KOŠICKÁ BEZPEČNOSTNÁ REVUE

KOSICE SECURITY REVUE

Vol. 10 , No. 1 (2020), p. 45 – 59

ISSN 1338-4880 (print ver.), ISSN 1338-6956 (online ver.)

The Case-Law Shaping the Right of the Third-Country Nationals for the Language Assistance

Judikatúra a jej vplyv na vymedzenie jazykovej mediácie ako základného práva štátnych príslušníkov tretích krajín

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The manuscript was received on 29. 04. 2020 and was accepted after revision for publication on 10. 06. 2020

Abstract:

The present article deals with the provision of the language assistance for the third-country nationals set as a procedural guarantee within the European Convention on Human Rights as well as EU secondary legislation. As the right for the language assistance is defined broadly, an attempt to narrow the definition of the language assistance is made on the basis of the European Court of Human Rights Case-law. At the same time, the peculiarities related to the provision of the interpreting services across the EU Member States are brought out in order to help to solve the present situation.

Keywords*: language assistance, procedural safeguards, detention, intercultural communication, case-law, human rights.*

Abstrakt:

Predkladaný príspevok sa zaoberá témou jazykovej mediácie v kontexte komunikácie so štátnymi príslušníkmi tretích krajín. Právo na jazykovú mediáciu je ukotvené v Európskom dohovore o ľudských právach ako jedno zo základných ľudských práv a zároveň tvorí integrálnu súčasť aj sekundárnej legislatívy EÚ vo vzťahu k migrantom, kde je definovaná ako procesná záruka pre každého žiadateľa o azyl. Právo na jazykovú mediáciu je však definované veľmi široko. Cieľom príspevku je, na základe analýzy judikatúry Európskeho súdu pre ľudské práva, poskytnúť bližšie vymedzenie tohto práva, ktoré je poskytované v rámci jednotlivých členských štátov EÚ na rôznej úrovni a v rôznej forme. Za upozornením na problémy, ktoré úzko súvisia s uplatňovaním tohto práva je snaha o riešenie súčasnej situácie v tejto oblasti.

Kľúčové slová: *jazyková mediácia, procesné záruky, detencia, interkultúrna komunikácia, precedensy, ľudské práva.*

Introduction

Migration within the countries of the European Union (hereinafter "the EU") is currently one of the most topical issues. According to the Internatioinal Organization for Migration (hereinafter referred to as „IOM“) the total number of illegal migrants and asylum seekers who arrived in Europe in 2019 was 128,536 [1], respectively. The number indicates the third-country nationals coming to Europe by sea or by land. Each Member State seeks to address the issue of migration, or its consequences, in a way that is appropriate to the national legislation, cultural or political environment of the country. It is therefore necessary to take into account the diversity of Member States when tackling migration. However, the EU's main objective is to establish common procedures and rules for dealing with the residence of third-country nationals in the territory of the Member States. In an effort to create "(...) an area of freedom, security and justice open to those who are compelled by circumstances to seek protection in the Union" [2], the EU has adopted appropriate legal instruments which it seeks to transpose into the national law of the individual Member States through secondary legislation, thereby creating a common framework to address migration and its consequences.

With the arrival of foreigners, there is also a call for national governments not only to provide funding to address migration, but also to address the need to provide adequate housing, health care, education, legal aid, employment and, last but not least, language assistance. For the purposes of this study, the term *language assistance* means an interpretation service which must be provided by the Member State not only for basic communication in official communication with the competent authorities, but also for daily communication between members of the Police Force and foreigners placed in detention facilities across the Member States. The provision of the language assistance along with the cultural mediation for the third-country nationals detained in detention facilities is an area that has received increasing attention in recent years, as it is an issue that directly reflects the level of respect for fundamental human rights in the individual EU Member States towards the third-country nationals.

