



Legal Framework and Some Peculiarities of the Communication with the Third-Country Nationals in Slovakia and Greece

Právny rámec komunikácie a niektoré problémy komunikácie so štátnymi príslušníkmi tretích krajín na Slovensku a v Grécku

Elena NIKOLAJOVÁ KUPFERSCHMIDTOVÁ¹

¹ Academy of the Police Force in Bratislava

The manuscript was received on 14. 03. 2022 and was accepted after revision for publication on
11. 04. 2022

Abstract:

The present paper highlights the timelessness of the Convention on Fundamental Human Rights and Freedoms in terms of intercultural communication with third-country nationals in the context of detention facilities within Slovakia as a transit country in relation to migration and also Greece that is considered first-line country from the point of view of migrants. By providing a closer look at the specific conditions of communication in selected countries, we conclude that the Convention itself is a general framework which, although formulated in 1950, takes into account current migration needs and is the starting point applicable to the development of current legislation at both Member State and EU level.

Keywords: *intercultural communication, migration, detention centres, language assistance, asylum seekers, EU legislation*

Abstrakt:

Predkladaná štúdia sa venuje analýze právneho rámca pre potreby interkultúrnej komunikácie medzi štátnymi príslušníkmi tretích krajín a príslušníkmi Policajného zboru na Slovensku a v Grécku, pričom východiskom je sekundárna legislatíva Európskej únie (EÚ), keďže Slovensko aj Grécko sú primárne členskými krajinami EÚ, a teda právne predpisy EÚ sú pre všetky členské krajiny záväznými dokumentmi. Slovensko však napriek členstvu v EÚ patrí medzi tzv. tranzitné krajiny, ktoré sa nemusia vysporiadať s výrazne vysokým počtom prichádzajúcich štátnych príslušníkov tretích krajín na ich územie. V Grécku je však situácia diametrálne odlišná, napriek



Legal Framework and Some Peculiarities of the Communication with the Third-Country Nationals in Slovakia and Greece

Elena NIKOLAJOVÁ KUPFERSCHMIDTOVÁ

skutočnosti, že aj vnútroštátne predpisy Grécka vychádzajú z legislatívy EÚ. Štúdia venuje pozornosť zjednocujúcim, ale taktiež diferencujúcim faktorom, ktoré ovplyvňujú aktuálnu situáciu v týchto krajinách, a to so zreteľom na komunikáciu v rámci azylového procesu a postavenie tlmočníka/prekladateľa ako ústredného subjektu, ktorý je sprostredkovateľom komunikácie.

Kľúčové slová: migrácia, štátni príslušníci tretích krajín, polícia, azylový proces, detenčné centrá, interkultúrna komunikácia, tlmočnicke/prekladateľské služby, príslušníci Policajného zboru, hotspots, nelegálni migranti.

1 Communication with the Third-Country Nationals in the Context of International and European Legislation

The common framework for all EU Member States is primarily EU legislation, through which the EU seeks to address current issues concerning the stay of third-country nationals in the territory of the Member States and the establishment of rules for communication with them. In order to ensure respect for human rights and freedoms while providing guarantees, the EU has reflected Member States' efforts to improve the return management of illegally staying third-country nationals, in all its dimensions, with a view to lasting, fair and effective implementation of common standards on return, and developed Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, "Return directive". The Return Directive is a key document in the field of migration, providing a single framework for all EU Member States. Defining an effective return policy is crucial to gaining support for elements such as legal migration and asylum.

In the case of detention of third-country nationals in detention facilities, in accordance with Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (also known as the European Convention on Human Rights, and therefore for the purposes of the present study hereinafter also referred to as 'the ECHR') para. (2) '*Every alien detained in a detention facility shall have the right to communicate in official communication with the competent authorities in a language he understands.*' [1] The Member State is therefore required to provide an interpreter in order to ensure a standard procedure, i.e. that the third-country national can understand and communicate in the translated language in all procedural proceedings. The legal regulation concerning standards and procedures in the field of communication in the framework of official relations with third-country nationals in all EU member states, including Slovakia, is similar, as they are governed by common European legislation. In practice, however, the legislation in question is implemented with regard to specific conditions in individual countries.

The rules of communication in official communication form part of the following documents in particular:

- Directive 2013/32 / EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection;
- Directive 2008/115 / EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals;

Legal Framework and Some Peculiarities of the Communication with the Third-Country Nationals in Slovakia and Greece

Elena NIKOLAJOVÁ KUPFERSCHMIDTOVÁ

- Directive 2010/64 / EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings;
- Regulation (EU) No 182/2011 of the European Parliament and of the Council 439/2010 of 19 May 2010 establishing a European Asylum Support Office;
- Regulation (EU) No 182/2011 of the European Parliament and of the Council Regulation (EC) No 640/2013 of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person;
- Commission Recommendation (EU) 2017/432 of 7 March 2017 on ensuring more effective returns in the implementation of Directive 2008/115/EC;
- Commission Recommendation of 1 October 2015 establishing a common "return handbook" to be used by the competent authorities of the Member States in carrying out return tasks (C (2015) 6250 final).

