



Interpreting in Russian for a Lithuanian in Slovenia violated fair trial right

In today's Chamber judgment¹ in the case of [Vizgirda v. Slovenia](#) (application no. 59868/08) the European Court of Human Rights held, by five votes to two, that there had been:

a violation of Article 6 §§ 1 and 3 (right to a fair trial / right to be informed promptly of accusation/ right to an interpreter) of the European Convention on Human Rights.

The case concerned the complaint of the applicant, whose native language is Lithuanian, that he had not had a fair trial after being charged with robbery because he had not understood the interpreting provided to him, which had been in Russian.

The Court found that the domestic authorities had never verified that Mr Vizgirda knew Russian well enough to conduct his defence effectively in that language. It also rejected the Government's argument that such knowledge could be assumed because Russian was widely spoken in Lithuania.

The Court found that a lack of complaints by him on that issue had been partly due to the fact that he had never been informed of the right to have interpreting in his native tongue and that he had been vulnerable as a foreigner facing criminal proceedings.

Overall, the language assistance he had received had not allowed him to actively participate in his trial, which had therefore been unfair and his rights had been violated.

Principal facts

The applicant, Danas Vizgirda, is a Lithuanian national who was born in 1980 and lives in Ljubljana (Slovenia).

He was arrested in Slovenia in March 2002 on suspicion of complicity in a bank robbery with six others. He was formally indicted in May of the same year with four other men, all Lithuanians, on charges of robbery, theft and attempted of a motor vehicle.

All the initial proceedings, including communication with a court-appointed defence lawyer, were interpreted into Russian for him. He was also given transcripts of witness statements in Russian. In July 2002 he was sentenced to eight years and four months in prison. His appeal was dismissed.

In February 2003 the applicant complained to the domestic courts that, among other things, he did not understand Russian well, that the first-instance court had ignored his statement to that effect, and that his right to use his own language in the criminal trial had been violated.

His complaint was ultimately dismissed by both the Supreme Court, in January 2006, and the Constitutional Court in July 2008. Both superior courts found that he had never raised a complaint during the criminal proceedings about not being able to understand Russian, that he had had the assistance of counsel, with whom he had also communicated via the Russian language, that he had participated in his trial and that his right to a fair trial had not been violated.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Complaints, procedure and composition of the Court

Relying in particular on Article 6 §§ 1 and 3 (a) and (e) (right to a fair trial / right to be informed promptly of the accusation against him/her / right to an interpreter) Mr Vizgirda complained that he had not had a fair trial because he had not understood the language of the proceedings or the interpreting provided. He also raised complaints under Article 5 § 2 (right to be informed promptly in language understood of reasons for arrest), and Articles 13 (right to an effective remedy) and 14 (prohibition of discrimination), read together with Article 6.

The application was lodged with the European Court of Human Rights on 2 December 2008.

Judgment was given by a Chamber of seven judges, composed as follows:

Paulo Pinto de Albuquerque (Portugal), *President*,
Nona Tsotsoria (Georgia),
András Sajó (Hungary),
Egidijus Kūris (Lithuania),
Iulia Motoc (Romania),
Gabriele Kucsko-Stadlmayer (Austria),
Marko Bošnjak (Slovenia),

and also Marialena Tsirli, *Section Registrar*.

Decision of the Court

Article 6

The Court observed that it was clear that the authorities had been aware that Mr Vizgirda did not understand Slovenian and had provided him with Russian interpreting and translations in the criminal proceedings. However, it could not find any indication that the authorities had ever asked him whether he understood that language well enough to conduct his defence effectively in it.

The Court did not accept the Government's argument in favour of a general assumption that Russian was spoken widely in Lithuania. The Government had not given any other explanation why the authorities had believed he had a sufficient knowledge of Russian when appointing an interpreter for him.

The Court found that the authorities were obliged to ascertain the applicant's competency in the Russian before making the decision to use it for the purpose of interpretation. It referred in this connection to the standards enshrined in the European Union's Directive 2010/64/concerning the right to interpretation. It added that the fact that a defendant has a basic command of the language of the proceedings or, as may be the case, a third language into which interpreting is readily available, should not by itself bar that individual from benefiting from interpreting into a language he or she understands well enough to fully exercise his or her right to defence.

The Court noted that there were no audio-recordings of Mr Vizgirda speaking in Russian before the investigating judge or at the trial, where he had only made some basic statements in that language. While the Constitutional Court had found later that he had succeeded in communicating with counsel in Russian, it had not explained that finding by referring to any facts. Its conclusion seemed to have been based on an assumption rather than evidence.

The Government had argued that neither the applicant nor his lawyer had complained about using a Russian interpreter during the investigation. However, the Court observed that the authorities had never informed Mr Vizgirda of his right to have interpreting in his own language. That, and his basic knowledge of Russian and his position of vulnerability as a foreigner facing criminal proceedings,

could explain his lack of objections. The fact his lawyer had not complained about a lack of Lithuanian interpreting had not relieved the courts of their duty to look into the matter properly.

Overall, the Court concluded that Mr Vizgirda had not been provided with language assistance which had allowed him to actively participate in the trial against him. That meant that the trial as a whole had been rendered unfair and his rights had been violated.

Other articles

The Court found that Mr Vizgirda had not exhausted domestic remedies as regards his complaints under Article 5 § 2 about not being informed in a language he understood of the reasons for his arrest and a separate one under Article 6 §§ 1 and 3 (a) and (e) about a lack of Russian interpreters and rejected both as inadmissible.

With regard to its conclusion of a violation of Mr Vizgirda's rights, it found that no separate issue arose under Articles 13 and 14, read together with Article 6.

Just satisfaction (Article 41)

The Court held by 5 votes to 2 that Slovenia was to pay the applicant 6,400 euros (EUR) in respect of non-pecuniary damage and EUR 2,500 in respect of costs for proceedings before the Court.

Separate opinions

Judges Kucsko-Stadlmayer and Bošnjak expressed a joint dissenting opinion which is annexed to the judgment.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.