



Interpreters as cultural experts? Asylum practices in Slovakia

Helena Tužinská¹ 

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Abstract

Cultural expertise can be a meaningful part of judicial proceedings, including asylum appeals. In countries where it is not yet common, the need to address questions of cultural identity might be communicated indirectly through interpreters. As a result, interpreters implicitly and explicitly respond to co-producing the Other. This paper uses empirical data from long-term ethnographic research on interpreting asylum hearings to trace their institutional conditions in Slovakia and the actors' approaches to the culturally sensitive aspects of interpretation in these proceedings. The perspectives of asylum applicants, their legal representatives, interpreters and decision-making authorities are analysed through the concepts of sayability and interpretability—the relationship between representations of legal, cultural, and linguistic identities. This article discusses how the research participants' norms of interpreting, awareness of positionality, and procedural neutrality influence the spoken and written file narrative. Legal terms and administrative jargon are often not translated into plain language, accessible to laypeople. The often unacknowledged misinterpretation also affects the flow of the proceedings. Thus, systemic training of interpreters is essential, particularly public service interpreters who actively shape their informal role as cultural experts. At a time of increased demand for cross-cultural understanding, this article provides new perspectives on exploring the challenges for interpreters as well as other public service professions in relation to the notions ascribed to cultural identities.

Keywords Cultural expertise · Interpreting · Asylum · Impartiality · Training

✉ Helena Tužinská
helena.tuzinska@uniba.sk

¹ Comenius University in Bratislava, Bratislava, Slovakia

1 Introduction

The problem of cultural translation in social sciences and humanities is particularly important where members of minority cultures are ascribed unequal decision-making opportunities, which also applies to refugees. Interpreting for asylum applicants presents the challenge of considering differences in legal cultures, institutionally established standards, and social and cultural identities.

Every act of interpretation transcends language boundaries and is the key to understanding its social context. Thus, the analytical focus cannot remain only on activity in the courtroom and situational inequality because they are part of wider social and political inequalities.¹ This paper describes how the asylum field actors conceptualise their habits and normalise routines. I focus on how the spoken becomes written and the written becomes the fact. Notably, the previous experiences with which participants enter the courtroom co-create the communicative scenes of all the cases.

Cultural expertise, in the format of independent expert witnessing such as country experts and social scientists appointed as experts, is very rare in court proceedings in Slovakia. In the case of asylum proceedings, this gap is implicitly, and in some cases explicitly, filled by interpreters. My aim is to address the visibility of interpreters' performative power in constituting the Other. I focus on the negotiation of meanings within the following areas: (1) language identification and the flexibility of criteria for appointing interpreters; (2) notions of impartiality and ethical procedures; (3) room for exegesis of socio-legal terminology and culture-specific terms, all discussed in corresponding sections. By analysing ethnographic observations of multicultural encounters in Slovakia, I show where the challenges of interpreting and cultural expertise intersect.

1.1 Research site and methods

The asylum field as a research site in the Central European region is less studied than the number of asylum applicants would warrant. Slovakia lies on the Schengen borders. A common narrative of refugees representing not only security but also an economic threat² is in contrast with volunteering individuals, public initiatives and civic organisations in the so-called refugee crisis back in 2015. People have responded even more receptively when encountering refugees after the Russian invasion of Ukraine in 2022. Sentiments arising from the so-called cultural proximity of Slovaks and Ukrainians as Slavic people have declined within half a year, as refugee-related issues became critical again after the energy crisis, rising debt, and falling incomes among voters.³ Slovakia, with a rich history both in emigration and

¹ See Diana Eades, *Courtroom Talk and Neocolonial Control* (Walter de Gruyter 2008) 37; Susan Berk-Seligson, *The Bilingual Courtroom: Court Interpreters in the Judicial Process* (The University of Chicago Press 2002) 25; Nick Gill and Anthony Good (eds), *Asylum Determination in Europe: Ethnographic Perspectives* (Palgrave 2019) 196.

² Miroslava Hlinčíková and Martina Sekulová (eds), *Globe in Motion 2: Multiple Shades of Migration: Regional Perspectives* (Institute of Ethnology and Social Anthropology SAS 2019).

³ Patrik Szicherle and Jana Kazaz, *Perception of Ukrainian Refugees in the V4* (Globsec 2022) 7.

immigration,⁴ now acting as a country of asylum, is still in its own transformation of asylum's infrastructural support. The same applies to interpreting for asylum applicants: innovations get systemically fostered at a very slow pace. In Slovakia, as well as in its neighbouring countries—Poland, the Czech Republic and Hungary—the attitude towards refugees is more cautious than in Western Europe.⁵ The negative media and political discourse about foreigners originating from outside the European Union (EU) has also been reflected in the distorted assumption of citizens that there are ten times more foreigners in Slovakia than there are in reality.⁶

The presented research findings from 2017–2019, focusing on communication during trials, have followed my participation in the asylum field in 2005–2008 and 2010–2011. These earlier encounters were related to my ethnographic research in detention and reception centres as well as other asylum proceedings-related activities such as coordination meetings and trainings. The participant observation of court hearings, judges, ethnographic interviews with asylum applicants, their legal representatives, representatives of state institutions—policepersons and decision-makers, both court and ad hoc interpreters, became an integral part of my research,⁷ all first-hand.