The documents themselves clearly define the requirements to ensure proper communication with the competent authorities through an interpreter. *'(...) Within the meaning of Article 1 of the Geneva Convention or as beneficiaries of subsidiary protection, each applicant should have effective access to proceedings, cooperation and proper communication with the competent authorities in order to be able to provide relevant evidence concerning his case, (...)'* [2] In addition, the procedure for examining an application for international protection should, in normal circumstances, grant the asylum seeker at least: the right to remain in the Member State pending a decision by the determining authority; access to the interpretation service when submitting one's case in case of an interview with the authorities; the right to be informed of one's legal status in a language the person understands is crucial during the proceedings. At the same time, according to par. 28 of the Directive 2013/32/EU, it is also necessary to ensure that *'the basic communication necessary for the competent authorities to be able to understand whether persons wish to apply for international protection should be provided through interpretation.'* [3] Also in the context of the provision of information and advice at detention facilities and border crossing points, individual Member States are obliged to provide *'(...) interpretation to the extent necessary to facilitate access to the asylum procedure.'* [4] As regards the procedure itself, all Member States are required to provide the same guarantees for each of the applicants. Among the procedural guarantees mentioned under Article 12 para. 1 letter (a) the need to inform applicants *'(...) in a language they understand or may reasonably be presumed to understand, (...)'* [5] is included and subsequently, in accordance with Article 12 (2); 1 letter (b) of the same Directive, it is important that applicants receive the services of an interpreter whenever necessary so that they can submit their case to the competent authorities.

2 Legal Regulation of Communication between the Members of the Police Force and Third-Country Nationals in Slovakia

The Border and Foreign Police Bureau of the Presidium of the Police Force is a body with nationwide competence in the area of border control in the Slovak Republic. The Border and Foreign Police Bureau is a unit of the Presidium of the Police Force,

**Legal Framework and Some Peculiarities of the Communication with the
Third-Country Nationals in Slovakia and Greece**
Elena NIKOLAJOVÁ KUPFERSCHMIDTOVÁ

which directly manages, methodically directs and controls the activities of its organizational units in the performance of tasks in the following areas: border control, fight against illegal migration and smuggling, risk analysis, cooperation with the European Border and Coast Guard Agency (hereinafter referred to as 'Frontex'), analysis of travel documents, residence of foreigners, return of foreigners, expulsion of foreigners, issuing of visa and, to a limited extent, in the area of asylum procedures and implementation of the Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (also known as 'Dublin Regulation'). At the same time, the Border and Foreign Police Bureau of the Presidium of the Police Force proceeds (in accordance with national legal regulations governing the entry of foreigners into the territory of the Slovak Republic), the visa and procedures in case of an unauthorized stay of foreigners in our territory. The legal regulations of significant importance in the territory of the Slovak Republic that are governing the conditions of a stay of foreigners within our territory are:

- Constitution of the Slovak Republic;
- Act No. 480/2002 Coll. on asylum;
- Act No. 71/1967 Coll. on administrative proceedings;
- Act of the National Council of the Slovak Republic No. 171/1993 Coll. about the Police Force;
- Act No. 404/2011 Coll. on the stay of foreigners and on the amendment of certain laws as amended, which stipulates, among other things, that the official agenda related to the stay of foreigners is kept in the state language.

In case of an unauthorized border crossing or illegal stay in the country, foreigners are detained in detention facilities (in Slovak language known as Útvary policajného zaistenia pre cudzincov). Police detention units for foreigners are detention facilities that are primarily used for the temporary detention of third-country nationals who are deprived of their liberty, while detention of third-country nationals is applied to foreigners who are in the territory of the Slovak Republic without a residence permit. At this point, it is important to note that migration without a permit is not considered a criminal offense in Slovakia, still it is an offense. In Slovakia, this is the only offense for which a foreigner can be placed (detained) in detention facility, while the primary goal of detention is the preparation and implementation of deportation of a foreigner to the country of origin or transit country or to a country that according to the Dublin system is responsible for examining the asylum application. Asylum seekers may be detained until the main reasons for their application for asylum have been established or to avoid absconding if the asylum application appears to have been made only with the intention of preventing an imminent deportation. Detention is performed by members of the Police Force. The legal grounds for regulation of detention in the Slovak Republic are contained in Section I. § 77-81 of the Act No. 404/2011 Coll. on Residence of Foreigners and Amendment and Supplementation of Certain Acts. These provisions include reasons for detention, adjustment of conditions in detention facility and placement of foreigners, adjustment of regime in detention facility, provisions on health care of detained persons, rights of detained persons, duration of detention and reasons

**Legal Framework and Some Peculiarities of the Communication with the
Third-Country Nationals in Slovakia and Greece**
Elena NIKOLAJOVÁ KUPFERSCHMIDTOVÁ

for release. The stay in detention facility can last up to one and a half year, in case of families with children up to six months. In case of placement in detention facility, the detainee is obliged to comply with the regime specified by the facility rules.

