



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

THIRD SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 44234/98
by Sahin UCAK
against the United Kingdom

The European Court of Human Rights (Third Section), sitting on 24 January 2002 as a Chamber composed of

Mr G. RESS, *President*,
Sir Nicolas BRATZA,
Mr L. CAFLISCH,
Mr P. KŪRIS,
Mr R. TŪRMEN,
Mr J. HEDIGAN,
Mrs M. TSATSA-NIKOLOVSKA, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged with the European Commission of Human Rights on 29 June 1998 and registered on 9 November 1998,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the partial decision of 29 August 2000,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant, Sahin Ucak, is a Turkish national of Kurdish origin, born in 1960 and serving a sentence of imprisonment in HM Prison, Dungavel, near Strathhaven, Scotland. He is represented before the Court by Mr John J. McCabe, a former solicitor.

A. The circumstances of the case

The facts of the case, as submitted by the parties, may be summarised as follows.

In about 1987, the applicant arrived in Switzerland from Turkey with his wife and child. They made an application for asylum on the grounds that, while in Turkey, the applicant had been detained and tortured by the police. The application was successful, and the applicant lived in Switzerland with his family until 1994. The applicant speaks Kurdish, Turkish and French. He speaks no English.

In July 1994, the applicant arrived in the United Kingdom. On 21 November 1994, the applicant was staying with friends in bed and breakfast accommodation in Glasgow, when police officers arrived with a search warrant. He was detained and his room was searched. A plastic bag containing white powder was found in the room. The police officers spoke only English, which the applicant did not understand. He was taken to the police station and a detention form was completed in English at 12.24 a.m. the following morning (22 November 1994). The applicant did not see the form. The applicant asked for help (in French). He did not understand that he was being detained, or his rights on detention, including his right to have his detention intimated to a solicitor. At 4.46 a.m. the applicant was charged in English with possession of heroin.

The police contacted a Turkish interpreter, Ms Orgun. She indicated that she worked at a school in Glasgow and would not be able to attend at the police station until late in the afternoon. The police also contacted the duty solicitor, Mr Hall. At about 9 a.m. (on 22 November 1994), Mr Hall came to see the applicant. As there was no interpreter present, the applicant and Mr Hall did not understand each other, the latter being unable to understand French. Mr Hall was accordingly unable to give the applicant any legal advice. At 5.15 p.m. (on 22 November 1994), the applicant was interviewed by the police through Ms Orgun, without a solicitor. At the conclusion of the interview, the applicant was charged again with possession of heroin (the same charge).

On 23 November 1994, the applicant appeared before the Glasgow Sheriff Court. He was represented by Mr Hall. The interpreter was Ms Orgun. Mr Hall advised the applicant briefly, through the interpreter, before the hearing. At the hearing, the applicant was remanded in custody.

On 30 November 1994, the applicant, represented by Mr Hall and with Ms Orgun acting as interpreter, was fully committed for trial.

Ms Orgun subsequently interpreted for the applicant and Mr Hall on three occasions at Barlinnie Prison, where the applicant was remanded in custody awaiting trial. At the second of these conferences, Mr Hall asked the applicant if he knew the addresses of the two friends with whom he had travelled to Glasgow in November 1994. He said that he did not, and Ms Orgun told the applicant that if he provided the addresses, they would not be passed on to the police. The applicant said again that he did not know the addresses. The applicant states that Ms Orgun went red in the face and became angry. She pointed her finger at the applicant and said he was a liar. The applicant claims that he told Mr Hall, through Ms Orgun, that he wanted to change interpreters, but was told that it would not be possible as no other interpreter was available.

The applicant then changed solicitors, in the expectation that the new solicitor would be able to speak French. This was not the case, and interpretation was still required. At the first meeting between the applicant and Mr Macara of Beltrami and Co, the new firm of solicitors, Ms Orgun was again present. The applicant claims that he asked Mr Macara, through Ms Orgun, if another interpreter could be found, but he was told again that this would not be possible. Ms Orgun interpreted at all subsequent consultations between the new solicitor and the applicant.

None of the documents to be used at trial, including the indictment and the witness precognitions, was translated into Turkish. The first occasion on which the indictment was translated for the applicant was when it was read out in court at the beginning of the trial.

The trial took place at the High Court of Justiciary in Glasgow on 17 and 20 March 1995. Ms Orgun acted as interpreter for both the prosecution and the defence. She was paid by the prosecution.

