

Main findings of the report from an inquiry by the Public Defender of Rights into the handling of applications by the Foreigners' Police Service

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FOCUS OF THE INQUIRY

The report is based on an inquiry carried out in October and November 2019 by members of an inquiry team set up by the Office of the Public Defender of Rights. The team visited all Border and Foreigners' Police Departments ("BFPDs") existing at the time, namely in Bratislava, Trnava, Dunajská Streda, Nové Zámky, Nitra, Trenčín, Žilina, Banská Bystrica, Rimavská Sobota, Prešov, Košice and Michalovce.¹

In order to assess the situation at individual BFPDs, we conducted unannounced interviews with the management, as well as with foreigners present at the departments at the time of our visit. In order to get a picture of the situation and reach a broader public, we also developed a questionnaire and received over 500 responses. The findings of the report are based primarily on the personal visits of individual BFPDs, but also on the comments received from the central level (Bureau of Border and Foreigners' Police), particularly on the statistics, training of police officers and on the system used to process and redistribute applications. The results of our inquiry do not include BFPD Michalovce because the department refused to cooperate from the outset and referred the team to the spokesperson of the superior police directorate.

The inquiry focused on the procedures applied by the police in the processing of applications submitted by foreigners during the periods of increased numbers of applicants. The inquiry also focused on the conditions existing at individual BFPDs, on the problems encountered by the police in the performance of their duties, on how foreigners are treated, on the existence of 'informal waitlists', on how foreigners' applications are processed, on the efficiency of the scheduling system, on whether the principles of good public governance are applied, on the provision of information to foreigners (with specific emphasis on the quality, accessibility, comprehensibility and scope of the information available in foreign languages), on the material and technical resources available at individual BFPDs, and on the overall quality of their premises. The purpose of the inquiry was neither to evaluate the correctness of procedures nor to assess the form of stay (residence permits) granted by the Slovak Republic.

INSUFFICIENT BFPD STAFFING

In order to understand the functioning of individual BFPDs and the difficulties they face in handling foreigners' applications during peak

¹ The team did not visit the new department in Ružomberok which opened in December 2019.

periods, our inquiry focused, in the first place, on the adequacy of staffing.

The results show that only one BFPD (Prešov) was fully staffed. In other words, all planned job positions at the department were staffed. The other BFPDs were understaffed, with the highest number of vacant posts in Dunajská Streda (36% of vacancies – nine out of the planned 25 posts were vacant), followed by Trnava with 35% (12 out of 34 posts were vacant) and Bratislava with 29.5% (21 out of 71 posts were vacant). The highest number of vacancies reported those BFPDs which face the heaviest workload due to the presence of corporations and foreign investors in their respective territorial jurisdictions. Their understaffing directly affects the length of time needed to process the applications filed.

Moreover, the BFPDs do not employ civilian staff and thus all the activities, including mail sorting and documents issuing, are performed by police officers. Although the BFPDs would welcome if civilian personnel performed these administrative tasks, the staffing decisions fall under the competence of the Ministry of the Interior of the Slovak Republic (the “Interior Ministry”). In this connection, the “Strategy of Labour Mobility for Foreigners” contains a measure for implementation in 2019 “to support the existing human resources by hiring civilian personnel (approximately 70 staff) who would perform administrative support functions (reception and registration of applications for residence permits, handling of queries, issuance of documents) in order to speed up the process of decision-making and checking the legality of stay”. However, the measure was not implemented in 2019.

INADEQUATE LANGUAGE SKILLS OF BFPD OFFICERS

The findings of the inquiry and our personal experience lead us to conclude that most BFPD officers do not speak a foreign language and they communicate with foreigners only in the Slovak language. We noticed that many foreigners who came to the BFPDs were accompanied by Slovak nationals. These aides, assigned to foreigners mostly by job agencies and employers, assisted their clients in filling in applications and interpreting their communication with police officers. Several foreigners (in Prešov, Nové Zámky and Banská Bystrica) said that some officers were able to communicate in English. We witnessed a situation in Košice when a police officer, who distributed queue tickets to foreigners, communicated only in Slovak, although the queue comprised only English speaking foreigners. When a foreigner asked something in English, the officer responded in Slovak.

