

# LINGUISTIC HUMAN RIGHTS AND THE ROLE OF INTERPRETING: THE SLOVENIAN SITUATION

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To ensure linguistic rights as fundamental rights and the equal treatment of all before the law as well as in other social spheres, translation and interpreting are becoming a necessity; the regulation of this professional area, defined by society's socially weakest members, is indicative of the level of democracy in a society. The article presents the Slovenian situation from the perspective of the need to ensure community interpreting, taking into account information gained by direct observation and interviews.

The Constitution of the Republic of Slovenia generally guarantees linguistic rights in public settings, but their implementation depends on specific laws, thus ensuring and formally regulating interpreting only in court and asylum procedures, while no services are offered in general social and health care settings (except for sign language interpreting), resulting in a power imbalance in interpreter-mediated interactions where interpreting is managed through the improvisation and goodwill of all parties involved. The article ends with plans on how to improve the situation in Slovenia, considering that an integrated arrangement of community interpreting is necessary nowadays, respecting linguistic rights as basic human rights.

## 1. INTRODUCTION

The contemporary Slovenian linguistic situation is increasingly marked by multiculturalism and multilingualism, which are becoming a major linguistic challenge throughout the world.

The article argues that linguistic rights are to be considered as basic human rights in order to ensure the equal treatment of all before the law as well as in other social spheres, the necessary means for that being translation and interpreting, whose regulation in protecting society's weakest members suggests the level of democracy in the society. An overview of the current situation in different public service environments in Slovenia is presented from the perspective of the need to ensure community interpreting both in better legally-regulated and in less regulated settings, taking into account information gained by direct observation and from interviews. In addition, the desired organisation

in community interpreting service is observed through a set of necessary steps to achieve comprehensiveness defined by Ozolins (2000), from primary steps, such as interpreting training and accreditation, to secondary ones, like policy planning and professional development. Finally, plans are proposed on how to develop the profession in Slovenia and assist in respecting linguistic rights in contemporary society.

## 2. INTERPRETING AS A LINGUISTIC HUMAN RIGHT

When speaking of fundamental human rights, we are thinking of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations that was formed as a set of legal, political and also moral principles for ensuring rights and freedoms for all mankind. Although the most frequent issues of fundamental human rights deal with human dignity, freedom, justice and peace<sup>1</sup>, it is also important to raise awareness of the unequal treatment of individuals on the basis of language when fundamental human rights as stated in the Declaration are indirectly violated because individuals or groups of individuals are linguistically underprivileged. Underprivileged due to the lack of language knowledge, when individuals or groups are pushed into situations in certain environments, their fundamental human rights are violated on the basis of language, such as the freedom of speech, the right to a fair hearing by an independent and impartial tribunal, the right to political participation, the possibility to enter the education system, etc. (Phillipson et al. 1995, 2). The rights to liberty and security of person, or even life may also be violated when it comes to questions of society's weakest members, for example asylum seekers. Linguistic rights should therefore be understood as fundamental human rights, both on a collective and individual level (Phillipson et al. 1995, 1–2).

Translation and interpreting may play a vital role in ensuring linguistic rights if they are organised and accessible for this purpose. Organisation and access to interpreting services have long been regulated mostly in environments with economic interest, whereas general public interest remained in the background, which is true, for example, for health care interpreting in the United States in certain states with large and important clinical centres<sup>2</sup>. In the last decade though, the whole profession of community interpreting and translation has started with systematic regulation in Europe as well. Interpreters are not only enabling successful communication, but also reducing the democratic deficit of society's socially weaker members (Gorjanc 2010, 137–139).

Community interpreting, uniting under this umbrella term interpreting in health care, legal and other public settings, is mostly defined by the circumstances of interpreting (Garber 2000, 14; Gentile 1997, 110; Pöchhacker 2000, 49); meaning public sector, medical and court interpreting (Roberts 1997, 9). Community interpreting today is a consequence of increasingly multicultural and multilingual societies (Gentile 1997, 112), where today's interpreting

<sup>1</sup> Preamble to the Universal Declaration of Human Rights.

