Language Requirements for the Contractor's Key Experts in Public Procurement [2]

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https://doi.org/10.33542/VSS2026-1-4

Abstract

This study analyses the legal limits of contracting authorities' language requirements for suppliers' key experts. Through EU law and CJEU case law, it identifies the doctrinal proportionality test. The study evaluates recent decision-making practice of oversight authorities in the Czech Republic and Slovakia (e.g., Metro D, D1 Turany-Hubová, SAP). Ultimately, it defines a "dual-channel approach," dogmatically distinguishing language requirements applied as strict selection criteria from their flexible placement among special contract performance conditions, which are legally verifiable during pre-contractual cooperation.

Keywords: *public procurement, language requirements, proportionality test, dual-channel approach, pre-contractual cooperation.*

Introduction

Public procurement (PP) is one of the European Union's (EU) most significant economic instruments, in which two conflicting yet legitimate interests come into play. On the one hand, there is the imperative to build a single internal market, which requires openness, non-discrimination and the removal of barriers to free movement. On the other hand, there is an objective need for contracting authorities to ensure the smooth and secure performance of the contract. In large infrastructure and technology projects, this need is closely linked to the ability to communicate professionally, accurately and efficiently with the contractor's implementation team, particularly with its key experts.

At the intersection of these interests lies the legal issue of the language requirements imposed on the economic operator's key experts in the tender documentation (the documents required for preparing a tender). The requirement that specific individuals (site managers, project managers, chief architects, supervisors or IT analysts) have a certain level of proficiency in the official language of the contracting authority's country is not merely a marginal administrative filter. From the

[2] This paper forms part of the work carried out under the VEGA grant scheme and is published with financial support from VEGA grant project No. 1/0384/26, 'Hybrid models of public power: private-law instruments in the hands of the state and their legal control'.

perspective of EU law, this is a measure with the potential to give rise to indirect (hidden) discrimination. Economic operators from other Member States are objectively disadvantaged by such a requirement, as they are forced either to recruit a limited pool of local experts or to withdraw from the PP procedure altogether.

For this reason, a language requirement integrated into the PP process is subject to a strict proportionality test. When assessing it, supervisory authorities and courts must weigh the extent of the interference with fundamental freedoms against the genuine preponderance of the public interest in safety and the quality of performance. The aim of this study is to provide a comprehensive analysis of the limits of the permissibility of such communication barriers, whilst synthesising the legal framework with the latest developments in case law. In a broader context, particular attention is also paid to the recent judgment in the case of Vilniaus tarptautinė mokykla, which clarifies the limits of a blanket requirement to use the official language without the possibility of concessions or exceptions (Judgment of the Court of Justice of the European Union No. C-48/24).

The issue under analysis has two key dimensions. The first is the dogmatic level: the study systematically distinguishes whether the language requirement is formulated as a condition for participation or as a specific contractual requirement for the performance of the contract (Directive 2014/24/EU of the European Parliament and of the Council; Act No. 343/2015 Coll.[3]). This procedural distinction directly determines the scope of review and the extent of intervention by supervisory authorities. Whilst the qualification approach constitutes a strict exclusion criterion preventing participation in the tender itself, in the case of contractual terms, the authorities respect contractual freedom. They intervene in contractual freedom only to a limited extent, primarily with the aim of excluding obvious excesses that would be contrary to the fundamental principles of PP (interpretative opinion of the Public Procurement Office No. 3/2016).

The second is the application dimension: finding the delicate balance between the legitimate protection of the security of a complex contract and hidden discrimination against foreign bidders. This research paper examines this balance comparatively against the backdrop of approaches to the admission of interpreters in strategic projects. It draws on Czech case law concerning infrastructure, particularly the construction of Prague's Metro D line, where the necessity of direct communication without an interpreter was accepted for key personnel (judgment of the Supreme Administrative Court of the Czech Republic, ref. no. 9 As 125/2024-56).

This approach is subsequently compared with the latest Slovak case law. The case of the D1 Turany–Hubová motorway section is analysed, in which the supervisory authority overturned a blanket ban on interpreters for site managers on tunnel projects (Public Procurement Office decision No. 12978-6000/2024). This contrasts with the case of the SAP[4] information system, which,

[3] Act No. 343/2015 Coll. on Public Procurement and on Amendments to Certain Acts (PPA).

[4] SAP stands for "Systems, Applications, and Products in Data Processing.

conversely, legitimised a strict communication requirement directly in the qualification phase, basing its argument on the distinction between ‘front-office’ management experts in direct contact with users and ‘back-office’ administrators (Public Procurement Office Decision No. 8600-6000/2026).

The output of the study is the construction of an admissibility test based on case law, which may also serve as a practical methodological tool for the practical application by contracting authorities and review bodies.

This academic study is systematically divided into five main sections. Chapter 1 analyses the framework of European law and key case law of the Court of Justice of the European Union (CJEU) on communication barriers. Chapter 2 examines the decision-making practice of the Czech Office for the Protection of Competition (ÚOHS) and its judicial review. Chapter 3 then examines the Slovak legal context, with an emphasis on the landmark cases of D1 Turany – Hubová and the SAP information system, which form the current core case law (Public Procurement Office decisions No. 12978-6000/2024 and No. 8600-6000/2026). Synthesising these findings, Chapter 4 presents the operational admissibility test itself, and Chapter 5 formulates the concluding summary.

1 The framework of European Union law

1.1 Primary law and Directive 2014/24/EU

The principles of equal treatment, non-discrimination, transparency and proportionality form the fundamental regulatory framework for assessing any entry restrictions in PP (Directive 2014/24/EU of the European Parliament and of the Council; Arrowsmith, 2014). Their primary purpose is to ensure genuine competition and prevent its artificial narrowing (Sanchez-Graells, 2019).

Although the language requirement may appear to be a mere administrative matter, in reality it constitutes differential treatment. A tenderer whose staff speak the local language has a clear structural advantage over foreign competitors, meaning that such a language barrier de facto constitutes indirect (hidden) discrimination. This approach is also unequivocally confirmed by established case law. In the landmark Lumius case, it was explicitly stated that a procedure whereby the contracting authority prevents suppliers from participating by setting qualification requirements that are manifestly disproportionate to the size, complexity and technical difficulty of the contract is considered a hidden form of unlawful discrimination (judgment of the Supreme Administrative Court of the Czech Republic, ref. no. 1 Afs 20/2008-152). A strict language proficiency requirement is therefore justifiable only if it pursues a legitimate aim and stands up to a strict proportionality test.