The knowledge of a foreign language is not a qualification criterion which the officers assigned to the BFPDs must meet. According

to the management, younger officers usually speak basic English, whereas the older ones have a command of the Russian language and they can make themselves understood speaking Slovak when they communicate with Ukrainian applicants. However, the present staffing levels at individual BFPDs are inadequate to ensure the presence of at least one officer with foreign language skills on the shift. According to the management, there has never been a case of a foreigner's application not being processed due to the language barrier. There are currently no training courses available to BFPD officers to improve their foreign language skills. Although the interest in language courses is there, the responses we have received suggest that their scope should be kept to a minimum because the officers have regular duties to perform. This finding only confirms that the BFPDs are understaffed. Despite this, systematic language training for the officers assigned to the departments which interact with foreigners should play a significant role. Police officers should not simply rely on the fact that all foreigners speak Slovak or are accompanied by Slovak-speaking aides because this sort of support is not available to everyone.

FIXED OPENING HOURS ALSO DURING THE PERIODS OF INCREASED WORKLOAD

The opening hours at BFPDs are fixed; in other words, even during peak periods when the number of applications increases, typically in September and October, the number of business days per week remains the same, and so does the number of opening hours per business day. According to the management, any increase in the number of business days or opening hours would require additional human and technical resources.

The days of business vary from one BFPD to another. As a rule, there are three business days per week – Monday, Wednesday and Friday. Opening hours are from 07:30 to 12:00 noon by default and resume after the lunch break to last till 15:00 on Mondays and 17:30 on Wednesdays. Our survey showed that the “opening hours’ information” published on the websites of the departments in Nitra and Nové Zámky was incorrect: both departments had their Wednesday opening hours longer than what the websites suggested.

Only two BFPDs (Bratislava and Trnava) have business days from Monday to Friday. Jana Dubovcová, the former Public Defender of Rights, suggested this practice during her term of office and we welcome the fact that BFPD Bratislava, which has the highest workload, has embraced her suggestion. As far as the Trnava department is concerned, the information available on the website does not reflect reality. During our visit to Trnava, which took place on a Tuesday, we noticed that the opening hours indicated on the door contained a remark that Tuesdays and Thursdays were reserved

solely for pre-booked foreigners. However, foreigners get to see this information only as they enter the department.

During business days, priority is given to the vulnerable groups of applicants, such as parents with small children, pregnant women, older persons, persons with severe health disabilities, applicants with the status of Slovaks living abroad, and those applying for a residence permit in connection with the restoration of Slovak citizenship. This was confirmed during the visit of individual BFPDs when members of the inquiry team observed that when a department opened for business in the morning, the attending officers asked mothers with children (by way of example) to step out of the queue and proceed to the front. This human approach and empathy is praiseworthy and should be highlighted as an example of good practice.

EXISTENCE OF INFORMAL WAITLISTS DRAWN UP BEFORE OPENING

The team visited individual BFPDs before their opening hours to observe how the departments coped with the morning swell of applicants. Except for Rimavská Sobota and Michalovce, where the number of applicants is low, the queues which formed in the early morning hours in front of all BFPDs were considerable. Some foreigners (or their proxies) queued from even the day before. These waiting foreigners created informal waitlists; according to witness accounts, the first in the queue put his/her name on a piece of paper and the rest put their names below as they joined the queue. Foreigners considered these informal waitlists necessary, saying that the situation would be not manageable without them, mainly because some of them joined the queue the day before. In most cases, the existence of such informal waiting lists created a sense of order. However, at some departments (Dunajská Streda and Prešov), the lists were drawn up by organised groups, a practice which BFPD management considers unacceptable.