Due to the lower number of long-lasting cases in Slovakia, all parties would be identifiable; hence the extracts are without a file number and the names are fictitious. Being aware of the vulnerability of the actors, I respect their privacy and maintain their anonymity. Verbal informed consent was obtained prior to all the interviews and the objectives were communicated as part of academic research.⁸ Extracts interpreted below come from the hearings at the Regional Court in Bratislava and related interviews with different actors. The interviews were held in Slovak or in English, while English was not the native language of either of us.⁹ Asylum seekers cited in this study (from the Middle East and Asia) persisted in appealing their asylum refusals and were eventually granted international protection. The other actors, including the interpreters quoted here, are Slovak citizens. The trajectories of asylum applicants are diverse, the conditions in which they are interpreted vary, and the professional backgrounds of all the participants are also manifold. Also, the typical coordinates of official contact are not the same in all the states of the EU. In general, if foreigners cross the state border without a valid travel document and are unable to prove the necessary amount to cover the costs of their stay in the Slovak Republic, the relevant police department will ask them to provide an explanation. The police have

⁴ Ján Botík, *An Ethnic History of Slovakia: Multi-ethnicity, Minorities, and Migrations* (Stimul 2021).

⁵ 'Asylum Seekers and Beneficiaries of International Protection in V4 Countries (Updated Report)' (*ReliefWeb*, 26 June 2019). <https://reliefweb.int/report/czechia/asylum-seekers-and-beneficiaries-international-protection-v4-countries-updated-report>. Accessed 16 June 2023.

⁶ *ibid.*

⁷ Research participants are given fictional names starting with a capital letter referring to their position.

⁸ 'Ethical Codex' (*Ethnographic Society of Slovakia*, 2017). <http://www.nss.sav.sk/o-nas/stanovy/>. Accessed 21 February 2023.

⁹ Selected parts of this text were translated into English by John Minahane and Pavol Šveda, with the exceptions of the English originals. The readers might notice stylistic incongruences as some views are presented by non-natives.

the right to take their fingerprints for identification in the system Eurodac,¹⁰ carry out a personal search, to withdraw the travel document, and return it once the asylum procedure is completed. A short interview is held to identify the foreigner and their family members, the route of arrival to the Slovak Republic as well as the reasons for leaving the country of origin.¹¹

During my research, most asylum seekers wished to join their families or Middle Eastern and Asian communities in Western Europe and, therefore, hesitated to apply for asylum in Slovakia. Migration policy in the Slovak Republic has long been restrictive, and the success rate is very low. In 2017, there were 29 granted asylums out of 166 applications; in 2018, only 5/178; and in 2019, it was 9/232; subsidiary protection was given twice as often, for one year only, and could be prolonged. However, most of the proceedings were discontinued.¹² The time limit for administrative expulsion in the case of unauthorised entry is 48 hours.¹³ According to my findings, in need of interpretation into scarcer languages, an ad hoc volunteer from the group of foreigners might be asked to interpret instead of a qualified interpreter, registered by the Ministry of Justice as a court interpreter.¹⁴ If the deportation is not carried out in time, the foreign nationals are transferred to detention camps. In case they apply for asylum or subsidiary protection, they must do so at the police asylum department and proceed to the reception camp on the border with Ukraine for a longer interview and questionnaire. This is held by the Migration Office of the Ministry of Interior (MO), the decisive body on not/granting international protection. After three/four weeks in a reception camp, refugees are placed in accommodation centres. They might be invited for a second or third interview with more detailed questions. In case international protection is granted, MO and other organisations provide integration assistance.¹⁵

If asylum or subsidiary protection has not been granted or the person has been unjustifiably detained, asylum applicants may appeal to the regional administrative courts in Bratislava or Košice. A lawsuit can be submitted within thirty days from

¹⁰ Regulation (EU) 603/2013 of 26 June 2013 on the establishment of Eurodac for the comparison of fingerprints for the effective application of Regulation (EU) 604/2013 [2013] OJ L180/1.

¹¹ Act No. 404/2011 Coll. on Residence of Foreigners (Slovakia).

¹² See ‘Statistics’ (Ministry of Interior, Slovak Republic). <https://www.minv.sk/?statistiky-20>. Accessed 21 February 2023.

¹³ Act No. 404/2011 Coll. (n 11).

¹⁴ For the state administration the remuneration is fixed according to Decree No. 491/2004 Coll. on Fees and Compensation of Costs and Lost Time for Experts, Interpreters and Translators (Slovakia). The statutory price (20 Eur per hour) for interpreting at courts and for the police represents approximately half of the market price for languages with fewer interpreters, and one-third less in the case of world languages. Also, as some places are not easily accessible, and there is no compensation for the loss of time spent on the road (often long), the price is inadequate compared to the interpreter’s commercial remuneration. See Markéta Štefková, ‘Legal Translation and Legal Interpreting—from the Demands of Practice to the Educational Models’ in Martin Djovčoš and Pavol Šveda (eds), *Translation and Interpreting Training in Slovakia* (Stimul 2021) 127.