In the dogmatic division of the regulatory scope of the Public Procurement Directive, it is necessary to consistently distinguish between two levels. Firstly, these are the selection criteria (conditions for participation), which allow the contracting authority to require proof of professional qualifications for managerial and technical staff. Secondly, there are the specific conditions for the performance of the contract or contractual requirements. These do not constitute a condition for participation, but rather an obligation which the tenderer accepts for the contractual relationship and which applies only after the contract has been concluded. This distinction is not merely academic – it has direct procedural legal implications for when the language requirement is applied and verified (strictly ex ante during the evaluation of tenders versus ex post during the verification of performance itself or only prior to the signing of the contract).

From the perspective of primary law, the general prohibition of any discrimination on grounds of nationality under the Treaty on the Functioning of the European Union (TFEU) is particularly relevant, as it is supplemented by further specific freedoms (Article 18 TFEU). This primarily concerns the protection of the free movement of workers, which forms the original normative basis for case law on language barriers (Article 45 TFEU), further, the freedom of establishment applied when a foreign applicant sets up a permanent establishment (Article 49 TFEU), and finally, the protection of the free movement of services applied to their cross-border provision (Article 56 TFEU).

1.2 The proportionality test in CJEU case law

1.2.1 Case C-379/87 Groener: the birth of the proportionality test

The principle of proportionality, which requires that the measures chosen be necessary and appropriate to achieve the objective pursued, has been a fundamental part of European law since the landmark case Internationale Handelsgesellschaft. In this historic decision, the CJEU established proportionality as a general limiting principle for any interference by public authorities in fundamental market and economic freedoms (CJEU Judgment No. 11/70). Whilst this case established the legal basis, a specific adaptation of the test for the sensitive area of language barriers did not occur until almost two decades later.

Although neither of these key disputes directly concerned the application of the procurement directives (since the first case involved the forfeiture of a deposit on an export licence and the second concerned the free movement of workers), the conclusions reached are universally applicable under EU law. Both legal doctrine and case law draw on them by analogy in the context of PP. Any communication conditions set by contracting authorities in tender documents are ultimately assessed through the lens of restrictions on the fundamental freedoms of the internal market, upon the protection of which secondary law is built.

The Groener case provides the absolute foundation for assessing such limits. The factual basis of the dispute concerned a Dutch national who applied for a permanent full-time position as an art teacher at a vocational school in Dublin (CJEU judgment No C-379/87).

Under the Irish legislation in force at the time, a strict condition for appointment to the permanent teaching staff was proof of proficiency in the Irish language, despite the fact that the teaching of art itself was to be conducted exclusively in English. As the applicant failed a specific oral examination, the Ministry refused to appoint her. This raised a fundamental legal question before the CJEU: Can a Member State make access to employment conditional on knowledge of the official language, even though the performance of the work itself does not directly require such linguistic competence?

In this judgment, the CJEU confirmed an important sovereign premise: European law does not prohibit national policies aimed at protecting and promoting the national language, which constitutes a fully legitimate objective. At the same time, however, it set strict limits, as the implementation of such a policy must not interfere with the free movement of workers. For this sensitive area, the Court formulated a basic three-part proportionality test:

1. *Legitimacy of the objective:* The measure must pursue a genuine public interest (the protection of the official language).
2. *Proportionality:* The requirements arising from such measures must not, under any circumstances, be disproportionate to the objective pursued.
3. *Non-discriminatory application:* The manner in which the language requirement is applied in practice must not place nationals of other Member States at a disadvantage (CJEU judgment No C-379/87).

In applying this test to the facts of the case, the Court expressly recognised that teachers play a key role in the implementation of language policy, which manifests itself directly through their participation in the day-to-day life of the school and in everyday communication. This idea was elaborated upon by Advocate General Darmon, who stated that every citizen has the right to be taught in the official language of their state, which is the bearer of a common cultural heritage. Teaching posts are therefore strategic for the implementation of this policy, and so the language requirement was not disproportionate in the given context (Opinion of the Advocate General in Case C-379/87).

This conceptual approach – that is, a rigorous examination of the key role played by the person concerned in the day-to-day performance of their duties – has been established by the CJEU as a settled standard of case law. The Court also directly referred to the findings in the Groener case in its most recent judgment, Vilniaus tarptautinė mokykla, from 2026. This case concerned a requirement by the Lithuanian inspectorate that teachers and administrative staff at a private international school demonstrate their knowledge of the official language exclusively by means of a specific national certificate. Whilst the CJEU once again confirmed the protection of the official language as a legitimate objective, it strictly rejected the unconditional requirement for a single local certificate. The Court found that such a practice is disproportionate and infringes the freedom of establishment, as it absolutely precludes the consideration of other equivalent language proficiency certificates obtained in other Member States. In the field of PP, this judgment thus constitutes the most recent confirmation of the rule that the contracting authority may not make compliance with the language requirement conditional solely on a domestic certificate and must always accept equivalent evidence (CJEU judgment No C-48/24).

1.2.2 Case C-281/98 Angonese: non-discriminatory means of proof

The Angonese case marked a fundamental shift in the approach to the formal demonstration of language proficiency. The facts of the case concerned a dispute involving an Italian national who had applied for a job at a private bank in the province of Bolzano. The bank required, as a condition of participation, the submission of a specific local certificate of bilingualism, which was issued only by the local authorities and for which examinations were held exclusively in that province. The applicant did not possess this specific certificate, but was able to demonstrate his perfect bilingualism through other equivalent documents relating to his studies in Austria and his experience as a translator (CJEU judgment No C-281/98).

In this landmark judgment, the CJEU confirmed two key conclusions. Firstly, it recognised the horizontal effect of the prohibition of discrimination, meaning that this prohibition applies not only to public authorities but also directly to the requirements of private employers. Secondly – and this is crucial for PP – the Court ruled on the nature of admissible evidence. It found that whilst a requirement for a certain level of language proficiency may be legitimate, it is manifestly disproportionate if it cannot be demonstrated by any other means. The exclusion of equivalent documents and the conditioning of the fulfilment of the communication requirement solely on one specific local diploma thus constitutes prohibited discrimination on grounds of nationality (CJEU judgment No C-281/98).

The application of this doctrine to the field of PP has fundamental implications. It means that, when formulating conditions for key experts, the contracting authority must not require only one specific type of document (e.g. exclusively a certificate of a state language examination issued by a local institution in the contracting authority's country), but, under European law, must unconditionally accept equivalent means of proving language proficiency.

As confirmed by review practice, such equivalent means of proof include, in particular, certificates in accordance with CEFR standards at the required levels (e.g. B2 or C1), evidence of full-time study completed in the required language, or objectively demonstrated long-term professional experience in the relevant linguistic environment (Decision of the Office for the Protection of Competition No. ÚOHS-10367/2020/542/VHu). Rejecting such equivalents would lead to a direct breach of the prohibition of discrimination.

