



# Communication with third-country nationals in detention facilities<sup>1</sup>

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## Abstract

**Aim:** is to analyze the current state of the common means of communication and analysis of legislation in the field of mutual verbal and non-verbal communication between detained third-country nationals and police officers within the detention facilities in selected EU countries, which affects the prevention of misunderstandings and conflicts with particular respect to protection of human rights and fundamental freedoms of the detained foreigners.

**Methodology:** Analysis and comparison of the respective legislative documents in selected EU countries and the European Court of Human Rights Case-law related to the violation of Article 5(2) regarding the right to language assistance is conducted in order to be enable a detained person to communicate in language a detained person understands as these rights directly affects the human rights, namely the right to liberty and security, of a third-country national detained in detention facility within the territory of the EU country.

**Findings:** The analysis of the respective legislative documents within the selected EU countries showed differences in interpretation and consequently also implementation of the right to language assistance that is guaranteed as one of the procedural safeguards in the context of protection of human rights and fundamental freedoms. Different interpretation and implementation of the right to language assistance prevents effective communication between police officers and third-country nationals detained in detention facilities and causes frustration on both sides, especially during the times of migration crises when

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the effective communication becomes one of the main tools in prevention of misunderstandings and conflicts. The list of common peculiarities experienced across the EU countries was made. The analysis of the European Court of Human Rights case law proved remaining problems in provision of language assistance causing unnecessary complications for the EU countries and affecting the human rights of the third-country nationals detained in detention facilities.

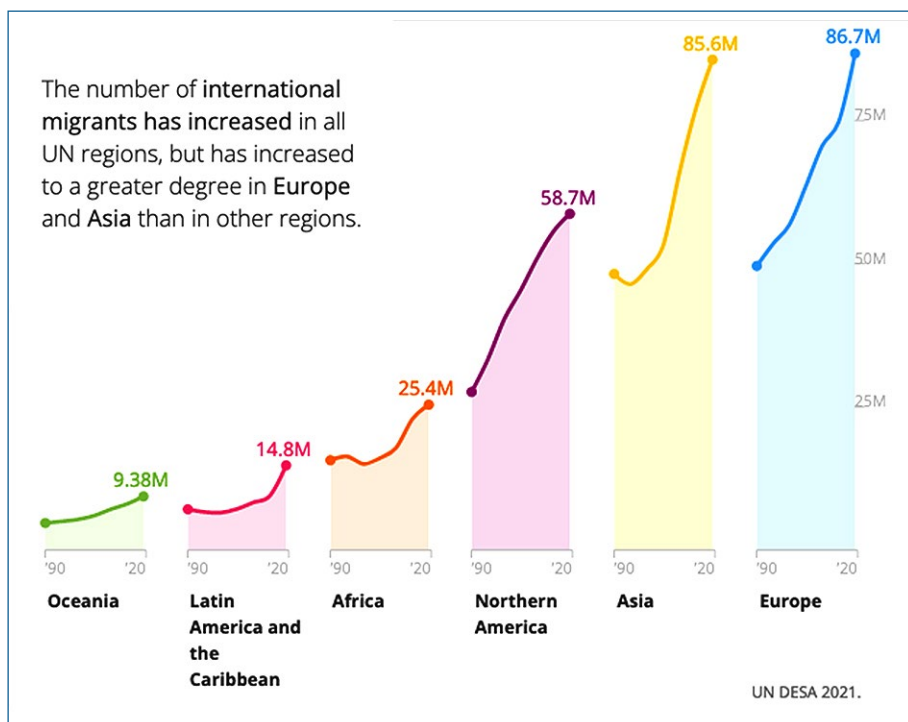
**Value:** The value of the study lies in provision of general overview of the remaining problems experienced by both – the police officers representing the respective EU countries and third-country nationals arriving into the territory of the EU and being detained in detention facilities, resulting from different interpretation and implementation of one of the human rights – right to language assistance which is guaranteed as a procedural safeguard at the international and European level, and at the national level of the respective EU countries. By detailed analysis of the core legal documents and the European Court of Human Rights case law, the attention is drawn to the legal consequences for the EU Member States. To prevent the negative consequences, the areas of required amendments are pointed out.