¹⁵ Act No. 480/2002 Coll. on Asylum (Slovakia). See also, ‘Asylum in Slovakia’ (*United Nations High Commissioner of Refugees*). <https://help.unhcr.org/slovakia/asylum/>. Accessed 16 June 2023; ‘Frequently Asked Questions’ (*Human Rights League*). <https://www.hrl.sk/en/frequently-asked-questions>. Accessed 16 June 2023.

delivery of the decision. The court reviews compliance of the decision with the law, the sufficiency of its justification and the correctness of the proceedings. The lawsuit can be rejected if the court finds it unjustified. In case the objections of an asylum applicant are found justified, the decision of MO is cancelled and returned for re-examination. The courts might also specify binding instructions for the new proceedings at MO. If the regional administrative courts reject the lawsuit, asylum seekers may bring the complaint to the Supreme Administrative Court. If the objections are considered to be well-founded, the Supreme Administrative Court returns it for re-assessment to MO.¹⁶ However, due to misinterpretation, mistranslation and lengthy investigation many have been pending in the system for much longer than they had expected.

My aim here is not to derive some pure or true version of the stories being translated but rather to show the impact of the communication process on the decisions of the court. More importantly, there is no source text but only a co-produced dialogue. Although it was not always possible to apply ethnographic methods in the way that the individual cases would require, given that not all participants in the research could be repeatedly contacted, one can observe recurrent patterns. I have attempted to describe not only the answers to my research questions, but above all the questions that the participants themselves posed. The institutional encounters are analysed in the predominantly monolingual settings of the state and correspond to various forms of interpretation from trained and untrained interpreters.¹⁷ All selected examples correspond to the institutional contexts in which interpreters are implicitly assigned the role of a cultural expert.

2 Language identification and contested meanings

Most asylum applicants communicate in the first instance with the border police. This encounter is the primary reference point in their file, as their retold testimony is further investigated. Later in the asylum procedure, significant discrepancies might arise as the spoken becomes written and the written becomes the fact. The belief that ‘linguistic forms of variation are utterly consequential for the legal process’¹⁸ is not firmly established in such cases.

The first condition for the negotiation of meanings is to create a space for identifying the language which is to be chosen for all speakers, ideally the applicant’s

¹⁶ *ibid.* As of mid-2023, the newly established Regional Administrative Courts in Bratislava and Košice exercise competence in this proceeding. See Act No. 151/2022 Coll. on the Establishment of Administrative Courts (Slovakia).

¹⁷ See generally Marketa Štefková, ‘Public Service Interpreting and Translation in Slovakia’ in Marketa Štefková, Koen Kerremans, and Benjamin Bossaert (eds), *Training Public Service Interpreters and Translators: A European Perspective* (Comenius University of Bratislava 2020); Pavol Šveda, ‘Interpreter Training in Central Europe’ in Pavol Šveda (ed), *Changing Paradigms and Approaches in Interpreter Training* (Routledge 2021); Pavol Šveda and Martin Djovčoš (eds), *Translation and Interpreting Training in Slovakia* (n 14).

¹⁸ William M O’Barr, *Linguistic Evidence: Language, Power, and Strategy in the Courtroom* (Academic Press 1982) 122.

mother tongue. The language of interpreting might be misidentified as the language varieties might not be differentiated by participants to a sufficient degree. Linguistic means are linked not only with diverse geographical regions but also with differing socioeconomic status and contextual usage of language. For the police, as Paula and Petra describe, however, the linguistic competencies of their staff are framed by their concept of the administrative language:

We have Slovak as our administrative language, we speak Slovak, and naturally, that's the linguistic equipment of our police. (...) There has genuinely been a change over time; we have young people who have language skills, though they aren't required to speak to them because we don't have any bonuses for that, but they're willing to speak. A knowledge of languages isn't a condition of acceptance by the Foreign Police.

Our people know English—but maybe the foreigner doesn't know English (...) it is not his native language; he begins to stammer and does not understand.

If the language of interpreting is not one of the major world languages and an available ad hoc interpreter is relied on, they usually convey only an approximate meaning. Some of them ascribe less importance to details in the varieties of one language or even to differences between languages (Urdu, Pashto, distinct Arabic dialects). On the other hand, applicants are aware of the diversity of registers within a single language as Arne notes, 'our language is complicated, like in courts, we use the formal language, but in everyday conversation, we use our dialect, which is very different from the formal'.

In accordance with Maryns,¹⁹ in practice, the procedural requirement of a monolingual standard means oversimplification of linguistic variation within and between codes and disqualification of multilingual speaker repertoires. There are numerous widely spoken languages which have regional or national dialects so different from one another that they may be mutually incomprehensible. In the following example, the attorney Lucia describes his awareness of misapprehensions as the interpreter translated details for the applicant:

It seems he understood something, but only a little—afterwards, they became aware of that (...) It's as if you communicated with Slovaks in Polish, always you'll make some false assumptions. And the worst part of it is that for the Police, it's sufficient if they have entries just for those basic questions from the report. Anything else, let the applicants just sign it.