As part of the administrative procedures and in the process of submitting and assessing an asylum application, EU Member States are required to provide staff who are properly trained in the subject and receive appropriate training, which includes the elements referred to in Article 6 (2) (4) letter from a) to e) of the Regulation (EU) No. 439/2010. It follows from the above that members of the Police Force operating within detention facilities must have adequate knowledge or the necessary training in order to be able to fulfill their job duties. The demands of working with detained foreigners also include language competence, which is essential for ensuring everyday communication and formulating instructions concerning the existence in detention facilities. A key communication aspect is to ensure that all persons placed in the facility are instructed on the premises and, if possible, to issue a translated copy of the day schedule and regime in the accommodation in the mother tongue of the detained foreigners or at least in a language they understand.

English is one of the most widespread languages today. It is a language that is called 'lingua franca', a platform for communication between people around the world who have a mother tongue other than English. Despite the fact that English is currently an extremely widespread language and, from the point of view of members of the Police Force working in detention facilities, it is often a working tool, many third-country nationals only have language competence in their own mother tongue. To express their needs, they often try to use an interpreter, or other foreigners detained in the detention facility with a sufficient command of widely spread languages or at least English, if the interpreter is not present.

Member States have an obligation to ensure basic communication between foreigners and the competent authorities in official communication, in a language that foreigners placed in the detention facility understand, i.e. by providing an interpreter who is subject to specific requirements not only in the field of language and cultural competence, but also the gender aspect must be taken into account if a foreigner placed in the detention facility requests so. In order to ensure effective communication between foreigners placed in detention facilities and the competent authorities (in accordance with the above documents), interpreters and translators ensure official communication with the competent authorities within individual procedural acts. The interpreters and translators are in Slovakia selected from the list of experts, translators and interpreters of the Ministry of Justice of the Slovak Republic. The translator, who conducts the translation of official documentation or information materials, is also selected from the list of court experts, translators and interpreters of the Ministry of Justice of the Slovak Republic. However, on the basis of the source documents, the interpretation request is formulated only for the needs of procedural acts and official communication with the competent authorities.

The conditions for the performance of interpreting activities, as well as the rights and obligations of interpreters for the needs of official communication, are regulated in Slovakia by Act No. 382/2004 Coll. on Experts, Interpreters and Translators (hereinafter referred to as 'Act No. 382/2004'). *'About the authorization, i.e. the translator's ability to act as an official translator, no decision is issued, the translator is not appointed, nor*

**Legal Framework and Some Peculiarities of the Communication with the
Third-Country Nationals in Slovakia and Greece**
Elena NIKOLAJOVÁ KUPFERSCHMIDTOVÁ

does he receive a certificate, but is entered on a list of experts, interpreters and translators once the conditions are defined. The law stipulates 10 conditions under which the applicant has a legal right to be entered on the list (...). [6] At the same time, enrollment is not necessarily conditioned by the current need for new translators. *The list is maintained by the Ministry of Justice of the Slovak Republic especially for interpreters and translators, the registration department is the relevant language. The Ministry is also entitled to make an entry in the list. The list shall be publicly available free of charge on the Internet (...)*. [7] Act No. 382/2004 also takes into consideration the new international standard in the field of law ISO 20228:2019 on interpreting services, which was published in April 2019 by the International Organization for Standardization (ISO) responsible for the development and publication of international standards, is also binding on official interpreters. The standard specifies the competencies that official interpreters should have. These competencies are based on the basic skills and knowledge needed to perform interpreting activities as such, including language, intercultural, interpersonal and technical skills. These standards are supplemented by the competencies necessary for the performance of activities in the field of law, i.e. a thorough understanding of the roles of lawyers, judges, court clerks, prosecutors and the like. [8]

The needs of detention facilities are fulfilled by the interpreter who becomes a mediator between the third-country nationals detained in the detention facility and the members of the Police Force working within the premises of the facility as well as all other parties (such as legal counsel, representatives of competent authorities, non-governmental organizations etc.), thus, the interpreter's responsibility is not only to help the parties avoid potential misunderstandings and anticipate areas of conflict, but to become a person who actively contributes to building a common cultural-cognitive platform that facilitates and enables successful mutual understanding. In the context of detention facilities, the work of an interpreter is extremely demanding, especially with regard to the psychological and emotional disposition of placed foreigners, who often suffer from feelings of helplessness, frustration and crippling fear.

Due to the fact that in the recent periods, foreigners arriving into the territory of the Slovak Republic were in most cases the ones whose mother tongue does not belong to the widely spread languages (e.g. coming from Afghanistan, Pakistan, Bangladesh, Morocco, Sudan, Turkey, etc.), the communication within the premises of detention facilities without the participation of an interpreter is usually very difficult. At the same time, it is not possible to require from the members of the Police Force to master the language of every foreigner who is detained in the detention facility. One of the no less important aspects that significantly affects communication with detained foreigners is the fact that foreigners are usually people with a lower level of education. It follows from the above that a member of the Police Force, as well as for example an interpreter or representatives of non-profit organizations (e.g. League for Human Rights), who voluntarily provide legal advice for foreigners detained in detention facilities, conduct a wide range of activities that go beyond their competences stipulated by the law. Legislative anchoring of intercultural communication between members of the Police Force and foreigners placed in detention facilities at a time when it is necessary to communicate daily requirements, whether by members of the Police or foreigners themselves, remains an open question, as in Slovakia the daily intercultural communication is not legally covered and therefore does not form part of any legislation.