In connection with the existence of informal waitlists, we believe that already during their first contact with the department and while queuing up, all applicants should be informed that the BFPDs do not take these informal waiting lists into account. A notice saying that 'informal waitlist will be disregarded' was displayed only in Žilina, although just in the Slovak language and inside the building. This sort of information should be displayed in clear view at the entrance for everyone to know that putting their name on an informal waitlist is not necessary, let alone in situations when such the list is kept by an organised group which is likely to ask money from applicants for putting their names on it. The formation of long queues in front of the departments and the creation of informal waiting lists could

be avoided through the introduction of an efficiently functioning appointment scheduling system.

EFFICIENCY OF THE ELECTRONIC APPOINTMENT SCHEDULING SYSTEM

At the time of our visits, the old appointment system was still in operation (until 15/11/2019). Both the officers and foreigners viewed the system as insufficient, inefficient and rigid. The appointment system for the individual BFPDs was administered by the Detention Centres in Sečovce and Medved'ov. The main drawback of the system was that it did not allow applicants to choose a convenient time for the handling of their applications. The system simply allotted a time slot which the applicant was unable to change. Also, the system enabled appointments only for certain types of services (for example, the granting or renewal of a temporary or permanent residence permit). The old system had limited capacity in terms of the number of schedulable appointments per business day.

The 'new' electronic appointment scheduling system was launched on 15/11/2019. According to the Bureau of Border and Foreigner's Police, the new system is based on the same platform as the other electronic systems used across the police service (e.g., traffic police). At the time of its launch, the system enabled the scheduling of appointments only up to 14 days ahead; from the end of January, applicants may schedule their appointments 60 days ahead. The objective of the Bureau is to fine-tune and beef up the system's capacity to accommodate all those who want to schedule their appointments electronically. At the same time, the scope of the services bookable through the new electronic system has broadened.

An efficiently functioning electronic scheduling system with sufficient capacity in terms the number of schedulable appointments is the way forward if the BFPDs want to eliminate informal waitlists, shorten the queues (which are forming since early morning hours or even since the evening before), and prevent the activities of various organised groups which profit from the inefficiency of the appointment scheduling system.

INCONSISTENT PRACTICE IN THE PROVISION OF INFORMATION

The BFPDs provide general information by telephone, email or in person. The first two modes of communication are used to provide information on the statutory requirements which a residence permit application must meet, on the procedure, etc. However, those who would like to enquire about the status of their particular application must appear in person. The answers in the questionnaire show that it is almost impossible to reach the BFPDs by phone. The survey

also showed inconsistencies in the practice applied by individual BFPDs for the provision of general information by email, such as information on the general requirements for permanent residence permit applications and the procedure of their processing. While some BFPDs² provided comprehensive information, including the explanation of the relevant legal provisions governing the content and submission of applications, some BFPDs³ simply referred the applicant to the applicable provisions of law. Some BFPDs⁴ in their answers mentioned, much to our surprise, that this sort of information may only be provided in person during the applicant's visit, even though the management of BFPD Bratislava, for example, stated that the department provides this type of information also by email.

The practice of those BFPDs which do not provide general information to foreigners on their request, i.e., information which the departments are obliged to provide under the laws and regulations governing BFPD activities and which they have at their disposal, is in clear breach of the right to information enshrined in the Constitution and runs counter to the principles of good governance. After all, it is in the interest of the BFPDs themselves to reduce the number of foreigners appearing in person exactly due to the insufficient staffing of the foreigners' police service. This objective could be achieved through the provision of general information by email or telephone. This would reduce the number of foreigners who come in person just to obtain general information. We are also of the view that the completeness of the information provided over the phone or email before the submission of applications increases the efficiency of the procedure and reduces the number of those who need to resubmit applications or those who appear in person just to get general information.