<sup>2</sup> See data by the International Medical Interpreters Association at <<http://www.imiaweb.org/default.asp>> [accessed 1-12-2010].

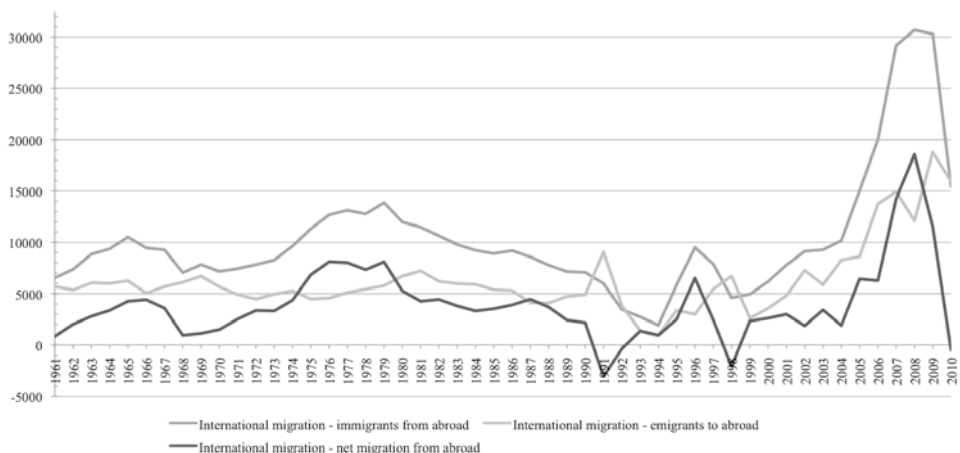
situation within community interpreting is distinctly characterised by an asymmetry in the power balance, since it represents a situation where, almost always, it is the socially weaker who needs an interpreter to communicate with the socially stronger person (Garber 2000, 19).

Community interpreting is the oldest form of interpreting, but which has in the 20<sup>th</sup> century and the 21<sup>st</sup> century fallen into the shadow of conference interpreting. If court interpreting has indeed only been formally regulated for half a century, all other varieties of community interpreting have been established since the very first meetings of different language groups (Roberts 1997, 7). Particularly due to the growing need of expanding multilingual and multicultural environments, community interpreting today is rising in importance and quantity among different types of interpreting; it is professionalising and gaining more equal ground in university curricula (Prunč 2010). Since the first Critical Link conference in 1995 in Canada (Carr et al. 1997), the field has immensely developed in research too. Advance can also be seen in environments where these studies have only recently started to develop, an example being Slovenia (Gorjanc 2009; Morel 2009; Jurko 2009; Pokorn, Matičič, Pokorn 2009; Pokorn, Gorjanc 2010).

### 3. THE REPUBLIC OF SLOVENIA AND ITS LINGUISTIC SITUATION

Slovenia is the fifth-smallest EU member state with a population of 2,056,868 inhabitants, the majority, 87.9%, being native speakers of Slovenian. The number of foreigners in Slovenia has risen substantially since 2002, especially in reaction to the EU entrance and enlargement in 2007. Net migration dropped drastically with the economic crisis, yet in contrast to overall net migration, the net migration of foreigners in Slovenia has still remained positive up to this date, with migrants now coming from very diverse linguistic environments.