3 Legal Regulation of Communication between the Members of the Police Force and Foreigners Detained in Detention Facilities in Greece

Greece, along with Italy, has been hit hardest by migratory waves in recent years. As in Italy, a system of hotspots has been set up at the initiative of the EU in Greece. In Greece, hotspots serve as reception centers for third-country nationals arriving in the EU Member States and aim to facilitate the identification, subsequent registration, fingerprinting and screening interviews of incoming migrants as the main purpose is to identify persons who need international protection. Temporary relocation mechanisms have also been introduced. The hotspot-based approach is based on the idea that EU agencies (in particular European Asylum Support Office, Frontex and the European Union Agency for Law Enforcement Cooperation) should provide first-hand assistance to Member States on the ground. In Greece, when registering and identifying migrants, it is recorded whether the incoming third-country national intends to apply for international protection. In the Greek islands, following the adoption of the EU-Turkey declaration of 18 March 2016, 'hotspot facilities turned into closed detention centres. People arriving after 20 March 2016 through the Aegean islands, and thus subject to the EU-Turkey Statement, were automatically *de facto* detained within the premises of the hotspots in order to be readmitted to Turkey in case they did not seek international protection or their applications were rejected, either as inadmissible under the Safe Third Country or First Country of Asylum concepts, or on the merits. Following criticism by national and international organisations and actors, as well as due to the limited capacity to maintain and run closed facilities on the islands with high numbers of people, the practice of blanket detention has largely been abandoned from the end of 2016 onwards. It has been replaced by a practice of systematic geographical restriction, i.e. an obligation not to leave the island and reside at the hotspot facility, which is imposed indiscriminately to every newly arrived migrants. [9] As the hotspot also serves as a detention facility. At the same time, in order to reduce the risk of absconding, the Greek police, in cooperation with the Greek Asylum Service, have introduced automated reports containing the following information:

1. a daily list of scheduled interviews;
2. a daily list of meetings for the purpose of registration;
3. a weekly list of cases in which the person concerned did not appear for the interview;
4. a weekly list of cases in which the person concerned did not appear for the meeting for the purposes of registration;
5. daily list of decisions with undelivered notifications;
6. a daily list of cases in which return proceedings may be initiated;
7. a daily list of closed cases;
8. a daily list of archived cases. [9]

Stakeholders, i.e. the Greek police, the Greek Reception and Identification Service, the Greek Asylum Service and EASO therefore have the opportunity to receive the reports in question and to use them properly, depending on their function. At the same

**Legal Framework and Some Peculiarities of the Communication with the
Third-Country Nationals in Slovakia and Greece**
Elena NIKOLAJOVÁ KUPFERSCHMIDTOVÁ

time, the active use of these reports allows migrants to be located quickly in order to ensure appropriate follow-up to the relevant asylum procedure and its completion or return procedure. In addition, the European Border and Coast Guard is currently working with the Greek police to set up a final electronic return case management system.

As regards the actual relocation of foreigners arriving in Greece, temporary relocation mechanisms were introduced by two Council Decisions in September 2015. These mechanisms were used from 24 March 2015 to 26 September 2017 and were intended to relocate 160,000 migrants on the basis of quotas in order to share the burden between Member States and thus ease the pressure on first-line countries. Active EU support is embodied continuously throughout the presence of Frontex, EASO, Europol, Eurojust and FRA, and the Hellenic Coast Guard collaborates with the Commission's Structural Reform Support Service (SRSS). Frontex with 264 staff from Member States, a Support Officer and an Operational Coordinator, EASO with five admissibility experts in Chios, and four interim EASO staff deployed to the Asylum Service support mainly the registration procedures. However, there were 12 Member State experts, 13 interpreters, 3 EASO staff and 5 interim staff seconded to the Greek Asylum Service. In Lesbos, EASO had two inadmissibility experts, four case workers and 40 interpreters. Vulnerability experts were also among the staff present. By November there were six Member State experts, 11 interpreters, 4 EASO staff and 6 interim staff seconded to the Greek Asylum Service.[10] However, the European Commission has repeatedly commented that the contribution of EASO guest officers remains insufficient to cover the needs; there is a shortage of experts provided by Member States, and those guest officers who were sent often lacked the right profile. The short period of deployment also mitigates against providing sustainable language and legal assistance.

A key means of ensuring an effective solution to the migratory situation to which Greece is exposed, has been to make significant progress in implementing the EU-Turkey declaration, thanks to which has significantly reduced the number of people who died in the Aegean Sea and also reduced the number of migrants arriving across the land border between Greece and Turkey. However, the resettlement of migrants, especially Syrians, is still not possible without close cooperation with all relevant partners, especially with regard to the day-to-day implementation of steps, including language support, in the form of providing interpreters to/from arriving migrants' languages. Operational support from stakeholders will not be possible without effective communication, which at the same time facilitates and speeds up the transfer of migrants who are subject to proper asylum procedures, including vulnerable groups, to special detention facilities on land. Emphasis should also be placed on putting in place the necessary procedures to reduce the slippage in the processing of second-level asylum applications, to prioritize asylum applications lodged by island applicants and to increase detention capacity at island hotspots in order to increase the rate of return of migrants. The measures aimed at effective intercultural communication need to be recognized by all parties involved.