REFERRAL OF APPLICATIONS FOR PROCESSING FROM THE MOST BURDENED BFPDS TO THE LESS BURDENED ONES

The inquiries and visits of the BFPDs showed that in order to cope with the workload during peak periods, the service has adopted a practice whereby the territorial competence for the processing of applications for a temporary residence permit filed with the most burdened BFPDs in the Bratislava Region is transferred to the less burdened departments in the east of Slovakia. According to the Bureau of Border and Foreigners' Police, there are indeed situations where the applications filed in Bratislava are referred for processing

- 2 BFPDs in Nové Zámky, Rimavská Sobota, Prešov, Košice and Nitra.
- 3 BFPDs in Žilina and Banská Bystrica
- 4 BFPDs in Bratislava and Michalovce.

to other BFPDs depending on their actual workload and the average number of temporary residence permit applications filed.

The report contains an analysis of the third sentence of Section 125(1) of Act No. 404/2011 on the Stay of Foreigners, as amended, which provides for the transfer of territorial competence for processing. We have concluded in this connection that the transfer of territorial competence is lawful and in line with the procedures established by law because it pursues a legitimate objective, i.e., to make the processing of applications more efficient and thereby expedite the process. Equally, an extensive interpretation of the term “Interior Ministry” warrants the conclusion that the entity taking a decision on the transfer of territorial competence – the Director of the Bureau of Border and Foreigners’ Police – appears to be authorised to do so. Thus transferring the territorial competence for the processing of residence permit applications is lawful both in substantive and procedural terms.

What we view as problematic in the context of these referrals is the exercise of the procedural rights by the applicant, as a party to proceedings, whose application has been referred for handling elsewhere. According to the BFPDs, any information on the status of a particular application may only be provided in person, and not by telephone. However, this could pose problems for those whose applications have been referred for processing to other BFPDs (in line with the third sentence of Section 125(1) of the Act on the Stay of Foreigners). There could be situations in practice where foreigners who have filed their application in Bratislava (based on the applied-for location of their residence) would have to travel to Košice in order to get information about the status of their application. The efficiency of proceedings should yield benefits to all parties to the proceedings and should not be achieved to the detriment of the applicant’s procedural rights. The right to inspect one’s file is a right which any party to the proceedings must be able to exercise also in person. Therefore, any transfer of territorial competence that would require a party to hire a proxy – because the considerable geographical distance impairs the party’s ability to exercise his/her procedural rights in person – is in breach of the party’s right to inspect the file.

INSUFFICIENT INFORMATION AVAILABLE TO FOREIGNERS IN FOREIGN LANGUAGES

Generally speaking, the scope of the information available at the BFPDs in foreign languages is very limited. The entrance/navigation signs to the departments are only in Slovak. The information on the business days/opening hours displayed at the entrance to the departments was almost entirely in Slovak. The only information available on the official notice boards in a language other than Slovak concerned the online appointment scheduling system. Most

departments did not have the English version of the Act on the Stay of Foreigners; the sending of general information by email also appears to be problematic – not a single email query received in English was answered in English. The comparison of the English and Slovak pages on the Interior Ministry’s website shows that the scope of information on the two pages differs. The main problem with the English version of the webpage, which contains information for foreigners, is that it is poorly arranged and does not contain even the basic and essential information, such as business days, opening hours or contact telephone numbers to the information lines operated by individual police directorates.⁵ We must underline in this connection that the basic command of a foreign language should, as a minimum, be a standard requirement for those who interact with foreigners and we, therefore, plead for the systemic development of BFPD officers’ language skills.

INADEQUATE PREMISES

We have noticed that the quality and equipment of BFPD premises is gradually improving and that some departments are moving to new locations. BFPD Žilina moved to new premises in 2019 and BFPD Bratislava moved from the inadequate premises at Hrobaková Street to a new location. The departments in Trnava and Prešov have been refurbished and equipped as client-friendly. The department in Dunajská Streda (evaluated during the survey as the worst in structural and material terms) moved to a new place, and the department in Nove Zámky is planned for relocation. Still, the premises of some BFPDs remain unsatisfactory and we believe that efforts should continue to make sure that they meet at least the minimum standards for the reception of applicants, such as waiting rooms with sufficient capacity, client-friendly workplaces and access to toilettes and drinking water.