1.2.3 Case C-202/11 Las: a comprehensive test for cross-border language restrictions

The judgment of the Grand Chamber of the CJEU in the Las case represents, in the context of the free movement of workers, the most comprehensive doctrinal test to date for assessing cross-border language restrictions. The facts of the case concerned a Dutch citizen who worked for a Belgian company under an employment contract drawn up in English. However, a Flemish decree in force at the time required, on pain of absolute nullity, that all cross-border employment contracts where the place of work was in the region concerned be drawn up exclusively in Dutch (CJEU judgment No C-202/11).

In this judgment, the CJEU identified three legitimate objectives that may theoretically justify state language barriers: the protection and promotion of the official language, the protection of the employee, and the assurance of effective supervision by administrative authorities. The Court confirmed that the objective of promoting the official language constitutes a legitimate interest which, in principle, justifies a restriction on the freedom of movement of workers under the TFEU. At the same time, however, it strictly insisted that the measure adopted must be strictly proportionate. It assessed the absolute penalty of contract invalidity as manifestly disproportionate, since there are less restrictive means of achieving the objective pursued, such as, for example, drawing up the contract in an authentically equivalent bilingual form (CJEU judgment No C-202/11).

By applying these conclusions to the assessment of communication requirements in PP (particularly regarding the contractor's key experts), this judgment establishes a comprehensive and structured approach. The CJEU first examines the existence of a legitimate aim and subsequently applies the classic three-step proportionality test:[5]

Basic prerequisite (Existence of a legitimate aim): Does the contracting authority's requirement pursue an objective public interest (e.g. protection of the official language, operational efficiency and security of performance, effective supervision by authorities)? If so, the measure is subjected to the three-step proportionality test itself:

1. *Appropriateness of the measure (functional test):* Is the communication requirement realistically capable of and suitable for directly achieving the stated objective?
2. *Necessity of the measure (less restrictive means test):* Is strict language proficiency for the position in question truly necessary, or is it possible to achieve the purpose of the measure through other, more market-friendly alternatives (for example, by allowing a qualified interpreter or by providing bilingual documentation)?
3. *Proportionality in the strict sense of the word (stricto sensu):* A fair balance between the interference with rights – that is, weighing the extent of the burden and the restriction of competition for foreign tenderers on the one hand against the declared real benefit for the safety and quality of the contract performance on the other (CJEU judgment No C-202/11).

[5] In constitutional theory and case law, the proportionality test is referred to as either a three-step or a four-step test. In substance, it is the same logical procedure; the difference lies solely in the systematics. Whilst the four-step test lists the demonstration of a 'legitimate aim' as its first, equivalent formal step, the three-step model (also applied in this text) regards the existence of a legitimate aim as an absolute 'zero' prerequisite and only proceeds to the actual testing (1. suitability, 2. necessity, 3. proportionality stricto sensu).

1.2.4 Case C-15/15 New Valmar: application of the test to the free movement of goods

The fact that the strict proportionality test for language barriers formulated in the Groener and Las cases constitutes a universal doctrinal standard is evidenced by the judgment of the Grand Chamber of the CJEU in the New Valmar case. In that judgment, the Court extended the scope of application of this test to the protection of the free movement of goods. The facts of the case concerned a dispute involving a Belgian company based in the Flemish region, which was required, on pain of absolute nullity, to issue all invoices exclusively in Dutch, even in cross-border transactions with an Italian business partner (CJEU judgment No C-15/15).

The CJEU, referring directly to its previous case-law, reaffirmed that the promotion and protection of the official language is, in principle, a legitimate objective. However, it intervened decisively at the stage of assessing proportionality: it found that the absolute sanction of invalidating the invoice clearly goes beyond what is necessary. A proportionate, and therefore less restrictive, solution would be, for example, to allow the production of a linguistically equivalent version alongside the mandatory Dutch version.

In the context of PP, this judgment serves as a key reminder of the inadmissibility of 'absolute barriers'. Just as the automatic invalidity of a contract (Las) or an invoice (New Valmar) is disproportionate from the perspective of EU law, so too is the automatic and unconditional exclusion of a tenderer a priori disproportionate simply because its foreign expert does not possess the strictly required local language certificate. This applies particularly where the objective of smooth communication and the security of performance can be achieved by other means that are more favourable to the free market.

1.2.5 Case C-298/14 Brouillard: the obligation to compare qualifications

The CJEU's judgment in the Brouillard case introduces into case law a key obligation of active substantive comparison. In a dispute over a position as a law clerk at the Belgian Court of Cassation, the commission required exclusively a Belgian diploma or its formal recognition. The CJEU found a breach of the free movement of workers (Article 45 TFEU). It emphasised that the authority must not assess qualifications in a purely formalistic manner, but must comprehensively compare foreign documents and professional experience with national requirements (CJEU judgment No C-298/14).

In the field of PP, this case law establishes a fundamental rule for assessing participation conditions and key experts. A contracting authority in PP must not rigidly require exclusively a national document (, e.g. a specific domestic language certificate) and reject a foreign candidate outright on the grounds of its formal absence.

It follows from the Brouillard case law that the contracting authority is obliged to actively and substantively compare the submitted equivalent documents (e.g. foreign diplomas, CEFR language certificates at the relevant levels) in conjunction with the expert's actual professional experience in a foreign-language environment and assess whether this combination provides the same guarantee in terms of quality and performance reliability as that declared by the contracting authority in its requirement for a domestic certificate. The formalistic rejection of an expert without such a comprehensive comparison constitutes a prohibited barrier to market access.

1.3 Synthesis of the European framework

Four key doctrinal conclusions for the PP sector emerge from the analysed case law of the CJEU. When setting communication conditions, the following applies:

1. in principle, they pursue a legitimate aim (protection of the official language, operational efficiency and security of performance);
2. they are subject to a strict proportionality test (the Las doctrine), which imposes an uncompromising obligation on the contracting authority to examine less restrictive alternatives (e.g. allowing an interpreter or bilingual documentation);
3. equivalent alternative means of proof must always be accepted to demonstrate the required language competence (Angonese doctrine);
4. the contracting authority has an active duty to materially compare and take into account the equivalent qualifications and foreign experience submitted (the Brouillard doctrine).

At the same time, however, it must be objectively acknowledged that the CJEU has not yet issued a specific judgment directly addressing the language barriers imposed on a contractor's key personnel solely from the perspective of the Public Procurement Directive. The current doctrinal framework is therefore being developed through the analogous application of case law on the fundamental freedoms of the internal market, in conjunction with the general principles and regulatory options of European law (Articles 18, 58 and 70 of Directive 2014/24/EU of the European Parliament and of the Council).