**Keywords:** intercultural communication, EU, legal framework, human rights and fundamental freedoms

## Introductory Notes

Migration is becoming not only one of the highly discussed issues nowadays, but a serious concern for vast majority of the European Union (EU) Member States. Primarily due to the war conflict in Ukraine but also due to raising numbers of migrants arriving into the EU illegally. According to the International Organization for Migration (IOM) the total number of illegal migrants and asylum seekers who arrived in Europe in 2021 was 86.7 millions, respectively (Diagram 1) ([World Migration Report, 2022](#)). The population of non-European migrants in Europe reached over 40 million ([World Migration Report, 2022](#)).

**Diagram 1.** *The number of international migrants according to the UN regions*



*Note:* Interactive World Migration Report, 2022.

The number indicates migrants arriving into the territory of the European states that tackle the migration, or its consequences according Europe to the national legislation, cultural or political environment of the country. Thus, it is more than important to take into account the diversity of the individual Member States when tackling migration, even when there remains one joint objective – to tackle the migration crisis as effectively as possible and in more or less same manner that is acceptable for all parties involved. To achieve this objective, the EU has adopted several legal instruments that were subsequently transposed into the national legislation of respective EU Member States. By doing so, a common framework to address migration and its consequences was created.

## Legal Framework for the Communication with Third-Country Nationals in the Context of the 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 for their observance, 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, so-called '*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 gain support for elements such as legal migration and asylum.

In case of detention of third-country nationals in detention facilities, in accordance with Article 5 of the European Convention on Human Rights (ECHR)<sup>2</sup> para. 2, '*anyone arrested shall be informed without delay and in a language he understands of the reasons for his arrest and of any charge against him*'.<sup>3</sup> Each third-country national detained in a detention facility shall have the right to communicate in official communication with the competent authorities in a language which he/she understands. The Member State is therefore required to provide an interpreter in order to ensure a standard procedure, i.e. the third-country national can understand and communicate in the interpreted language in all procedural proceedings. The legal regulation concerning standards and procedures in the field of communication in the framework of official contact with third-country nationals in all EU Member States 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 (Kupferschmidtová, 2020).

The rules for official communication with respective authorities form part of the following documents:

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- 2 Convention on Protection of Human Rights and Fundamental Freedoms is also known as the European Convention on Human Rights and for the purposes of the present scientific study the European Convention on Human Rights (ECHR) will be used.
  - 3 Article 5 para.2 of the European Convention on Human Rights.

- 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;
- 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 ‘Handbook on Return’ 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 and additionally, the procedure for examining an application for international protection should normally give 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 the case in case of an interview with the authorities; the right to be informed at crucial moments during the proceedings of the legal position in a language he/she understands; and the right to an effective remedy before a court in the event of a negative decision.<sup>4</sup> At the same time, according to par. 28 of this Directive, 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.’* Also in the context of the provision of information and advice in detention facilities and border crossing points, individual

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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.

Member States are obliged to provide '(...) interpretation to the extent necessary to facilitate access to the asylum procedure'.<sup>5</sup> As regards the procedure itself, all Member States are obliged to provide the same guarantees for applicants. Among the procedural guarantees mentioned under Article 12 para. 1 item (a) includes the need to inform applicants '(...) in a language that they understand or may reasonably be presumed to understand, (...)'<sup>6</sup> and subsequently, in accordance with Article 12 (2); 1 item (b) of Directive 2013/32/EU, it is important that applicants are provided with the services of an interpreter whenever necessary so that they can submit their case to the competent authorities (Kupferschmidtová, 2020).