**Figure 1.** International migration, Slovenia, annually

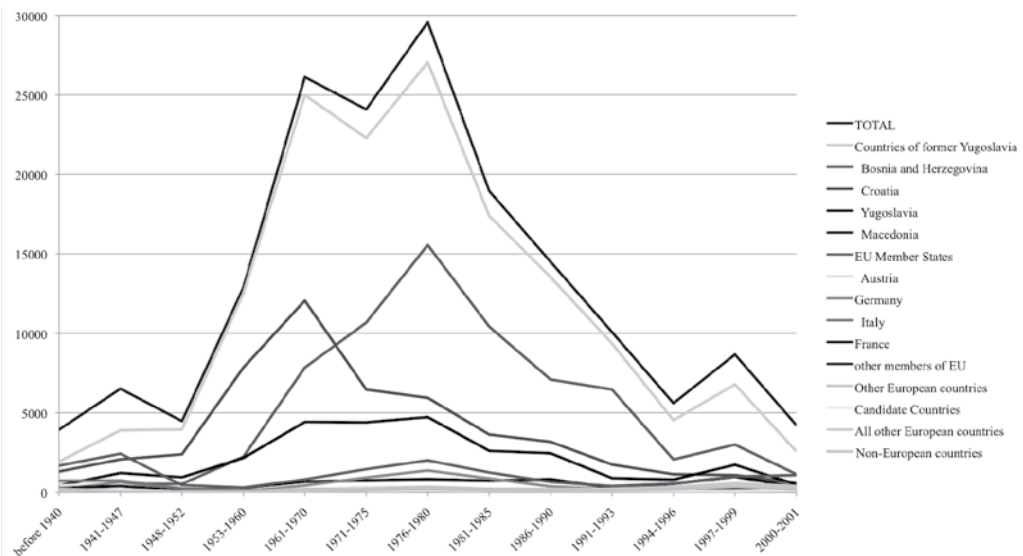


Source: Statistical Office of the Republic of Slovenia

## 2.1. Experience with immigration

In its history, Slovenia has experienced intervals of larger immigration (see Figure 1). In the 1970s, economic immigrants came from other Yugoslav republics, and intensive immigration from the same area repeated in the late 1990s after Slovenia's independence. In the times of the economic boom of 2008, the majority of immigrants from non-EU states again came from Bosnia and Herzegovina, Serbia, Croatia, Kosovo and the Former Yugoslav Republic of Macedonia (see Figure 2). Bearing in mind the common history of the nations and the common former official language Serbo-Croatian, interaction with these immigrants has not represented a major linguistic problem.

**Figure 2:** Immigrants to Slovenia by year of immigration and country of first residence



Source: Statistical Office of the Republic of Slovenia.

## 2.2. An increasing linguistic problem

Nowadays, immigrants arrive from countries of unfamiliar linguistic environments, for example Albanians from Kosovo and migrant workers from other EU member states. In 2007, every third EU immigrant came from Bulgaria and every fifth immigrant from Slovakia (Vertot 2009, 71). In 2008, 40% more work permits for foreign workers were issued than the year before; 60% of those workers work in construction, the metal industry, international transport and agriculture, and come from Bulgaria, Romania, Slovakia and Hungary (Pokorn, Matičič, Pokorn 2009, 172). In addition to that, asylum seekers, even though rarely granted refugee status and thus stay in the country, mostly come from the

Middle East and Africa. Taking all this into consideration, establishing communication in social services is one of the most pertinent problems of Slovenian society (Pokorn, Gorjanc 2010).

### 3. EXERCISING LINGUISTIC RIGHTS AND COMMUNITY INTERPRETING IN SLOVENIA

Research on community interpreting in Slovenia is still developing and has concentrated on specific fields so far.

An important academic contribution on health care interpreting was made by researches in the European Project ‘MedInt—Development of a curriculum for medical interpreters’ as a selection of papers (Andres, Pöllabauer 2009), dealing specifically with medical interpreting and also covering different aspects of the Slovenian situation (Gorjanc 2009; Jurko 2009; Pokorn, Matičič, Pokorn 2009). An article in the selection of the CIUTI Symposium on training and research in community interpreting at the university level (Kainz, Prunč, Schögler 2011) presents the specifics of Slovenian (Gorjanc 2011). In Slovenian, however, literature is limited; even on court interpreting as best known and also interesting for jurists, studies are scarce. Having said this, the situation is improving, both by promoting community interpreting to interpreting students at the Department of Translation Studies at the Faculty of Arts (University of Ljubljana), resulting in theses on different subtopics (Morel 2009, Čater 2009, Lozar 2010, Chitrakar 2011), and by researchers taking greater interest in the effects of migration, with regard to linguistic rights (Gorjanc 2010), orientalism (Maček 2010) or integration into society (Kejžar, Medved 2010).

#### *3.1. Linguistic human rights in Slovenian legislation*

Taking the top-down approach, it is a constitutional right in Slovenia to use one’s own language in front of state officials and in public services, stated in the Constitution (Article 62) and the General Administrative Procedure Act (ZUP; Article 62).