The situation in Greece is similar to that in Italy. General leaflets informing about asylum in Greece are available in 18 languages, i.e. Arabic, Amharic, Ukrainian, Turkish, Russian, Moldovan, French, Georgian, Chinese, Spanish, Persian, Albanian, Swahili, Bengali, and in Danish and Sorani, Urdu, and Tigrinya. The admissibility interview is carried out exclusively in distance form, via audio/video calls. The committee together with an interpreter are located in Athens and an asylum seeker on

**Legal Framework and Some Peculiarities of the Communication with the
Third-Country Nationals in Slovakia and Greece**
Elena NIKOLAJOVÁ KUPFERSCHMIDTOVÁ

one of the Greek islands. In this case, the communication is affected by a weak signal, problems with technology and impersonal approach, or lack of privacy. Within each stage, there is always a different interpreter, i.e. Greek police officers together with interpreters from Frontex are present during screening of nationalities and taking fingerprints, IOM interpreters are present during registration and identification, and interpreters from non-governmental organizations such as ActionAid, MetaAction or Zanabiyya are mainly present at the interview. The vast majority are non-professional interpreters. Greek national legislation is facing the constant change that is necessary in view of the evolving migration trends. The interventions of many other stakeholders, such as Frontex, IOM, EASO, etc., require an approach that takes into account the specificities of Greece as a first-line country. The interventions in question are reflected in Greek national law, in particular in:

- Act 4686/2020 'Improvement of migration legislation, amendment L. 4636/2019 (A' 169), 4375/2016 (A' 51), 4251/2014 (A' 80) and other provisions' (*Νόμος 4686/2020 «Βελτίωση της μεταναστευτικής νομοθεσίας, τροποποίηση διατάξεων των νόμων 4636/2019 (A' 169), 4375/2016 (A' 51), 4251/2014 (A' 80) και άλλες διατάξεις»*) (ΦΕΚ Α' 96 /12-5-2020);
- Act 4636/2019 'on International Protection and Other Provisions' (*Νόμος 4636/2019 «Περί Διεθνούς Προστασίας και άλλες διατάξεις»*) (ΦΕΚ 169/A/1-11-2019);
- Act 4375/2016 'Organization and functioning of the Asylum Service, Appellate Body, Reception and Identification Service, Establishment of the General Secretariat for Reception, Transposition of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast) (L 180/29.6.2013), provisions on the employment of beneficiaries of international protection" and other provisions' (*Νόμος 4375/2016 «Οργάνωση και λειτουργία Υπηρεσίας Ασύλου, Αρχής Προσφυγών, Υπηρεσίας Υποδοχής και Ταυτοποίησης σύσταση Γενικής Γραμματείας Υποδοχής, προσαρμογή της Ελληνικής Νομοθεσίας προς τις διατάξεις της Οδηγίας 2013/32/ΕΕ του Ευρωπαϊκού Κοινοβουλίου και του Συμβουλίου «σχετικά με τις κοινές διαδικασίες για τη χορήγηση και ανάκληση του καθεστώτος διεθνούς προστασίας (αναδιατύπωση)» (L 180/29.6.2013), διατάξεις για την εργασία δικαιούχων διεθνούς προστασίας και άλλες διατάξεις*) (ΦΕΚ 51/A/3-4-2016);
- Act No. Regulation (EC) No. 3907/2011 on the establishment of an asylum and first reception service, transposition of Directive 2008/115/EC on common standards and procedures in Member States for returning third-country nationals without a residence permit to Greek law and other provisions (*Νόμος 3907/2011 «Ίδρυση Υπηρεσίας Ασύλου και Υπηρεσίας Πρώτης Υποδοχής, προσαρμογή της ελληνικής νομοθεσίας προς τις διατάξεις της Οδηγίας 2008/115/ΕΚ «σχετικά με τους κοινούς κανόνες και διαδικασίες στα κράτη-μέλη για την επιστροφή των παρανόμως διαμενόντων υπηκόων τρίτων χωρών» και λοιπές διατάξεις*) (ΦΕΚ 7/A/26-01-2011);
- Act 4058/2012, Bulletin 63/A/22-03-2012 (*Νόμος 4058/2012*) (ΦΕΚ 63/A/22-03-2012);

Legal Framework and Some Peculiarities of the Communication with the Third-Country Nationals in Slovakia and Greece