## Implementation of Legal Framework for the Communication with Third-Country Nationals Across the EU Member States

Language mediation remains an important and very sensitive issue, as it is, on the one hand, an integral part of the asylum procedure and has a direct and non-negligible effect on communication between the national authorities of the individual EU Member States and on the other hand, it affects the destiny of the third-country national applying for the asylum in the respective Member State of the EU. Taking into account the quality and efficiency of services provided, it is important, especially in the case of the so-called *first-line* or *destination countries*<sup>7</sup>, which have to deal with a high number of asylum seekers, so that asylum seekers understand each stage of the process and that the authorities are able to properly assess and take into account all the details of the applicant's circumstances. For instance in Italy, being the country directly affected by the system of *hotspots*, the main goal is the fast identification, registration and processing of migrants. In Italy, a third-country national is detained in hotspots for several days and then placed in a detention facility (Berbel, 2020). The stay in the detention facility is significantly affected by the lack of cultural mediators, interpreters and translators into all languages. This is a persistent problem, in particular with interpretation/translation into the languages of sub-Saharan Africa remaining the most problematic. The thirdcountry nationals coming to Italy come in most cases from Nigeria, Eritrea, The Gambia, Sudan, Senegal,

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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 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.

7 The country that is a destination for migration flows (regular or irregular).

Somalia, Mali, Bangladesh, Guinea and Côte d'Ivoire. Upon arrival in Italy, the hotspots provide information on the possibility to apply for asylum and individual types of stay in four world languages, i.e. Italian, English, French and Arabic. In view of the fact that the command of world languages is rather rare for incoming migrants, the information in question is provided by the European Asylum Support Office (EASO), as part of the ACCESS project, and by the Office of the United Nations High Commissioner (UNHCR) and in the framework of the ASSISTANCE project, the International Organization for Migration (IOM), assists in less widely used languages, i.e. Kurdish and its extended dialects – Kurmanji, Sorani and Tigrinya. Thus, provision of high standards of language assistance in a wide range of languages remains a challenge not only for Italy, but also for many EU Member States, especially if the asylum seeker speaks only his or her mother tongue, which appears to be an indigenous language or a lesser-used language. There is also the possibility that asylum seekers may speak the language of the country in which they are applying for asylum, e.g. in the case of Colombians or Venezuelans registered in Spain. In cases where a common language is absent, the interpretation of procedural acts in a language that can be reasonably assumed to be understood by the asylum seeker shall become a particular priority. The language barrier must never affect the human rights of third-country nationals and the decision of national authorities on the residence of third-country nationals in their territories.

Information on remedies should also be available in a language that the third-country national understands or can reasonably be presumed he/she understands. Whether the information is provided in written or oral form depends on the receiving Member State. In most cases, the information is provided in the form of leaflets or reference materials. The possibility of standardized templates would streamline the work of the administration and contribute to transparency, as well as significantly contribute to reducing the cost of interpretation services. It could also partially address the persistent problem of a lack of interpreters from/to lesser-used languages. In this paper, the lack of qualified and competent interpreters is not the subject of the analysis, but it is necessary to pay special attention to this topic, because the setting of qualification criteria directly affects the outputs of interpreting services provided for the needs of detention facilities. While in some countries, (usually in the so-called *transit countries*<sup>8</sup>) the qualification criteria are high as they require higher education and specialized

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8 The country through which migration flows (regular or irregular) move; this means the country (or countries), different from the country of origin, which a migrant passes through in order to enter a country of destination.