In line with the legalistic attitude to interpreting according to Ozolins (2010), articles in specific laws regulate linguistic rights in court proceedings and, in connection with it, in policing (e.g. Criminal Procedure Act, Minor Offences Act, Courts Act). Other than that, community interpreting is explicitly guaranteed to persons from particularly vulnerable groups, as are asylum seekers and deaf persons. Asylum seekers are guaranteed interpretation services by the International Protection Act (ZMZ) (cf. Pokorn, Matičič, Pokorn 2009). Within community interpreting, the most integral regulations apply to interpreting for the deaf: the Act on the Use of Slovenian Sign Language (ZUSZJ) not only assures their rights, but also establishes rules for exercising them. Yet as a field in its own right with specific aspects of practice, sign language interpreting is exempt from our research.

As to interpreting at public service offices and in health care, the legal basis is insufficient and rather vague, expressing only that a person has the right to an interpreter if they do not understand the language of the procedure. The Patient Rights Act (ZPacP) does not mention language or interpreting at all, in spite of which some informed consent forms (annexed to ZPacP, in Slovenian) feature a special statement for the translator or interpreter to sign that they have translated or interpreted the information to the best of their knowledge and in a way that enables the patient's understanding.

Considering all of the above, the principle of subsidiarity can be applied: the lack of a special law (the so-called '*lex specialis*') means that the most general law is valid (ZUP), so anyone who does not speak Slovenian has a legal right to an interpreter (Morel 2009).

### ***3.2. The current state of community interpreting in Slovenia***

In spite of paper promises, Slovenia is far from a comprehensive regulation of community interpreting in the service of respecting linguistic rights. In line with legislation, interpreting is accessible and better structured in more regulated settings, such as the courts and the asylum procedure, whereas it is less common and more likely subject to improvisation in other public services environments.

#### ***3.2.1. Court interpreting***

Legal acts mainly ensure the defendant's right to an interpreter/translator, while the rules on court interpreters lay the ground for the management and practicalities of the service itself. However, there are no standards, guidelines or good practice guides.

Court interpreters are under the domain of the Ministry of Justice, who manages the selection, examination and accreditation procedures of court interpreters. Training for court interpreters exists only to a limited extent: the Judicial Training Centre at the Ministry offers joint seminars on the Slovenian legal system for court interpreters, court experts and appraisers, and also brief language workshops intended to direct candidates to self-study. Until two separate associations for court interpreting were established very recently, there was no professional organisation to keep an eye on the field.

By analogy with examinations—two translations followed by an oral exam with questions on the relevant legal systems and problematic terminology, usually without any testing of the candidate's interpreting skills—court interpreters in Slovenia are also court translators and in fact even predominantly so. Especially in better represented languages, court interpreters (direct translation from Slovenian) might only deal with texts and turn down assignments in court, whereas those for lesser-spoken languages in Slovenia do not have that choice and are often participants in court proceedings, hence acquiring more experience. This situation together with the lack of available training and guidelines for either interpreters or legal professionals surmounts to issues on the service quality, questioning not whether the service is provided, but how and to what standard (cf. Čater 2009). However, this is expected to

change with the provisions on quality and training in Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings.

### ***3.2.2. Asylum procedure***

Interpreting in the asylum procedure falls into the category of protecting the rights of particularly vulnerable persons, meaning that interpreting is specifically and legally regulated in the ZMZ (see above) with its most relevant part in regard to interpreting being the selection procedure. Implementation falls under the jurisdiction of the Ministry of Interior Affairs, Sector of Migration, whose responsibility is also the Asylum Centre in Ljubljana. An employee there is specifically engaged in translation and interpreting for English and French. For all other languages, contracted interpreters are called in. Although the legal criteria for their selection are fairly general, an exception is a requirement that the interpreting applicant does not interpret for the diplomatic missions and consular posts of the countries whose language they interpret. Professional issues are left aside and selected interpreters are not offered, let alone required to take part at any introductory instructions, lectures, insight or training. Leaving aside the in-house interpreter who has gone through some interpreting training the majority of the appointed interpreters have no interpreting background other than in informal situations.

