



## EMN FOCUSSED STUDY 2014

# The use of detention and alternatives to detention in the context of immigration policies

### Top-line “Factsheet” (National Contribution)

#### National contribution (one page only)

*Overview of the National Contribution – introducing the study and drawing out key facts and figures from across all sections of the Focussed Study, with a particular emphasis on elements that will be of relevance to (national) policymakers.*

The detention of third-country nationals is a measure restricting the freedom of the individual. Since it is serious interference with human rights and freedoms, this measure must be carried out in compliance with international conventions.<sup>1</sup> The legislation of the European Union (“EU”) concerning asylum and migration policies defines in what situations and under the fulfilment of what conditions can a third-country national be detained (e.g. upon illegal entry to the territory of a Member State, risk of absconding during the return procedure, or in connection with a request for international protection). In all cases, however, the EU stipulates and encourages Member States (“MS”) to seek alternatives to detention and to use detention as the last resort. Alternatives to detention are measures replacing detention and, hence, full restriction of personal freedom, and enable the individual (third-country national) to stay at a certain place upon fulfilment of the set conditions and restrictions which partially limit their freedom of movement. Such alternatives include, for example: regular reporting of the place of stay, the surrender of a financial guarantee or travel documents, electronic monitoring, release to care worker or under a care plan, etc.

Member States apply different procedures relating to detention and alternatives to detention, and there is a lack of information on the ways and extent of using alternatives to detention. There is also very little information on how detention and alternatives to detention contribute to the effectiveness of the return or

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<sup>1</sup> For example, Convention for the Protection of Human Rights and Fundamental Freedoms (1950), International Covenant on Civil and Political Rights (1966), European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987).

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international protection procedures.

This is one of the reasons why the Steering Board of the European Migration Network (“EMN”), approved under the EMN Work Programme 2014 the preparation of a focussed study on The Use of Detention and Alternatives to Detention in the Context of Migration Policies. This focussed study is prepared by MS and Norway on the basis of common specifications.<sup>2</sup> The European Commission (“EC”) will prepare, on the basis of the MS contributions, a synthesis report which will inform about and will analyse the thematic areas tackled by the specifications of the study, as provided below.

The aim of the synthesis report will be to identify similarities, differences and good practice related to the use of detention and alternatives to detention in the different EU MS and Norway. Specifically, the report will focus on the identification of the categories of third-country nationals who can be detained in a MS or who can be provided an alternative to detention, on the grounds, assessment procedures applied, and the criteria for deciding whether a person should be detained in a facility or provided an alternative to detention. At the same time, the synthesis report aims to provide an overview of the types of facilities used by MS for detained third-country nationals, the conditions in such facilities, and an overview of the types, conditions and organisation of the alternatives to detention that can be used by Member States. The report will also contain statistical data on detention and alternatives to detention, as well as an evaluation of the impacts of detention and alternatives to detention on an effective return policy or international protection procedures of MS with a specific focus on identifying good practice.

The focussed study was prepared by the SR under the title Detention and Alternatives to Detention in the Context of the Migration Policy of the SR. From the point of view of methodology, the study is based on the content and analysis of the documents and publications on this topic. The primary source of information was the legislation of the SR and relevant EU legal acts governing detention and alternatives to detention. The authors of the study also used the internal regulations of the Bureau of the Border and Aliens Police of the Police Force Presidium (“BBAP PFP”), such as guidelines, instructions or internal orders of the police detention facilities for aliens. The relevant websites of various institutions were also important for the preparation of this study. Since no comprehensive research has been conducted in the SR aimed to analyse the use of detention and alternatives to detention so far, it was not possible to base this study only on available secondary sources. In order to obtain the most up-to-date information from practice, a questionnaire was used to collect information, and interviews with the BBAP PFP on the topic were conducted. The specific statistics required by the study specifications were compiled by the BBAP PFP and the Migration Office of the Ministry of Interior of the SR (“MO MoI SR”). The responses to the questions contained in the questionnaire or collected by means of the interviews represented a very important source of information, and the authors of this study would like to thank to these institutions for their cooperation and their willingness in providing them.

Section 2 of the focussed study presents the legislation on the detention of third-country nationals in the SR and the different categories of third-country nationals who can be detained in the SR under the current legislation, in line with the specifications. This section also provides an overview of the legal grounds under which a third-country national can be detained, and deals with the detention of vulnerable migrant groups.

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<sup>2</sup> Available at: [http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/illegally\\_resident/emn\\_study\\_detention\\_alternatives\\_to\\_detention\\_common\\_template\\_final\\_24feb2014.doc](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/illegally_resident/emn_study_detention_alternatives_to_detention_common_template_final_24feb2014.doc).

