

Communication with Foreigners: Legal Implications of Interpreting.

**A Comparison of Practices in the V4 Countries
(Poland, Hungary, Czech Republic and Slovakia) and the Ukraine.**

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The findings presented in the study are drawn from the observations and experience of all the project partners and reflect the current state of practice in the years 2010-2011. In our findings and recommendations we do not distinguish the type of public service administrator. The term *interview* is used to mean any type of contact between state organs and foreigners, given that the problems which are mentioned appear in all state institutions, though in differing degrees. For institutional specifications see the national studies.

Introduction

Communication between people who speak different languages is something of an adventure: each language has its own way of encoding meanings in words. If a competent interpreter is not available, misunderstandings will occur. The situation becomes rather more complicated when representatives of a state are communicating with foreigners. Nationals of foreign states who need residence permission are in the position of applicants, and the officials are in the position of decision-makers. The interpreter appears as a neutral medium. In practice, however, competent interpreting is not a matter of course. This comparative report results from the experience of lawyers who have observed interpreting for foreigners in the V4 countries and the Ukraine.

The project of comparing practices in interpreting during proceedings with foreigners was initiated by the Human Rights League. In 2010, in association with the Polish Helsinki Foundation for Human Rights, the Hungarian Helsinki Committee, the Czech Organisation for Aid to Refugees and the Ukrainian Caritas, the League applied to the Visegrad Fund for project financing. Experts from the V4 region who are principally engaged in providing legal assistance to foreigners were in agreement that the field of interpreting demands specific attention, because the quality of the services provided now is chronically unsatisfactory and does not correspond to the financial outlay. At a working seminar held in Bratislava in March 2011 they presented the results of their observations and proposed some fundamental practical measures in the national reports.

The national reports present specific information for each of the given countries. They are based on a description of national law, together with the most frequent inadequacies identified during interpretation in legal contexts. The practical examples given are taken from the observations of lawyers and other personnel and also from accounts by the foreigners themselves. Crucial problems are described from the observations, but it is not implied that they represent a rule in every case. Although laws and their practical applications differ in the individual Central European countries, nonetheless the themes presented in this study are cross-sectional, appearing to a greater or lesser degree throughout the entire region.

The national reports all have the same title, *Practices in interviewing immigrants: legal implications*. They are written by experts in the law which applies to non-nationals: for Poland, Maja Tobiasz; for the Ukraine, Kristina Yarosh; for Hungary, Orsolya Szantai Vecsera; for the Czech Republic, Hana Franková; for Slovakia, Zuzana Številová.

The present comparative report and the national reports may be accessed at the donor page <http://visegradfund.org/>, also at the web pages of all five of the research partners: <http://hrl.sk/pages/publications>, <http://www.opu.cz/>, <http://helsinki.hu/Kiadvanyaink/htmls/>, <http://www.hfhrpol.waw.pl/>, <http://www.caritas-uzhgorod.org/>

These texts have the same aim for all of the countries concerned: to raise awareness of the crucial influence of interpreting on the course of proceedings with foreigners. In some of the V4 countries UNHCR or NGOs have organised training courses for interpreters and also for decision-makers from the Migration Offices. There is, however, a far wider spectrum of state and non-state personnel who have contact with foreigners (border and foreign police, employment officials, migration officials, etc.), for whom this text may serve as a starting-point towards future projects. Our aim is to draw attention to undesirable and recurring phenomena which are persistent, despite the efforts of all concerned to hold proceedings correctly.

Fundamentals

Participants in the project have extensive experience of the crucial issues studied and can draw on personal observation. We have repeatedly noted complaints about the conduct and quality of interpreting during various proceedings and in foreigners' contacts with the state organs. We ask whether the existing legal norms and their practical application sufficiently guarantee respect for the fundamental rights of foreigners, as regards proper and lawful interpreting during the proceedings. Furthermore, we raise the question of the risks other foreigners are exposed to, due to persistent inadequacies identified by the observers.

During our research we focused on areas which fundamentally influence the quality of interpreting:

- circumstances and context of the interview
- time and place where the interview is held
- persons present: representatives of the institution, interpreter, foreigner
- presence/absence of a qualified interpreter
- standards of interpreting in the given institution
- the interpreter's linguistic command of legal expressions
- the interpreter's communicative and intercultural skills
- the interpreter's institutional influence and independence
- legal implications of inaccurate interpreting for the foreigners
- legal implications of inaccurate interpreting for the interpreter
- influence of the conduct of the interview on the process of interpreting

The V4 countries have a shared historical experience, they belong to the Schengen region, and they are bound by international treaties and agreements which guarantee the basic human rights and freedom of every person. They bear responsibility arising from those international agreements, which do not concern migration exclusively. The national studies show¹ that in dealings with foreigners there are similar or even identical problems in the Ukraine, Poland, Hungary, Czech Republic and Slovakia. The practices identified are undesirable, and they are not desired either by the foreigners themselves or by the state organs. This text aims to specify the most frequently observed phenomena which require improvement at the national and local levels. During the professional seminar mentioned earlier, experts from the individual countries shared knowledge of successful alternative approaches and suggestions for improvement.