Regarding linguistic frequency, the first place in languages spoken in the procedures today goes to Farsi, followed by Arabic, English and Urdu. While interpreters are available for all the most common languages, there are none for some languages, such as Pashtu, resulting in a few procedures being put on hold. In a few cases, an asylum seeker only speaks a dialect (e.g. African dialects Ibo, Wolof, etc.). For the purposes of daily communication, interpreting might then take place over a relay by a fellow asylum seeker who interprets into English. Such examples raise questions on ethics and standards. While understanding that interpreting represents a prerequisite for their work, officials are obliged to best balance the need to enable communication and to ensure quality service.

After the interpreter's selection, there is no regulated quality control. The only type of supervision is indirectly performed by the official running the procedure, particularly in English, when they can watch over the communication or assist when the applicant's language variant is particularly difficult to understand (cf. Lozar 2010). But even with less familiar languages, the first results of discourse analysis show that the official's preparation and knowledge on the applicant's country of origin and their alleged arrival might help to understand local names, either to recognise them when the interpreter does not, or simply to follow the procedure more easily.

### ***3.2.3. General public services***

Ensuring interpreting in public sector offices is a legal right under the ZUP (see above), however, consistent with Ozolins (2010), the reach of language services is affected by cross-

sectoral interpreting needs that conflict with usual sector-specific policy development (*ibid.*, 196) and also by an overall unfavourable attitude towards immigrants. The only research on this so far originates in integration studies and inspects migrant contacts with state administration and institution officials (Kejžar, Medved 2010). Similar to this research, interviews with NGO employees, who offer aid in administrative matters especially to refugees in the immigration process, prove that interaction often suffers from ignorance and a weak knowledge of foreign languages by administration officials, who then make excuses that the official language in Slovenia is Slovenian, thus hindering at least partly successful communication.

### ***3.2.4. Interpreting in health care***

Supporting linguistic rights as human rights in health care is a precondition for providing access to the same standard of health care regardless of the patient's linguistic background and enabling the doctor to rightfully fulfil their explanatory duty. Nevertheless, as costs of providing interpreting in health care seem unfounded due to rare cases of health care interpreting in Slovenia, language barriers imply unequal treatment, however difficult to confirm, since no official records are available and no infringements to the authorities reported.

#### ***4.2.4.1 Overview of the state of affairs***

The following overview is thus based on estimations, opinions and views from the parties concerned themselves: medical staff, patients and interpreters (see Pokorn, Matičič, Pokorn 2009; Morel 2009).

Overall, health care staff are most familiar with sign language interpretation, but are without any proper training or available guidelines and resources on the topic. The circumstances might be the most challenging for young professionals, whereas practicing doctors rely on their proficiency: having gathered experience with time helps them cope with the observed situations. English and languages from the former Yugoslavia do not pose problems, but foreigners who do not speak any of these face more difficulties in communication and are fewer in number—a fact closing the vicious circle of ignorance to introducing interpreters into health care. A bilingual member of staff might also be sought to help to overcome the language barrier. As it is, doctors welcome patients who bring along family members or friends as ad hoc interpreters despite probably being aware of the possible risks, since ad hoc interpreters tend to struggle with terminology, interpreting skills and role issues. A big concern experienced by doctors is patients hiding their lack of knowledge out of shame and fear. Faced with unknown languages and medicines, doctors cope with finding information on the web, communicating with simplified language and gestures, making additional lab tests and detaining patients in hospital under regular supervision longer than normal.



Apart from sign language interpreters and those who occasionally accompany asylum seekers, only a few individuals in Slovenia regularly deal with health care interpreting, usually due to a rare language combination and their extraordinary willingness to lend a hand. An amateur interpreter like that might have consequently acquired new skills, probably excelling over a conference interpreter in this specific setting, but has no recognised status as an interpreter.

#### ***4.2.4.2 Research project “Health care interpreting in Slovenia”: an opportunity to put ideas into action***

Evidently, it is vital in Slovenia to arrange community interpreting integrally, thereby acknowledging linguistic rights as basic human rights. Aware of the vain hope that the situation can advance instantly and the work needed, the first steps on how to regulate the profession in Slovenian society are being made in the form of a three-year research project ‘Health Care Interpreting in Slovenia’ proposed by the Department of Translation of the University of Ljubljana and funded by the Slovenian Research Agency.

