

CAJ's submission no. 258

**CAJ's Commentary on
Proposals for Provisions of
In-Court Interpretation Services**

April 2010

Promoting Justice /
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What is the CAJ?

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation affiliated to the International Federation of Human Rights. CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the community.

The Committee seeks to ensure the highest standards in the administration of justice in Northern Ireland by ensuring that the government complies with its responsibilities in international human rights law. The CAJ works closely with other domestic and international human rights groups such as Amnesty International, Human Rights First (formerly the Lawyers Committee for Human Rights) and Human Rights Watch and makes regular submissions to a number of United Nations and European bodies established to protect human rights.

CAJ's activities include - publishing reports, conducting research, holding conferences, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws and the criminal justice system, equality and advocacy for a Bill of Rights.

CAJ however would not be in a position to do any of this work, without the financial help of its funders, individual donors and charitable trusts (since CAJ does not take government funding). We would like to take this opportunity to thank Atlantic Philanthropies, Barrow Cadbury Trust, Hilda Mullen Foundation, Joseph Rowntree Charitable Trust, Oak Foundation and UNISON.

The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

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Re: Proposals for Provisions of In-Court Interpretation Services

Thank you for inviting the Committee on the Administration of Justice (CAJ) to present our views on *the Proposals for Provisions of In-Court Interpretation Services*. As you will know, CAJ is an independent non-governmental human rights organisation that was established in 1981. CAJ's activities include - publishing reports, conducting research, holding conferences, monitoring, campaigning locally and internationally, individual casework and providing legal advice. Its areas of work are extensive and include policing, emergency laws, criminal justice, equality and the protection of rights. The organisation has been awarded several international human rights prizes, including the Reebok Human Rights Award and the Council of Europe Human Rights Prize.

The consultation proposals raise questions regarding the right to fair trial of the *European Convention on Human Rights* (Article 6) and the prohibition of discrimination (Article 14). CAJ believes that further consideration needs to be given to the potential impact that inadequate provisions and safeguards may have. Article 6. 3 of the ECHR, through its incorporation into law in Northern Ireland by the Human Rights Act 1998, guarantees the free assistance of an interpreter when necessary (e) and the right 'to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf *under the same conditions as* witnesses against him' (d). Issues around the equality of arms exist with the proposals generally. It is important to recall that the Hillsborough Agreement states that 'full provision of adequate funding and other resources for legal services to the disadvantaged in society, ensuring equality of access to justice for all', is potentially 'necessary action' to support the agreed policies of the Agreement.

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- Quality of interpretation

CAJ is concerned about the provisions in relation to the quality and competency of interpreters. While section 7.2 states that ‘interpreters are required to take an oath or affirm that they will faithfully and accurately interpret the proceedings in court’ it appears that only those who are registered with NRPSI are subject to a Code of Professional Conduct. Moreover, it appears that interpreters used for less ‘complex’ cases, whilst needing a level 3 OCN accreditation, are not subject to any measure of quality assurance. Although interpreters registered with NRPSI are subject to relatively strict criteria for entry, there appears to be little regulation of the profession of interpreter. Moreover, there appears to be no requirement by the Courts and Tribunals Service – or indeed the Criminal Justice System as a whole – for interpreters to be specifically versed in relevant legal terms. This raises questions of responsibility in the case of miscarriages of justice or wrongful convictions. Specialist training for interpreters working within the justice system should be required, given the technical terms used and the possible ramifications of misinterpretation or inadequate interpretation.

Section 7 speaks of the ‘quality and competency of interpreters’ who NICTS ‘engages’. Section 2.1.1. states that ‘The Police Service of Northern Ireland (PSNI) and the Public Prosecution Service (PPS) are responsible for arranging an interpreter for the first court appearance at a criminal court. The Court Service is responsible for arranging an interpreter at a second or subsequent hearing of a criminal case’. CAJ believes that the Criminal Justice System as a whole should have a standard policy as to the necessary qualifications and assurance of competency for all interpreters.

- Accessibility of all aspects of cases

The consultation is in relation to ‘in-court interpretation’ and nothing is said regarding any obligation to provide written or oral translation of legal documents to relevant victims, defendants or family members; CAJ believes that this should be made an explicit policy, as it is clearly important that all stakeholders have a full understanding of each case. Again, such a policy is needed for the whole of the Criminal Justice System. Similarly, whilst the NICTS should be commended for stating in the document that it is possible to obtain it in an alternative language by contacting the Communications Group at the address provided, accessibility should be standard practice for all

consultations and public documents put out by the Court Service and other agencies of the Department of Justice.

- Presumption of need

CAJ would be concerned that the provisions offered in both Section 1 and Section 3 in relation to the criminal, civil and family courts are in fact too narrow and that there should be a presumption of the need for a qualified interpreter in all cases which come before the courts which involve an individual who requires or requests a professional interpreter. It should be the duty of NICTS to arrange for such an interpreter and pay for his/her services.

