

# FAIR TRIALS INTERNATIONAL

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Fair Trials International  
59 Carter Lane  
London EC4V 5AQ  
United Kingdom

Telephone +44 (0)20 7762 6400  
Fax +44 (0)20 7762 6401

[www.fairtrials.net](http://www.fairtrials.net)

## **Submission**

**To the European Scrutiny Committee of the House of Lords**

**An Initial Response to the Proposal for a Council Framework  
Decision and Resolution on the Right to Interpretation and  
Translation in Criminal Proceedings**

**9 September 2009**

## About Fair Trials International

Fair Trials International (FTI) is a UK-based NGO that works for fair trials according to international standards of justice and defends the rights of those facing charges in a country other than their own.

FTI pursues its mission by providing individual legal assistance through its expert casework practice. It also addresses the root causes of injustice through broader research and campaigning and builds local legal capacity through targeted training, mentoring and network activities.

Although FTI usually works on behalf of people facing criminal trials outside of their own country, we have a keen interest in criminal justice and fair trial rights issues more generally. We are active in the field of EU Criminal Justice policy and, through our expert casework practice, we are uniquely placed to provide evidence on how policy initiatives affect defendants throughout the EU.

For further information, contact  
Catherine Heard  
Policy Officer, Fair Trials International  
0207 762 6400

[Catherine.Heard@fairtrials.net](mailto:Catherine.Heard@fairtrials.net)

### 1 Executive summary

1.1 FTI takes this opportunity to provide our views to the European Scrutiny Committee of the House of Lords on the Proposal presented by the European Commission on 8 July 2009 for a Framework Decision on the right to interpretation and translation of relevant documents in criminal proceedings (the "Proposal"). While we have some concerns regarding the scope of the measures proposed, we believe the Proposal deserves to be welcomed and supported as a matter of principle.

1.2 The Swedish Presidency of the European Union wishes to prioritise minimum procedural defence safeguards for all EU citizens. The Proposal represents the first of a series of measures set out in the Presidency's Roadmap of 1 July 2009<sup>1</sup>, ("Roadmap"). The Presidency has indicated that it intends to seek political agreement on the Proposal at the coming Justice and Home Affairs Council meeting at the end of October 2009.

1.3 In this paper we set out our initial views on the Proposal, which we illustrate with case studies from our own clients showing the importance of introducing minimum standards across Member States so that the right to adequate interpretation and translation facilities is guaranteed throughout the course of proceedings, both substantive and relating to extradition hearings following the issue of a European Arrest Warrant.

1.4 The injustices we encounter in our own casework bear out the Government's conclusion<sup>2</sup> that divergencies exist in the way different Member States give effect to the right to interpretation and translation. This divergence detracts from the fundamental right of suspects and defendants to understand the case against them and participate fully in their defence. In practice, it can often be more difficult for non-nationals than nationals to receive a fair trial. This problem could be significantly reduced if the measures contained in the Proposal were adopted. We therefore hope the Committee will support the Proposal and be in a position to do so in time for the JHA Council at the end of October 2009.

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<sup>1</sup> "Roadmap with a view to fostering the protection of suspected and accused persons in criminal proceedings" 1 July 2009

<sup>2</sup> Paragraph 7, Explanatory Memorandum submitted by the Office for Criminal Justice Reform July 2009

## 2 Policy context: opportunity presented by Stockholm Programme

2.1 We believe that greater cooperation between Member States during recent years has resulted in real improvements in some areas of criminal justice, cutting down delays, increasing efficiency, and enabling serious organized crime crossing national borders to be tackled more effectively. Clearly this is a positive trend.