Ms Orgun was included in the list of witnesses submitted by the prosecution at trial. Her evidence, concerning the accuracy of her interpretation at the interview on 23 November 1993, was agreed between legal representatives in the form of a joint minute. The applicant claims that he was not aware of this until after his trial.

At the conclusion of the trial proceedings, the applicant's solicitor advocate formally complimented Ms Orgun on the assistance provided by her to the applicant and the court. The trial judge agreed, noting that the interpretation had been "quite, quite outstandingly good".

On 20 March 1995, the applicant was convicted of being concerned in the supply of a Class A controlled drug, diamorphine (heroin), with a street value of 50,000 to 100,000 pounds sterling (GBP), contrary to section 4(3)(b) of the Misuse of Drugs Act 1971. He was sentenced to 10 years' imprisonment.

In January 1996, the applicant applied for legal aid for advice in connection with an appeal.

In March 1996, counsel advised that more investigation and information was required before grounds of appeal could be settled. In June 1996, the Scottish Legal Aid Board indicated that they wished to see counsel's opinion as to prospects of success on appeal before deciding whether to grant legal aid for the appeal. They granted emergency legal aid to cover the marking and lodging of the appeal, instruction of Edinburgh agents, and the obtaining of counsel's opinion as to prospects of success.

On 11 November 1996, after several unsuccessful requests, the applicant's solicitors obtained an increase in authorised expenditure from GBP 800 to GBP 1,200 to assist in paying for interpretation and translation costs. Prior sanction was required for translation of lengthy documents, such as counsel's opinions, on an individual basis.

Legal aid for the appeal was granted in December 1996. The Legal Aid Board informed the applicant's solicitors that they should apply for sanction each time they wished to use an interpreter or have a document translated. After lengthy discussions with the Legal Aid Board, the applicant's solicitors obtained cover which allowed them to have urgent or necessary documents, including correspondence, translated up to a cost of GBP 200 without prior sanction from the Legal Aid Board. Prior sanction continued to be required for translation of lengthy documents. The following amounts were awarded in addition. On 26 February 1997 GBP 250 was granted for use of an interpreter, on 12 March 1997 GBP 150 was granted, on 9 April 1997 GBP 150 was allowed for translation of documents and GBP 200 for the use of an interpreter, on 18 April 1997 a further GBP 150 for use of an interpreter and GBP 250 for translation of documents, on 22 May 1997 GBP 52.50 was granted, on 13 June 1997, GBP 130 for translation was allowed and sanction granted for GBP 150 for an interpreter for a consultation with the applicant, on 28 October 1997 a blanket sanction for GBP 250 for translation was granted and an additional GBP 100 on 4 December 1997. Further interpreters' fees was granted on 17 February 1998 for a consultation with the applicant, on 6 May 1998 GBP 105.95 in interpreters' fees was allowed for work on the appeal, and an additional GBP 200 and GBP 300 for interpreter's fees was granted on 6 May 1998 and 16 July 1998 respectively.

Letters in English from the applicant to his solicitor at this time indicated that he was receiving assistance within prison in having documents translated into French for him and his comments were being translated into English for transmission to the solicitor.

On 21 March 1997, grounds of appeal were lodged with the High Court of Justiciary. These alleged that his detention, arrest and interview by the police had been unlawful and unfair, that the applicant's legal representatives had failed to use an interpreter who was independent and in

whom the applicant had confidence, that his legal representatives failed properly to explain the legal proceedings and in particular to explain the indictment and that the applicant had as a result of cultural and language difficulties been unable to understand the proceedings.

The appeal was heard on 23 June 1998 and an interpreter provided for the applicant who was present. At the outset of the proceedings, the applicant was informed that he should indicate if he did not understand what was being said. He gave no such indication. Written reasons for the dismissal of the appeal were given on 26 July 1998. The High Court of Justiciary held that the applicant's arrest and detention were not unlawful, and that although holding an interview after charge was contrary to practice, there was no unfairness, as the applicant had relied at trial on the answers he had given in the interview.

As regarded the ground of appeal concerning the interpretation, the High Court held:

"The grounds of appeal go on to state that because of his treatment by the police in Turkey the appellant had become fearful of the police and Turkish nationals. Since his first meeting with the interpreter was with the police, he thought that she was associated with the authorities. However, she was also used by the duty solicitor. The same interpreter was present at consultations prior to his trial. He did not have confidence in her. At the trial she was engaged by both the defence and the Crown and the latter paid for her services. However, he did not tell the solicitor advocate who represented him at trial that he did not trust her. She was on the list of Crown witnesses but the content of her evidence – which was concerned with the accuracy of her translation at the interview – it was agreed by way of a joint minute.