The present paper aims to analyse the legal framework and current situation regarding the language assistance in the context of the third-country nationals detention on the basis of the European Court of Human Rights (hereinafter referred to as “ECtHR”) Case-Law related to the violation of Article 5 (2) of the European Convention on Human Rights (hereinafter referred to as “ECHR”). The right to communicate in the language a detainee understands is one of the fundamental human rights and the EU adopted the ECHR in order to establish the common framework for all Member States to ensure this right is ensured even in the field of migration in relation to the third-country nationals. However, the quality and accessibility of the language and cultural mediation services in regard to the third-country nationals detained in detention facilities across the EU Member States remains at different levels.

1. Legal Framework for the Provision of Basic Procedural Safeguards in relation to Language Assistance

In order to effectively tackle the numbers of illegal immigrants and in an effort to establish a coherent approach in the field of immigration and asylum, dealing together with the creation of a common asylum system, a legal immigration policy and the fight against illegal immigration, the EU adopted Directive 2008/115/EC on an effective removal and repatriation policy based on common standards, for persons to be returned in a humane manner and with full respect for their fundamental rights and dignity [3], Consequently, Directive 2013/32/EU on common procedures for granting and withdrawing international protection (recast) [4], Regulation (EU) No 439/2010 establishing a European Asylum Support Office[5] as the core documents on migration policy applicable to all Member States were adopted in compliance with the human rights protection. The common framework was subsequently transposed into the national legislation of the Member States with the main aim to further develop the standards for procedures for granting and withdrawing international protection. However, due to the scale of migration crisis and disproportionate influx of migrants into the individual Member States the application of the common framework is in some countries limited to minimum standards.

1.1. Detention and Procedural Safeguards

In compliance with Article 8 of the recast Directive s the grounds for detention of an asylum seeker are set out as a general framework for all Member States. Taking into account particularly the provision that prohibits Member States from detaining asylum seeker for the sole reason that he/she has appliled for asylum, the article also obliges Member States to verify whether less coercive alternative measures cannot be effectively applied. At the same time, it is of particular importance to stress out that the detention can be ordered only if necessary and on the basis of an individual assessment of each case. However, detention remains one of the key tools in the response to migration and asylum flows. As stated in Directive 2008/115/EC Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient [6] and in compliance with para (17) third-country nationals in detention should be treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law [7]. Detention should, as a rule, take place in specialised detention facilities. The grounds for detention are explicitly defined in Article 8(3) of the recast Reception Conditions Directive. It is worth mentioning that also Article 8 of the Directive requires EU Member States to lay down the grounds for detention in their national law, as well as the possible alternatives for detention [8]. In line with Article 9 of the International Covenant on Civil and Political Rights (ICCPR) the rights to liberty and security of the person are recognised. The ICCPR prohibits arbitrary arrest and detention, requires any deprivation of liberty to be according to law, and obliges parties to allow those deprived of their liberty to challenge their imprisonment through the courts. These provisions apply not just to those imprisoned as part of the criminal process, but also to those detained due to mental illness, drug addiction, or for educational or **immigration purposes** [9]. In its General Comment No. 8, the Human Rights Committee states that these provisions are applicable to all deprivations of liberty by arrest or detention, including in cases of immigration control

[10]. On December 9, 1988, the United Nations General Assembly adopted, without a vote, a Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment in which it is explicitly stated (Principle 4) that any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority [11]. Additionally, in compliance with the Principle 11 a person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law and shall also receive prompt and full communication of any order of detention, together with the reasons therefor [12]. Thus, the right to communicate is set as one of the fundamental human rights. Further, the right to communicate in a language a person detained can understand is set also in the European Convention on Human Rights.

1.2. Protection of Fundamental Human Rights and Language Assistance

As stated in Article 5 §2 of the ECHR:

˝Everyone who is arrested shall be **informed promptly**, in a language which he understands, of the reasons for his arrest and of any charge against him˝ [13].