2.2 We are, however, concerned that European cooperation in the fight against crime has forged ahead with insufficient regard for basic principles of justice and fairness. The Stockholm Programme, the Roadmap and the current Proposal all present an opportunity for the EU to address this and do more to enable Member States to trust each other's systems to deliver justice to the necessary standard. Previous attempts to build a sound basis for mutual trust between member states have notably failed. Instead of ensuring minimum fair trial standards across the Union, the policy emphasis has been on strengthening security. The fundamental right of citizens to a fair trial has received almost no attention, but there is now an opportunity to put this right.

2.3 The Roadmap provides strong arguments for introducing minimum procedural safeguards. Pointing to the fact that the removal of internal borders has increased cross-border criminality and that as a result more individuals are finding themselves involved in foreign proceedings, the Roadmap acknowledges that this results in suspects knowing less about their rights than they would if arrested at home, as well as language barriers making meaningful participation in their defence more difficult.

2.4 In FTI's experience, a single case often suffers multiple failures to respect basic rights. For example the lack of access to a lawyer or legal aid can be exacerbated by the lack of information on rights or on the prosecution case, or the lack of a quality interpreter or translations of important documents. Similarly, the inability of suspects to contact friends, family or consular officials as quickly as possible often prevents them from taking the necessary steps to exercise other key rights before their position in the case is irrevocably prejudiced.

2.5 The European Commission's proposals for the Stockholm Programme published on 10 June highlight the need to put ordinary citizens' interests at the heart of the project. FTI welcomes this stance and believes it should underlie the approach to guaranteeing basic defence rights as much as it does to the right to security and effective crime control. It should be a cornerstone of EU criminal justice policy that all within the EU will be treated fairly in criminal investigations and proceedings, being allowed a full opportunity to defend themselves and participate meaningfully in their trial.

2.6 Although these rights are enshrined in the European Convention on Human Rights and Fundamental Freedoms, FTI's cases show that they require further legislative force in order to become tangible for ordinary citizens. Only then can individuals depend on them with confidence wherever they happen to be in the EU. This is implicitly recognised by the Swedish Presidency's statement in the Roadmap that *"there is room for further action of the European Union to ensure full implementation and respect of Convention standards, as well as, where appropriate, to expand existing standards or to make their application more uniform"*.

2.7 We believe detailed and binding legislation on each measure, beginning with the current Proposal, is the best way to ensure this important aim is achieved. We are therefore encouraged by the Government's broadly positive response to the Swedish initiatives. In an Explanatory Memorandum on the Roadmap submitted by the Office for Criminal Justice Reform on 22 July 2009, the Government signalled its support for the Roadmap and for a step-by-step approach introducing measures that will meaningfully enhance the existing fundamental right to a fair trial. In a separate Explanatory Memorandum also released in July 2009, the Government indicated its broad support for the Proposal, referring to the importance of "ensur[ing] there are accepted common minimum

standards across the states of the EU in this field for the protection of those suspected of committing criminal acts...".<sup>3</sup> We hope that the Committee will similarly provide its broad support to the Proposal.

### **3 Cases illustrating the need for legislation on translation and interpretation**

#### Case study 1: Teresa Daniels (TD), British national arrested in Spain

In 1997, TD and her companion AB were arrested at Gran Canaria Airport: almost 4 kilos of cocaine was found in 2 suitcases belonging to AB. On arrest, AB told police that TD had no knowledge of the drugs. No drugs were found on her person or in her luggage. At the trial (less than three months after her arrest), TD was asked a few questions and after 1 ½ hours was told she could leave. She assumed throughout the trial that she was there as a witness. No interpreter was present to assist her and she could not follow the proceedings. AB maintained throughout the trial that TD had known nothing about his activities.

In a judgment issued six months later, TD was sentenced to 10 years. AB received the same sentence and was taken to prison to start his sentence; TD was allowed to go free pending her appeal. She was not sent the judgment or an English translation of it. She heard nothing further and was unaware that her appeal was in fact unsuccessful and her sentence had been reconfirmed. A letter from the Spanish authorities in response to a query from her MP suggested she had been discharged. However, an extradition request was later made by Spain and granted in October 2005 by the UK, resulting in TD's extradition, to serve her sentence in a Madrid jail. She was ultimately granted a royal pardon and released in January 2009.