Our aim is not to produce new recommendations for interpreters, but rather to identify “systemic gaps” which make incorrect functioning by the interpreter possible. In those cases where we have identified lacunae in the laws which permit these defects to occur, we suggest systemic changes in legislation. Where the inadequacies identified are other than legal, we suggest advancing the education² of those persons whose activity and decision-making have crucial influence on the status of foreigners.

¹ See the source texts at <http://hrl.sk/pages/publications>, <http://www.opu.cz/>, <http://helsinki.hu/Kiadvanyaink/htmls/>, <http://www.hfhrpol.waw.pl/>, <http://www.caritas-uzhgorod.org/>

² Included in this project is an English translation of previous research findings: Tužinská, H. 2011. *Questions of Description and Translation: Using Data from Anthropology and Ethnology in the Conduct and Interpretation of Interviews with Immigrants*. (Slovak original Bratislava 2010: Stimul.) at <http://hrl.sk/pages/publications>,

Reasons for problems in interpreting during proceedings with foreigners:

- time stress
- high turnover of personnel
- ignorance of correct professional procedure
- unwillingness to change conventional non-functioning procedures
- formality and constrained nature of proceedings with foreigners
- insufficient motivation of personnel and their feeling that the work is futile
- internal guidelines framed in an anti-immigration spirit
- ignorance of consequences (increased number of cases for renewed consideration, slowness and possible protraction of court proceedings, with associated increase in financial outlay, inability to vindicate rights, worsening of foreigners' quality of life)

Benefits of competent interpreting during proceedings with foreigners:

- saves time in a long-term perspective
- is economical and saves state resources
- provides a feeling of the usefulness of work done
- respects human rights
- does not contribute to “log-jams” in court procedures
- promotes positive results for the entire system
- contributes to the vindication of rights
- has a fundamental influence on the accuracy of the record and towards ensuring that justice will be done in principle and in practice when the case is finally decided
- knowledge of correct professional procedure improves the standards of work
- change of attitude in dealings with foreigners facilitates communication
- change of attitude and behaviour improves the image of the country abroad
- improving the quality of the interview avoids the need to address the same immigrants' cases repeatedly
- improving the quality of work reduces the turnover of personnel caused by subjective considerations
- willingness to change conventional but less functional procedures results in a simplification of tasks

Problems Identified and Practical Recommendations³

1. Problem: participants in the proceedings do not know the official procedures

- non-availability of information about proceedings involving foreigners in any language other than the state language (SK)
- participants (both foreigners and interpreters) do not receive precise information about the course of the interview, as there is an absence of written standards for procedures with foreigners (PL)
- at the beginning of proceedings the foreigners are not informed of all their rights and duties, or of the course of the interview, or of the possibilities of a further official course of action (PL)
- in asylum proceedings applicants are frequently not aware of their legal option to demand a change of interpreter, if they have well-founded grounds for doing so (CZ, SK, HU, PL)
- in civic-legal proceedings foreigners often do not know that they themselves are required to make an interpreter available (PL)
- the summons to the interview or other procedures is written in the state language; the foreigner does not sufficiently understand the content and so will not come to the interview at the stipulated time or with the required interpreter (PL, CZ, SK, HU)
- the translation of decisions takes the form of an oral summary, without explanation (HU, SK)
- some printed materials designed for foreigners are only in the state language (SK, HU)
- due to administrative complication, foreigners are dependent on official help even in cases where that is not inevitable (SK, CZ)

1. Recommendation: to ensure knowledge of the procedure

- to explain a standardised official procedure to every foreigner before the interview begins
- to make available precise instructions on the course of the interview, to explain the rights and duties of the foreigner including the right to a break during the interview or a glass of water, or the right to suspension of the interview and its continuation on another day
- the summons to the interview should contain information:
 - on the language of the interview
 - on the right to change the language of the interview
 - on the right to demand a change of interpreter during the interview
- since there are differing ideas of what it means to be concise or detailed, which facts are important, or what types of facts should be included, it is essential that foreigners should receive instructions on what is required
- the summons to civic-legal proceedings of whatever kind should include information about the need to provide an interpreter at the foreigner's own expense, and this information should also be presented in another language besides the state language
- the summons to the interview or other proceedings should be sent in a language which it is believed that the foreigner understands
- dependence on the authorities could be reduced with the help of a greater availability of printed materials in languages other than the state language, also by the availability of printed materials in a number of languages in electronic form, which could also be sent by post

2. Problem: languages are not precisely identified

- in proceedings at the borders foreigners are not informed that the interview may be conducted in a language which they declare they understand, but is not their native language (they may have learnt another language at school, but their level of knowledge is inadequate, which protracts and encumbers communication with the foreigner) (PL)

³An abbreviation for a country means that the selected phenomena were observed there in varying degrees. It does not imply, however, that in other countries they do not exist, even if they are not explicitly stated in the national reports.