As far as navigation to individual departments is concerned, it was sometimes very difficult to find their actual location despite the GPS coordinates published on the website of the Interior Ministry. This applies, for example, to BFPD Prešov which is situated in an industrial zone and there are no signs showing directions to the department from the main road, unlike in Banská Bystrica or Bratislava.

OVERVIEW OF THE MEASURES PROPOSED

With reference to the above conclusions, pursuant to Section 17(2) (e) of Act No. 564/2011 on the Public Defender of Rights, we are proposing a set of measures designed to improve the situation in the handling of foreigners’ applications for residence permits, make the

5 The website of the Interior Ministry was assessed in March 2020.

practices across the entire BFPD service consistent, and ensure full respect for the fundamental rights and freedoms of applicants for a residence permit in the Slovak Republic.

PROPOSED MEASURES ADDRESSED TO THE BUREAU OF BORDER AND FOREIGNERS' POLICE (SUMMARY)

- To build and further develop the language skills of BFPD officers who interact with foreigners and to support the introduction of a foreign-language bonus as a salary component;
- To display at individual BFPDs clear notices on business days and opening hours also in English;
- To develop a strategy for coping with the fluctuating workload at individual BFPDs during peak periods;
- To display a clear notice at the entrance to each BFPD saying that any informal waitlists will be disregarded and that clients do not need to put their names on any waitlist for their application to be processed.
- To ensure that the queue tickets are distributed only to those foreigners who are physically present at the department;
- To ensure that BFPD officers do not cooperate with any individuals who organise informal waitlist in front of the departments;
- To issue an internal BFPD instruction specifying:
 - the time limit within which and the manner in which general information must be provided to those who request it by email, and make the practice consistent across the service;
 - the duty to provide information also to those foreigners who come to the department in person;
- To ensure that the BFPD telephone lines are adequately attended so that foreigners can reach the department by telephone and obtain the information they need to submit their application.
- To develop a model notice on the referral of an application for processing to another BFPD, which is comprehensible to the applicant both in terms of substance and language;
- To ensure that the departments to which applications have been referred for processing may provide information from the applicant's file also in ways other than presenting the file for personal inspection, for example by email or telephone, in which case the callers' identity could be verified against their personal data contained in the file (e.g., personal number, passport number).
- To ensure that applicants may inspect their files also within the premises of the department where they filed them originally, for example by making a digital copy of the file available;
- To ensure that the information displayed on the official notice boards and at the entrance to the BFPDs in other languages (English, Russian,...) is the same in terms of scope and substance

- as the information provided in Slovak;
- To ensure that all BFPDs have a publicly available copy of the Act on the Stay of Foreigners.
- To continue the process of moving those BFPDs which need to relocate to more appropriate premises;
- To install traffic navigation signs showing directions to the BFPDs.

PROPOSED MEASURES ADDRESSED TO THE INTERIOR MINISTRY (SUMMARY)

- To allocate adequate human resources to the most understaffed BFPDs as a matter of priority;
- To increase the number of staff at the BFPDs according to their specific needs;
- To open the foreigners' police service also to civilian employees and make the necessary arrangements for their hiring and integration into BFPD workflows;
- To analyse the causes behind the lack of interest in working for the foreigners' police service and adopt measures to remedy this undesirable situation.
- To bring the information on the business days/opening hours published on the Interior Ministry's website in line with the reality of certain BFPDs;
- To publish on its website clear information about which days of the week are reserved solely for pre-booked applicants and 'significant foreign investors', similarly to the practice at BFPD Trnava which reserves Tuesdays and Thursdays for these two categories.
- To ensure that the English webpage of the Interior Ministry is clearer and better arranged and that it contains the same information as the Slovak webpage.

