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CUREDI013UK024

Question(s) at stake:

Whether the adjudicator erred in law when he allowed the hearing to continue in the presence of a Northern Albanian interpreter rather than a Southern Albanian interpreter.

Outcome of the ruling:

The adjudicator did not err in law when he allowed the hearing to continue in the presence of a Northern Albanian interpreter rather than a Southern Albanian interpreter.

Topic(s):

- Immigration and Asylum

Keywords:

Tag(s):

Author(s):

- Bianchini, Katia (Max Planck Institute for Social Anthropology, Department Law and Anthropology, Germany)

Country:

United Kingdom

Official citation:

Davidhi v Secretary of State for the Home Department [2002] UKIAT 02250

No link available.

ECLI:

No ECLI number / ECLI number unknown

Date:

28 June 2002

Jurisdiction / Court / Chamber:

Immigration Appeal Tribunal

Remedy / Procedural stage:

Appeal to the Adjudicator

Previous stages:

- Adjudicator (7 December 2001)
- Secretary of State (22 January 2001)

Subsequent stages:

No information found.

Branches / Areas of law:

Asylum law and human rights

Facts:

The appellant, an Albanian citizen, appealed against the adjudicator's decision rejecting his claim for international protection. The Immigration Appeal Tribunal gave the appellant leave to present expert evidence in order to establish that he needed a Southern Albanian interpreter and not a Northern Albanian interpreter at the hearing (para. 1). According to the appellant, he could not fairly present his case because he had requested a Southern Albanian interpreter, but the interpreters at the interviews and court hearing had been from areas in Yugoslavia "such as Macedonia and Kosovo where spoken Albanian has great differences in its dialects and grammar from that spoken in Albania" (para. 5). As a consequence, the interactions were ambiguous (ibid.).

The appellant's solicitor requested an extension of the timeline to submit such evidence, and his request was allowed. However, the appellant's solicitor did not reply, and therefore the Immigration Appeal Tribunal Judge in charge of the case contacted the Immigration Appellate Authority interpreter office, which was able to provide a letter from the University of Salford's language company (para. 2). The letter explained that "Kosovan [the native language of the interpreter] is not a separate dialect of Albanian. The Albanian language spoken in Kosovo can be readily understood by any native Albanian, and vice versa: any native of Kosovo can readily understand Albanian. This applies to educated and non-educated people alike. By way of background, there are slight differences in the tone/emphasis of words spoken in Kosovo compared to, say, the capital, Tiranë, but this does not constitute a full-blown dialect and does not hinder comprehension. At present, due to the war, all the words in Kosovan Albanian originally adopted from neighbouring Serbia have been dropped. For written purposes, Albanian in Kosovo is identical to standard Albanian" (para. 6). The author of the letter was an "educated, impartial, professional linguist who is" a native speaker of Albanian and has been validated by two other independent linguists (para. 6).

The judge sent this letter to the parties and issued a direction according to which the letter should be considered as evidence, and asked each party to present any comment within 7 days (para. 2). No reply was received within the timeline. However, later, a request was presented to grant a new adjournment in order to instruct a professor at Birmingham University (para. 2). This request was refused as it did not specify how long would be needed to receive the expert's opinion (ibid.).

Ruling:

The Immigration Appeal Tribunal dismissed the appeal.

First of all, the Immigration Appeal Tribunal judge reasoned that at the hearing before him, the appellant's counsel acknowledged that, based on the letter from the University of Salford, it was not feasible for him to claim that the appellant had suffered prejudice due to the interpreter. Instead, counsel merely contended that justice was not served as the appellant did not receive the requested interpreter (para. 7).

Second, the Immigration Appeal Tribunal judge noted that, according to the record of the hearing before the adjudicator, the appellant claimed that the interpreter spoke Northern Albanian (or Kosovan), which was slightly different from the language spoken in Southern Albania, where the appellant was from. The interpreter stated that he was qualified to interpret for people from all parts of Albania and Kosovo, mentioning that the distinctions were merely related to accent. After hearing this clarification, the appellant's counsel did not pursue the matter further. Throughout the hearing, there were no indications of communication issues between the interpreter and the appellant; the appellant responded promptly to each question, showing no difficulty in understanding, while the interpreter translated his answers without any delays (para. 8). However, after the hearing the appellant's solicitors filed a complaint with the Appeals Authority, claiming that not having the

requested interpreter caused distress to their client (para. 9). Such a complaint also formed the basis of the appeal. The Immigration Appeal Authority manager replied to the complaint, apologized, but also remarked on the qualifications of the interpreter used at the hearing and the comments of the Salford letter (para. 11).

Third, counsel tried to argue that the adjudicator erred in law in trying to establish the interpreter's competence because by doing so he treated the interpreter as if he were "an expert witness" that could be questioned (para. 12). However, the Immigration Appeal Tribunal indicated that it did not agree: the adjudicator was required by rule 31.1 of the 2000 Procedure Rules to proceed with the hearing unless convinced that denying an adjournment would hinder the fair resolution of the appeal. Considering the request made, it would have been incorrect not to investigate whether the inability to comply could potentially cause any actual harm to the appellant. Therefore, the Immigration Appeal Tribunal judge clarified that he believed that the adjudicator approached this matter in a completely appropriate manner. It would have been inadvisable to solely rely on the interpreter's claim that no harm was caused; however, the Salford letter clearly confirmed this to be true (para. 12).