- some foreigners who declare that they understand one of the world languages might use dialect rather than the standard form e.g. of French or English, but the interview is held in the standard form of the language (PL)
- for some languages or dialects there is no interpreter in the country. As a result the interview is conducted in both English or French and also with an external interpreter via videophone, but during the proceedings it is discovered that the foreigner also speaks standard English or standard French (SK, HU, PL, UA)
- the interpreter does not admit that he or she only partially knows the dialect which the foreigner is using and neglects precise translation (CZ, HU, SK, PL, UA)
- inaccurate translation in cases where the translator has insufficient command of the language in which the interview is conducted (for example, we noted that Afghan translators normally speak Farsi and Pashtun, but since only one of those languages is their native language, some specific expressions were incorrectly translated because they have a partially different meaning in the related language) (CZ, HU, SK, PL)
- for the foreigner, the above-mentioned ‘approximate’ translation may produce a mass of inaccuracies in the final evaluation of his or her testimony, even though when using his or her own words the foreigner may have spoken precisely (CZ, HU, SK, PL, UA)

2. Recommendation: to discover the foreigner’s and the interpreter’s knowledge of languages

- foreigners should be informed at the borders that the interview will be conducted in a language which they say they understand
- the persons responsible should discover:
 - whether the foreigner speaks a dialect or the standard form of the language, and all the languages which he or she speaks fluently
 - whether the foreigner possibly also speaks another language for which an interpreter can be found locally rather than via videophone
 - whether the interpreter has a fluent command of the dialect of the language of interpretation, or only its standard form, in which case the responsible person should give the interpreter sufficient time to clarify all possible discrepancies resulting from the unusual dialect used

3. Problem: the conditions are unfavourable for concentration

- at the borders migrants without documents are often in a poor state of health and suffering exhaustion after long-sustained stress (PL, CZ, HU, SK, UA)
- police at the borders work under difficult conditions, including time pressure (PL, CZ, HU, SK)
- the foreigner during proceedings has insufficient privacy for the interview, because third persons also may be in the room (PL, HU, SK)
- in certain offices or at the borders there are a number of compartments in one room designed for interviews with foreigners, so that the participants in various proceedings may overhear one another (PL, SK)
- if the same person who has done the initial inspection of the foreigner is taking the record, one may expect that the foreigner will be mistrustful towards the police officer and testimony will be restricted (SK)
- if the competent persons are in uniform, that may evoke fear in the foreigner, in that it recalls the situation of threat which he or she has experienced and is supposed to describe (HU, SK)
- if the interpreter comes from the persecutor’s region or is of another religious confession and political persuasion, from fear of the consequences of revealing personal and other sensitive data the foreigner will minimise the testimony, which may result in essential facts being omitted which are necessary for the gaining of international protection (HU, UA, SK)
- if officials in the foreigner’s presence communicate with the interpreter in the state language, i.e. a language which the foreigner does not know, they cast doubt upon their own impartiality, just as an interpreter does by communicating with foreigners in the language of interpretation in the officials’ presence (SK, CZ, HU)

3. Recommendation: to create conditions for concentration

- the interview should only be held after the person has been offered help and is capable of giving concentrated testimony
- the authorities should be aware that the course of the interview is affected by the following factors: during which part of the day or night one comes into contact with the foreigner; in which room the interview is held; and to what extent the conditions for safeguarding personal details from third parties are fulfilled
- the authorities should be aware that the course of the interview is fundamentally influenced by the number and origin of persons present in the room, also by the service assignment of the institution's personnel and their previous relationship to the foreigner and legal competence towards him or her
- border facilities should have sufficient personnel to make it possible for interviews with foreigners to be conducted by persons other than those who have detained and inspected them
- the arrival of participants, introductions, explanation of procedures, rights and duties of all parties participating, frequent interruption, patience or efforts to accelerate the conclusion of the interview, are reflected in the process of recollection and in the applicant's speech
- the interpreter, like the foreigner, should be aware of having the right to request a break in the interview
- in all circumstances freedom of speech and protection of privacy should be afforded during the hearing or interview, with only the interviewer, the foreigner and the interpreter present in the room, so that personal details will not be at the disposal of unauthorized third parties