Elena NIKOLAJOVÁ KUPFERSCHMIDTOVÁ

- Act 4375/2016, Bulletin 51/A/3-4-2016 (*Νόμος 4375/2016*) (*ΦΕΚ 51/A/3-4-2016*);
- Decree of the President of the Republic No. 114/2010 establishing a uniform procedure for granting refugee or subsidiary protection status to aliens or stateless persons in accordance with Council Directive 2005/85/EC laying down minimum standards on procedures in Member States for granting and withdrawing refugee status (*Προεδρικό Διάταγμα 114/2010 «Καθιέρωση ενιαίας διαδικασίας αναγνώρισης σε αλλοδαπούς και ανιθαγενείς του καθεστώτος του πρόσφυγα ή δικαιούχου επικουρικής προστασίας σε συμμόρφωση προς την Οδηγία 2005/85/ΕΚ του Συμβουλίου ‘σχετικά με τις ελάχιστες προδιαγραφές για τις διαδικασίες με τις οποίες τα κράτη μέλη χορηγούν και ανακαλούν το καθεστώς του πρόσφυγα»*) (*ΦΕΚ 195/A/22-11-2010*);
- Act 4251/2014 Act on Immigration and Social Inclusion and other provisions (*Νόμος 4251/2014 «Κώδικας Μετανάστευσης και Κοινωνικής Ένταξης και λοιπές διατάξεις»*) (*ΦΕΚ 80/A/01-04-2014*);
- Act 4554/2018 Custody of unaccompanied children and other provisions (*Νόμος 4554/2018 «Επιτροπεία ασυνόδευτων ανηλίκων και άλλες διατάξεις»*) (*ΦΕΚ 130/A/18-7-2018*);
- Decree of the President of the Republic No. 131/2006 on the transposition of Directive 2003/86/EC on the right to family reunification (*Προεδρικό Διάταγμα 131/2006 Εναρμόνιση της ελληνικής νομοθεσίας με την Οδηγία 2003/86/ΕΚ σχετικά με το δικαίωμα οικογενειακής επανένωσης, ΦΕΚ 143/A/13-7-2006*) (*Τροπ: ΠΔ 167/2008, ΠΔ 113/2013*). [12]

The legal framework for communication in a foreign language, as well as for interpretation and translation in Greece, and with regard to interpretation/translation in particular in the Greek courts, is governed by Articles 233-238 of the Greek Penal Code. Court interpreters and translators are appointed by the competent court from a list drawn up each year by the Judicial Council for First Instance (συμβούλιο πλημμελειοδικών) and confirmed by the Judicial Board of Appeal (συμβούλιο εφετ). In cases of extreme urgency, interpreters outside the list shall be appointed. Article 252 of the Civil Code applies to civil proceedings, which stipulates that if a witness, expert or party does not speak Greek, an interpreter appointed by the court is called in. Article 137 of the Judicial Administrative Procedure Code also contains a similar provision. [13] By default, the provision of translation/interpretation services in Greece is also linked to the legal profession. In accordance with the Bar Code (Article 36 of Act No. 4194/2013, Government Gazette, Volume A, No. 208), the work of a lawyer includes the translation of documents in a foreign language and the translation of Greek documents into any foreign language. A translation is legally valid for a judicial or any other body if it is attached to a certified copy of the original document and the lawyer confirms that he has sufficient knowledge of both the language of the original document and the language into which he/she translated the document. [14] If necessary, interpretation/translation for non-legal matters, there is also the possibility to use the services of private professional translators or interpreters. However, there is no central database of certified translators or interpreters in Greece. However, there is a database of members of the

**Legal Framework and Some Peculiarities of the Communication with the
Third-Country Nationals in Slovakia and Greece**
Elena NIKOLAJOVÁ KUPFERSCHMIDTOVÁ

Greek Translators' Union (FIT), whose members are private professional translators (some of whom also deal with interpretation). This database allows you to search for an interpreter or translator by language and region. However, for the purpose of communicating with third-country nationals detained in detention facilities, interpreters and translators seconded by the participating partners, i.e. EU agencies, are used primarily, or the knowledge and skills of already detained foreigners who are able to interpret into/from the Greek language are used for this purpose. However, in general, Greece faces a shortage of qualified interpreters. Communication with third-country nationals is legally limited only for communication in official communication, especially in court proceedings.

4 Legal Regulation of Official and Non-Official Communication with Foreigners Detected in Detention Facilities

The issue of migration throughout Europe, but especially within the EU Member States, is a complex issue that each Member State seeks to address in an appropriate way, taking into account the political, social or cultural aspects. The starting point for tackling migration-related issues for Member States in particular is EU secondary legislation, which they are obliged to implement into their national legal systems so as to preserve the specificities of individual regulations, current societal challenges and opportunities within Member States. Although these are mainly directives, which are mostly of a recommendatory nature, we find the most parallels in the legal regulation of the Asylum Act. It follows from that law that, in the event of communication with a foreigner who does not have sufficient knowledge of the language of the country in which he/she is detained, the Member States are required to provide an interpreter, translator or linguistic or cultural mediator. The presence of an interpreter is necessary, especially in the case of official contacts with the competent authorities, in order to ensure a standard procedure, i.e. the third-country national could understand and be able to communicate in all procedural proceedings. In the case of Slovakia, the presence and assistance of an interpreter is also necessary if the third-country national speaks the official language of the country in which he/she is detained.