It is also said in the grounds of appeal that the appellant did not fully understand the proceedings. He did not understand the relationship between the Crown and the defence and the rules of procedure and evidence. After full committal he had changed his solicitor in the hope that his new solicitor would be able to speak to him in French. However, this did not happen. The solicitor advocate whom he had engaged outlined the case to him before the trial, but he was not told the content of the statements which had been given by witnesses before the trial. Although he had been charged at the end of the interview in the police stations, the first times when the terms of the indictment were translated for him was when it was read out in court at the beginning of the trial. He felt unable to participate in the preparation of the defence.

... [The applicant's counsel] accepted that there was no question of the appellant having been prejudiced by anything which he said at his interview. The speech by his solicitor advocate to the jury relied on the consistency of his evidence with what he had told the police at the outset. A deliberate decision had been taken not to challenge the admissibility of his statements.

As regards the interpreter [the applicant's counsel] accepted that the appellant had not made any complaint about her to either solicitor. However it was unfair that the same person should be used by different parties under an adversarial system, especially where, as here, the appellant thought that the interpreter was biased. On the other hand, she could not say that his lack of trust in [the interpreter] had meant that any line of defence had not been advanced or that any matter which would have

assisted the defence had not been revealed. Further, she made no criticism of the way in which the interpreter had performed her work...

As regards the appellant's reservations about the interpreter we consider that this point is devoid of merit. He never stated his hesitations prior to or during the trial and it does not appear that he ever sought to have an explanation of what he claims was troubling him. In any event there is no question of the appellant suffering any actual prejudice as a result of the way in which the services of the interpreter were engaged. The appellant complains that he did not understand various aspects of the proceedings or have knowledge of the contents of witnesses' statements but we do not see that this had any practical effect on the appellant's defence. There is no suggestion that he suffered any actual prejudice.

As regards the proposition that justice must be seen to be done, it is important to bear in mind that this relates to the need to achieve what the impartial observer would regard as the doing of justice in the proceedings in court. In the present case the various complaints ... made in regard to the matter of fairness should not be regarded in isolation but in relation to the proceedings which were taken... against the applicant. For the reasons which we have given we do not consider that, whether considered individually or cumulatively, they led to any reasonable suspicion that the appellant did not receive a fair trial on the charge which he faced. Accordingly in our view the original grounds of appeal are not well-founded."

B. Relevant domestic law and practice

In pre-court procedures in Scotland, it is the responsibility of the police to satisfy themselves that a suspect understands the procedures being followed and that he can participate in any interview. There is case-law indicating that this requires the provision of an interpreter when the suspect does not understand English (*HM Advocate v. Olsson* 1941 J.C.63). In the normal course of events, when the police become aware that a witness or suspect requires the assistance of an interpreter they engage one from a list which they have available and interview the person on arrival of the interpreter.

As regards trial procedures, in practice the prosecutor in Scotland arranges for the provision of an interpreter in cases where it appears that one is needed. Acting for the Crown in the public interest, the prosecutor undertakes the responsibility for providing an interpreter until the end of the trial. The Crown pays for the interpreters' fees. Once a person is convicted the courts assume responsibility for provision of an interpreter in any further proceedings.

The common law, as applied in Scotland, recognises the right for an accused to understand. In the case of *Mikhailitchenko v. Normand* (1996 22 EHRR 29), the appeal court held proceedings to be unfair where a trial continued after it had been recognised that the Bulgarian interpreter was having difficulty in communicating with the accused who spoke Russian. A common law plea in bar of trial on the basis of oppression or unfairness

may be taken by an accused before the trial or the matter can be raised as an objection to the continuation of proceedings, where the conduct of the interpreter is impugned as affecting the proceedings.

COMPLAINTS

The applicant complains under Article 6 of the Convention that he was unable to participate effectively in the criminal proceedings because inadequate provision was made for interpretation and translation. In particular, he complains that he was unable to change interpreter before his trial even though he had no confidence in the interpreter who was acting for him, since there were no other Turkish interpreters available; that no translations were provided of key documents, including the indictment and witness precognitions; that funding through legal aid for interpretation and translation was extremely limited; and that the translations provided in connection with the appeal were so poor as to be unintelligible. The applicant claims that the person found to translate documents was not Turkish but Armenian, and the applicant found it impossible to understand the translations which she prepared of documents related to his appeal.