4. Problem: the poor quality of records

- in some cases, at the borders the foreigner has the task of personally writing by hand on paper the reasons for leaving his or her country of origin; afterwards these are translated and become part of the written asylum application (PL)
- the police do not inform foreigners how detailed their report should be, or what type of facts it should contain (PL, HU, SK, CZ)
- many official records of interviews with foreigners are hand-written by officials; sometimes they are scarcely legible (PL)
- the record of the reasons for submitting an asylum application is abbreviated, incomplete, sometimes without professional interpretation (PL, CZ, HU, SK)
- an interpreter who witnesses an incorrect recording of testimony and tries to clarify the meaning of phrases will be stopped by the official (CZ, SK)
- the record from the borders is officially considered crucial, and any factual discrepancy with the later interview is proof of the applicant's untrustworthiness, without taking account of the above-mentioned handicaps or the person's momentary state of health or psychic state (PL, CZ, HU, SK)
- in some procedures the foreigner does not receive a copy of the record after proceedings end (PL, SK, HU)
- if the foreigner after the interview expresses an interest in a copy of the record, he or she must give written reasons and must pay for each page of the record (PL)
- decisions are communicated orally, in summarised form, with interpretation; complete decisions are given in written form, in the state language, and the foreigner does not understand them (SK, CZ, HU)

4. Recommendation: to prepare high quality records

- records should always be written on computer; in specific cases such as asylum procedures audio recording of the interview should be considered
- the foreigner in all cases should automatically receive a copy of the record after conclusion of the interview, without the necessity to give written reasons or an oral request, free of charge and without delay
- the record at the borders is inevitably brief, but it may also be untrue on account of the foreigner's emotional state and the insufficient availability of qualified interpretation. Therefore, having regard to the circumstances of compiling it, the record from the borders should be considered marginal

- in the decision-making process the crucial element should be a professionally conducted interview at the Migration Offices with qualified interpreting, allowing sufficient time to ensure its thoroughness
- decisions on the granting of any of the forms of protection and on granting rights of residence should be accessible to the foreigner in complete form in a language which he or she knows
- state employees, particularly those working at the borders, should have access to continual education
- intercultural communication should be part of the curricula in the police academies

5. Problem: the interpreter has a limited vocabulary

- in official proceedings use is made of unqualified interpreters who make fundamental errors, which have undeniable influence on the content of the decision (CZ, HU, SK, UA, PL). In particular:
- the interpreter has an insufficient vocabulary in the terminology of law and migration (HU, CZ, SK, UA, PL)
- the interpreter does not know the realia and culture of the foreigner's country of origin, including the specifics of expression in the given country: he or she produces a translation which deviates from the meaning or is nonsense (PL, SK, HU, CZ)
- the interpreter does not understand communication between persons with a legal education and does not have a command of legal phrases, which in the legal context may not have the same significance as in ordinary language; even the meanings of fixed phrases such as 'right of residence' or 'asylum application' may be confused (HU, SK, PL, CZ, UA)
- the interpreter sometimes translates inaccurately that foreigners will be placed in an asylum facility, when in fact they are ultimately placed in detention centres (SK)
- a professional standard of interpreting is not recognised and enforced by the state organs (PL, HU, UA)
- there is no register of court interpreters (UA)
- the interpreters who are hired do not have compulsory training in the areas of law and migration (HU, UA, PL, SK)
- university courses of law and translatology focused on migration either do not exist, or they do not combine their knowledge in practice (HU, PL, SK, UA)
- interpreters who wish to be registered as official translators must pay excessive sums of money and bear the associated burden of administration (SK)

5. Recommendation: to become involved in the training of interpreters

- command of legal or professional terminology should be a condition of the choice of interpreter
- to pass legislation changing the rules for interpreting, to the effect that interpreters, while they need not be on an official register of interpreters, are required successfully to complete courses on the specifics of interpreting for foreigners, mastering:
 - legal terminology concerning migration
 - intercultural communication
 - knowledge of cultural specificities, including verbal and non-verbal communication, for selected countries of origin
- in the university curriculum for lawyers, social workers and translators there should be compulsory and optional subjects which interconnect their findings in practice
- the quality of each interview concerning asylum should be open to scrutiny by means of audio recordings
- conduct and interpretation of proceedings with foreigners should be supervised

6. Problem: an interpreter is not available

- due to an insufficient number of interpreters or on account of the foreigner's financial hardship, the interpreting may be done by a person close to him or her, who is neither qualified to interpret nor authorised to deal with personal data, exposing this information to the risk of abuse (CZ, SK, HU,

UA)

