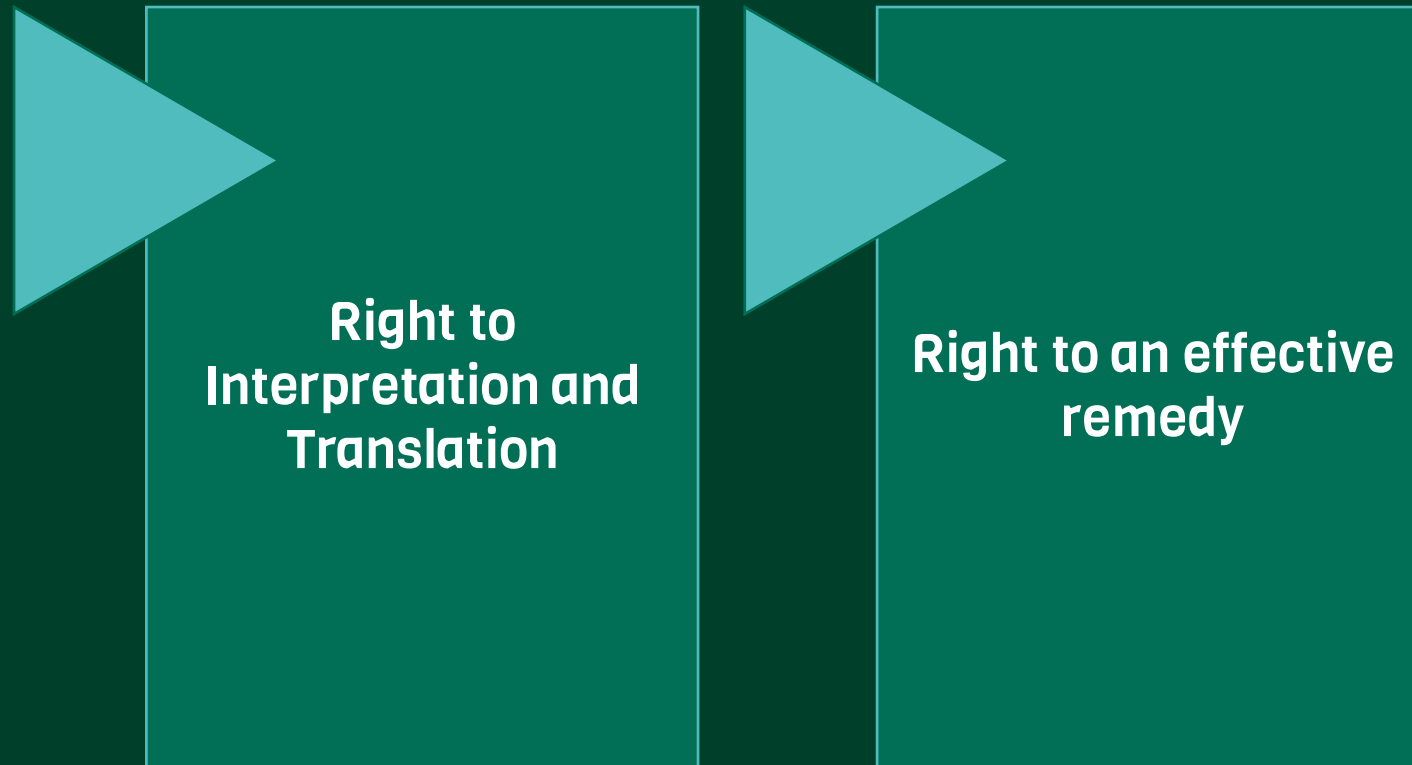


Obstacles to the use of alternative measures

The role of the defence and the insufficient implementation of procedural safeguards in cross-border proceedings

The insufficient implementation of procedural safeguards in cross-border proceedings

