11] I came across various difficulties concerning translations and interpretations in different stages of the criminal proceedings. As most of these relate to conduct at the hearing or to interpretations and translations in a specific criminal proceeding, it is hard to have direct access to the documents and thus it is also hard to make an analysis of the quality of the translation or interpretation. However, this is different concerning the Letter of Rights which must be provided in writing. I decided to reach out to my students at Maastricht University,[12] and asked them to look at the language version of the Letter of Rights in their native language that is provided by the Dutch Ministry of Justice and Security as the model to be used.[13]

The Dutch Ministry provides translations for 30 languages, 20 of which were analysed by my students. This resulted in a picture of the quality of the translations which I will sketch below. Most of my students had no command of Dutch, so the question put was not whether it was a correct translation, but whether the text was understandable, whether there were any errors and whether you could detect whether the translation was made by a native speaker. The reason to ask them to look at it as a stand-alone document lies in the fact that it puts the student in the same position as the just arrested accused who receives the written text in his/her own language (or a language s/he understands) in a completely Dutch environment. In other words, neither the quality of translating from the Dutch original[14] nor

Order of the President of the Second Chamber of the Court of 24 January 2019, Okresná prokuratúra Bratislava II v ML, Case C-510/17, ECLI:EU:C:2019:128.

11 André Klip, *Taal, tolken en vertalen in de strafprocedure, preadvies voor de Nederlands-Vlaamse Vereniging voor Strafrecht* (Nijmegen: Wolf Legal Publishers, 2021).

12 I wish to thank the many students who provided me with their comments on the native language versions.

13 The text can be found at: "Mededelingen van rechten aan de verdachte," Rijksoverheid, accessed October 12, 2023 2023 , https://www.rijksoverheid.nl/documenten/brochures/2014/10/20/mededelingen-van-rechten-aan-de-verdachte.

14 There is no information whether the translator used the Dutch version or another text as original.

the question of whether the end result legally complies with the demands of Directive 2012/13 has been tested in this small research project. Another reservation is that most languages had just one native speaker assessing the text. In that sense, the research project gives a mere impression and cannot be taken as producing representative empirical test results yet.

On the basis of the comments received, I have grouped the translations into three categories. One with little to no complaints. An intermediate category with minor errors, however with some odd sentences and doubts as to whether the translator is a native speaker. The last group consists of translations with severe errors, several incomprehensible or weird sentences and the commentator is convinced that the translator is not a native speaker. Some of the translations were on the edge of two categories.

a. Translations not leading to complaints
Arabic, French,[15] Russian, Surinamese,[16] Ukrainian

b. Minor errors/few odd sentences/doubts on native speaker
Bulgarian, Chinese, Croatian, Estonian, Latvian, Papiamentu,[17] Polish, Portuguese, Romanian
If the Croatian text is used for a Bosnian/Serbian native speaker s/he may not understand some words which are typical Croatian. The Bulgarian text uses words that read as "punishable fact" which looks very similar to "strafbaar feit" which is a term of art in Dutch criminal law, but apparently makes little sense in Bulgarian as a translation for "criminal offence". In this group, quite some spelling mistakes are reported.

c. Severe errors/incomprehensible or weird sentences/not a native speaker
Albanian, English, German, Hungarian, Italian, Spanish

One native speaker gave the comment that "the person writing this document was very lazy and s/he just straight up used google translate to translate it from Dutch." Another wrote: "The way the text is formulated

15 Except for one sentence that does not make sense.

16 The sentence construction leads the commentator to conclude that it was probably written by somebody with Surinamese roots born in the Netherlands or who came to the Netherlands at a young age.

17 The comment was made that the text corresponds to the papiementu spoken on the island of Curaçao, which slightly differs from the papiemento spoken on the island of Aruba.

simply sound "not Hungarian" and this is easy to spot already from the very beginning." Google translate was mentioned several times as a likely source of several translations.

The comment on the Italian version read as follows:

> The document has not been translated by someone who is a mother-tongue speaker for several reasons: There are copious grammatical mistakes which regard: the capitalisation of words, the use of pronouns (at points necessary pronouns are omitted, where instead there is an excessive repetition of pronouns which should be absent), the choice of the prepositions, the order of the words in the sentence and the use of commas.

The Spanish comment is:

> The first sentence makes no sense since "incorpora" means to incorporate. It seems like the police is incorporating a lawyer in its police station rather than providing a lawyer to the accused concerning the second sentence: by saying "hacerle observaciones", it seems that the lawyer will make observations to the accused rather than to the police that has interviewed the accused. Again, the last sentence is wrongly formulated and it is just really difficult to understand the sentence. "Perseguir" means to go after someone as in follow someone. "Si es posible" means if it is possible, and in this case they rather meant "it is possible." It does not become clear at all that the fact that he will not be prosecuted might be subject to some conditions that the accused will have to follow.