- the person who conducts the proceedings may interpret and afterwards make a decision in the foreigner's case (PL)
- the lack of qualified interpreters in civic-legal proceedings, language and cultural barriers of uniformed immigrants tends to give power to the intermediary, who may abuse the foreigner's vulnerability, demand high financial compensation, and retain the foreigner in dependence and in human trafficking (CZ, SK)
- the foreigner does not have an interpreter available and does not contact the employment office, insurance, school or hospital in sufficient time: the unsolved problem escalates, and the final result is that more resources are spent (for example, with the intervention of emergency services) (PL, CZ, SK, UA)
- in the absence of emergency interpretation services there is high pressure on the public service and on lawyers, due to the need for interpretation in contacts with doctors, insurance and employment offices (CZ, UA, SK)
- the state imposes the requirement that an interpreter be present even in civic-legal proceedings where it does not defray the expense, thereby injuring the rights of the person participating in proceedings and placing him or her at a disadvantage (SK)
- where the institution selects the interpreter who is cheapest or most consistently available, this may be to the detriment of the quality of interpretation (HU, CZ, SK)
- when the interpreter is not present physically, interpreting done via internet is of poor quality and incomplete because of the loss of contextual signals (HU)

6. Recommendation: to create networks and databases of trained interpreters

- the interpreter should be physically present, except where it is not possible to provide interpreting other than by internet or telephone
- the interpreter should be independent in relation to the foreigner and also in relation to the state organ⁴
- the interviewer should not interpret
- the state institutions, in co-operation with NGOs, should create a network (and a publicly accessible list) of community interpreters who:
 - have completed courses in the specifics of interpreting for foreigners, including the relevant legal terminology
 - need not necessarily be recorded in the register of interpreters⁵
 - would be available for lower remuneration than court interpreters⁶
- a database of trained community interpreters to be at the disposal of foreigners and officials alike
- a platform of community interpreters can be created similar to that initiated by the OPU⁷ (CZ) with the co-operation of state institutions, NGOs, migrant organisations and chairs of translology:
 - through internship for university students of translation in the NGOs,
 - participation of the NGOs in the preparation of university courses for community interpreters,
 - participation of university staff in the education of community interpreters,
 - involving the migrant communities in the search for suitably proficient people for providing this service
 - this form of co-operation will lead to saving of resources
- in cases of demonstrable financial hardship interpreting fees would be paid by the state

⁴ See the interpreter's code of ethics.

⁵ With a corresponding amendment of the law in the respective state.

⁶ With a corresponding amendment of the law in the respective state.

⁷ In 2010 the OPU (Organisation for Aid to Refugees) began co-operation with the Institute of Translatology in the Philosophical Faculty of Charles University, Prague. Under expert guidance the translology students perform obligatory practical professional work in OPU. These helpers are included in the system of voluntary support and used mainly in visits to the asylum centres, offering legal and social counselling in OPU offices, or assisting in foreigners' dealings with officialdom. See further on <http://utrl.ff.cuni.cz/>, <http://opu.cz/cz/article/23>, also on the special discipline of community interpreting.

7. Problem: the interpreter does not adhere to the interpreter's code of ethics

- the interpreter is insufficiently educated: unqualified interpreting leads to contradictions and causes tensions
- the interpreter does not give sustained attention throughout the entire duration of the interview (PL, SK, HU, CZ)
- the interpreter personally urges the foreigner to compress his or her statements (CZ, SK)
- the interpreter casts doubt on the foreigner's testimony by direct commentary, or by emotive non-verbal expressions (CZ, SK, HU, PL)
- the interpreter does not translate the interviewer's questions, or arbitrarily asks questions of his or her own (HU, CZ, PL, SK)
- the interpreter does not halt the foreigner who is speaking, but does not write notes and subsequently arbitrarily summarises and materially reduces the foreigner's testimony, omitting details which may later play an important part in the testimony (CZ, SK, HU, UA, PL)
- the interpreter arbitrarily speaks with the foreigner during the proceedings and is unaware of the negative consequences of such behaviour for the foreigner (PL, SK, HU, CZ)
- the official does not notice that the interpreter is translating superficially, or simply does not understand the foreigner's statements; the translator does not wish to cause a postponement of proceedings; the foreigner ought to object but does not know this, because he or she has not been instructed to this effect (PL)
- the interpreter's level of knowledge of the foreign language, including legal terminology, is not verifiable on the spot, and generally it is less probable that the foreigner will express discontent with the interpretation immediately during the proceedings, because the objection has to be translated by the interpreter concerned (PL)
- unethical interpreting can contribute to making the proceedings with foreigners inadequate, and even to their applications being rejected on grounds of discrepancies (PL, SK, CZ)
- even though UNHCR has a specific code of ethics for translators and has organised training courses for interpreters in asylum proceedings (SK, CZ, UA), the interpreter sometimes does not know and does not adhere to the fundamental standards of interpreting or the interpreter's code of ethics (CZ, SK, UA)
- in practice there is no established mechanism for inspecting and maintaining the level of interpreting and enabling disciplinary action in cases of breaching of the code of ethics, with criminal proceedings to be initiated in those cases where there is suspicion that a criminal offence has been committed (SK, PL)⁸
- a code of ethics for non-sworn interpreters does not exist (PL, SK, CZ)