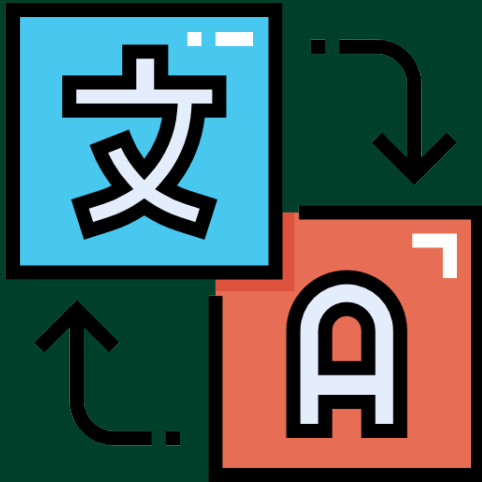


Right to Interpretation and Translation

Binding minimum standards laid down in

❑ Directive 2010/94/EU

Right to Interpretation and Translation



Translation and interpretation services are essential in cross-border proceedings

- requested persons shall be able to
 - Understand the language of proceedings
 - Communicate with their lawyer in order to receive effective representation

If linguistic assistance is not guaranteed, risk of **impeding the effective exercise of defence rights**, including the right to be informed about the right to a lawyer!

Obstacles to Interpretation and Translation

- ☐ shortage of interpreters,
- ☐ inadequate assessment of the requested person's knowledge of the national language,
- ☐ interpretation not guaranteed for client,
- ☐ lawyer consultation before interrogation,
- ☐ poor quality of translation and interpretation services and inability to challenge the failure to provide (qualitative) interpretation,
- ☐ lack of translation services for communication between dual representation
- ☐ delays in receiving translated documents.

Right to effective remedy

- Article 47 of the Charter of Fundamental Rights

Right to an effective remedy

No explicit right to challenge an EAW in the FD



The right to challenge an EAW is essential to provide a possibility to invoke an alternative measure instead.

It is necessary to place lawyers in a position to make the case for another EU Mutual Recognition Instrument, or for release, when their client is facing an EAW.

Right to an effective remedy

No explicit right to challenge an EAW in the FD

BUT

- ❑ CJEU recognised that there must be a possibility to challenge the decision to issue an EAW, including its proportionality.
- ❑ Requested persons are entitled to challenge before a court the conditions for issuing an EAW, and in particular its proportionality.



Joined Cases C-566/19 PPU and C-626/19 PPU – JR and YC

a person must be afforded effective judicial protection before being surrendered, which *“presupposes, therefore, that judicial review of either the European arrest warrant or the judicial decision on which it is based is possible before that warrant is executed.”*



“Given the risk of infringement on the right to liberty that is inherent in the issuing of an EAW, the option to challenge it by way of court proceedings should be available as soon as the decision to issue it has been adopted.”

Joined Cases C-566/19 PPU JR and C-626/19 PPU YC,
Opinion of Advocate General Campos Sánchez-Bordona

...but the CJEU subsequently suggested that:

Case C-649/19 PPU – IR, pp 79

*“the right to effective judicial protection does not require that the right, provided for in the legislation of the issuing Member State, to challenge the decision to issue a European arrest warrant for the purposes of criminal prosecution can be exercised **before the surrender** of the person concerned to the competent authorities of that Member State.”*

The right to challenge an EAW in light of Art 47 CFR thus needs further clarification from CJEU especially in cases of challenging AFTER surrender to the issuing Member State

At the Member State's level



"it is for the Member States to ensure that their legal orders effectively safeguard the level of judicial protection required by Framework Decision (...) introducing a separate right of appeal against the decision to issue a European arrest warrant taken by a judicial authority other than a court is just one possibility in that regard."

Joined Cases C-566/19 PPU JR and C-626/19 PPU YC, pp 64 - 65

- Possibility for appeal not existing in all MS
- In some MS, legal remedy available only after surrender
- In some MS, legal remedy available only if MS is the executing State



EIPA

European
Institute of
Public
Administration