Providing interpreting/translation services for the purpose of communication between the Members of the Police Force (that are country nationals) and detained third-country nationals in detention facilities do not have the same form in individual Member States. However, it strikes that there are (at least) two major communication modes in practice:

(a) official communication with the competent authorities

The unifying factor for both of the analyzed countries remains the common framework based on the EU secondary legislation, which is binding for all Member States and regulates communication with third-country nationals in the framework of official relations with the competent authorities. Although, the EU secondary legislation is transposed into national law in different Member States, while specific conditions of first-line, transit or destination countries are taken into account, the fact that during the official communication with the third-country national the presence of an interpreter is obligatory, is enshrined in the legislation of all the Member States, as it forms an integral part of a set of fundamental human rights. In official communication with the competent authorities, it is therefore necessary in the EU Member States to use the assistance of (in most cases court/official) the interpreter, whose job is to impartially communicate

**Legal Framework and Some Peculiarities of the Communication with the
Third-Country Nationals in Slovakia and Greece**
Elena NIKOLAJOVÁ KUPFERSCHMIDTOVÁ

information to both parties and in case of communication problems, that may be caused by cultural differences or ignorance of non-linguistic reality, the interpreter has the right to inform or explain these problems to the individual parties involved.

b) a day-to-day communication in detention facilities

The day-to-day communication between the members of the Police Force and third-country nationals detained in detention facilities in individual EU Member States is not regulated in any of the countries surveyed. In most cases, foreigners who speak the official language of the country in which they are detained, are used by all parties (and also by the non-governmental organizations that also provide professional as well as amateur interpreters or cultural mediators to these facilities), to mediate communication in detention facilities. Continuous interpreting services are not a reality in most Member States, including the Slovak Republic. Non-official communication in the conditions of the Slovak Republic takes place mainly between the members of the Police Force and third-country nationals and usually without the participation of an interpreter. Slovakia, as the so-called transit country does not have to deal with such an influx of foreigners as Greece, which is considered a target country for third-country nationals. However, the solution to the situation, at least in the conditions of the Slovak Republic, could be not only information material, but at least a multilingual communication manual in the languages of foreigners whose nationalities most often found themselves in the premises of detention facilities in Slovakia. As a suitable part of the communication guide, not only the conversational part with basic communication phrases, but also lexicon from areas such as eating, family or shopping, history and culture of the Slovak nation and Slovak may also be interesting for asylum seekers. In the conditions of Greece, the situation is somewhat more complicated, as other parties are also entering the process of communication between the Greek authorities/police officers and third-country nationals.

We can consider the most complicated situation to be a situation where not only Greek interpreters, but also interpreters from individual European agencies and institutions provide communication in the framework of informal communication. However, the communication itself outside of official communication in the countries of hotspots is also influenced by many other factors, e.g. the informal policy of redistribution of foreigners and the relatively slow procedures applied to the placement of foreigners in hotspots, which significantly affect the mental and physical health of detained foreigners who are detained in overcrowded facilities for too long and (in most cases) are kept in poor hygienic conditions. The unsatisfactory living conditions and frustration of third-country nationals detained in hotspots directly affect communication with the members of the Police Force, who often do not have an interpreter at hand when they need to communicate. The starting point for both parties is therefore spontaneous form of linguistic or cultural mediation, which usually takes place with the help of detained foreigners who are fluent in Greek, or one of the world's widely spread languages, e.g. English, German, French etc. The subject form of language and cultural mediation, the so-called language and cultural brokering is currently a common form of *ad hoc* interpretation in detention facilities, reflecting the needs of detained third-country nationals and also the members of the Police Force placed in the detention facilities by national authorities.

**Legal Framework and Some Peculiarities of the Communication with the
Third-Country Nationals in Slovakia and Greece**
Elena NIKOLAJOVÁ KUPFERSCHMIDTOVÁ

CONCLUSION

It naturally follows from the above-given analysis that the current situation regarding intercultural communication outside of official communication in detention facilities is frustrating for both parties, the members of the Police Force and third-country nationals. Ideally, both parties speak at least one of the world's languages and are able to communicate with each other. However, the ideal case is very rare. As usually arriving third-country nationals have no other language competency than of their mother tongue or the level of their second language competence is low. At the same time, it is not possible to require members of the Police Force to speak the language of every foreigner detained in the detention facility. In view of the fact that third-country nationals change in detention facilities, a permanent interpretation service would have to be provided in all languages of detained foreigners. The challenge therefore remains to ensure communication not only in during the official contact with the competent authorities, but also in the context of day-to-day communication within detention facilities. Given the complexity of the issue and the diversity of conditions in each EU Member State, it is difficult to find a one-size-fits-all solution. The acute shortage of qualified interpreters for the needs of the asylum procedure or communication within detention facilities also remains one of the burning but unresolved issues.

One of the main objectives of the European Commission's European Migration Network (EMN) is to provide information on the current situation, outcomes and statistics on migration, integration and international protection at the EU and Member States level. In order to identify the challenges associated with migration, the following encountered: the provision of adequate language transfer (interpretation), emotional challenges for caseworkers in the implementation of coercive measures, and extensive reinsurance legislation and case law. [15] Assistance in the field of interlingual and intercultural communication is one of the main priorities in addressing migration issues, not only at the European level. The police, courts and the Migration Office, as well as lawyers, are currently struggling with the current problem of securing official or non-official interpreters from the various languages spoken by detained foreigners. Interpretation from different languages is a serious problem in all EU Member States. Police authorities must now look for appropriate measures to ensure adequate interpretation for foreigners, otherwise they run the risk that the detention order will be rejected on the grounds of a violation of the right to receive an interpreter in a language that the foreigner understands. In this situation, the police cannot evade their duty simply by pointing out that the relevant interpreters are not available. [16] Complications with the provision of adequate interpretation in official acts do not contribute to alleviating the situation in day-to-day communication with detained foreigners. However, the obligation to give a foreigner the access to information in a language he/she understands is enshrined in law not only at the European level but also within the (mainly constitutional) national law of all EU Member States. Provide multilingual information materials or compile information material that could be distributed in a uniform format in all languages of foreigners arriving in the EU would facilitate and speed up the work of the police, courts and migration authorities in all Member States.