The German version apparently was also not double checked when headers were made. Contrary to the German grammar rules nouns were not capitalised. As a result of which it looks rather clumsy. In the context of German in numbers of accused that will read this text, it raises the question why the translation has not been double checked.

This is even more the case with the language used most in the world: English. The issues with that version can be divided into the following categories: word meaning; idiom; punctuation and grammar as well as non-translation. An example in this context is the word "interrogation". The commentator states: "In English interrogation can have two meanings. The first is to question formally, systematically, or closely someone.

The second is to question someone aggressively. As such, it is not a good word to use in this context."

Another example relates to the following sentence in the English handout: "In principle, the lawyer must be present within two hours after the notification was given by the police." The native speaker found this sentence rather confusing: "On the one hand if something is 'in principle' then it is guaranteed in theory but not in practice. On the other, 'must' implies it is something that has to happen. As such, it's unclear if this a concrete right or a right with reservations or just something you can usually expect but might not happen."

3. Findings on the Translations in the Netherlands: the Text Is Too Legal, Too Extensive and Too Difficult for Ordinary People

Quite a number of comments related to the fact that text missed out on being comprehensible for non-lawyers (Croatian). From the Italian comment: "The document adopts an exceptionally formal language since it capitalises the pronouns (such as Lei) and the possessive adjectives (such as Suoi). This kind of language is usually only used in formal letters to someone who covers an official role (for example the prime minister or the rector of a university) or in an academic setting."

Legal terminology is very difficult to translate, especially if the translator is not a lawyer and has no knowledge of the legal concept. Whilst most of my commentators are lawyers/law students, their comments were in many cases that the translator certainly lacked legal knowledge. Evidence of this was found for instance in the case of the German/Italian/Latvian version that translates the Dutch "transactie" with "Transaktion"/"transazione"/"transakcija" which does not make sense in German/Italian/Latvian. Similarly, "strafbeschikking" becomes "Strafbescheid" in the German version. Had the translator had legal knowledge s/he would have translated the latter with "Strafbefehl". The latter does exist under Germany law and even gave inspiration to the later developed Dutch strafbeschikking.

One commentator noted a cultural disconnect:

> The references to serious and less serious offences aren't entirely clear to someone who is not familiar with the Dutch criminal justice system. In particular,

> a person's understanding of a serious offence as one that you can 'be detained before trial for' will depend on the rules they are familiar with (and rules on pre-trial detention vary substantially by country).

Another native speaker stated: "As a reader who does not know the Dutch legal system, the functioning of this mechanism is not clear from the information that is provided." What also might be a cultural problem is that many commentators criticised the question-style of the document. Of course this is what the original Dutch document did and in a Dutch context it is certainly intended to make things user friendly. However, the question is whether that also meets the expectations of individuals who may not be used to the state approaching them in such a way.

Spronken wrote in 2010, in a study that preceded the drafting of Directive 2012/13 and strongly influenced the legal instrument, that the purpose of the Letter of Rights can be understood by lay persons and even by those with poor reading ability or a low IQ. She noted at the time that most of the existing Letters formal and legal language is used with references to legal provisions that will be difficult to read and understand by most lay people.[18]

What is simple and accessible? Spronken stated that the Letter should not be too long and written in a style that would not discourage to make use of their rights.[19] She also refers to the dilemma that some level of detail is inevitable.[20] The model Spronken presented was inspired by what was in use in England and Wales. It has five pages and most sentences have not more than 25 words.[21]

In Spronken's study dating from 2010, information was gathered on the number of languages in which the Letter of Rights is available in several

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18 Taru Spronken, *An EU-Wide Letter of Rights. Towards Best-Practice* (Antwerp-Cambridge-Portland: Intersentia, 2010), 32 and 40.

19 On Croatia it is reported that the letter is not drafted in simple and accessible language. See: Zlata Đurđević, Elizabeta Ivičević Karas, Marin Bonačić and Zoran Burić, Croatia, "Implementation of Directives on Procedural Rights for Suspects and Accused Persons: State of Play and Critical Profiles," in *Effective Protection of the Rights of the Accused in the EU Directives. A Computable Approach to Criminal Procedure Law*, eds. Giuseppe Contissa, Giulia Lasagni, Michele Caianiello and Giovanni Sartor (Leiden: Brill, 2022), 84.