It is precisely this case-law vacuum at European level that creates ample scope for national review bodies and administrative courts, which are gradually filling this gap through their own, often highly case-specific, decision-making.

2. Case law of the Office for the Protection of Competition of the Czech Republic

2.1 The Lumius case: an instrumental understanding of the principle and the definition of hidden discrimination

The Czech Public Procurement Act [6] enshrines the fundamental principle of the prohibition of discrimination and equal treatment. To properly understand the limits of this principle when assessing communication conditions, it is essential to define its very purpose.

[6] Act No. 134/2016 Coll. Act on Public Procurement.

In the landmark Lumius case, the Supreme Administrative Court of the Czech Republic formulated an important conceptual distinction between the perception of discrimination in a human rights context and in an economic context. It noted that whilst the classic prohibition of discrimination in constitutional law serves to ensure the equality of people in dignity and rights (it is a value in itself), the purpose of the prohibition of discrimination in PP is, in essence, strictly instrumental. It does not protect suppliers for the sake of their right to equality per se, but serves primarily as a tool for achieving the objective of the law – ensuring the economy, efficiency and effectiveness of the management of public funds through open competition (judgment of the Supreme Administrative Court of the Czech Republic, ref. no. 1 Afs 20/2008-152).

It logically followed from this instrumental understanding of the court that limiting the prohibition of discrimination to overt forms alone (e.g. an explicit ban on the participation of foreigners) would create an easy way to circumvent the law. The protection of a competitive environment therefore necessarily requires the prosecution of hidden discrimination. The Supreme Administrative Court of the Czech Republic formulated a definition which still serves as an interpretative key in the decision-making practice of the Office for the Protection of Competition. A hidden form of impermissible discrimination is considered to be a procedure whereby the contracting authority prevents suppliers from participating by setting technical qualification requirements that are manifestly disproportionate to the size, complexity and technical difficulty of the contract. Consequently, it is clear that the contract can only be fulfilled by some of the potential tenderers who would otherwise be objectively capable of performing it.

This definition is not merely a mechanical rule, but constitutes a key principle for the application of the law. When assessing statutory limits, vague legal concepts often arise (e.g. proportionality, scope, or complexity of the contract). For their interpretation in PP, *an absolute interpretative rule* applies, according to which they must always be interpreted in favour of effective competition.

Applying this principle to language barriers imposed on the contractor's key experts, it follows from the decision-making practice of the Office for the Protection of Competition that the test of their admissibility is strictly two-fold:

1. *Relation to the subject matter of the contract:* The communication requirement must be primarily and materially related to the subject matter of the contract.
2. *Proportionality to complexity:* The scope and intensity of the requirements (e.g. the level of language proficiency required or the strict refusal of an interpreter) must correspond directly to the complexity, scope and importance of the contract in question.

2.2 The Úhlava Bridge case: a ban on interpreters need not constitute hidden discrimination

An important case by the Office for the Protection of Competition illustrating the assessment of language barriers in technically demanding transport construction projects is the resolution concerning a contract awarded by the Road Administration and Maintenance Authority of the Plzeň

Region. The factual basis of the dispute was the contracting authority's requirement in the PP procedure to demonstrate proficiency in the Czech language for the purposes of professional communication in three key positions within the implementation team – the site manager, his deputy and the surveyor. The main legal issue was whether the strict refusal to allow the use of an interpreter constituted an unreasonable and unlawful barrier to competition in a moderately complex construction contract.

The contracting authority defended this communication requirement by pointing to the more complex nature of the work (demolition of an old bridge, relocation of a road and construction of new bridges). It argued that, given the need for immediate coordination of staff, daily communication with supervisory authorities and safety risks, the use of an interpreter would be impractical in terms of time and potentially dangerous.

The Office for the Protection of Competition subjected this argument to a proportionality test and concluded that the contracting authority had acted in accordance with the law. The Office expressly concluded that the specified language requirement (without the option of an interpreter) for the purposes of technical communication in this specific case fully corresponded to the nature, scope and complexity of the contract. This confirmed an important principle of case law: if the contracting authority can objectively demonstrate that the nature of the work requires an immediate and precise professional response, the prohibition on the use of an interpreter does not constitute hidden discrimination (Resolution of the Office for the Protection of Competition No. ÚOHS-S339/2012/VZ-21769/2012/523/Krk).

2.3 The Třinec case: disproportionate intensity of the language requirement and the unlawfulness of the 'native speaker' standard

A significant decision by the Office for the Protection of Competition regarding the assessment of the limits of language requirements is the second-instance decision of the Office's Chairman in the case of a public contract awarded by the town of Třinec for the collection of municipal waste. In this case, the contracting authority required selected senior staff to have knowledge of Czech explicitly "spoken and written at the level of a native speaker". In these proceedings, the Office did not therefore assess the right to require communication in the local language per se, but rather the strict legal intensity (degree) of this requirement in relation to the nature of the contract (decision of the Chairman of the Office for the Protection of Competition dated 3 July 2020, Ref. No. ÚOHS-19109/2020/322/HSc, Case No. R0078/2020/VZ).

To illustrate the ambiguity of this condition, the Office referred to the Common European Framework of Reference for Languages (CEFR). It pointed out that the tender conditions do not specify at all which specific certified level (on the A1 to C2 scale) the vague term 'native speaker' is intended to correspond to, thereby clearly demonstrating the appropriateness of using precise, objective criteria when assessing language barriers.

The key ratio decidendi of this decision was that, although the need for seamless professional communication in Czech is understandable and legitimate, its excessive intensity constituted a fundamental error. The “native speaker” level represents, in the common sense, the absolute highest possible degree of linguistic competence. However, neither the nature of the contract nor the job description of the positions in question objectively necessitated communication at such an extreme level.

The Třinec case thus establishes an important rule for review practice: whilst a requirement for general communicative proficiency in a language is generally valid, its blanket demand at the absolute ‘native speaker’ level (without this being objectively justified by the extreme complexity of the task) generally constitutes an unjustified restriction of competition and hidden discrimination against foreign suppliers.

2.4 The Metro D case: a comprehensive proportionality test and definitive confirmation of the language barrier by the Supreme Administrative Court of the Czech Republic

A prime example of the application of an instrumental understanding of discrimination, in which supervisory authorities and courts have carefully balanced the protection of the free market against the safety of a strategic infrastructure project, is the exceptionally extensive dispute concerning the construction of the Prague metro. This case is a landmark decision (a so-called leading case), as it has passed through every single instance of review, with the language requirement holding up at each one: from the initial rejection of objections by the contracting authority (September 2022), through the first-instance decision of the Office for the Protection of Competition (Ref. No. ÚOHS-01899/2023/500) and the appeal decision of the Chairman of the Office for the Protection of Competition (Ref. No. ÚOHS-12479/2023/161), right up to the administrative courts. The Office’s decision was first upheld by the Regional Administrative Court in Brno (judgment ref. no. 62 Af 15/2023 of 4 April 2024), and finally by the Supreme Administrative Court of the Czech Republic (judgment ref. no. 9 As 125/2024).