Subsequently, the Principle 14 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, a person who does not adequately understand or speak the language used by the authorities responsible for his arrest, detention or imprisonment, is entitled to receive promptly **in a language which he/she understands the information (…)** and to have the assistance, **free of charge**, if necessary, **of an interpreter in connection with legal proceedings subsequent to his arrest** [14]. Further, a detained person is entitled to have the assistance of a legal counsel, to be informed of that right and to be provided with facilities for exercising it [15]. All of the mentioned principles were successfully transposed into the secondary legislation of the EU in the form of above-mentioned Directives and the principles also form an integral part of the European Convention on Human Rights. The secondary legislation documents as well as the Convention are the relevant documents for all Member States thus the set principles are legally binding even within the national legislation of the individual Member States. Additionally, legal Basis for the language assistance for the third-country nationals is established within the Return Directive, in particular, Article 13(3) and (4); Articles 20 and 21 of recast Asylum Procedures Directive 2013/32/EU (replacing Article 15(3) to (6) of Asylum Procedures Directive 2005/85/EC). In accordance with the mentioned documents the third-country national concerned shall have the possibility to obtain legal advice, representation and, where necessary and the language/linguistic assistance. For the purposes of the present article expression *language assistance* will be used and it is understood as covering both translation and also interpreting services provided to someone who does not speak or understand the language of the country he/she is detained in. The distinction between interpretation and translation is not insignificant given that, in the case-law of the European Court on Human Rights (hereinafter referred to as "ECtHR"), the two are largely conflated as Article 6(3)(e) of the ECHR refers only to 'interpretation'). The language assistance implies not only an obligation to provide for a translation of a

decision (this is already covered by Article 12(2)) but also an obligation to make available assistance by interpreters in order to allow the third-country national to exercise the procedural rights afforded to him/her under Article 13 [16]. In the present article, the distinction between translation and interpretation should be noted. When the reference to 'interpretation' is made, it is understood as an oral interpretation of oral communication. When the reference to 'translation' is made, it is understood as a written translation of written documents. The Directive 2010/64/EU on the Right to Interpretation and Translation in Criminal Proceedings which was transposed into the domestic/national legislation of the individual Member States of the EU until 2013 governs the detainee´s right to interpretation in police interviews, hearings and in meetings with his/her lawyer and the right to translation of essential documents. The question of language of the detainee is explained in para 22 of the Directive 2010/64/EU as follows:

´Interpretation and translation under this Directive should be provided **in the native language** of the suspected or accused persons or in any other language that they speak or understand in order to allow them fully to exercise their right of defence, and in order to safeguard the fairness of the proceedings [17].

However, it should be noted that in some cases an authority may experience a lack of interpreters/translators, in particular when the third-country nationals speak indigenous languages or their mother tongue belongs to the less widespread languages and the availability of interpreters/translators is in such cases limited, in general. The availability of interpreters is one of the factors that affect the accessibility of an effective remedy. Even in case an authority is able to ensure the presence of the interpreter for the purposes of official communication with the relevant authority, the quality of interpretation or translation services provided is in competence of individual Member States in compliance with para 24 of the Directive 2010/64/EU which reads as follows:

´Member States should ensure that **control can be exercised over the adequacy of the interpretation and translation provided** when the competent authorities have been put on notice in a given case´ [18].

Providing accurate interpretation or translation remain the priority for the benefit of detainee as well as for the needs of authorities that determine which individuals may remain in the country and which must leave. Moreover, in case of critical encounters that may result in additional court proceedings at the European or International level, the Member States authorities must ensure that the interpreters they provide are competent and have knowledge in both languages, are able to identify and employ the appropriate mode of interpreting, understand and follow confidentiality and impartiality rules, understand their role as interpreters without deviating into a role as counselor, legal advisor or other roles, etc. The qualification criteria for the interpreters/translators for the purposes of official communication with relevant authorities vary across the Member States. All the requirements on language-related services are set with one goal in mind: to provide the meaningful access to relevant information for the third-country nationals so they are able to understand their current situation with the fundamental human rights being taken into account as a priority. However, the process of providing the information to the third-country nationals, illegally staying in the territory of the individual Member States, is affected by several impediments to meaningful access to information in the

language of the third-country national. At the same time, it is worth mentioning that even the language-related provisions in the secondary legislation of the EU are frequently subject to interpretation on their own, especially in regard to **the form and extent of language assistance, requirements of quality and competence of the interpreter/translator**.