It seems that the negotiation of meanings takes place either way, even if the swiftness of the proceedings is prioritised, but the number of inconsistencies in the file might be higher. Although appointing untrained people to provide interpreting services means instituting a weak link into the legal process, and the potential for a miscarriage of

¹⁹ Katrijn Maryns, *The Asylum Speaker: Language in the Belgian Asylum Procedure* (St Jerome 2006) 323.

justice is high,²⁰ the police may have no better than ad hoc interpreting at hand. Training for public service interpreters and their infrastructural support is not available, though first attempts have been noted.²¹

In reflections on the abovementioned problems, the state representatives also refer to asylum seekers' 'cultural disparity'. Noticeably, their reasoning does not go further into distinctiveness stemming from a different class, educational or professional background, which may have more impact than those which are ascribed to ethnicity.²² Nevertheless, the label of ethnicity with its language often remains a single hallmark of identity. Thus, interpreters are easily assigned the role of a cultural expert. The problem is that they might have lost direct contact with current political situations in their country of origin and the language terms connected with their contextuality. However, it is commonly encountered that even in the case of the same dialect of interpreter and appellant, comprehension problems occur because of distinctions in social status, generation, or gender.²³

Interpreting has its own political and social context and intrinsically dialogic nature in each case. It is, therefore, not sufficient simply to determine the foreign language. I observed that if linguistic and social diversity is not recognised, communication becomes noise. The interpreter's linguistic competence cannot be a single criterion for appointing interpreters. To understand the emergence of such breakdowns, I argue that the participants' notions of what it means to be impartial limit the potential of dialogue. Only if both parties share a common ethic will the room for interpretation make sense.

3 Expertise, norms of interpreting, and impartiality

Notions of interpreters' impartiality are widespread among research participants. However, what exactly it means to be impartial depends on the control one exerts over the course of the procedure. On the one hand, examples of side-taking often include references to essentialist notions of culture. On the other hand, interpreters aware of the complexity of impartiality often mention the need for multiperspectivity.

Not taking sides means that one acknowledges dialogue with any kind of expertise, its language register included. At the same time, no interpreter can be culturally intact but rather aware of their dilemmas and variable positions. Indeed, normative neutrality is expected not only from interpreters but also from decision-makers and judges. According to Holden, it is crucial to distinguish between positionality and procedural neutrality. Providing cultural expertise in a procedurally neutral way means having the potential to empower vulnerable groups without contradicting the discipline's

²⁰ Susan Berk-Seligson, *Coerced Confessions: The Discourse of Bilingual Police Interrogations* (Walter de Gruyter 2009) 34–36.

²¹ Pavol Šveda and Marketa Štefková, *Crisis Management: Developing PSIT Structures for Ukrainian Displaced Persons in Slovakia* (2023) 10(1) *FITISPos* 85.

²² Rogers Brubaker, *Ethnicity Without Groups* (Harvard University Press 2006) 33; Thomas Hylland Eriksen, 'We and Us: Two Modes of Group Identification' (1995) 32(4) *Journal of Peace Research* 427.

²³ Anthony Good, *Anthropology and Expertise in the Asylum Courts* (Routledge 2007) 164.

ethics. In the whole process, all information given is subject to the scrutiny of the decision-making authorities.²⁴

In the past, the monologic model of the intermediary²⁵ was prevalent. The interpreter is, as it were, a medium of transmission, not a third party. From this perspective, the decision-maker Oleg describes a good interpreter:

It is essential for us that a question be translated precisely and that an answer be translated precisely, because it isn't the task of the interpreter to change anything or to take an initiative, or in any way to recast the answer or the question. (...) Obviously, he's making sense to applicants in that language; we put a question, he translates, the applicant gives his answer, he translates—and all this works.

Such views are common, as if the interpreter could furnish motives and strategies exclusively from the point of view of the person speaking in a social vacuum. Interpreters may have dilemmas from the above-described expectations. The legal fiction of the conduit role of the interpreter is a form of bias against linguistically disadvantaged persons. Rycroft explains that the conduit role is a faulty conceptualisation of the work of the court and police interpreter, though this belief system is still subscribed to for structural reasons. She emphasises the tension between the relativity of truth and the search for certainties in the legal process. Admission of the interpreter's participatory presence seems like a wild card.²⁶

Although ethical codes anticipate this unpredictability, they are not part of the legislation. In the Slovak Act on Experts, Interpreters and Translators,²⁷ impartiality is mentioned without definition. General terms such as 'ethical and moral principles', 'impartial and disinterested performance' are also referred to in the uncertified interpreters' oath at the court hearings as well as with the police. However, asylum seekers do not usually file a complaint against the misconduct of officially appointed interpreters because they do not want to sue the state from which they seek protection and which they see represented by the officially appointed interpreters.

In certain institutional circumstances, interpreters lacking impartiality may take on the roles of all professions: decision-makers, legal representatives, members of the police, social workers, and psychologists. For example, the ad hoc interpreters may give information to the applicants without disclosing its contextualisation to the lawyers, as Lena notices:

In the detention centre, I met with such behaviour from some interpreters, that, look, I'm here for the hundredth, two hundredth time and you're here for the

²⁴ Livia Holden, 'Anthropologists as Experts: Cultural Expertise, Colonialism, and Positionality' (2022) 47(2) *Law & Social Inquiry* 686.

²⁵ Cecilia Wadensjö, *Interpreting as Interaction* (Longman 1998).

²⁶ Roxana Rycroft, 'Hidden Penalties Faced by Non-English Speakers in the UK Criminal Justice System: An Interpreting Perspective' in Anne Wagner and Le Cheng (eds), *Exploring Courtroom Discourse: The Language of Power and Control* (Routledge 2011) 224.

²⁷ Act No. 382/2004 Coll. on Experts, Interpreters and Translators (Slovakia).

first time, so I'm going to talk a lot, and I'll say an awful lot to the client, over and above what you say. Those interpreters have thrust themselves into the role of advisors, on the grounds of the proximity of their culture.