The subject of the contracting authority’s (Prague Public Transport Company) public contract was the performance of independent and external supervision (investor’s technical supervision – ITS) during the construction of sections of Metro I.D. In the tender specifications, the contracting authority set out a strict requirement for the selected key positions within the implementation team (project manager, deputy and valuation specialist) a strict requirement for communicative proficiency in the Czech (or Slovak) language at a minimum B2 level, whilst expressly ruling out the possibility of substituting this proficiency with the presence of an interpreter. The key legal issue here was striking the right balance: is an absolute ban on interpreters for such key experts clearly disproportionate and covertly discriminatory against foreign contractors, or is it a proportionate, objectively justified measure to protect the public interest?

The complainants argued that the presence of an interpreter fully ensures communication in the Czech language and that its exclusion is unjustified and discriminatory. The contracting authority, on the other hand, defended its approach on the grounds of the need to ensure the efficient and secure conduct of the work. The day-to-day activities of this small team management included direct supervision of staff, immediate telephone communication with the investor, and working exclusively with regulations and standards written in Czech. The contracting authority was convinced that allowing an interpreter would completely undermine the ability to respond quickly and professionally, whilst disproportionately increasing the likelihood of fatal misunderstandings.

The Office for the Protection of Competition and subsequently its Chairman applied the proportionality test and concluded that the contracting authority had acted lawfully and that its requirements were correct and the only viable ones. They based their conclusion on three fundamental pillars:

1. *Intensity of the requirement:* The contracting authority demonstrated proportionality by not requiring the level of a native speaker, but only a functional B2 level, and this was restricted solely to managerial staff.
2. *Duration and nature of performance:* This was a contract to be performed through continuous activity over an exceptionally long period (estimated at up to 7.5 years).
3. *Operational efficiency and safety:* The performance of technical supervision during metro tunnelling affects the state's critical infrastructure and people's lives. From a safety perspective, the supervisory authority could not envisage that the selected experts would ensure the operational management of the construction and compliance with Czech legislation for years solely through interpreters.

This extensive interpretation was fully endorsed by the Regional Court in Brno and definitively confirmed by the Supreme Administrative Court of the Czech Republic. The highest court fully concurred with the conclusions of the Regional Court and the Office, and in its assessment of market restrictions, it aptly summarised the key rule that if the specified conditions reflect the contracting authority's existing objective needs, the following applies: *"Any obstacles to competition introduced by the tender conditions cannot be regarded as unjustified."* (judgment of the Supreme Administrative Court of the Czech Republic, ref. no. 9 As 125/2024).

This landmark case, confirmed by all instances, thus establishes a definitive and binding standard for practical application: *The ban on interpreters and the requirement for direct, active knowledge of the local language (min. B2) for management personnel does not constitute covert discrimination where a strategic, long-term contract for critical infrastructure is concerned, in which mediated communication would paralyse the operational efficiency of management, work safety and a smooth understanding of local legislation.*

3. The Slovak legal context

3.1 Legal framework

The Slovak legal framework for assessing language requirements in public procurement is determined by a combination of three key provisions of Act No. 343/2015 Coll. on Public Procurement and on Amendments to Certain Acts (PPA) and, by way of reference, specific regulations governing the state language and regulated professional activities. Section 10(2) of the PPA establishes the principles according to which the contracting authority and the contracting entity must observe the principle of equal treatment, the principle of non-discrimination against economic operators, the principle of transparency, the principle of proportionality, and the principle of economy and efficiency[7] . Section 34(1)(g) of the PPA establishes technical or professional competence, which, in the case of construction works and services, is demonstrated by information on the education and professional experience or professional qualifications of the persons designated to perform the contract or concession contract or of the managerial staff[8] .

Section 38(5) of the PPA further specifies that the conditions for participation set by the contracting authority to demonstrate technical or professional competence must be proportionate and must relate to the subject matter of the contract or concession[9] . With regard to specific conditions for the performance of the contract, Section 42(12) of the PPA transposes Article 70 of Directive 2014/24/EU and provides the contracting authority with a specific regulatory option[10] . These three provisions together create *a dual-track system* for the placement of language requirements: either as conditions for participation (Section 34 in conjunction with Section 38(5)), or as specific conditions for performance (Section 42(12)).

The existence of the described dual-track regime may, in practice, lead to the erroneous conclusion that by transferring a strict language requirement from the conditions for participation to the draft contract (and securing it, for example, by a contractual penalty), the contracting authority completely avoids supervision of compliance with PP principles. However, supervisory authorities in

[7] Section 10(2) of the Public Procurement Act. For the content of the principle of proportionality in Slovak case law, see also the methodological guidance of the Public Procurement Office No. 12582-5000/2017 of 25 July 2017.

[8] Section 34(1)(g) of the Public Procurement Act.

[9] Section 38(5) of the Public Procurement Act: “The conditions for participation which the contracting authority and the contracting entity lay down to demonstrate compliance with financial and economic standing and technical or professional competence must be proportionate and must relate to the subject matter of the contract or concession.”

[10]Section 42(12) of the Public Procurement Act; transposes Article 70 of Directive 2014/24/EU.

both Slovakia and the Czech Republic reject such a formalistic interpretation and, when assessing the limits of contractual freedom, proceed with exceptional doctrinal consensus.

The Slovak Public Procurement Office (PPO) has established this issue in its Interpretative Opinion No. 3/2016 on the Office's competence to review contractual terms. In it, the PPO explicitly states that although it does not examine the compliance of contractual terms with general commercial or civil law provisions, its review powers fully extend to examining the contract's compliance with the fundamental principles of the PPA (in particular the principles of transparency, non-discrimination and equal treatment). The Authority thus intervenes in contractual freedom to a 'limited extent', but uncompromisingly wherever the contractual terms artificially distort fair competition.