2. Questions of Application of the Right to Language Assistance and the Provision of Interpretation/Translation

The rights of the third-county national to receive language assistance should be granted by Member States in a way which provides the person concerned with a concrete and practical possibility to make use of it *("effet utile"* of the provision) [19]. The protection of the fundamental human rights guaranteed under the ECHR in relation to the language assistance is in practice interpreted on the basis of Member States needs and possibilities.

2.1. ´Grey zones´ of the Language Assistance

The language-related provisions are drafted in a broader sense, thus giving the way to broader interpretation, e. g. *being ´promptly´ informed* can cover the time period from 10 minutes to 24 hours since the arrest of the third-country national. Further, the very use of interpreter is also a subject to interpretation. It is not clear if the interpreter should assist the authorities from the moment of arrest or through the next stages of detention. The following questions related to the language assistance are not clearly specified in the ECHR or secondary legislation of the EU:

1. When does language assistance have to be provided?

2. What is the desirable form of the provision of the language assistance, i.e. written form (translation) required as a proof for court proceedings or the oral form (interpretation) would satisfy the Court requirements and the needs of national authorities?

3. What is the time scope the relevant information should be provided to the third-country national applying for the asylum and being detained in the detention facility?

4. What parts of documentation should be translated?

5. Are there any qualification criteria relevant for the choice of interpreter? What are the qualification criteria for the interpreter´s/translator´s competence? Who makes the choice of interpreter/translator?

The scope of the provision of language services is firmly grounded in the ECHR and the EU Directives. Thanks to the case-law of the ECtHR the narrow interpretation can be adopted across the Member States as the case-law functions not only as a reference but also as a cornerstone manifestly founded in the judicial decisions in past cases applicable to the future court decision-making.

2.2. EctHR Case-Law Shaping the Provision of Language Assistance

Language issues have been raised in quite a number of cases – till the beginning of the year 2020 there were 176 apparent violations of Article 5 §2 of the ECHR ruled as by the ECtHR. However, for the purposes of the present paper the following cases related to the violation of ECHR Article 5 §2 were analysed: case No. 51564/99 (Čonka v. Belgium), case No. 13229/03 (Saadi v. the United Kingdom), case No. 34082/02 (Rusu v. Austria), case No. 41015/04 (Kaboulov v. Ukraine), case No. 30471/08 (Abdolkhani and Karimnia v. Turkey), case No. 36378/02 (Shamayer and others v. Georgia and Russia), case No. 42310/04 (Nechiporuk and Yonkalo v. Ukraine), case No. 4922/04 (Lazoroski v. the Former Yugoslav Republic of Macedonia), case No. 12444/05 (Leva v. Moldova), case No. 11036/03 (Ladent v. Poland), case No. 60846/10 (Nowak v. Ukraine), case No. 18114/02 (Hermi v. Italy), case No. 18913/03 (Husain v. Italy).

The judgments of the ECtHR were selected on the basis of violation of Article 5 §2 criterion and Member States of the EU being the parties involved in the cases. The cases themselves appear to be crucial in shaping the provision of language assistance for a number of later cases as they are being cited as relevant case-law. The judgments fall to the time period from 2005 – 2011. The judgments are publicly available through the website of the ECtHR and are part of Case-Law section. The total number of judgments used as the relevant sources for the purposes of the present study is 14. The following cases are significantly shaping the way the language-related provisions are interpreted and as such they are frequently used as a reference by courts in the process of decision-making. The following cases are given along with the reasons of their importance being underlined and subsequently commented on:

- **the case of Čonka v. Belgium, Judgment of 5 February 2002, No. 51564/99,** the Grand Chamber ruled as follows: "Given that the applicants were not given information on available remedies in their language, there was only one interpreter available for many people and no form of legal assistance at the detention centre, there was no realistic possibility of accessing a remedy" [20].