However, the lack of neutrality might be a result of unconscious routine. A member of the police, Patrik critically reflects on the interpreter's position:

In the preparatory proceedings, the police officer either takes on a court interpreter or appoints an ad hoc interpreter, and this person must be given instructions. The instruction is given formally. The interpreter, if he isn't there for the first time, may not even read what is written, and just signs it. That would be OK if the police personnel were informed, those who work with the non-registered ones if those too had their training about why this is important. Because now all that is done as a formality. The first time, the second time, the interpreter takes the instructions, and afterwards, he approaches all that as routine. Sometimes we're glad that he even turned up. (...) When certain things confirm to us, or you actually see – that the interpreter is making some sort of judgement, he's minimising certain things, he's evaluating, that's not his proper business. Afterwards, we became aware of that, and we try not to cooperate with him.

Also, in cases when interpreters were asked to express views on the accent of an asylum seeker or comment on other markers of ethnicity, they were ascribed the role of expert linguists or anthropologists. They might even try to act in order to substitute for a systemic gap or just respond to the need to simplify the complexity of encounters with the Other.

For those who are interpreting asylum seekers in cooperation with UNHCR, there is a version of the ethical code available which has been used by the Slovak Migration Office²⁸ as a recommendation. In practice, however, in situations in which the ethical code might have been expounded (police, office, courts), officials did not confront the interpreters with it. One of the respondents, a legal counsel Lea, mentions breaching the code of ethics in the first contact on the borders:

They're all frightfully pally with the police, they have them as friends on social networks, and this fellow brought them in cakes, and right when he arrived they were crying 'hi!' (...) They make friends of those foreigner-interpreters who are willing to cooperate with them and do what they tell them, without those interpreters adhering to any ethical principles or rules for their interpreting, about how they should interpret.

In the view of a senior staff member Patrik at the detention centre, their reports do not play an essential role in evaluating the substantive merit of an application for asylum. The same attitude was held towards interpreting:

²⁸ Ethical Codex for Interpreters in Asylum Proceedings in *Osobitosti tlmočenia v azylovom konaní* (UNHCR 2010) 24–26. <https://www.minv.sk/?osobitosti-tlmočenia-v-azylovom-konani&subor=428538>. Accessed 21 February 2023.

As regards the reports from the Police Detention Units for Foreigners in relation to asylum proceedings, these reports are not crucial for decision-making. (...) Often at the beginning, the applicant is still ‘uninstructed’ and ‘uninfluenced’ by a third person who is not a police officer or Slovak Migration Office decision-maker, and as a general rule, he gives information about his motivations according to what he really feels.

Many of the state’s representatives are convinced that the first police report is not fundamental and that the legal representatives and interpreters are already communicating information about legal possibilities, and influencing the foreigner’s decision. In contrast, legal representatives Lucia and Linda say:

Reports from the police may play a fundamental role. Because if the judge detects something procedurally dubious there, on this basis he can quash a decision.

[The judge] discovered details of how the interview at the police premises was conducted, where they posed misleading questions.

In some cases, if judges understood English or Russian during the hearings, they might recognise the discrepancies resulting from mistranslations on the spot. However, they could not verify the complaints about impartiality from preceding sessions if there was no recording. Although court hearings can already be recorded, for the first interviews at police stations this practice is not yet common, and the interpreter may stay as if they were invisible, remarked by Linda:

For some of the interpreters who regularly go to interpret at the Migration Office or the foreign police, it is usual that they know the story of the proceedings (...), and they know the decision-maker expects to have down on report dn, dn, dn, dn.²⁹ He knows what she wants to have recorded. He achieves that. Or that is conveyed, and he proactively takes that situation upon himself.

On the other hand, interpreters might be treated as equal and visible participants in the hearings. They might intervene if they deem it necessary and provide explanations.³⁰ Although, in general, the stakeholders indicated a rather textual model of speaking—verbatim translation with little room for interpretation—literalness in practice is not kept. The danger of misinterpretation is serious if ad hoc interpreters’ unaddressed visibility is not questioned, as the legal representative Lea notices:

²⁹ Dn, dn refers not only to the sound of the keyboard, but also to the quick execution of an administrative duty.

³⁰ See, generally, Sonja Pöllabauer, ‘Interpreting in Asylum Hearings: Issues of Role, Responsibility and Power’ (2004) 6(2) *Interpreting* 175; Julia Dahlvik, ‘Why Handling Power Responsibly Matters: The Active Interpreter Through the Sociological Lens’ in Gill and Good (eds), *Asylum Determination in Europe* (n 1) 133.

(Untrained interpreters) do not use the appropriate words, but some other words; they change the meanings. They do not fully translate some things, they summarise, and the judge has no means of checking that. Ultimately, in fact, the judge does not care much about it, because he too summarises statements when he dictates them into the report. So, there's a kind of double summarisation, with a reformulation of somebody's testimony. The final report of what the foreigner says may be diametrically opposed to what he said in his own language. That is equally so whether it is at a court hearing, at the police or at the migration offices.