This shared Czech-Slovak perspective and the limits of supervisory authorities' intervention were defined with complete precision by the Czech Office for the Protection of Competition in its landmark first-instance decision in the Metro D case (Ref. No. ÚOHS-01899/2023/500, paragraph 279), where it aptly stated regarding the limits of the contracting authority's freedom of contract:

"The Office adds that the Act does not specify what contractual terms and conditions should be included in a contract concluded for the performance of a public contract. The law thus leaves the definition of contractual terms to the discretion of the contracting parties, where it is clear that the needs and requirements of the contracting authority will be reflected, as it is the contracting authority that best knows what it needs and under what conditions. It is therefore up to the contracting authority to determine the scope of the contractual terms. *It must, however, be emphasised that the contracting authority must not approach the definition of the contractual terms and conditions in a wholly arbitrary manner; that is to say, when defining them, it must also take into account the fundamental principles of the procurement procedure set out in Section 6 of the Act, which are intended to ensure that the contractual terms and conditions are not formulated by the contracting authority in a manifestly excessive manner."*

When assessing language barriers, a key conclusion emerges from the approach taken by both authorities: the inclusion of an excessive language requirement solely in the contract terms does not automatically provide the contracting authority with a safe harbour. If this condition is defined in a clearly excessive manner and without a legitimate objective reason (for example, an absolute ban on interpreters in a standard contract under threat of a high contractual penalty), the authority classifies it as hidden discrimination. In such a case, the supervisory authority will intervene just as strictly as if it were an unlawful condition of participation, and in accordance with the PPA, will order the contracting authority to remedy the unlawful situation (usually by amending the tender documentation), or may order the cancellation of the PP procedure used.

3.2 Related specific regulations

Act No. 270/1995 Coll. on the State Language of the Slovak Republic provides a supplementary legal basis for the legitimacy of language requirements. Section 8(3) of the Act requires that technical documentation, the preparation or submission of which is required for the purposes of proceedings under a specific regulation, be kept in the state language[11] . This provision legitimises the language requirements for output documents in Slovak, but does not automatically impose an obligation on the contractor to provide Slovak-speaking experts.

Act No. 138/1992 Coll. on authorised architects and civil engineers, in conjunction with Act No. 50/1976 Coll. (the Building Act), constitutes the second relevant special regime[12] . Site management is a regulated activity in the Slovak Republic (as it is in the Czech Republic); for foreign nationals, the regime for the recognition of professional qualifications under Directive 2005/36/EC applies, which means that language proficiency cannot be indirectly assessed as a condition for the performance of an activity which a foreign professional has already acquired in another Member State.

3.3 Previous case law: the limits of the 'native language level'

Slovak decision-making practice regarding language requirements has its roots in decisions of the PPO from 2007. In cases concerning contracts awarded by the Ministry of Labour, Social Affairs and Family of the Slovak Republic for expenditure verification services and by the Ministry of Agriculture of the Slovak Republic for the analysis of implementation procedures, the Office unanimously found that the requirement for knowledge of the Slovak language 'at native speaker level' was disproportionate (PPO decision of 19 October 2007, No. 924-120/121-7000/2007; PPO decision of 29 October 2007, No. 1104-152-7000/2007).

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[11] Section 8(3) of Act No 270/1995 Coll.: "Accounts shall be kept, financial statements drawn up, and technical documentation prepared or submitted as required for the purposes of proceedings under a specific regulation, as well as the statutes of associations, societies, political parties, political movements and commercial companies required for registration purposes, in the official language; in addition to the version in the official language, a version with identical content may also be drawn up in another language."

[12] Act No. 138/1992 Coll. on authorised architects and authorised civil engineers, as amended, in particular Sections 4 and 4a (recognition of professional qualifications pursuant to Directive 2005/36/EC). For the regulated activity of a site manager, see Act No 50/1976 Coll. on spatial planning and building regulations, as amended, and specific regulations governing professional competence.

The factual basis in these cases was the contracting authorities' blanket requirement for a large number of key experts (in one case, even all experts No. 1 to 15) to demonstrate proficiency in the Slovak language explicitly "at the level of a native speaker" . The key legal issue here was that the contracting authority required suppliers to demonstrate the absolute highest possible level of language proficiency, yet failed to define or explain this concept in more detail in the tender documents. The Office therefore had to assess whether such an extreme and vaguely defined condition constituted an unjustified barrier to foreign experts.

The Office assessed this requirement as manifestly discriminatory against potential key experts from other EU Member States, as it would be very difficult for them to achieve the level of proficiency in the Slovak language required by the contracting authority. The PPO explicitly concluded that the requirement is discriminatory against those experts who, whilst not proficient in the Slovak language at a native level, are nevertheless capable of performing the subject matter of the contract with equal competence. By such a procedure, the contracting authority unduly narrowed the pool of potential experts and restricted competition in the services market.

These decisions form a doctrinal parallel to the Czech Třinec case (analysed in sub-chapter III.3) – in both cases, there is a strict rejection of the highest intensity of language requirements for standard contracts. The Office later confirmed its consolidated position on the approach to reviewing participation conditions in its methodological guidance (PPO Methodological Guidance of 17 January 2022, No. 2865-5000/2022).

3.4 Decision of the PPO Chairman in the R4 Prešov case: key expert and limits of formal requirements

For a comprehensive understanding of the PPO's doctrine when assessing language barriers, it is essential to highlight the supervisory authority's systematic approach to the very concept of the 'key expert', which was defined by the Chairman of the Office in the case concerning the construction of the R4 Prešov Expressway – northern bypass (decision of the ÚVO Chairman dated 17 April 2023, No. 5470-P/2023). Although this decision does not directly concern language issues, its ratio decidendi is fully and analogously applicable to them.

In the tender conditions, the contracting authority required that the 'head of the construction supervision team' have experience in project implementation exclusively under FIDIC contract conditions, without allowing for any equivalent. The Chair of the Office assessed this formalistic requirement as discriminatory and disproportionate, and in his decision (in paragraph 41) formulated a fundamental rule regarding the nature of professional competence:

"The second-instance administrative authority is of the opinion that, in the case of key experts such as the chief site manager or the head of construction supervision, experience in implementing a project in accordance with specific contractual conditions is entirely irrelevant from the perspective of their professional competence. From the perspective of their role in the execution of the contract

, these key experts are responsible for the technical aspects of the construction work, regardless of the type of contractual conditions governing the execution.”

It follows from this decision for practical application that the requirements placed on a key expert must always be directly and proportionately related to their actual material and professional capabilities in relation to the subject matter of the contract. Applying this by analogy to language requirements provides a clear framework for their assessment: rigid and extremely formalistic requirements (e.g. insisting on certificates at native-speaker level without the option of using an interpreter), which are unrelated to the nature of the expert’s specialist technical work, do not stand up to scrutiny from a proportionality perspective.

3.5 The D1 Turany – Hubová case: exclusion of an interpreter as disproportionate

A landmark Slovak decision in this matter is the PPO’s decision concerning a strategic above-threshold contract for the construction of the D1 Turany – Hubová motorway section (which includes the extensive Korbeľka and Havran tunnels). Here, the contracting authority set out differentiated language requirements for experts (levels C1 and B2) in the contract terms, allowing for the use of an interpreter, but with a single strict exception. For the key position of ‘tunnel site manager’, it explicitly required level C2 without the option of an interpreter, under threat of a substantial contractual penalty (PPO decision of 7 October 2024, No. 12978-6000/2024).