Besides analysing the field, exploring the possibilities of using ICT tools for interpreting and organising awareness raising activities to inform health care stakeholders, providers and service users of the need, the main objective of the project is to design a curriculum and teaching material for health care interpreting, select and train the trainers and finally implement the programme. Taking into account that not only health care interpreting is insufficiently managed, but the whole community interpreting field, the project will therefore strive to propose how to organise the network for a comprehensive interpreting provision service in Slovenia.

## **4. CONCLUSION**

Modern society is facing challenges previously unknown to such extent due to globalisation, increasing mobility and, in the case of Slovenia, a constant positive net migration of foreigners, all contributing to a great linguistic diversity. Interpreting and translation for the community thus emerge as inevitable in times of increasing awareness of the legal rights to use one’s own language in front of state officials and in the public services and to safeguard linguistic rights as basic human rights. On this ground, research on community interpreting has only recently started to develop in Slovenia.

As legislation in Slovenia generally guarantees linguistic rights in public settings, the implementation depends on specific laws for certain areas, thus ensuring interpreting only in the limited environments of the courts and asylum procedures. Other areas are predominantly managed through improvisation and the goodwill of all parties involved. Due to the absence of any professional standards, codes of conduct, training or guidelines, an encounter with a language barrier in the public services often results in unequal treatment and power balance in interpreter-mediated interaction.

In order to ensure equal access to public services, community interpreting needs to be comprehensively organised. The essential requirements are organised language services in the form of an obligation for institutions and a high-level policy for generic and field-specific services, interpreting training and accreditation with a generic approach (Ozolins 2000). In order to organise and develop the field of community interpreting in Slovenia, it would be necessary to start with the following activities: raising awareness; training all parties involved; setting standards of practice; establishing a network of interpreters, and using modern technology. A comprehensive organisation of community interpreting would provide support to all the parties involved, protecting at the same time linguistic rights as human rights and ensuring them for all.

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## KALBINĖS ŽMOGAUS TEISĖS IR VERTIMO ŽODŽIU VAIDMUO: SLOVĖNIJOS ATVEJIS

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Santrauka

Siekiant užtikrinti, kad kalbinės teisės būtų tarp pagrindinių žmogaus teisių ir kad teismuose ir kitose viešųjų paslaugų srityse visi būtų lygūs nepaisant kalbos, vertimas raštu ir žodžiu tampa būtinybe. Šios paslaugos reikalingos labiausiai pažeidžiamiems visuomenės nariams, todėl jų užtikrinimas rodo demokratijos visuomenėje lygį. Straipsnyje aptariama padėtis Slovėnijoje, analizuojami tiesioginio stebėjimo ir interviu metu surinkti duomenys ir daroma išvada, kad Slovėnijoje viešųjų paslaugų srityje yra didelis poreikis užtikrinti vertimą žodžiu. Nors iš esmės Slovėnijos konstitucijoje užtikrintos kalbinės teisės viešojoje erdvėje, šių teisių praktinis

įgyvendinimas priklauso nuo konkrečių įstatymų. Praktiškai užtikrintas ir formaliai reguliuojamas tik vertimas žodžiu teismo ir prieglobsčio prašymo procedūrų metu, kitose srityse, pvz., socialinių paslaugų ar sveikatos priežiūros, tokios paslaugos neteikiamos (išskyrus vertimą į gestų kalbą). Daroma išvada, kad jei vertimas priklauso tik nuo kalbančiųjų gerų norų ir jų gebėjimo improvizuoti, o profesionalus vertėjas nekviečiamas, skirtinga kalba kalbančių situacijos dalyvių atžvilgiu susidaro jėgos disbalansas. Straipsnis baigiamas pasiūlymais, ką daryti, kad vertimo žodžiu paslaugų teikimo plėčiai visuomenei padėtis Slovėnijoje gerėtų, o kalbinės teisės būtų užtikrintos ir gerbiamos kaip ir kitos pagrindinės žmogaus teisės.