The stereotype of interpreters as impartial catalysts³¹ needs to be further problematised. Presupposed invisibility of the interpreters might conceal the fact that interpreters are active participants in multilingual and intercultural exchanges in the asylum field.³² Indeed, the interpreter's control over proceedings may, in practice, be great. While the minima laid down by the ethical code are necessary, they are not sufficient. The interpreters play a key dialogic role, often in a similar vein as cultural experts, elucidating the previous context of applicants' events. The professional jargon and legal terminology of both countries are ideally part of the interpreters' linguistic competence. The following case represents the lack of interpreters' impartiality, as the asylum seeker Arne describes how his interpreter from Midland chose terms that framed Arne's narrative in the opposite meaning of what was intended. He discovered this only when, after being detained, he contacted a legal representative and received her feedback on clarification questions. Since then, he has opted solely for English-language translators:

At the Migration Office, I had that same interpreter, who I realised later that he wasn't honest even in the entry interview at the police (...) I already had some information about his political direction. Both of us are from (Midland), and there are pro-regime and anti-regime people. You're in a situation where you're explaining why you cannot return because you're against a really terrorising regime, and the interpreter is like one of them, you know? I do not question the professionalism of the interpreter, but it's just that I found that, for example, people whom I had spoken of as rebels in a positive sense revolts, like opposition fighters, while he interpreted as terrorists or outlaws, something that gives a negative image. I was talking about them in a positive way. I supported them, for me, they were opposition fighters, and for him, they were terrorists. The interpreter used the terminology of the government. He was not giving the image that I was trying to show.

³¹ PH Gulliver, *Disputes and Negotiations. A Cross-Cultural Perspective* (Academic Press 1979) cited in Cecilia Wadensjö, *Interpreting as Interaction* (Longman 1998) 64.

³² Robert Gibb and Anthony Good, 'Interpretation, Translation and Intercultural Communication in Refugee Status Determination Procedures in the UK and France' (2014) 14(3) *Language and Intercultural Communication* 396.

Applicants for asylum on political or religious grounds face the problem of ideological partisanship of their interpreter-fellow citizen whom they do not always have an opportunity to replace even after detecting distortions in the interpreted text, as Arne remarks:

I was cautious regarding his possible collaboration with the government because it is highly probable that he is only paying back what he has received as benefits: the opportunity to travel abroad and to be in Czechoslovakia. (...) He travels freely, has his photo taken with government soldiers, and so on. I think, in the current political context of (Midland) there is no person at all who could be impartial and thus professional. That is the reason why I asked for interpreting in English.

The reasoning about the impartiality of the interpreters is bound to perspective-taking. Certainly, in practice, there are many examples where the linguistic incompetence of the interpreter is sufficient to create inconsistency. According to the decision maker Oliver, asylum applicants are also making strategic moves. In terms of achieving their goal the easiest thing is to say: ‘I didn’t understand, and the interpreter translated it badly. When a contradiction arises, and it cannot be otherwise explained (...) Everyone is guarding his interests’.

Most decision-making authorities do not ask interpreters to include either legal or cultural interpretation of terms during hearings,³³ but some would consult them out of record regarding their interests: verification of a dialect and cultural practices of the claimants.

4 Interpreters as cultural experts?

Holden defines cultural expertise as the special knowledge that enables experts to describe relevant facts considering the particular background of the litigants for the use of the court (or decision-making authority).³⁴ In this paper, I have shown several examples in which cultural experts were not part of the proceedings, and this role was implicitly ascribed to interpreters instead. Indeed, there were many cases where authorities did not expect any kind of cultural mediation and had ‘just interpreters’. Interpreters themselves varied as well. Few of the interpreters reflected that in some cases it would be unethical for them not to intervene,³⁵ and they acted with an extra contextual description. The sensitivity to the right intervention at the right time is part of professional ethics in general.

³³ Jan Blommaert, ‘Language, Asylum, and the National Order’ (2009) 50(4) *Current Anthropology* 415; Anthony Good, ‘Cultural Evidence in Courts of Law’ (2008) 14(1) *Journal of the Royal Anthropological Institute* 47.

³⁴ Livia Holden, ‘Cultural Expertise and Law: An Historical Overview’ (2020) 38(1) *Law and History Review* 29.

³⁵ See also Julia Dahlvik, ‘Why Handling Power Responsibly Matters’ (n 30) 150.

For the applicants, the legal system often represents a riddle requiring an expert's interpretation. Again, the interpreters have been asked as if they were already cultural mediators. When interviewing policewomen about the ways in which their staff check applicants' understanding, Paula emphasised that the responsibility was on the applicant's side—both in knowing the rights and being proactive:

I was always taught that ignorance of the law is no excuse and doesn't excuse even me if I as a policewoman happen not to know something in the law. (...) After all, the foreigner himself, he can say, I don't understand, explain that to me in some other way!

Although the potential to intervene has been ascribed to asylum applicants, their assertive behaviour is highly context-dependent and, in my research, rarely clarified beforehand. The interpreter's role in negotiating the communicative situation might also be proactive, in the sense of interventions which stem from the need to explain the context to any of the parties.

In this vein, current approaches in community interpreting and linguistic mediation are described by a court interpreter Ivor, who avoided misunderstanding by asking each of the parties for an explanation or an alternative:

When there's a bad set-up and the conditions are only making the situation harder for that interpreter, he must speak up and protest. Or alternatively say, object to, whatever is hindering our work. Not to agree to everything. Because this also is the kind of situation where a person can slide into feeling that, after all, I'm just the medium and I have to adapt to everything. (...) I spoke up on these lines: excuse me, I won't be able to carry on like this. Or, I am sorry, but this is making my work harder, and to make understanding easier for both sides, I would suggest this. (...) So I would say, when I'm there things fall into place round me, and I think constantly of that phrase linguistic mediator.