Whilst the applicant contested this requirement as discriminatory, the contracting authority defended it on the grounds of strict security considerations and the need for crisis management (e.g. in the event of a fire or cave-in). It argued that in such critical situations, allowing an interpreter would pose an immediate risk threatening the operational effectiveness and success of the emergency services’ intervention.

The Office rejected this argument through a doctrinally sound construction, using the argument of internal inconsistency rather than a lengthy technical assessment. It noted that, in another part of the conditions, the contracting authority required the presence of this expert ‘only’ for 75% of the total tunnel construction period. The Office thus formulated its ratio decidendi in paragraph 220:

“If, therefore, the inspected party does not cover the entire duration of the tunnel construction period with the requirement for 100% presence of the expert in question at the tunnel construction site, the Authority does not consider it proven that the requirement in question is so important, as claimed by the inspected party (particularly in emergency situations), that the option of using an interpreter for the position of key expert in question could not also be permitted, just as the inspected party has already permitted for other positions of key experts.”

From the perspective of the proportionality test, a clear conclusion follows: if the contracting authority accepts that, at the time an emergency arises, the expert may objectively be absent from the construction site, it thereby completely undermines its own argument regarding the irreplaceable nature of his immediate, direct communication without an interpreter.

For a comprehensive, dogmatic understanding of this judgment, it is important to highlight exactly how the Authority ruled on the matter. It rejected the applicant's objection (in section B11.1), in which he sought the complete removal of the language requirement, as unfounded. The Office therefore did not abolish the high language proficiency requirement itself (level C2 was retained), but ordered the removal of the rigid ban on the use of an interpreter. With this landmark decision, the D1 Turany – Hubová case thus represents a perfect Slovak parallel to the Czech Třinec case (subchapter III.3), albeit with one fundamental difference: whilst in Třinec the supervisory authority rejected the extreme stringency of the requirement itself ('native speaker'), in the D1 Tunnel case only the rigid contractual exclusion of an interpreter was rejected, whilst the high level of language proficiency was otherwise maintained.

3.6 The SAP Information System case: a differentiated approach and synthesis of decision-making practice

The most comprehensive decision in Slovak case law is the Public Procurement Office's decision in the case of the above-threshold contract awarded by *the Railways of the Slovak Republic (ŽSR)* for the development and support of the SAP information system (PPO decision of 21 April 2026, No. 8600-6000/2026). This decision is exceptional in that the supervisory authority directly summarised and distinguished all key historical and recent case law within it.

The contracting authority originally required, in the tender conditions, "active command of the Slovak or Czech language" (without the option of an interpreter) for six key experts. A crucial procedural moment arose when the contracting authority, as part of a self-correction, completely omitted this requirement for three strictly technical positions (developers and administrator). This implicitly confirmed the rule of proportionality in practice: for technically oriented, 'back-office' positions without the need for direct communication with users, a strict language barrier is not justified.

The dispute thus remained limited to just three strategic management and methodological positions (project manager, application architect and methodologist). The applicant argued that the language of communication in IT is English. However, the contracting authority demonstrated that these experts form the core of the team, are in constant direct contact with end-users, directly translate Slovak legislation into the system, and use specific railway terminology. For these reasons, interpretation would pose an unacceptable risk to the state's critical infrastructure, a point the Office fully accepted.

The highlight of the Authority's legal argumentation in this decision was its precise engagement with existing case law (paragraph 56 et seq.), through which the Authority confirmed the two-pronged nature of the proportionality test:

1. *Distinguishing historical practice (the 'intensity' line):* The Office explicitly distinguished earlier decisions from 2007 (which concerned an unreasonable requirement for an absolute

level of ‘native language’ proficiency), whereas in the current case the contracting authority reasonably requires only functional ‘active command’.

2. *Distinction from the D1 Tunnel case (formalism):* The Office also distinguished the case under consideration from the Turany – Hubová case. It pointed out that whilst the tunnel case involved a specific contractual condition taken to a formalistic extreme (C2 level), the SAP system involved a participation condition defined exclusively in functional terms, without a strict bureaucratic specification of CEFR levels.

The Office subsequently rejected the proposal. The decision draws a clear conclusion: the key to the lawfulness of a language requirement is a differentiated approach based on the expert’s specific job description, underpinned by a genuine practical need without unnecessary formalism.

3.7 Summary of Slovak case law

Slovak case law on language requirements can be summarised in three basic points. Firstly, the requirement for the Slovak or Czech language is, in principle, legitimate if it is linked to specific and objectively justified needs of the contract (PPO decision No. 8600-6000/2026). Secondly, the level of the language requirement must be strictly proportionate to the subject matter of the contract and the nature of the post, whilst earlier case law has unequivocally rejected the absolute ‘native language level’ as manifestly disproportionate (PPO decisions No. 924-120/121-7000/2007 and No. 1104-152-7000/2007). Thirdly, the rigid contractual exclusion of an interpreter for experts who do not have the required continuous (100%) presence on site constitutes an unlawful barrier to competition (Public Procurement Office decision No. 12978-6000/2024). Together, these propositions form a three-part test which is exceptionally precise and effective in practical application.

4. Comparative synthesis

4.1 Operational test of the admissibility of a language requirement

From a detailed analysis of European, Czech and Slovak case law, it is possible to distil a precise operational test of admissibility for practical application. For a language requirement for a key expert to pass the proportionality test and not distort competition, it must cumulatively meet four criteria:

(i) Substantive connection to the subject matter of the contract: The language requirement must be strictly justified by a specific material need of the contract (e.g. intensive communication with users, working with local legislation or security requirements). As confirmed by the Office on the basis of a structural analysis of the job description, for positions involving intensive contact and specific technical terminology, a strict requirement is justified, whereas for technical ‘back-office’ positions (developers, administrators), such a requirement is unjustified (PPO Decision No. 8600-6000/2026).

(ii) Reasonable intensity of the requirement: The level of language proficiency required must be calibrated according to the CEFR and must not be excessive. Practical consensus confirms that the requirement for a 'native speaker' or 'native language level' is excessive and discriminatory in standard contracts (decision of the Chairman of the Office for the Protection of Competition No. ÚOHS-19109/2020/322/HSc; PPO decisions No. 924-120/121-7000/2007 and No. 1104-152-7000/2007). The standard level for professional communication is B2 or C1. The highest level, C2, is justifiable only in exceptional cases involving extraordinary security or crisis requirements (PPO decision No. 12978-6000/2024).