The present study is the output of the project of the Academy of the Police Force in Bratislava registered under the title: Intercultural Communication with the Third-Country Nationals in Detention Facilities (VYSK 241). [17]

Legal Framework and Some Peculiarities of the Communication with the Third-Country Nationals in Slovakia and Greece

Elena NIKOLAJOVÁ KUPFERSCHMIDTOVÁ

References

- [1] OECD data available online at <https://www.oecd.org/els/mig/keystat.htm>.
- [2] Article 5 of the European Convention on Human Rights.
- [3] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.
- [4] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.
- [5] Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.
- [6] NOVÁKOVÁ, I. et al., 2018. *Interkultúrna komunikácia so štátnymi príslušníkmi tretích krajín v zariadeniach: Projekt/Rieš. výsk. úl. Iveta Nováková, spolurieš. Martina Binderová, spolurieš. Petra Ferenčíková, spolurieš. Emil Semjan, spolurieš. Patrik Ambrus, spolurieš. Jelena Ondrejkočičová, spolurieš. Klaudia Marczyová. [a i.]. 1. vyd. – Bratislava: Akadémia Policajného zboru – Katedra jazykov, 2018. – 39 1.: dokumentácia 11 1. Vto.*
- [7] GULDANOVÁ, Z., 2015. Právny rámec úradného prekladu na Slovensku a v Česku. In: Jana Rakšányiová et al., Úradný prekladateľ v slovenskom a európskom sociálnom priestore. Vydavateľstvo Univerzity Komenského v Bratislave, ISBN 978-80-223-4035-9.
- [8] GULDANOVÁ, Z., 2015. Právny rámec úradného prekladu na Slovensku a v Česku. In: Jana Rakšányiová et al., Úradný prekladateľ v slovenskom a európskom sociálnom priestore. Vydavateľstvo Univerzity Komenského v Bratislave, ISBN 978-80-223-4035-9.
- [9] Data are gained from the Greek Council for Refugees. Available [online] at <https://asylumineurope.org/reports/country/greece/asylum-procedure/access-procedure-and-registration/reception-and-identification-procedure/> [cit. 2022-03-14].
- [10] EC Hotspots State of Play – last update 11 November 2016. Available [online] at: ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/press-material/docs/state_of_play_-_hotspots_en.pdf [cit. 2022-03-14].
- [11] Migration -Implementation, Note from the Presidency, Brussels 3 October 2016, 12730/16. Available [online] at: www.statewatch.org/news/2016/oct/eu-council-migration-implimentation-12730-16.pdf [cit. 2022-03-11].
- [12] European Council on Refugees and Exiles. Available [online] at: <https://www.asylumineurope.org/reports/country/greece/overview-legal-framework> [cit. 2022-03-04].

**Legal Framework and Some Peculiarities of the Communication with the
Third-Country Nationals in Slovakia and Greece**

Elena NIKOLAJOVÁ KUPFERSCHMIDTOVÁ

- [13]European Justice. Available [online] at: https://e-justice.europa.eu/content_find_a_legal_translator_or_an_interpreter-116-el-sk.do?member=1 [cit. 2022-03-05].
- [14]European Justice. Available [online] at: https://e-justice.europa.eu/content_find_a_legal_translator_or_an_interpreter-116-el-sk.do?member=1 [cit. 2022-03-05].
- [15]For more information, visit: https://www.emn.at/wp-content/uploads/2017/01/Detention-and-alternatives-to-detention_AT-EMN-NCP_final.pdf [cit. 2022-03-12].
- [16]For more information (in Slovak): https://www.hrl.sk/assets/files/obsah/74-zaistenie_a_alternativy_k_zaisteniu_v_slovenskej_republike_-_narodna_sprava.pdf, p. 26. [cit. 2022-03-12].
- [17]NOVÁKOVÁ, I. et al. (2018) *Interkultúrna komunikácia so štátnymi príslušníkmi tretích krajín v útvaroch policajného zaistenia pre cudzincov: Projekt. /Rieš. výsk. úl. Iveta Nováková, spolurieš. Martina Binderová, spolurieš. Petra Ferenčíková, spolurieš. Emil Semjan,, spolurieš. Patrik Ambrus, spolurieš. Jelena Ondrejkočičová, spolurieš. Klaudia Marczyová. [a i.]. 1. vyd. – Bratislava: Akadémia PZ – K jazykov, 2018. – 39 1.: dokumentácia 11 1. Vto*

Author:

¹Elena Nikolajová Kupferschmidtová – Academy of the Police Force in Bratislava, Sklabinská 1, Bratislava, Slovakia, e-mail: elena.nikolajova@akademiapz.sk