7. Recommendation: to hire interpreters who adhere to the interpreter's code of ethics⁹

- to organise regular training sessions for hired interpreters
- to inform interpreters of their rights and duties before interpreting, and where the duties are continually not adhered to, also that criminal proceedings will be initiated where there is suspicion that a criminal offence has been committed, as mentioned above
- to employ those interpreters who, having read the code of ethics presented to them, guarantee in writing that they will adhere to it
- to record the interview and make the recording available to all participants in the proceedings, since only an audio/video record guarantees the possibility of a later inspection of the quality of interpreting
- the foreigner should have the option of expressing views on the quality of the interpretation without the presence of the interpreter whom any objections would concern, by completing a short questionnaire and depositing it in the institution's locked receptacle, or in writing not more than 7 days after the performance of the interview, this statement to be included in the foreigner's file

⁸ In the Slovak Republic according to § 347 of the Criminal Law "Untruthful expert opinion, interpretation and translation" or § 328 of the Criminal Law under such headings as "Corruption" and "Acceptance of bribes".

⁹ The Migration Office of the Slovak Republic's Interior Ministry, in co-operation with UNHCR, published a Code of Ethics for translators in asylum proceedings in: *Specifics of Interpretation in Asylum Proceedings* 2010. Another example (in English) of a professional standard for court interpreters is in Hrehovčík, Bázlik (2009: 264).

8. Problem: the interpreter assumes other functions

- interpreters intrude themselves into various positions (PL, SK, HU, CZ), in particular:
 - decision-maker (deciding on the application's justification)
 - lawyer (offering legal advice to the foreigner)
 - police officer (offering help with the release or processing of documents)
 - social worker (expressing views on the foreigner's integration)
 - psychologist (conducting the interview in the manner of a therapist)
 - expert on the country of origin (comparing what has been said with his or her own data from the country of origin)
 - social scientist (making statements on customs in the country of origin, the authenticity of ethnic and cultural expressions, and hence the foreigner's trustworthiness)
- interpreters intrude themselves into the above-mentioned positions without the institution stopping them or restraining them in such actions, which are in direct contradiction to the interests of their clients
- a representative of the institution tolerates it when an interpreter, in commentaries addressed to the foreigner, identifies himself or herself with the institution's position (CZ, SK, HU)
- a similar conflict of interest occurs if the institution's representative, who is conducting the interview, interprets, and afterwards decides on the foreigner's application (PL)
- the interpreter during breaks behaves as part of the institution for which he or she interprets, e.g. by informal communication with officials and police (SK, PL, CZ)
- the interpreter expresses a personal attitude, e.g. that what the foreigner has said is insubstantial or incomprehensible. In the first case the interpreter is usurping the role of the decision-maker, who is competent to decide what is substantial, and in the second case he or she is admitting to not being qualified to understand the dialect. This finding may be connected with objections frequently raised at appeal courts: that the interpreter did not fully understand what was said; that the written record is incomplete or contains inaccurate translations of statements of fact (HU, CZ, PL, SK, UA)
- the interpreter arbitrarily advises the foreigner to apply or not to apply for asylum (HU, CZ, SK, UA)
- the interpreter commits an illegal action¹⁰ (in the instances mentioned above) or incites the foreigner to corrupt activities, offering to 'dramatise' his or her case for remuneration (HU, CZ, PL, SK)
- the foreigner asks advice from the interpreter on what he or she should say in order to fulfil the criteria for the granting of asylum (PL, SK, UA)

8. Recommendation: to monitor the interpreter's position

- the institution for which interpreters work should ensure that the interpreters confine themselves to their proper position and adhere to the code of ethics and to all specific legal requirements, and refrain from illegal activity
- decision-makers should be trained to recognise the signs indicating that the interpretation is not correct
- for the decision-maker it is an advantage to know the foreigner's language, but only insofar as it becomes possible to check the translation, since as a representative of the institution he or she is not an independent party
- the interpreter should remain neutral throughout the entire proceedings, including breaks, and in this way support the authenticity of the foreigner's testimony
- the interpreter should in all circumstances translate the foreigner's statements fully
- where the foreigner makes a longer statement uninterrupted, the translator should make precise notes
- the interpreter should have space to explain the meanings of phrases, if they are noted down in the interview record with a shift of meaning
- the interpreter should be aware that if what is written is inexact he or she is not obliged to sign the