training, e. g. in case of Slovakia in order to ensure effective communication between foreigners placed in detention and the competent authorities, interpreters and translators ensuring official communication with the competent authorities within individual procedural acts are selected from the list of forensic experts, translators and interpreters of the Ministry of Justice of the Slovak Republic. The translator, who ensures the translation of official documentation or information materials, is also selected from the list of forensic experts, translators and interpreters of the Ministry of Justice of the Slovak Republic. However, on the basis of the background documents, the interpretation request is formulated only for the purposes of procedural acts and official communication with the competent authorities. In other countries, e.g. in Sweden, which is considered to be a so-called *destination country*, there are no rules setting out the qualifications of an interpreter and only account is taken of whether the interpreter ‘*speaks two languages*’. In fact, the current situation, regarding the interpretation/translation services provided for the third-country nationals in detention facilities in Sweden, significantly affects the personal security of an immigrant who is completely dependent on interpretation, especially in the case of an asylum interview. However, quality assurance is crucial for protecting access for individuals with limited language skills (ADM). The ability to effectively express the meaning, style and often the tone of the original source is very important, as it can affect the results of the interview with the asylum seeker and, consequently, the stay in the country. In some cases, interpreters seem to lack the skills needed to meet the interpreter’s requirements, or sometimes they simply translate incorrectly, which has serious consequences for the asylum seeker. Due to persistent problems related to the lack of competent and qualified interpreters, many countries have started to use audio/video conferencing to provide asylum seekers with the opportunity to communicate their needs. However, the use of this form of interpretation has its pitfalls, which include a lack of privacy, the absence of an interpreter at the place of detention, etc. In view of the fact that interpretation services are provided free of charge to third-country nationals and that Member States are responsible for all costs associated with these services, national authorities are responsible for selecting individual interpreters. Given that interpreters mostly rely on visual and audio stimuli to determine the meaning of translated speech, the use of technology is said to often suffer from poor sound quality or is interrupted during an interview and hearing is insufficient and frustrating for both parties, asylum seekers but also for the representatives of national authorities, especially when dealing with emotionally demanding situations.

The Member State is free to choose whether to provide a written translation of the relevant information or oral interpretation, provided that the context and



content are clear to the third-country national and that he/she understands his/her current legal situation. The provision in Article 5 of the recast of the Reception Conditions Directive 2013/32/EU requires Member States to make all reasonable efforts to ensure a translation into a language that the person concerned actually understands. The lack of interpreters is not considered to be an objective reason for not fulfilling this right of third-country nationals. In cases of extremely rare languages for which there is an objective shortage of interpreters, Member States are required to provide at least general information sheets explaining the main elements of the standard form in at least five languages most commonly used by illegal immigrants entering the territory of a Member State (Kupferschmidtová, 2021).

## **Criminal proceedings and the language assistance**

With regard to the criminalization of unauthorized border crossings in some Member States, while in other countries unauthorized border crossings are not considered a crime but an offense, the European Commission decided in 2016 to conduct a survey within EU Member States, which concerned issues of concurrence of asylum and criminal proceedings. The initiative brought new findings and insights into the issue of criminalizing unauthorized crossing of the state border of the EU Member States. The comparison of the findings of the European Commission from 2016 with the findings of the United States Government survey of 2019 was performed in order to verify the data regarding the punishment for unauthorized border crossing around the EU Member States. The data of both surveys in relation to the surveyed countries (Slovakia, Czech Republic, Austria, Greece, Italy, Sweden) are identical and show the diversity of approaches to the issue of unauthorized crossing of the state border. At the same time, the initial assumption, that countries which are exposed to a higher wave of migration (in our case – Italy, Greece, Sweden and Austria) will have stricter measures and will tend to criminalize unauthorized border crossings, while countries that are not exposed to intense migration waves (in our case – Slovakia, Czech Republic) will consider unauthorized crossing of the state border as a violation. However, this assumption was not confirmed in all selected countries. Surprisingly, Italy does not consider unauthorized crossing of a state border to be a criminal offense, as is the case in Greece, Sweden and Austria.

The above has been applied as follows: a third-country national who has committed an illegal crossing of the state border is being dealt with criminal proceedings in Slovakia, Italy and the Czech Republic, while in Sweden, Austria

and Greece an unauthorized crossing of the national border is considered a criminal offense. However, it is also worth noting that Slovakia and the Czech Republic prosecute persons for unauthorized crossing of the state border only if the state border is crossed by using force (Czech Republic) or using violence/threats (Slovakia).