20 Spronken, *An EU-Wide Letter of Rights*, 70.

21 With the exception of one of 46 words. See: Spronken, *An EU-Wide Letter of Rights*, 74–78.

Member States. The numbers differ quite a lot: Greece in 2007: 13;[22] England and Wales in 2010: 44; Finland in 2016: 15;[23] Germany in 2010: 48; Sweden in 2010: 42; Belgium in 2010: 46;[24] Netherlands in 2022: 30. On the basis of the reports of my students I conclude that this picture of a wide variety of numbers of languages in which the Letter of Rights is available continues to exist in 2023. The result is that some Member States have more language versions on stock than other. We have no information on what authorities do when the suspect only understands a language for which no translation was made yet. Some Member States have a central point at which translation are available, whereas for the most Member States it appears that they do not have that and if translations need to made, they may ask a translator to do so every time again. This may not always be the same translator.

4. The Polish Letter of Rights and Its Translations

The Polish Letter of Rights states that it is based on a Regulation of the Minister of Justice of 14 September 2020 (item 1618). I have analysed the Dutch (my mother tongue), German (a language I understand) and English (a language I understand) versions that are used in Poland. There are several things that can be noted that the three have in common. It is striking that rather formal language, with references to the Code of Criminal Procedure, is used. The information given relates to things that may happen right after arrest, such as questioning, as well as to matters that may come up years later, such as sentencing. The three versions have obviously used the same source document, however none refers to it. Of all three, its translator obviously has no legal knowledge.

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22 Zinovia Dellidou, "The Investigative of the Criminal Process in Greece," in *Suspects in Europe. Procedural Rights at the Investigative Stage of the Criminal Process in the European Union*, eds. Ed Cape, Jacqueline Hodgson, Ties Prakken and Taru Spronken (Antwerp–Oxford: Intersentia, 2007), 112.

23 Council of Bars and Law Societies of Europe (ECCB), "TRAINAC Assessment, good practices and recommendations on the right to interpretation and translation, the right to information and the right of access to a lawyer in criminal proceedings," published in 2016, accessed October 12, 2023, https://europeanlawyersfoundation.eu/wp-content/uploads/2015/04/TRAINAC-study.pdf, p. 209.

24 Spronken, *An EU-Wide Letter of Rights*, 15.

The title of the English version deals with rights for the accused only. The Dutch and German version titles also give instructions on *obligations* for the accused. Under point 11 it is stated: "If you are a suspect in penal proceedings, you have the following obligations: You are under no obligation to prove your innocence or to provide evidence against yourself." It is rather confusing to present a right under the title of an obligation. There are numerous little differences between the three versions, such as the German version referring to Article 175 of the Code of Criminal Procedure that does include the right to give explanations in writing, whereas the English and Dutch version do not do that.

A serious legal issue is that the Letter of Rights states that there might be circumstances that require the prosecutor to be present at the consultation of the accused with his lawyer. I consider this a clear violation of Articles 3 and 4 Directive 2013/48 on the Right of Access to a Lawyer.[25]

On the language as such I did not spot any errors in the English version. I noted quite some grammatical mistakes in the German version,[26] that as such do not undermine the understanding, but raise serious questions about the expertise of the translator. The Dutch version must be regarded as a drama. The person having "translated" this cannot have been a native speaker, places words in a non-native order and makes countless mistakes. There are typos, inconsistent and numerous incomprehensible parts. The text contains non-existent words (bewijsaanbiedingen/-onbekwaamheidsmaatregelen/gemarkeerde postbus). It addresses the accused sometimes with the formal Dutch version of you (u) and then continues in the same sentence with the informal you (je/ jij/ jou). In sum, those suspects and accused in Poland who are informed by this Dutch

[25] The provisions of the Code of Criminal Procedure allow the prosecutor or investigating authority to deny access to some documents. Apparently this relates to the existing legislation, see: Karolina Kremens, Wojciech Jasiński, Dorota Czerwińska, and Dominika Czerniak, "Poland. There and Back Again, A struggle with Transposition of EU Directives," in *Effective Protection of the Rights of the Accused in the EU Directives*, eds. Giuseppe Contissa, Giulia Lasagni, Michele Caianiello and Giovanni Sartor (Leiden: Brill, 2022), 156.

[26] The text reads "Bei Ihrer Ladung zum persönlichen Erscheinen bedarf eine Entschuldigung" missing of „es"; "der Empfängerin" this should have the article "die"; Wenn Sie im Ausland aufhalten, „sich" is missing.

version of their rights will be quite confused and the document cannot be regarded as meeting the standards of Article 4(5) Directive 2012/13.