Based on these observations, the Immigration Appeal Tribunal reasoned that any issues with interpretation quickly would have become apparent to everyone at the hearing. The adjudicator clearly indicated that this was not the situation in this case. The Immigration Appeal Tribunal concluded that the appellant had a valid administrative complaint regarding the lack of notice about their request not being fully addressed, which was appropriately addressed with an apology. However, there were no grounds to question the adjudicator's handling of the hearing or the interpreter's competence. Therefore, the appeal was rejected (para. 13).

Main quotations on cultural or religious diversity:

- "Before giving evidence, the Appellant said that the interpreter Mr B Qehaja spoke 'northern Albanian', while he was from the south of the country where there were slight differences in the language. Mr Qehaja told me that he was qualified and approved by the IAA to interpret for people from all parts of Albania and Kosovo and that the only differences between people from the north and those from the south were ones of accent." (para. 7)

- "During the whole of the hearing, there were no signs at all of the interpreter and the Appellant having any difficulty understanding each other; the Appellant answered each question promptly, indicating that he had had no difficulty understanding what had been said to him, while the interpreter interpreted each of his replies without hesitation." (para. 7)

Main legal texts quoted in the decision:

- Immigration and Asylum Appeal (Procedure) Rules 2000

Cases cited in the decision:

None

Commentary:

Use of Language Variety at the Hearing: Davidhi v. Secretary of State for the Home Department [2002] UKIAT 02250

Court interpreters in legal proceedings can have an impact on the outcome of cases; therefore, there is the need to ensure interpreters' qualifications, independence, and impartiality. Interpretation can become more difficult when an applicant speaks a different dialect than that of the appointed interpreter.

As established in *TS (interpreters) Eritrea* [2019] UKUT 00352 (IAC) (see Bianchini 2024), whether or not there are problems of communication between the witness and the court interpreter shall be checked by the decision-maker at the very beginning of the hearing. If the parties are unable to properly communicate, the hearing shall be adjourned and a competent interpreter appointed. Reviewing a lower judge's assessment of interpreter errors or qualifications requires careful consideration from an appellate judge. In *TS (interpreters) Eritrea*, the Upper Tribunal recognized this assessment as a skilful task within the realm of judge craft (*TS (interpreters) Eritrea*, para. 44). Consequently, challenging interpretation

issues on appeal will not be straightforward unless there is substantial evidence demonstrating significant problems that have impacted the case's outcome.

Such an approach was followed in the case of *Davidhi,* where expert evidence was required to support the appellant's claim that not having had a Southern Albanian interpreter at the hearing before the adjudicator damaged his case – although he had agreed with the adjudicator to continue with the case. Although the Upper Tribunal Judge had granted a few adjournments to allow the appellant's solicitors to present such evidence, they failed to do so, and the Immigration Tribunal refused the last adjournment request, probably believing that the solicitors had had enough time to act. Frustrated by such inaction – as is evident from the language used in the decision – the Immigration Appeal Tribunal took an uncommon step for a judge in a common law jurisdiction and asked the Appellate Authority interpreter office for an opinion on the issue. The latter was able to obtain a letter from the University of Salford's language company which the judge sent to all the parties and asked them to consider it as expert evidence, unless they had any objections. This letter, in the absence of any other evidence, was key in determining that there is not much difference between Southern and Northern Albanian and therefore the communication at the hearing before the adjudicator had not been fundamentally affected.

Finally, it should be noted that, whereas in some cases the ethnic and linguistic group of belonging of the interpreter and the applicant may raise issues of bias linked to political and/or cultural tensions in counties of origin, such an issue was neither a ground of appeal nor detected by the judge in the present case (see para. 13).

Other cases where the asylum applicant raised the issue of not being assisted by an interpreter who spoke his/her own dialect at the Home Office interview or lower court hearing include Upper Tribunal (Immigration and Asylum Chamber) Appeal no. PA/07269/2017 (05 February 2019); and Upper Tribunal (Immigration and Asylum Chamber) Appeal no. PA/08596/2018 (12 April 2018). Similarly to the case under review, it should be noted that in these cases it was not established that the use of a different dialect would have made any meaningful difference in the outcome of the decisions.

Literature related to the main issue(s) at stake:

Specific legal publications/comments addressing the case

- Bianchini, Katia. 2024. "General Principles at Hearings with Court Interpreters: *TS (Interpreters) Eritrea* [2019] UKUT 00352 (IAC)". *Cultural and Religious Diversity under State Law across Europe*, DOI: 10.48509/CUREDI013UK021.

General legal literature on the topic that may not be directly connected with the case

- Cohen, Juliet. 2001. "Questions of Credibility: Omissions, Discrepancies and Errors of Recall in the Testimony of Asylum Seekers". *International Journal of Refugee Law* 13: 293–330.

- Henderson, Mark and Mohena Moffatt. 2023. "Interpretation at the Hearing". In *Best Practice Guide to Asylum and Human Rights Appeals*, Ch. 34*.* London: Electronic Immigration Network, available at <https://www.ein.org.uk/bpg/chapter/34#toc2> accessed 25 March 2024.

General literature on the topic from other disciplines in the humanities and social sciences, in particular social and cultural anthropology

- Berk-Seligson, Susan. 2002. *The Bilingual Courtroom: Court Interpreters in the Judicial Process*. Chicago: University Press.

- Gibb, Robert and Anthony Good. 2014. "Interpretation, Translation and Intercultural Communication in Refugee Status Determination Procedures in the UK and France". *Language and Intercultural Communication* 14 (3): 385–399. [Reprinted in Phipps, Alison and Rebecca Kay (eds). 2015. *Languages in Migratory Settings: Place, Politics, and Aesthetics*. London: Routledge.]

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