Criminal and asylum proceedings are applied simultaneously in Slovakia, for example. However, asylum proceedings preclude criminal proceedings in the Czech Republic, for example, and in the event of a refusal of international protection (asylum), the third-country national is returned to his/her country of origin or to another country to which he or she may be readmitted. Circumstances to be taken into account when assessing the conditions referred to in Article 3 (1) 1 of the Geneva Convention apply in particular to the status of foreigners as refugees, taking into account the individual situation of a third-country national who has illegally crossed the state border of a Member State.

In a view of the fact, that in half of the countries surveyed, unauthorized crossing of the state border is a criminal offense, the judgments of the European Court of Human Rights were analyzed, where on the basis of filtering asylum seekers who came from third countries and at the same time were lawfully awarded compensation for infringements of Article 5 (1). 2 of the Convention, the key judgments were identified in relation to respect for human rights and fundamental freedoms.

It is, of course, not possible to cover the entire asylum or criminal issues related to the conditions for providing language assistance and intercultural communication in detention facilities across all Member States. Of course, a distinction needs to be made between criminal and asylum proceedings. However, for the purposes of the present study, it is necessary to draw attention to the fact that many countries consider the unauthorized crossing of the state border as a criminal offense, not a violation, as in the case of the Slovak Republic, and therefore address this criminal offense in criminal proceedings. Respect for human rights in this regard has therefore been examined through judgments of the European Court of Human Rights, respectively.

## **Common Peculiarities Related to Language Assistance Provision Faced by the EU Member States**

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. 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, also the very use of interpreter is also a subject to different approaches as it is not clear if the interpreter should assist the authorities from the moment of arrest or through the next stages of detention. And even the common framework of the language assistance is grounded in the ECHR and the EU Directives, the European Court of Human Rights (EctHR) may help to narrow down various interpretations from the Member States and adopt more unified way through the language provision as the EctHR judgments function as a reference to the future court decision-making also at the national level of the respective Member States.

Challenges related to the language issues have been raised in a number of cases – till the beginning of the year 2022 there were 59 apparent violation of Article 5 §2.<sup>9</sup> However, there were only few cases marked as the key cases. For the purposes of the present scientific study, the violations of Article 5 §2 related particularly to the following issues were analysed:

- a) information in language understood;<sup>10</sup>
- b) information on charge;
- c) information on reasons for arrest;
- d) prompt information.

As the number of the judgments was significant, the further selection was performed not only on the basis of violation of Article 5 §2 criterion but further the current Member States of the EU being the parties involved in the cases criterion was also implemented. Furthermore, only the judgments that appear to be crucial in shaping the provision of language assistance were taken into account based on the thorough analysis of all 59 cases. The selected judgments also reappear in the Court's Assessment section in the latter judgments as the respective judgments of key cases were cited as Principles laid down in the Court's case-law. The following cases/judgments<sup>11</sup> were considered as the core ones having impact on the language provision in terms of fundamental rights and freedoms entitled to third-country nationals arriving into the territory of the EU. The following key cases are given along with the reasons of their importance being underlined and subsequently commented on:

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9 HUDOC Database of the European Court on Human Rights – Violation of Article 5 para 2.

10 The numbers in the brackets indicate the number of the judgments of the EctHR directly related to the violation of Article 5 §. 2.