The above-described approach is part of the Dialogical Communication Method, which is recommended in communication with vulnerable groups and is applied more widely in ordinary interviews on asylum.³⁶ Supplementing this method, interpreters also use an approach designated as cultural mediation or culturally sensitive translation. In principle, the mediators do not intervene in the interaction to give their own opinion on the correctness of the behaviour of, or of the information given by, the applicant. If they ask for clarification, it is always with the knowledge of all participants. Knowledge of the methodology of the approaches mentioned obviates the possibility that interpreters will take upon themselves the role of collaborators of the investigating parties and thus, in the final analysis, put their authority in doubt. The interpreters' interactional stance would mean they could use their own strategies

³⁶ See Sonja Pöllabauer, 'The Interpreter's Role' in *Handbook for Interpreters in Asylum Procedures* (UNHCR 2017) 50–69.

for identifying misunderstandings, elucidating context, investigating intention, and clarifying meaning.³⁷

Culture-specific concepts are never self-explanatory. The interpreter Ivor ascertains the participants' precise meanings and is content to be guided by them. As a linguistic mediator, he verifies the contexts of what all the actors 'whisper' to him:

Following, observing, it's terribly important. My father, who's a sports commentator, told me once: see now how this player whispered to the other one. It's a beautiful word. He had actually whispered by his movement how exactly he should play the ball to him, or whatever. And to my mind, that's very important for the interpreter. To listen. To observe. Incessantly to observe, because afterwards you'll find that the applicant helps you greatly. He whispers to you, and when you use the word that he uses equally in that situation, when it's suitable, needless to say, an experienced interpreter is capable of judging that accurately, in my view. He shouldn't have any problem with that. So it will work out very well. That's how it should be, to my mind.

From the interactional perspective, interpreting with insufficient sensitivity to whispered contexts could not serve the purpose of asylum proceedings. Therefore, as demonstrated by above-discussed 'rebels', it is crucial to acknowledge that the diversity of culture-specific concepts can be adopted by legal and political jargon. Any terminology connected with affinity with kin, class, caste, gender, religion, political group, education, profession, and other identity markers—all refer to permuted social norms. However counterintuitive they might look, spatial coordinates are rarely static, such as the structuration of the place of residence, depiction of topography, and various types of registration of postal addresses. Any labelling of territories alters with microcultural niche as well as political infrastructure.

Many of these mentioned terms are regularly used in the interviews for asylum seekers. In the case of forms which are part of the applicant's file, a standardised translation available in multiple languages could help address the issue. At the same time, the need to provide a culturally sensitive explanation and communicate the legal concepts in plain language remains. However, formally acknowledging and allowing translators to be considered as cultural experts would require considerable change in the law. Even if such amendments impacting the weight that the court could give to interpreters' opinions are not on the horizon yet, awareness thereof can assist.

Participants in a communication frame their statements, and the modes of framing change situationally, professionally, socially, and culturally. A mutual search for a wider contextual meaning is thus crucial. The interlocutors with decisive power may distinguish the essential semantic shifts and create communicative space within interpreting. Interpreters could never be noise-free channels of communication; on the contrary, they may have considerable influences on proceedings.³⁸ However, this effect could be managed to a certain extent—if the status of interpreters is raised, and

³⁷ See Ruth Morris, 'The Moral Dilemmas of Court Interpreting' (1995) 1(1) *The Translator* 25.

³⁸ Good, *Anthropology and Expertise in the Asylum Courts* (n 23) 169.

their capacity for cultural expertise is supported and acknowledged. The insistence on verbatim translation in the courtroom could be dropped.

However, legal systems almost invariably impose the unrealistic and counter-productive requirement that interpreters shall be ‘verbatim’ as much as possible. In practice, on the contrary, interpreters must simultaneously mediate between two often very different sets of cultural assumptions and convert technical terms from one distinctive legal system into the nearest equivalent terms in another. Interpreters often do so without specialised legal training, virtually no time to reflect and choose their words carefully, and without having in front of them the documents to which the legal actors are referring. Although the Slovak Act on Experts, Interpreters and Translators³⁹ establishes verification of professional competence, in practice, diverse unexpected situations cannot possibly be covered.

The interpreter has the demanding task of restraining from creating a contradiction by using a concept with a different contextual meaning. Veracious interpretation thus means to become dialogical, asking inspecting queries. The interpreters, together with representatives of the state, not only do things with words.⁴⁰ Being interpretive means that both are acknowledged to do things with questions.⁴¹

5 Conclusion

In this article, I have presented some aspects of the institutional practice in the Slovak asylum field, with a focus on interpreting, ethnographically investigated between 2017 and 2019. The negotiation of meanings in asylum proceedings starts with language identification and the selection of interpreters. These first decisions are bound by notions of impartiality and ethical procedures of all participants. Both areas mentioned above provide room for a relevant exegesis of the socio-legal terminology and culture-specific terms. This study demonstrates the understanding of interpreters as actors who have the potential to bring cultural expertise to asylum proceedings in countries where it is not yet established. The findings may also serve as an inspiration for instituting ad hoc interpreter trainings.