THE LAW

The applicant invokes Article 6 of the Convention regarding the interpretation and translation facilities made available to him during his trial and appeal. The relevant provisions are:

“1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

...

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.”

1. The parties' submissions

The Government submit that the essence of the applicant's concern, as raised in the Court of Appeal, was that the interpreter, Ms Orgun, was not independently appointed as her involvement was arranged initially by the police and thereafter by the Crown. They deny that the mere fact that the police and Crown arranged for the interpretation facilities and the Crown paid the fees discloses a lack of fairness, in particular where there was no overt bias and the quality of service had been publicly acknowledged. Insofar as the applicant complains of the failure to translate the indictment prior to the trial, this was a very short document (seven lines), the charge was not a complicated one and the gist of it would have been explained to him in the consultations with the solicitor.

The Government also submit, concerning witness statements, that it was not a requirement for the Crown to submit their precognitions to the defence as the defence was free to take their own and have those translated if they wished. There is no evidence that the applicant ever asked to have any witness statements either provided or translated. In any event, not all items of written evidence have to be translated to render proceedings fair, where the interpreting assistance permits the accused to understand the case against him. While the applicant complains that he felt unable to trust the interpreter, the quality of her service was subject to praise by his own solicitor advocate and the trial judge and his counsel on appeal was unable to point to any matter on which this alleged distrust had been detrimental to the defence run on his behalf. In any event, it would have been open to the applicant to taken a plea either in bar of trial or as an objection to the continuation of proceedings on the basis that the trial was unfair due to the conduct of the interpreter. His complaints were therefore inadmissible for failure to exhaust domestic remedies or manifestly ill-founded.

The applicant submits that what particularly concerned him was the fact that the interpreter was Turkish and he was Kurdish and had specifically fled Turkey to avoid death at the hands of the Turkish authorities. This apprehension was confirmed when there was an altercation with her over the addresses of his friends and by his perception that the relationship of the police and the interpreter was the same as that in Turkey. The main problem was that she was not independently appointed, but took the majority of her work from the police. Further, she was Turkish not Kurdish, so there were difficulties with some words and she did not have any recognisable qualification and was not in a position to adequately deal with legal language. As regarded the indictment, he considers that it was essential that this should have been translated as it would put him on notice of the strict liability of the charge. A translation would have been easy to obtain. The applicant maintained that it was in fact common practice for the prosecution to supply copies of witness statements to the defence and as he did not see

them he was unable fully to understand what the witnesses were going to say.

The applicant submits that the possibility of appealing against the quality of the interpretation was not proceeded with solely on the advice of counsel. The comments by his solicitor at trial and the trial judge as to the effectiveness of the interpretation at trial were irrelevant as they did not speak a word of Turkish.

2. The Court's assessment

The Court observes that the guarantee, provided in paragraph 3(e) of Article 6, signifies that a person “charged with a criminal offence” who is unable to understand or speak the language used in the court has the right to the free assistance of an interpreter for translation or interpretation of all those documents or statements in the proceedings instituted against him which it is necessary for him to understand or to have rendered into the court’s language in order to have the benefit of a fair trial (see the Luedicke, Belkacem and Koç v. Germany judgment of 28 November 1978, Series A no. 29, p. 20, § 48). It does not require however that all written evidence or official documents should be translated. The interpretation assistance provided should be such to enable the defendant to have knowledge of the case against him and to defend himself, notably by being able to put before the court his version of events. For the right guaranteed to be effective, the obligation of the competent authorities is not limited to the appointment of an interpreter but, if they are put on notice in the particular circumstances, may also extend to a degree of subsequent control over the adequacy of the interpretation provided (see the Kamasinski v. Austria judgment of 19 December 1989, Series A no. 168, p. 35, § 74).

Above all, the guarantees in paragraph 3 represent the constituent elements of the general concept of a fair trial embodied in paragraph 1 of Article 6 (see, amongst other authorities, the Vacher v. France judgment of 17 December 1996, *Reports of Judgments and Decisions* 1996-VI, p. 2147, § 22).

The Court notes, first of all, that the applicant’s main complaint, as raised on appeal, is that the interpreter used at trial was not perceived by him to be appointed independently of the police and the prosecution. As he associated the interpreter with the police, who called her to the police station, he claims that this intimidated him and made him unable to talk freely with his solicitor. He also was upset, after the trial, to discover that the interpreter was listed as a witness by the prosecution. It does not appear that the applicant maintains a complaint that she was in fact lacking in independence, referring to his own experiences from Turkey regarding the police there. It is his own lack of confidence in the interpreter due to his own background and impressions which is at the heart of his complaint.