5. Concerns, Recommendations and Directions for Further Research

What is striking to see is that Member States do not use the model letter that has been published together with the Directive in OJ 2012, L 142/10. All Member States of which I was able to obtain Letters of Rights have made their own ones. As a result, the length of the Letters is quite different. Germany uses a one pager, France 2 pages, the Netherlands 3 pages, Belgium 4 pages, Poland 5 pages.

In its report, the Commission stated various shortcomings:

> One Member State's law does not provide for a Letter of Rights as such. Although it refers to a written declaration of rights, its purpose is not only informative. The declaration is handed over to a person when they are formally charged and is presented with a decree of accusation and an interview record to sign. This document mentions certain of the accused person's rights but does not correspond to the list set out in the Directive.
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> Another Member State also does not have a uniform Letter of Rights. Different templates are used by courts and the police and it is unclear whether these different templates contain all the rights required under the Directive. Moreover, it is not ensured that the person is allowed to keep the letter. There is no evidence that Member States used the original format attached to Directive 2012/13. They apparently have made their own Letters. (…)
>
> Not all Member States explicitly transposed the obligation to give suspects and the accused the opportunity to read and to keep the Letter of Rights. Moreover, one Member State allows for a deviation from the obligation to provide the person with written information (even at a later stage) in cases where providing written information can reasonably not be done and providing oral information is deemed sufficient.[27]

In a 2009 study, it was established that in many Member States the Letter of Rights does not mention the right to remain silent or the right to translation or interpretation and sometimes there is no Letter of Rights available

[27] See: Commission Report COM(2018) 858 final, para. 3.4.1.

in the language the suspects understands. [28] This situation raises several concerns and questions for further research. Especially in view of the fact that two major studies on defence rights and interpretation and translation do not address the translation of the Letter of Rights.[29] The impression is that Member States since the implementation of Directive 2012/13 on the Right to Information now more or less have a Letter of Rights available in their national language(s). However, there is no guarantee for an immediate availability in other languages.

There are serious concerns on the quality. There is no information on how were interpreters selected.[30] The translations give the clear impression that the translators do not have legal knowledge as well. There is no evidence that the translation was subjected to a review by a colleague or by lawyers understanding the language.[31] Although most Member States seem to have developed a practice in which the version in their own national language is the original, none mentions that fact. This should be known in order to evade double translation. It was found that quite a number of problems are already caused by the original, which have been copied into the translations, such as legalistic and complicated language.

The question comes up what the standards for quality should be. Is the quality to be determined by the professional standards of translators or by legal standards or by both?[32] Is it necessary that a native speaker makes

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28 See: Taru Spronken, Gert Vermeulen, Dorris de Vocht, and Laurens Van Puijenbroeck, *EU Procedural Rights In Criminal Proceedings* (Antwerp: Maklu, 2009), 108.

29 "Rights of suspected and accused persons across the EU: translation, interpretation and information," November 2016, European Union Agency for Fundamental Rights (FRA), accessed October 12, 2023, https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-right-to-information-translation_en.pdf; Council of Bars and Law Societies of Europe, "TRAINAC."

30 Whilst this study has predominantly analysed the ordinary Letter of Rights, the first impression in comparing with the two other Letters of Rights: the one for requested persons under an EAW, and the one for children as a suspect, indications were found that the three texts were not made by the same translator. This also raises the question whether the standard for the information for children is appropriate for their needs and understanding.

31 The FRA (p. 11) and ECCB (p. 6) studies do mention a general lack of assessing the quality of translators.

32 It appears that only very few Member States have an established procedure for ascertaining whether there is a need for translation. See: Spronken, Vermeulen, de Vocht, and Van Puijenbroeck, *EU Procedural Rights*, 84.

the translation? Is it necessary that somebody specialised in written communication with foreigners make the translation? Things start with an original that must be in simple and accessible language. However, that is not all. It is my understanding of Article 4(5) that it does not require a word for word translation of the original (even if this meets the requirement of being *simple*) text, but that it takes into consideration that a foreigner may miss the context of wording, because he may not be familiar with the local or language environment. It is desirable that translations are made in a team of translators and lawyers that have in mind how the message is perceived by the foreign suspect.

In sum, the picture that emerges for foreigners arrested is that providing them with a Letter of Rights in their language is seriously handicapped in almost all aspects: the timing (availability), the linguistic quality, the accessibility and simplicity. This situation creates severe risks concerning the right to a fair trial for foreigners. They may not invoke rights because they do not know. They may not come to their own trial because they did not understand.

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