I have demonstrated how the routinised practices with a dominance of monolingual standards result in the disqualification of multilingual speakers’ repertoires.⁴² In a legal setting, even within the same dialect, a (dis)respect for differences in gender, age, and social background has far-reaching consequences.⁴³ My contribution is to

³⁹ Act no. 382/2004 Coll. (n 27). This Act does not apply to ad hoc interpreters, they take an interpreters’ oath on the spot.

⁴⁰ John L Austin, *How to Do Things with Words* (Clarendon 1975).

⁴¹ Helena Tužinská, ‘Doing things with Questions: Interpreting in Asylum Context’ (2019) 103 *LUD* 81–99.

⁴² See Maryns, *The Asylum Speaker* (n 19); Max Spotti, ‘It’s All About Naming Things Right: The Paradox of Web Truths in the Belgian Asylum-Seeking Procedure’ in Gill and Good (eds), *Asylum Determination in Europe* (n 1) 69–90.

⁴³ See Susan Berk-Seligson, *The Bilingual Courtroom: Court Interpreters in the Judicial Process* (The University of Chicago Press 2002); Good, *Anthropology and Expertise in the Asylum Courts* (n 23); Katrijn Maryns ‘The Use of English as Ad Hoc Institutional Standard in the Belgian Asylum Interview’

question the kinds of strategies interpreters and other actors have for identifying misunderstandings, elucidating context, investigating intentions, and clarifying meaning explicitly. I suggest that with the shortage of cultural experts and court interpreters, ad hoc interpreters, as well as other professions in public service, could incorporate cultural expertise into their training.

Cultural concepts and professional jargon, all of which might be instruments of social control, may remain as intact as relics, accessible only to the initiated. On the other hand, both legal and culture-specific terminology can be faced with dialogical methods, mediating culturally sensitive information without erasure of context⁴⁴ or upturn of hidden penalties.⁴⁵ As it was aptly put by Good, however technically competent the interpreters might be, the mere fact of their involvement converts the kinds of formalised, question-and-answer dialogues that characterise legal proceedings (and which normally serve to enhance the power of the legal actors) into trialogues, where the interpreter is every bit as much an active participant as the lawyer and the asylum applicant.⁴⁶

Unless communication obviously and irretrievably breaks down, the other actors systematically overlook the interpreters' key role in court. Interpreters are written out of the script, both literally and metaphorically. The court could be unaware of the moral dilemmas and technical difficulties they face. This challenge can be met together with the interpreters, sensitised by training. More attention also needs to be paid to the linkage between the mode of posing questions and the communicative power of answers.⁴⁷ The culture-specific context might be investigated and elucidated with open ethnographic questions. In this vision of a communicative space, cultural expertise can be engaged in the understanding of the law, cross-cultural differences, and resolution of conflicts, acting in a procedurally neutral way,⁴⁸ not only for cultural experts but also for interpreters.

(2017) 38(5) *Applied Linguistics*, 737; Helena Tužinská, *Medzi riadkami: Etnografia tlmočenia azylových súdnych pojednávani* (Akamedia 2020).

⁴⁴ Diana Eades, 'Erasing Context in the Courtroom Construal of Consent' in Susan Ehrlich, Diana Eades, and Janet Ainsworth (eds), *Discursive Constructions of Consent in the Legal Process* (Oxford University Press 2016) 71–92.

⁴⁵ Roxana Rycroft, 'Hidden Penalties Faced by Non-English Speakers in the UK Criminal Justice System: An Interpreting Perspective' in Anne Wagner and Le Cheng (eds), *Exploring Courtroom Discourse: The Language of Power and Control* (Routledge 2011).

⁴⁶ Interview with Anthony Good, Professor Emeritus, School of Social and Political Science, The University of Edinburgh (Edinburgh, 26 September 2019).

⁴⁷ See generally Sandra Hale, Jane Goodman-Delahunty, and Natalie Martschuk, 'Interpreter Performance in Police Interviews: Differences Between Trained Interpreters and Untrained Bilinguals' (2018) 13(2) *The Interpreter and Translator Trainer* 107; Deborah Davis and Elisabeth Loftus, 'Inconsistencies between Law and the Limits of Human Cognition' in Lynn Nadel and Walter P Sinnott-Armstrong (eds), *Memory and Law* (Oxford University Press 2012) 29–58; Aneta Pavlenko, 'Language Rights Versus Speakers' Rights: On the Applicability of Western Language Rights Approaches in Eastern European Contexts' (2011) 10(1) *Language Policy* 37; 'Guidelines for Communicating Rights to Non-native Speakers of English in Australia, England and Wales, and the USA' (*American Association of Applied Linguists*, 2016). <https://www.aal.org/guidelines-for-communication-rights>. Accessed 21 February 2023.

⁴⁸ See Sandra Hale, 'Interpreting Culture: Dealing with Cross-cultural Issues in Court Interpreting' (2014) 22(3) *Perspectives: Studies in Translatology* 321; Holden, 'Cultural Expertise and Law' (n 34); Ilenia Ruggiu, *Culture and the Judiciary: The Anthropologist Judge* (Routledge 2019).

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Declarations

Ethics approval and consent to participate This is an observational study. Verbal informed consent was obtained prior to all the interviews and observations. All data were anonymised, under the Ethical Codex of the Ethnographic Society of Slovakia (2017) which is based on the Code of Ethics of the American Anthropological Association, <https://www.americananthro.org/ethics-and-methods>. Accessed 21 February 2023.

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