As one of the most significant cases related to language assistance in which the Court confirmed its case-law that one interpreter being available for many people is not sufficient. Thus, the shortcomings in the language assistance provided for a group of people being considered as the violation of Article 5 §2 of the ECHR. The case also stipulates that a group of people cannot be taken into account as an entity, therefore, the individual approach is obligatory not only for the purposes of legal assistance but consequently even in regard to language assistance.

- the case of Saadi v. the United Kingdom, Judgment of 29 January 2008, No. 13229/03, the Chamber found a violation of this provision, on the ground that the reason for detention was not given sufficiently "promptly". It found that general statements – such as the parliamentary announcements in the present case – could not replace the need under Article 5 § 2 for the individual to be informed of the reasons for his arrest or detention. The first time the applicant was told of the real reason for his detention was through his representative on 5 January 2001 (see paragraph 14 above), when the applicant had already been in detention for 76 hours. Assuming that the giving of oral reasons to a representative met the requirements of Article 5 § 2 of the Convention, the Chamber found that a delay of 76 hours in providing reasons for

detention was not compatible with the requirement of the provision that such reasons should be given "promptly" [21].

It may be difficult to establish an exact time framework for the language assistance provision as it is not clear who is responsible for informing a detainee about the reasons of his/her arrest, i.e. police officer v. legal representative as also the individual objective circumstances of the case have to be taken into account. Additionally, the assumption of giving the information to a detainee in the oral form has raised the question of proof for the reasons of court proceedings. An obligation to provide documentary evidence and oral evidence vary across different jurisdictions among the EU Member States. However, on the basis of the above-mentioned case, it can be concluded that a delay of 76 hours in providing relevant information (reasons for detention) to a detainee provided justified ground for the violation of Article 5 §2. As a leading judgment on the subject of time framework it established the maximum length of time available for provision of information thus also for the language assistance.

- **the case of Rusu v. Austria, Judgment of 2 October 2008, No. 34082/02** as the Court reiterated that paragraph 2 of Article 5 contains the elementary safeguard that any person arrested should know why he is being deprived of his liberty. This provision is an integral part of the scheme of protection afforded by Article 5: by virtue of paragraph 2 any person arrested must be told, in simple, non-technical language that he can understand, the essential legal and factual grounds for his arrest, so as to be able, if he sees fit, to apply to a court to challenge its lawfulness in accordance with paragraph 4. Whilst this information must be conveyed "promptly" (in French: '*dans le plus court délai'*), **it need not be related in its entirety by the arresting officer at the very moment of the arrest**. Whether the content and promptness of the information conveyed were sufficient is to be assessed in each case according to its special features [22].

As mentioned in connection with the time framework for the provision of information and consequently also for the language assistance required in this matter, it is obvious that the obligation to provide information ´promptly´ is understood as being provided as soon as possible and additionally by the arresting officer. This judgment, however, does not take into account the language competence of the arresting officer. It implies that the arresting offices will be able to communicate the information in the language of the detainee which is in case of third-country nationals arriving into the European countries and having not sufficient command of the language of receiving country, hard to achieve. The crucial information of this judgment, however, lies in the form of information being provided and thus affecting the interpreter´s/officer´s competence to distinguish between the modes of interpreting and employing the non-technical language that is easy to understand.

- **the case of Husain v. Italy, Judgment of 24 February 2005, No. 18913/03** the Court further notes that the right set out in paragraph 3 (e) of Article 6 to the free assistance of an interpreter signifies that an accused who cannot understand or speak the language used in court has the right to the free assistance of an interpreter for the translation or interpretation of all those documents or statements in the proceedings instituted against him that it is necessary for him to understand in order to have the

benefit of a fair trial (…) However, paragraph 3 (e) does not go so far as to require a written translation of all items of written evidence or official documents in the procedure. In that connection, it should be noted that the text of the relevant provisions refers to an "interpreter", not a "translator". This suggests that oral linguistic assistance may satisfy the requirements of the Convention. In the present case the applicant received free assistance from an Arabic interpreter when the committal warrant was served on him. There is nothing in the case file to show that the interpreter's translation was inaccurate or otherwise inadequate. Moreover, the applicant did not contest the quality of the translation, and this may have led the authorities to believe that he had understood the content of the document concerned (see, *mutatis mutandis*, Hermi v. Italy, Judgment of 6 November 2003, No. 18114/02) [23].