The Court considers that it is not appropriate under Article 6 § 3(e) to lay down any detailed conditions concerning the method by which interpreters may be provided to assist accused persons. An interpreter is not part of the court or tribunal within the meaning of Article 6 § 1 and there is no formal requirement of independence or impartiality as such. The services of the interpreter must provide the accused with effective assistance in conducting his defence and the interpreter's conduct must not be of such a nature as to impinge on the fairness of the proceedings.

The fact that the interpreter was called by the police to the police station to interpret for the applicant during police interview does not in the Court's view disclose any irregularity or oppression. An interpreter had to be provided at the police station. Nor does the fact that the interpreter was listed as a witness by the prosecution to confirm the accuracy of her interpretation at the police interview indicate that she was thereby associated with the prosecution. Her evidence was agreed by the applicant's solicitor as part of the defence case as the contents of the police interview were relied on by the defence to support the applicant's consistency and credibility.

The applicant has also expressed doubts that this interpreter was properly qualified or able to deal with Kurdish words or legal language. He refers in addition to an incident in which the interpreter is alleged to have shouted at him and called a liar, as indicating that she was unreliable. The Court notes that there is no independent verification of these allegations in the contemporaneous documents. The applicant's solicitor advocate made a point of praising the standard of the interpretation at trial, with which assessment the trial judge concurred. While the applicant asserts somewhat sweepingly that they were in no position to give a useful opinion, it also appears that no criticism or complaint about the interpreter's abilities or conduct was raised on appeal. His counsel indeed conceded that she was unable to point to any element favourable to the defence which had not been revealed due to the applicant's alleged lack of trust in the interpreter. Counsel also informed the appeal court that the applicant had not made any complaint about the interpreter to his solicitors. The applicant argues that this is wrong as he did make complaint. It does not appear however that either solicitor confirmed this to his counsel.

The alleged inadequacies and misconduct of the interpreter, beyond her alleged lack of independence, were therefore never brought to the attention of the trial or appeal courts. As the Government have pointed out, if it had been considered that her conduct was preventing the fair conduct of the proceedings, it would have been possible to make an application to the court before or during the trial. This was not done and this Court is not satisfied that the applicant's complaints about this aspect of his trial have been substantiated.

As regards the applicant's complaint that he was not given a written translation of the indictment, the Court notes that the indictment set out the charge against the applicant in seven lines of text. It had been translated to him in substance when he was charged by the police and it was translated in open court at the beginning of his trial. It was the duty of the applicant's solicitor to explain to him the legal ingredients of the drugs offence against him and the applicant does not claim that he failed to do so. The Court is not persuaded that the applicant was not properly informed of the nature and legal classification of the charge against him or that the proceedings were rendered unfair due to the lack of a written translation of the indictment. While the applicant also refers to a failure to provide translations of witness statements, it is not apparent that he ever requested his solicitor to obtain translations of these documents or that the substance of the evidence against him had not been explained to him by his solicitor. There is in particular no evidence that the assistance provided to him before or during trial did not enable him to have knowledge of the case against him or to defend himself by being able to put forward to the courts his version of events.

Finally, as concerns the applicant's complaints about the restrictions on and quality of translations provided during his appeal, the Court notes that no complaint about this appears in the letters which the applicant wrote to his solicitors concerning the preparation of his appeal. The details provided by the Government concerning the grants of legal aid to obtain translations, have not been contradicted by the applicant. The translated letters provided by the applicant as supporting his complaints of poor quality are short, rough translations, in manuscript, of his solicitors' letters to him and are not translations of any legal document lodged in the appeal. Furthermore, the applicant was at this time also receiving assistance within the prison in having documents translated into French for him pending the receipt of Turkish translations and in having letters written to his solicitor in English. Insofar as there were any points of difficulty, it was open to him to request further clarifications at his consultations with his legal advisers at which an interpreter was present. In the circumstances, the applicant has not shown that he was in any way prejudiced in the conduct of his appeal by any lack of understanding of the documents. At the outset of the appeal, the court informed him that he should indicate if he did not understand what was being said. He made no complaint however of any lack of ability to follow the proceedings.

The Court finds that the applicant's complaints that he did not receive a fair trial due to the interpretation and translation facilities provided are manifestly ill-founded and must be rejected pursuant to Article 35 §§ 1 and 4 of the Convention.

For these reasons, the Court unanimously

Declares inadmissible the remainder of the application.

Vincent BERGER
Registrar

Georg RESS
President