11 The judgments are publicly available through the website of the EctHR and are part of Case-law section.

- *the case of Saadi v. the United Kingdom of Britain, Judgment No. 13229/03*, concerns the setting of a precise time frame for the provision of language assistance, as it has not yet been clear who is responsible for informing the detainee of the reasons for his/her arrest, i.e. a member of the Police Force or a legal representative? However, the subject of the judgment is also the form of providing information to the detained person - oral versus written form, as the obligation to provide evidence of the provision of information to a detained person is interpreted differently in the different jurisdictions of the EU Member States. However, on the basis of the judgment, it can currently be concluded that the delay of 76 hours in providing the relevant information (grounds for detention) to the detained person provided a reasonable ground for violating Article 5 para. 2. The judgment also laid down the maximum timeframe available for the provision of information and thus also for the provision of language assistance.
- *the case of Khlaifia v. Italy, Judgment No. 16483/12*, the judgment regulates, *inter alia*, the form in which information is provided to third-country nationals who have illegally crossed the national borders of Greece. On the basis of a court decision, in the event of a return decision, or an entry ban decision and an expulsion decision, it is necessary to issue such decisions in writing, stating the factual and legal reasons, as well as information on available remedies. At the same time, Member States are obliged (following that judgment) to make available general information material explaining the main elements of the standard procedure in at least five of the languages most frequently used or understood by illegal migrants arriving in the Member State concerned. At the same time, detained third-country nationals must be provided with systematic information that explains the rules applicable in the establishment and sets out their rights and obligations. Such information shall include information on their authority under national law to contact selected organizations and authorities. At the same time, it is about covering communication with detained foreigners within the framework of unofficial contact.
- *the case of J. R. and others v. Greece, Judgment No. 22696/16*, judgment regulates the Member State's obligation to provide the third-country national with information material (information brochure) in a language that the detained foreigner understands and at the same time to inform without delay of the reasons for the arrest, while the responsibility for providing that information remains with the UN High Commissioner for Refugees, who assumes the obligation to inform newly admitted third-country nationals in hotspots about their rights and obligations and to indicate how to access

the asylum procedure. According to the government, the same employees distribute information brochures of a legal nature, and subsequently foreigners who wish to do so can turn to lawyers for non-governmental organizations. In that judgment, the court also drew attention to the fact that all information was to be provided in plain language. All information should be provided to the detained foreigners ‘as soon as possible’, but the arresting law enforcement officer may not provide it in full immediately. In this case, the court also determines the content of the information material. At the same time, the court notes that the content of the said material was not such as to provide sufficient information on detention, remedies, that the foreigner may contact a lawyer and a police officer and that he may object to the expulsion decision, etc. within 48 hours.

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 (Brannan, 2010a).

## **The Implications of the ECtHR Judgments on Provision of Language Assistance**

The right to language assistance is one of the fundamental rights guaranteed by the ECHR and is also enshrined in secondary EU legislation and is therefore binding on all Member States. Thanks to the case law of the ECtHR, the provision of language assistance (i.e. interpretation and translation services) and the scope of their use is specified for future use. Questions concerning the form of interpretation and translation services provided for the purposes of the asylum procedure remain in the hands of the national authorities of each Member State and their preferences (oral form/written form), as long as they can be presented as evidence for potential ECtHR proceedings. Although the ECtHR has ruled in favor of a written translation, it also allows information to be obtained orally from the competent authorities if it can be provided as evidence for possible

proceedings. Similarly, the right to provide information in a language understandable to third-country nationals arriving to the territory of the EU Member States is one of the procedural guarantees set out in the ECHR. However, it is a prerequisite to provide relevant information within 24 hours of the detention of a third-country national, as a person detained in a detention facility has the right to be informed of the reasons for his/her detention and this right is part of the procedural guarantees (Brannan, 2010b). The definition of the exact time frame for providing information for the above-mentioned purposes depends to a large extent on the language skills of the detainee, as according to the case law, the provision of information at the time of detention is preferred. In both forms of language assistance, information is provided in a language that the detainee understands and, in the vast majority of cases, the official language of the third-country national's country of origin is taken into account. Although in many cases, detained foreigners also speak one of the world's languages, the most common are French, Arabic and Spanish. In most cases, the official language of the third-country national's country of origin shall be taken into account while providing the language assistance. The selection of an interpreter remains in the hands of the national authorities and is based on the national law of each EU Member State (Valdmanová, 2020). A common framework for ensuring the quality of interpretation services and the qualifications of individual interpreters remains an unanswered question, as qualification criteria vary from one Member State to another. There are no explicit restrictions on the number of interpreters available for a group of third-country nationals (indefinite number of persons). Based on the judgment no. 51564/99 of 5 February 2002 in the case of *Čonka v. Belgium*, where one interpreter provides interpretation services for a group of persons, the Member State's obligation to assess each case individually is not respected. Given the perception of the third-country national, the individual approach and the physical presence of the person providing language assistance are therefore preferred, although the physical presence of an interpreter or translator is often difficult to achieve from the point of view of national authorities. However, the scope of the information provided should enable the third-country national to understand all the remedies they have at their disposal and their current legal status (Mikkelsen, 1996).