- Responsibility

We do not believe that it is more “effective” for the prosecution and defence to be responsible for the provision of interpreters for their own witnesses. It may well be that the prosecution has more money available than the defence. Particularly in light of the recent NICTS consultation regarding the revision of the means test for criminal legal aid, defence lawyers may feel that they cannot afford to call further witnesses who may have relevant information but require an interpreter. Moreover, the consultation document states (2.2.3) that the defence is responsible for ‘making arrangements to meet the interpreting and translation needs of all defence witnesses’ yet it is not clear whether the qualification and competency requirements set out in section 7, which apply to interpreters engaged by NICTS, also apply those arranged by other agencies including the defence. Clarification on this is needed.

- Inquests

The arrangements for foreign language interpretation at inquests appear inadequate in that they seem to limit the ability of the Coroner to direct NICTS to arrange for an interpreter only in circumstances where a witness at an inquest is unable to understand English sufficiently to give evidence. This fails to take into consideration the needs of the victim’s family. This is entirely at odds with one of the four strategic aims of the Northern Ireland Criminal Justice System to ‘make the criminal justice system as open, inclusive and accessible as possible.’

- Tribunals

The criteria set out in section 5, which relate to when NICTS will arrange for an interpreter in Tribunal Hearings, is not very detailed: who is to judge whether ‘the party cannot speak or understand the language of the Tribunal well enough to take part in the hearing’ (section 5.1.1. first bullet point) and how are they to determine this (on what will they base this decision?) That a party will have to apply for public funding (and subsequently be rejected) or

demonstrate that they 'cannot afford to fund an interpreter privately' will seemingly cause further delay in the system.

- Sign Language

The provision of interpreters for deaf and hearing-impaired persons is wholly inadequate. Regardless of the nature of the case, CAJ believes that a British Sign Language (BSL), Irish Sign Language (ISL) or other Language Service Professionals (LSP) interpreter should be arranged for and paid for by NICTS (unless in agreement with another government department or agency in specific cases) for all cases that involve (as defendant, witness or victim) persons who are deaf or hearing-impaired. Significantly, the consultation document does not mention ISL although it is different from BSL and is used in Northern Ireland. This was formally recognised in 2004 by then-Secretary of State Paul Murphy.¹

- Irish language

The consultation document refers to the *Administration of Justice (Language) Act (Ireland) 1737* which prohibits the use of any language other than English to be used in the courts. Whilst we are aware of the pending decision relating to the *Application by Caoimhín Mac Giolla Catháin for Judicial Review*, CAJ has concerns about the application of the 1737 Act given that the *Good Friday Agreement* obliges the government to 'recognise the importance of respect, understanding and tolerance in relation to linguistic diversity, including in Northern Ireland, the Irish language, Ulster-Scots and the languages of the various ethnic communities, all of which are part of the cultural wealth of the island of Ireland'. It is our belief that the 1737 Act is contrary to the government's obligations under the *European Convention on Human Rights and the European Charter for Regional or Minority Languages*.

The government's Department of Culture, Arts and Language (DCAL) website states that, as a result of the Charter, 'If Irish [language] users wish to speak to a non-Irish speaking Government official in Irish notice should be given so that an interpreter can be arranged, if this is possible'. Thus, it is our understanding of the *European Charter for Regional and Minority Languages* that if an Irish speaker chooses to communicate in Irish with any government department or agency, they may do so but should provide sufficient notice so an interpreter, if the government personnel does not speak Irish, will be arranged. It would appear that this would include the courts.

¹ When speaking at Hillsborough Castle, Mr Murphy said "I am pleased to announce formal recognition for both British and Irish Sign Languages in Northern Ireland. See <http://www.nio.gov.uk/paul-murphy-announces-recognition-for-sign-language/media-detail.htm?newsID=8540>

CAJ draws your attention to the recent report by the Committee of Experts of the Application of the European Charter for Regional and Minority Languages by the United Kingdom and the subsequent recommendation by the Committee of Ministers of the Council of Europe 'to adopt and implement a comprehensive Irish language policy, preferably through the adoption of legislation'.²

We also take note of the fact that since signing the Charter in 2000, an Inter-departmental Charter Implementation Group (ICIG) has set up a subgroup (the 'Article 9 subgroup', run by the Court Service) to consider how Irish might be used in the legal system in Northern Ireland. This would appear to have been initiated on the back of the *Review of the Criminal Justice System in Northern Ireland* which recommended in 2000 that 'consideration of the use of the Irish language in courts be taken forward in the wider context of the development of policy on the use of Irish in public life generally'. That the consultation document does not refer to the Irish language demonstrates that the Court and Tribunal Service is not adhering to this recommendation.

Finally, CAJ believes that there should be an explicit policy that a female interpreter is used in cases of assault or abuse, particularly sexual, involving a female victim.

Thank you for permitting CAJ to submit our views and we look forward to seeing the Northern Ireland Courts and Tribunals Service response to the consultation.

Yours sincerely,

Jacqueline Monahan
Criminal Justice Programme Officer

² Recommendation RecChL(2010) 4 of the Committee of Ministers on the Application of the European Charter for Regional or Minority Languages by the United Kingdom. 21 April 2010.