When we became involved in the case (after the appeal) it became clear that the court had based its decision on a single entry in TD's personal diary about an expected payment she was looking forward to receiving. This in fact referred to a few thousand pounds' compensation for a personal injury claim relating to a car accident she had suffered, as she could have established if she had had a fair trial. The court relied on its own unofficial 'translation' of the relevant entry, which was later shown to be largely inaccurate. An official translation of the diary, carried out by a qualified translator, was also supplied to the court prior to trial, yet inferences were made by the prosecution and the court to the detriment of the defence based on the first, unreliable, translation. The official, accurate, translation was ruled inadmissible for being adduced out of time. The appeal court upheld the original decision in full.

In this case, having an interpreter at court throughout trial and being allowed to insist on official translations of key prosecution evidence in good time before the trial could well have prevented a gross miscarriage of justice.

#### Case study 2: Andrew and Graham Stow (A and G), British nationals arrested in Portugal

A and G were considering opening a diving school. In July 1999 their dive boat was subjected to a thorough routine search by Portuguese customs officers in Faro and nothing was discovered. A few days later the Harbour Master in Faro asked the brothers to move their boat 250 metres down the wharf to make way for a larger boat. The next day one of the men dived below the boat and discovered boxes scattered over the sea bed. He began bringing the boxes up and around 15 minutes later officers from the Policia Judiciária arrived. A and G assisted the police in bringing up the boxes. They maintain they were completely unaware of their contents. Shortly thereafter they were arrested at gunpoint and accused of importing hashish into the harbour.

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<sup>3</sup> Paragraph 7, Explanatory Memorandum submitted by the Office for Criminal Justice Reform on [ ] July 2009

Immediately after their arrest, they were interrogated in Portuguese with no interpreter or legal adviser present. They were pressurised into signing confessions in Portuguese.

They did not see the charges against them in writing until a whole year after their arrest. The charges were in Portuguese. As their defence lawyer did not speak English, A and G had to rely on other remand prisoners to help them understand the document. Throughout the trial, the court-appointed lawyer only worked for the benefit of the court; the court proceedings were not translated for A and G; and only their responses to the judge were translated into Portuguese.

They eventually won a retrial only for the appeal to uphold the original decision. They served six years in jail in Portugal and nine months in a British prison following a transfer. They are now awaiting a decision from the European Court of Human Rights under Article 6.

#### Case study 3: Mr X, British national detained in Germany

Mr X was involved in a domestic dispute with his wife in Germany in early 2008. At the end of the quarrel both parties were injured: Mr X had a serious stab wound to his abdomen, and had to undergo two major operations. Both parties gave conflicting statements and blamed each other for the stabbing.

Mr X was interviewed by two policemen almost immediately after his surgery. The interview was ten minutes long and Mr X had not been told whether he was being interviewed as a witness or a suspect. At the time Mr X was still strongly under the influence of medication. Neither an interpreter nor a lawyer was present during the initial interview.

#### Case study 4: Garry Mann (GM), British national detained in Portugal

On 15 June 2004 GM, a British national, was with friends in a bar in Albufeira, Portugal, when a riot took place in a nearby street. GM was arrested along with other suspects some 4 hours after the alleged offences. He was tried and convicted – along with 13 other defendants – less than 24 hours after his arrest. He had been attending the Euro 2004 football tournament and was arrested under temporary legislation in place at the time. The object of the legislation had been to allow for a fast track procedure to convict and deport foreign nationals caught “red-handed”. This was clearly inappropriate in GM’s case, where identification was in issue.

GM was sentenced to 2 years’ imprisonment on 16 June 2004 but, two days later, voluntarily agreed to be deported after being told he would not have to serve his sentence provided he did not return to Portugal for a year.