(iii) Openness to equivalent forms of evidence: In accordance with primary EU law, the contracting authority must allow for several equivalent means of demonstrating competence and must not turn this into a formalistic obstacle by requiring exclusively a single local certificate. It must allow for the submission of equivalent evidence (e.g. CEFR certificates, proof of education or experience in the relevant language), which follows directly from established European case law (CJEU judgment C-281/98)

(iv) The possibility of an interpreter for positions not requiring continuous presence: A rigid contractual exclusion of an interpreter is justifiable only for contracts involving heightened security risks for those experts who are required to be continuously present at the workplace. If the contracting authority does not require the expert to be present on site 100% of the time, the exclusion of an interpreter in the event of a sudden emergency is internally inconsistent and disproportionate (PPO Decision No. 12978-6000/2024). Furthermore, the contracting authority must always compare the proposed alternative solutions (such as providing a certified interpreter) individually and objectively with the objectives of the contract, and must not reject them across the board without assessing their substantive purpose (Judgment of the CJEU C-298/14).

4.2 Condition of participation vs. specific performance condition: choice of placement within the system

The most important operational choice when formulating a language requirement is the contracting authority's decision on its systemic placement. The contracting authority must decide whether the requirement should be enshrined at the level of a condition for participation (Article 58 of Directive 2014/24/EU / Section 34(1)(g) of the PPA), or at the level of a specific condition for the performance of the contract (Article 70 of the Directive / Section 42(12) of the PPA).

A comparative analysis and the methodology of supervisory authorities give rise to three application scenarios with different risk profiles and procedural limits.

Scenario A: Language as a condition for participation (Qualification, ex ante approach): In this scenario, the language requirement is enshrined directly as a condition for participation and is strictly applied ex ante during the evaluation of tenders. The Office has defined strict limits for this procedure and stated that conditions for participation do not, as a rule, 'relate to language skills'. It allows for an exception only if “without knowledge of the Slovak language, it is objectively impossible to properly perform the subject of the contract or the performance of the contract would be associated with unreasonable difficulties” (PPO Methodological Guideline No. 9930-5000/2026).

This restrictive approach is therefore justifiable only for positions where there is a demonstrable necessity for communication. This was perfectly confirmed in the most recent case concerning the SAP information system, where the Authority allowed language as a condition for participation only for managerial positions, and for technical and support positions, the contracting authority removed the requirement by self-correction (PPO Decision No. 8600-6000/2026). European case law subjects this qualification criterion to the strictest possible proportionality test (judgments of the CJEU C-281/98 and C-379/87).

Scenario B: Language as a contractual condition verified prior to signature (pre-contractual, hybrid approach): If the contracting authority is unable to objectively justify a strict qualification approach (Scenario A), it may use an alternative and set language proficiency exclusively ‘as a specific requirement for the performance of the contract (...) or as a contractual condition not linked to a specific person’ (PPO Methodological Guideline No. 9930-5000/2026).

From a legal perspective, compliance with this contractual requirement is verified exclusively with the successful tenderer within the framework of the pre-contractual cooperation procedure. In this procedure, it is crucial to respect the limits of cooperation, according to which “the documents in question must not fall under any of the conditions for participation or the requirements for the subject matter of the contract” (PPO Council Decision No. 6693-9000/2018). However, this prohibition on circumventing the law does not apply to Scenario B, as the relevant methodological guidance explicitly removes the nature of a condition for participation from the language used in standard clauses and reclassifies it as a specific condition for the performance of the contract.

At the same time, a fundamental rule applies to this mechanism, namely that the documents required under the cooperation arrangement may be demonstrated by the successful tenderer ‘both through its own capacities and through the capacities of other persons (subcontractors)’. In this procedure, the contracting authority must therefore not prohibit the successful tenderer from demonstrating compliance with the contractual language requirement by engaging a third party (Decision of the PPO Council No. 6693-9000/2018).

Scenario C: Language as a standard contractual condition (Implementation, ex post approach): From a legal perspective, this scenario is based on the same foundation as Scenario B (specific condition for contract performance), but differs solely in terms of the timing of verification. The contracting authority does not verify compliance with the language requirement during the PP process (neither in tenders nor during pre-contractual cooperation), but this is an obligation implemented and monitored only ex post during the actual performance of the contract. This approach maximally protects competition and market openness, but for the contracting authority it carries the risk of discovering a communication failure only once work has commenced on site, which in practice is addressed with strict penalties.

It was precisely this model that was assessed in the landmark case of D1 Turany – Hubová, where the contracting authority enshrined the language requirement (including the obligation to provide interpreters and the threat of severe contractual penalties for breach) exclusively in the commercial terms of the works contract (PPO decision No. 12978-6000/2024).

Conclusion

This study has demonstrated that a language requirement for the contractor's key experts in public procurement is, in principle, legally permissible, but is subject to a strict multi-stage proportionality test. The foundations of this test were laid down by the CJEU in the Groener judgment and subsequently developed in the Angonese, Las, New Valmar and Brouillard cases (CJEU judgments Nos. C-379/87, C-281/98, C-391/09, C-15/15, C-298/14). The Czech and Slovak legal systems have successfully transposed this European test, and their application practice has fully operationalised it. The latest case law of the Public Procurement Office has established a stable and predictable framework of reasoning confirming the existence of a two-track approach, which provides contracting authorities with methodological certainty and guarantees tenderers protection against disproportionate restrictions**.**

A set of practical recommendations for the drafting practice of contracting authorities emerges from the analysed case law and methodology. When setting conditions, the contracting authority should:

1. strictly differentiate the language requirement and link it exclusively to positions with demonstrable communication intensity;
2. set the required level precisely in accordance with CEFR standards (usually B2 or C1, with the highest level, C2, justifiable only in exceptional cases involving specific security requirements);
3. unconditionally allow for multiple equivalent methods of demonstrating language competence;
4. justify the requirement by explicitly referring to the expert's specific job duties;
5. allow the use of an interpreter for positions that do not require continuous presence at the workplace;
6. strategically consider its systemic placement, giving preference to specific contractual terms that offer greater flexibility and the possibility of legal verification within the framework of pre-contractual cooperation, whilst maintaining full regulatory effectiveness.

In conclusion, it is essential to reiterate that, despite a wealth of case law, there is still no landmark judgment from the CJEU that directly addresses the language requirement for a contractor's staff solely from the perspective of the Public Procurement Directive (Directive

2014/24/EU of the European Parliament and of the Council). The task of filling this doctrinal vacuum currently rests with national supervisory authorities, which are fulfilling it with increasing methodological precision. In the context of the announced reform of the European public procurement framework, however, it would be highly desirable de lege ferenda for future legislation to provide an explicit methodological consideration of language barriers directly at the level of primary EU law. Such a legislative step would definitively strengthen legal certainty for all entities participating in public procurement in a cross-border context.

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