¹⁰ In the Slovak Republic according to § 347 of the Criminal Law. For more information cf. <http://www.vyvlastnenie.sk/predpisy/trestny-zakon/>

record

- the institution's given rules of interpretation should be made available for specific proceedings

9. Problem: inaccurate interpretation has consequences only for the foreigner

- the accuracy of the decision depends on the accuracy of the interpretation
- if interpreting is done through a family member, another migrant, a refugee, or an official, these persons thereby gain access to the foreigner's personal data (CZ, SK, HU, PL)
- the foreigner is afraid that proceedings may be discontinued, or the application may be refused, if he or she complains of the interpreter during the interview (PL, SK, CZ, HU, UA)
- every discrepancy serves as proof of the foreigner's untrustworthiness in further proceedings (PL, SK, CZ, HU)
- if the foreigner states that he or she did not say what is stated in the written record, there is no proof of the shift of meaning (PL, SK, CZ, HU)
- the person who conducts the interview does not explain the term 'persecution' or poses the question regarding persecution verbatim, although foreigners do not understand the meaning of the term: they state that they were not persecuted, though they may have lived under threat of death (PL, SK, CZ)
- further explanation of incompletely expressed opinions is often interpreted by officials as a deceitful or contradictory pronouncement (PL, SK, CZ, HU, UA)
- when the foreigner signs the written record he or she expresses agreement with its content, and so it becomes impossible to show errors in interpretation: the record is in the state language and the foreigner may not possess a copy (PL, SK, CZ, HU, UA)
- complaints against incorrect interpreting are not recorded because (PL, SK, CZ, HU, UA) :
 - foreigner's do not wish to weaken their already disadvantaged position
 - foreigners and interpreters are compatriots
 - possible errors in conducting and interpreting the interview cannot be proved in the absence of an audio record
 - there is no effective tool to impeach the interpreter
- misunderstandings resulting from inaccurate interpretation lead to greatly increased future expenses for both the country and foreigners (PL, SK, CZ, HU)

9. Recommendation: to make the records of proceedings available to the foreigner

- to introduce the practice of making foreigners acquainted with, and explaining to them, their relevant rights and duties¹¹, including the right to express doubt about or to reject interpretation on justifiable grounds
- in cases where a legal representative is present, interpretation and translation is more thorough; it is ensured that the interpreter will go back over the written record, and amendment is possible
- even when a legal representative is not present, an audio recording should be available
- the interviewer should be aware of other cultural significances (e.g. of the term 'persecution' in foreign languages) and should ascertain the factual state by differently posed questions¹²
- obligatory audio recording at least in asylum proceedings; this would solve the problem of the precision of the interpretation, subsequent appeals and elucidations of written records; the evaluation of testimony would be reversible
- the foreigner should receive a copy of the written record automatically after the interview's conclusion, without written justification or oral request, free of charge and without delay
- the foreigner should have the option of expressing views on the quality of the interpretation without the presence of the interpreter whom any objections would concern, by completing a short

¹¹ In the meaning of the legal system of the country on whose territory the foreigner happens to be.

¹² A detailed description, analysis and examples of various techniques of communication with foreigners may be found in: Tužinská, H. 2011. *Questions of Description and Translation: Using Data from Anthropology and Ethnology in the Conduct and Interpretation of Interviews with Immigrants* (Slovak original Bratislava 2010: Stimul), which is available online in English at <http://hrl.sk/pages/publications>

questionnaire and depositing it in the institution's locked receptacle, or in writing not more than 7 days after the performance of the interview, this statement to be included in the foreigner's file

10. Problem: the institution makes difficulties for interpreting

- in some cases the interviewer makes interventions which obstruct narration and also obstruct qualified interpreting (PL, SK, CZ, HU):
 - by not explaining the entire course of the proceedings to the foreigner
 - by not being prepared for the interview
 - by showing hostility to otherness
 - by mistrust of foreigners
 - by disrespectful communication
 - by inattention
 - by rushed conduct of the interview
 - by posing closed questions
 - by frequently interrupting replies
 - by entering his or her own reformulated statements in a non-verbatim record
 - by not having an audio recording
 - by not giving copies of the record to the foreigners
 - by not maintaining professional standards and legal procedures
 - by non-verbal and verbal expressions of a personal and institutional attitude towards foreigners

10. Recommendation: to conduct an interview which promotes high quality interpreting

- every institution which communicates with foreigners should have regular training sessions for its staff which address the fact that the course of proceedings and the quality of interpreting are essentially influenced by:
 - the degree to which the entire course of the proceedings is explained to the foreigner
 - the degree of preparedness for the interview
 - the attitude to otherness
 - the degree of trust between those communicating
 - the degree of mutual respect
 - the degree of attention while listening
 - the speed at which the interview is conducted
 - the quality of questions posed
 - the frequency of interruption of replies
 - the accuracy and the faithfulness of the record
 - the presence of an audio recording
 - the foreigner's reception of a copy of the record
 - the degree to which professional standards are upheld
 - the non-verbal and verbal expressions of a personal and institutional attitude towards foreigners