The trial was grossly unfair in a number of ways but perhaps the most striking is that GM had no time to prepare his defence, instruct a lawyer of his own choosing, or seek legal aid to help pay for his own lawyer or interpreter. There were only two court-appointed lawyers for the 14 defendants and they were not given the time or opportunity either to cross-examine prosecution witnesses or to call witnesses for their own clients who could support their alibis and offer character evidence. The court-appointed interpreter translated at trial for all 14 defendants, communicating with one, who would then convey the information to the others as best he could.

GM is now threatened with extradition to serve his sentence, having been served with a European Arrest Warrant in March 2009, despite never having returned to Portugal and having been in no trouble since. GM faces a real risk of having to serve a jail sentence in Portugal on the basis of a

conviction branded by District Judge Stephen Day<sup>4</sup> as having been “*obtained in circumstances that are so unfair as to be incompatible with the Respondents’ right to a fair trial under Article 6 ...*”.

#### **4 FTI’s concerns on the language of the Proposal**

4.1 While we welcome the Proposal in principle, we have some concerns about areas where the language does not go far enough to ensure full protection of the right to an interpreter and translation sufficient to guarantee a fair trial. We will provide our detailed analysis to the JHA Council Working Group at a later stage, but our key concerns are summarized in brief below.

*When does the right become effective?*

4.2 Art 1.2 states that the right applies “*from the time [the suspect] is informed by the competent authorities of a Member State that he is suspected of having committed a criminal offence until the conclusion of the proceedings...*” Given that the suspect can be questioned or searched by investigating authorities before being informed that he is a suspect, it would be preferable if the right were stated to apply as soon as possible in the process, not merely at the moment the authorities formally inform the person he is a suspect.

*For how long does it apply?*

4.3 Similarly it would help to confirm in the instrument itself that the “conclusion of proceedings” means after all rights of appeal have been exhausted. (It is clear from the preceding Explanatory Memorandum that this is the intention: para 17.)

*What documents must be translated?*

4.4 Art 3.2 defines the documents to be translated as having to include “*the detention order depriving the person of his liberty, the charge/indictment, essential documentary evidence and the judgment.*” The Explanatory Memorandum preceding the Proposal clarifies what is intended to be covered by the term “essential documentary evidence”, saying that it includes “any relevant documentary material such as key witness statements needed in order to understand “in detail, the nature and cause of the accusation against him” in accordance with Article 6(3)(a) of the ECHR”.

4.5 Whilst we fully appreciate that translations of every document in the proceedings would not be necessary in order to fulfill this objective, it would be preferable if further detail were provided in the proposed legislation about what represents “essential documentary evidence”. In particular, an indexed and fully referenced summary of the prosecution evidence should be provided in translation well before trial, to enable the defendant to consider with his legal adviser whether a formal request for a translation of any particular piece of evidence referred to in the summary should be made.

#### **5 Conclusion**

5.1 It is clear that a lack of adequate interpretation and translation facilities during any stage of criminal proceedings is unjust and violates basic human rights and fair trial safeguards. Over and above the impossibility of a defendant understanding the case against him and having a proper opportunity to defend it, with equality of arms as required by Article 6 as a guiding principle, a failure to provide such facilities is also discriminatory, contrary to Article 14.

5.2 We are delighted that the Government has accepted in principle the need for common action to guarantee fair trial rights across the Union and endorsed the need for a set of binding rules on

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<sup>4</sup> In an unsuccessful application for a football banning order brought by the Commissioner of Police against Garry Mann in July 2005

interpretation and translation, as a first step in that direction. We hope that the Committee will also be able to indicate its broad support for the Proposal in time for the JHA Council at the end of October 2009.

5.3 FTI is grateful for this opportunity to provide our initial views on the Proposal and illustrate them with some of our clients' experiences. We would be pleased to deal with any queries: contact details are provided on page 2.

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**9 September 2009**