The relevance of the EctHR judgments lays in their power to impose a verdict on a Member State in case the violation of fundamental human rights and freedoms is proved and, thus, the consequences in the form of penalties are imposed on the Member States. By taking into account at least the framework for provision of language assistance to the third-country nationals arriving into the territory of the EU Member States, the possibility of not having a complaint

lodged by the third-country nationals as injured party increases significantly and consequently helps to create a safer place for everyone within the Member State (Norström, 2010).

All third-country nationals detained in detention facilities face challenges that are directly related to their human and procedural rights and that need to be communicated on a daily basis. The language (as well as cultural) barrier does not alleviate the situation for third-country nationals detained in the territory of a Member State whose official language is not spoken by the parties involved in the process described above. Although the right to language assistance and the effective provision of intercultural communication is currently based on the level of legal aid, it still cannot enjoy institutional support in its application practice and is only gradually specified and interpreted thanks to the case law of the EctHR (Novákává, 2018).

Language assistance remains one of the fundamental human rights guaranteed by the national law of the Member States, EU secondary legislation, but also international law and significantly affects not only the status of the third-country national in a foreign country but also guarantees the respect for human rights and the way in which they are guaranteed in the state is one of the key factors influencing the sense of security in the state and also having a significant impact on migrants' prospects in deciding where to settle (Wierlacher & Hudson-Wiedenmann, 2003).

## Concluding Remarks

The UN Human Rights Council defines the right to language as a list of obligations imposed by state authorities to use certain languages for specific contexts, as well as the obligation to recognize and promote the use of the languages of national minorities or indigenous peoples. The right to language i.e. human rights combined with the use of a particular language are enshrined in many international instruments and are closely linked to non-discrimination, freedom of expression, the right to privacy, the right to education, the right of linguistic minorities to use their language within a particular language group, etc. This issue is currently a topical issue in many EU countries where third-country nationals have been detected and placed in detention facilities (Tužinská, 2015). While some countries, such as Austria, have a well-functioning police training system for lesser-used languages, other countries face the same problems as the Slovak Republic - the absence of a common language of communication, the absence of quality interpreters. Also Czech Republic faces comparable situation



as the Slovak Republic, where the legislation enshrines the right of a third-country national to a free interpretation service in the case of official contact with the competent authorities. There is no legislative regulation of communication between members of the Police Force and third-country nationals outside official communication (Shultz, 1981). The issue of intercultural communication within the premises of detention facilities, where it is necessary to communicate everyday needs and instructions, whether by members of the Police Force or foreigners, therefore remains unsolved from the point of view of legislation. At this point, it is important to note that the proportion of non-official communication with third-country nationals in detention facilities is much higher than in official communication. With regard to non-official communication, assistance to foreigners is usually provided by non-profit organizations such as Organization for Aid to Refugees (OPU), Association of Citizens Dealing with Emigrants (SOZE), Counseling for Integration (PPI), Word 21, etc. The main goal of non-profit organizations is the implementation of comprehensive assistance to foreigners, especially in the field of integration social and legal assistance or psychological counseling. However, they often implement various educational, cultural and media projects, or they are also involved in projects through which they try to raise public awareness of migration issues. They use both, professional and amateur interpreters to communicate with foreigners, especially in the field of community interpreting. It follows that the scientific research role can be an inspiration for countries facing the same problems in communicating with third-country nationals.