In the judgment, the Court confirmed that an oral translation is sufficient thus giving a green light to oral language assistance as the one that satisfy the requirements set in the ECHR. However, a written translation is usually desirable for the purposes of the court proceedings as the confirmation of information being provided in the language a detainee understands is usually required along with the date and time specifically stated for the purposes of court proceedings (see also the case of Abdolkhani and Karimnia v. Turkey, Judgment of 22 September 2008, No. 30471/08).

The rights concerned are obviously intended to represent minimum standards. The language-related assistance is in practice a subject of interpretation from the perspective of the individual countries. Through the case-law of the ECtHR it is shown how the provisions on language assistance can be developed to some extent. Frequently, the language issues are raised together with complaints under Article 5 and 6 and occasionally in conjunction with Article 14 (prohibition of discrimination). Even though the Court has rarely found a violation solely on account of language issues, the above-mentioned cases have given it the opportunity to lay down the basic principles in passages that represent a consolidation of the applicable case-law [24].

3. Language Assistance in the Context of Asylum Procedure

Language mediation remains an important and very sensitive matter as on the one hand, it is an integral part of the asylum procedure and has direct and influential impact on the communication between national authorities of the individual EU Member States but on the other hand, the quality and effectiveness of the provided services is at stake in cases of frontline or target/destination countries that are affected by high numbers of asylum seekers and as of the asylum procedure the asylum seekers need to understand each stage of the process so the authorities will be able to properly assess and take into account all details of the applicant´s circumstances. The provision of high standards of language assistance in a wide range of languages still remains a challenge for many EU Member States, in particular if the asylum seeker speaks only his/her mother tongue that happens to be an indigenous language or the less widespread language. There is also a possibility that asylum seekers may speak the language of the country they apply for asylum in, e. g. in case of Colombians or Venezuelans registered in Spain. However, in cases where there is no common

language shared, putting interpretation and cultural mediation at the forefront of procedural needs is of particular priority.

The language barrier must never affect the human rights of the third-country nationals and the decision of national authorities about the stay of the third-country nationals at their territories. The information about the legal remedies should be available in a language a third-country national understands or may reasonably be presumed to understand. Whether the information is provided in a written or oral form is up to a receiving Member State. In most cases, the information is provided in the form of leaflets or reference materials. The possibility of **standardised templates** would rationalise the work of the administration and contributed to the transparency and also would considerably limit the costs of interpretation services. It could also partially solve the persistent problem related to the lack of interpreters from and to the less widespread languages. **The lack of qualified and competent interpreters** is not the subject analysed in the present contribution, however, it deserves particular attention as qualification criteria vary between the Member States usually with *transit countries* having high qualification criteria and even requiring a university degree and specialised training and *destination countries* being more relaxed in this matter, e. g. Sweden having no rule stipulating that an educated and professional interpreter must be hired before anyone who might "speak two languages' in reality becomes a threat to the personal security of the immigrant, who is totally dependent on the interpretation to secure his or her legal or medical rights [25], and even having volunteers with not specified qualification employed as interpreters for the purposes of asylum interview. In the context of so-called *hotspots* (Italy and Greece) it is a common practice. However, the quality assurance is critical in terms of protecting access for individuals who are limited in their language proficiency. The ability to effectively convey the meaning, style and frequently also tone of the original source is of high importance as it may influence the results of the asylum seekers interview and consequently also the stay in the country. In some instances, it appears that interpreters may lack the skills required to meet the demands of interpretation or sometimes, they simply translate incorrectly with serious consequences for the asylum seeker. Due to remaining problem related to the lack of competent and qualified interpreters, many countries started to use audio/video conferences in order to ensure an asylum seeker is able to communicate his/her needs. The use of this form of interpretation has its own peculiarities including lack of privacy, absence of an interpreter at the site of the detention centre thus being a foreigner to a detainee as this aspect has also its psychological background – the interpreter is usually at the official locations of the national authorities instead of being present at the detention facilities and providing the services for the detainees. As the interpreting services are provided for the third-country nationals free of charge and the Member States being responsible for all the costs related to such services, also the choice of interpreter is made by the national authorities. However, the remote interpreting technology is used in particular in so-called *frontline countries* like Italy, Greece or Bulgaria where the numbers of asylum seekers are overwhelming. Considering the fact that interpreters mostly rely on visual and sound cues to determine the meaning of the speech translated the use of technology which reportedly frequently suffers from poor sound quality or is interrupted during the interview/hearing is inadequate and causes frustration for both,