Summary

Identified faults:

1. **participants in the proceedings do not know the official procedures**
2. **languages are inaccurately determined**
3. **conditions are unfavourable for concentration**
4. **written records of poor quality are produced**
5. **an interpreter is not available**
6. **the interpreter has a restricted vocabulary**
7. **the interpreter does not adhere to the interpreter's code of ethics**
8. **the interpreter assumes other functions¹³**
9. **inaccurate interpretation has consequences only for the foreigner**
10. **the institution makes difficulties for interpreting**

Corresponding recommendations:

1. **to verify the knowledge of procedure**
2. **to ascertain the foreigner's knowledge of languages and the interpreter's knowledge of languages**
3. **to create favourable conditions for concentration**
4. **to produce written records of good quality**
5. **to create networks and databases of trained interpreters**
6. **to become involved in the training of interpreters**
7. **to hire interpreters who adhere to the interpreter's code of ethics**
8. **to monitor the interpreter's position¹⁴**
9. **to make records of proceedings available to the foreigner**
10. **to conduct an interview which supports good quality interpreting**

The project partners identified a need for these measures in differing degrees within all of the institutions where state representatives come into contact with foreigners. Crucial problems are described from the observations, but it is not implied that they represent a rule in every case. The identified faults in interpreting have undesirable consequences for both the asylum application and the administrative proceedings, because they may protract the proceedings and increase the expense. Investment in precise interpreting ultimately saves expense in the proceedings, because it makes them more effective. Last but not

¹³In doing so the interpreter may commit errors which amount to breaches of the generally binding legal regulations.

¹⁴ In the Slovak Republic this includes the initiation of criminal proceedings in the event of commission of a criminal act according to § 347 or § 328 of the Criminal Law, Law No. 300/2005, from the Register. (The Criminal Law is understood in the meaning of later regulations.)

least, ensuring adequate interpretation helps to avoid the creation of conflict and promotes justice in the proceedings.

The interpreter should have a good vocabulary, particularly in the terminology of law and migration, because the better the interpreter's grasp of legal terminology, the more expeditious and trouble-free further official proceedings with the foreigner will tend to be. Also, the interpreter should be skilled in intercultural communication and should be familiar with the exact names of realia in the given country. He or she should know any different calendar and the political, religious, social and cultural situation in the foreigner's country of origin. Similarly, knowledge of the rules of verbal and non-verbal communication in the languages of both the countries concerned is part of his or her professional requisites. Included in the present project is an English translation of research findings on communication with foreigners, together with examples of the use of ethnographic and anthropological data in the conduct and interpretation of interviews with foreigners (Tužinská 2011).

Currently there is no control mechanism for the quality of interpreting, and subsequent complaints are treated as unfounded. Technical investment in audio recordings and their archive storage will be repaid not only in the form of a better quality of interviews but also in the elimination or expediting of appeal proceedings. An audio recording of the interview serves as evidential material for all participants, should they be accused of unprofessional conduct, deceit, or commission of a criminal act (untruthful expert opinion, interpretation or translation, or enticement to the criminal act of corruption).

The comparative report presented here, *Communication with Foreigners: Legal Implications of Interpreting*, which compares practices in Poland, Hungary, Czech Republic, Slovakia and the Ukraine, describes a number of levels of misunderstanding which arise consciously or unconsciously during contact with foreigners. It addresses fundamental problems and illegitimate practices which repeatedly occur during interpretation. It proposes systemic measures which may substantially help in the prevention of undesirable situations. It sets out conditions which will make communication easier, to the benefit of all participants.

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Online materials on interpreting and conducting an interview:

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- UNHCR *Interpreting in a refugee context*, Self-study Module:
www.unhcr.org/refworld/docid/49b6314d2.html, (in Czech):
http://www.unhcr.cz/dokumenty/MANUAL_PRO_TLUMOCNIKY.pdf
- Recommendations for conducting interviews with women who are victims of human trafficking:
<http://www.unhcr.cz/ochrana/?cid=449>
- Interpreting by students: <http://opu.cz/cz/article/23> , <http://utrl.ff.cuni.cz/>
- *Interpretation in the Asylum Process - Guide for Interpreters*, (in English, Finnish, Swedish):
<http://www.migri.fi>
- *Human Rights Watch Report 2010*: <http://www.hrw.org/en/reports/2010/12/16/buffeted-borderland-0>
- *Immigration and Refugee Board of Canada: Interpreter Handbook*:
<http://www.irb.gc.ca/eng/brdcom/publications/inter/pages/index.aspx>
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