The added value of the research lies mainly in recording the diversity of approaches in addressing the regulation of communication with third-country nationals in detention facilities across EU Member States, which has a direct impact on language provision and respect for human rights of detained third-country nationals (Zachová, 2007).

The scientific research is also original in taking into account the categorization of the surveyed countries in relation to population migration and the application of legal aspects of foreign language communication with third-country nationals, as it provides new insights into communication with foreigners entering the territory of a Member State. At the same time, it provides an overview of existing shortcomings and problems in the provision of interpretation and translation services (Rossato, 2017). By linking information on persistent shortcomings and problems with current case law, the ECtHR also draws attention to the possibility of eliminating Member States' penalties for providing language assistance to foreigners, thus not only contributing to respect for human rights and fundamental freedoms, but also creating scope for consolidating



national legislation across the countries surveyed as well as other EU Member States (Waldnerová, 2012).

The scientific research points at the possibility to make the unification of standard procedure in EU Member States possible as the summarization of problem areas in the foreign language communication affects all EU Member States (not just the countries studied), especially with regard to respect for and protection of human rights and fundamental freedoms to which the injured foreigners are referring, if they apply to a court against the Member State in which they were detained (Viktoryová & Blatnický, 2015). Fundamental rights also include the provision of information in a language that incoming third-country nationals understand in order to ensure a standard procedure, i.e. the third-country national should understand and be able to communicate during all steps of proceedings. Similarly, legislation in the countries surveyed concerning standards and procedures in the field of official communication remains subject to interpretation by individual Member States, in particular as follows:

1. forms of assistance by the interpreter, i.e. the interpreter is physically present or the interpretation takes place via telephone videos, audio calls;
2. the level of interpretation services provided depends on the individual Member State, i.e. the interpretation is provided by a highly qualified professional or an unqualified non-professional volunteer, a member of the Police Force or another foreigner detained in a detention facility who speaks the language of the country of detention.

Defining areas of divergent interpretation makes it possible to unify procedures and harmonize national legislation on the provision of language assistance in all EU Member States (Svensen, 2009).

The scientific research increases the possibility of consolidating the applicable case law - the right of third-country nationals to obtain language assistance should be granted by Member States, in a way that provides the person concerned with a concrete and practical opportunity to use it. Consequently, the possibility of a penalty by the EctHR allows the unification of provisions on language assistance as thanks to the EctHR judgments, it can be interpreted to a certain extent, especially with regard to the provision of interpretation services. ECtHR judgments provide an opportunity to set out the basic principles in passages that consolidate the applicable case law in all EU Member States (Moser-Mercer, Künzli & Korac, 1998).

**Based on the summarized conclusions, the following can be recommended:**

- to expand the possibilities of learning in the field of foreign languages within the Police Force, especially for Foreign and Border Police, if possible also in regard to the less widespread languages,
- to implement an alternative form of communication in the form of pictures (pictograms) in detention facilities,
- further monitoring of intercultural communication in detention facilities is recommended in order to be able to take appropriate measures to make the communication with third-country nationals more efficient, e.g. extending the communication guide to other languages,
- to consider training in intercultural communication for police officers to streamline not only the verbal but also the non-verbal part of communication,
- to consider establishing cooperation with universities providing training in interpretation and translation programs and highlighting the urgent need for police practice to address the shortage of interpreters/translators, especially for less widely used and non-European languages,
- to draw attention to the need of unified information materials in the languages of detained foreigners to provide basic legal advice, thus enabling Member States to avoid potential penalties from the European Court of Human Rights,
- to consider the possibility of equipping the detention facilities with technological equipment enabling automatic translation/interpretation, which would help to resolve communication situations within the framework of unofficial communication,
- to consider supplementing the subject of intercultural communication within the specialized training courses for members of the Police Force, and thus not only draw attention to the difficulties of working with foreign language within the police practice, but also offer preparation for resolving situations,
- to draw attention to the possibility of harmonizing the way of ensuring intercultural communication within detention facilities, and thus contribute to the creation of a unified system at the national level.

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