asylum seeker and the representatives of national authority especially when dealing with emotionally charged situations. The higher rate of removal orders in cases where **videoconferencing was problematic** is not in favour of this method of interpretation.

The Member State is at liberty to choose whether a written translation of the relevant information or oral interpretation is provided as long as the context and content is understandable for the third-country national and he/she understands his/her current legal situation. The provision in Article 5 of the recast Reception Conditions Directive 2013/33/EU requires Member States to make all reasonable efforts to provide for a translation into a language the person concerned actually understands and the non-availability of interpreters may only be a valid excuse in cases of extremely rare languages for which there is an objective lack of interpreters. However, the Member States shall make available generalised information sheets explaining the main elements of the standard form in at least five of those languages which are most frequently used or understood by illegal migrants entering the Member State concerned.

Conclusion

The right to language assitance belongs to the fundamental rights guaranteed by the ECHR and is also very well grounded within the secondary legislation of the EU, thus being binding to all Member States. Thanks to the EctHR case-law more light is shed on the provision of such services and the scope of their use is specified for the needs of the future cases. Questions related to the form of services being provided for the purposes of asylum procedure remain in the hands of national authorities of the individual Member States and **their preference – oral vs. written form,** as long as it can be submitted to the EctHR as a proof for potential proceedings. However, the relevant information is required to be provided **within the scope of 24 hours** since the person is detained in the detention facility as the right being informed is also one of the procedural safeguards. The exact time of the information provided for the above-mentioned purposes is highly dependant on the language competence of the police officer performing the arrest as from the case-law the preference of providing the **information at the moment of arrest is declared**. The official language of the country of origin of the third-country national is in most cases taken into account when interpreting into the language a detained person can reasonably understand. **The individual approach** is favoured and the physical presence of the interpreter is preferable from the asylum seeker perspective, however, hard to achieve from the perspective of the national authorities. **The choice of interpreter** remains in hands of the national authorities based on the national legislation of the individual Member States. The common framework in regard **to quality assurance of interpretation services** and the qualification for individual interpreters remain an unanswered question as the qualification criteria vary across the Member States. In regard to **the number of interpreters being available for the group** of third-country nationals (indefinite number of people) the limits are not explicitly set. However, based on the judgment of 5 February 2002, No. 51564/99 related to the case Čonka vs. Belgium, one interpreter for many people is not in line with the obligation to assess individually

each of the cases. **The extent of the information** provided should allow the third-country national to understand the legal remedies and his current legal status.

All things considered, detainees located in detention centres face serious challenges to their human and procedural rights that are hindered by difficulties related directly to language access issues. Language (and also cultural) mediation is set as a human right to which institutional compliance is still not satisfactorily responsive and especially in case of frontline countries not very effective as the burden regarding the number of migrants arriving to the frontline countries is enormous and very hard to tackle.

The present contribution 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 Centres for Aliens (VYSK 241) [26].

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