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The detention of third-country nationals in the SR is governed by the Act No. 404/2011 Coll. of 21 October 2011 on Residence of Aliens and on changes and amendments to some acts, as amended (hereinafter referred to as the “Act on Residence of Aliens”). The grounds for detention of third-country nationals are defined in the act in compliance with the Return Directive, and the relevant provisions do not specify to what categories of third-country nationals they apply to. However, the grounds or the circumstances under which third-country nationals can be detained can be applied to or be derived from all categories defined in the specifications of this study. An exception in this regard is Article 88a of the Act on Residence of Aliens which entered into effect through an amendment from 01 January 2014 and which explicitly lists grounds for the detention of applicants for asylum. With respect to the categories of third-country nationals defined in the specifications, it can be stated that in the context of the current legislation of the SR third-country nationals pertaining to all these categories can be detained under the conditions defined by law. Almost all categories of vulnerable persons can be detained, but only when reasonable and for the time needed, whereas the period of detention cannot be extended. An exception in this regard is an unaccompanied minor who may not be detained under any circumstances.

The final part of Section 2 deals with the conditions of release of detained third-country nationals who cannot be returned to their country of origin and have been granted tolerated stay, the procedures of assessment related to the detention of third-country nationals, indicators for detainment, and with the judicial review of decisions on detention.

The SR individually examines and assesses the grounds for detention within the detention procedure with respect to every third-country national (Section 3). Such individual procedure applies to all categories of third-country nationals listed in the specification of the study (Section 1, Q1), and is conducted by the competent police departments in compliance with the Administrative Order<sup>3</sup>. The precondition for detaining a third-country national is an individually assessed and positively evaluated purpose of such action and the justification of the police department on the basis of what proof/indications it came to such decision. The individual approach to the detention procedure also includes an assessment of the possibility of providing an alternative to detention, as well as the assessment of the potential vulnerable situation of the third-country national.

The Act on Residence of Aliens establishes, in line with the Return Directive, the grounds under which a third-country national must be released from detention without undue delay. The procedure for the release of a detained third-country national from a police detention facility for aliens (“PDCA”) is governed by the internal regulations of the MoI SR.

Since the decision on detention in the SR is a decision of the administrative authority which acted in the matter, the judicial authorities of the SR do not start acting until an appeal is lodged against a decision on detention or against a decision on extending the period for detention.

Section 4 provides an overview of the types of facilities for detention in the SR and on the conditions in these facilities for third-country nationals. There are two police detention facilities for aliens of the BBAP PFP of the MoI SR in the SR which serve exclusively for the detention of third-country nationals. These facilities are guarded and have a closed character. When placing third-country nationals in such facilities, the geographical place of apprehension, the occupancy of the facility, and the facility equipment are taken into account, also considering the age, sex, health condition, family relationship, as

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<sup>3</sup> Act No. 71/1967 Coll. on Administrative Proceedings.

well as religious, ethnic or national specificities of the third-country national. Third-country nationals can be detained in prison only in the case of custodial sentence. The conditions in the facilities, as well as the rights and obligations of detained third-country nationals are detailed in Section 4.

Section 5 of the study is about alternatives to detention. It describes the legislation of the SR on imposing alternatives to detention and their practical organisation, including competent institutions and conditions that a third-country national must comply with in the case of such alternative. Section 6 describes the procedure when assessing an alternative to the detention of a third-country national, including judicial review of a decision on not providing an alternative to detention. Alternatives to detention constitute a relatively new measure in the SR incorporated in the Act on Residence of Aliens and entered into effect in January 2012. These law provisions provide for two options of alternatives to detention that a police department can use instead of detaining a third-country national: the obligation to report the place of stay, or the obligation to submit a financial guarantee. An alternative to detention can only apply in cases where a third-country national has not been set a period for departure under the administrative expulsion procedure and where the detention procedure has been initiated. An alternative to detention cannot be provided to the category of third-country nationals who are subject to detention due to execution of a Dublin transfer or in cases of administrative expulsion procedures due to the fact that the third-country national poses a serious risk to national security or public order, or threatens national security, public order or public health. When making a decision, the police department considers the imposition of the individual alternatives in all procedures related to detention, and takes into account, in particular, the personality of the third-country national, his/her situation, vulnerability and the level of risk to the purpose of detainment. The conditions and the practical organisation of the imposition of both alternatives are described in Section 5. Since the time such alternatives have been introduced to the legislation of the SR, the alternative to detention – the obligation to report the place of stay – was only provided in two cases in 2013. This low number of used alternatives relates, inter alia, to the fact that the category of persons where the possibility of providing an alternative to detention is considered is very small given the fact that where a police department sets a period for departure of a third-country national in its decision under the administrative expulsion procedure, no further steps are made with respect to detention, as a result of which it is irrelevant to consider any options of providing an alternative to detention.

Section 7 of the study partly analyses the impacts of detention and of the alternatives of detention to the efficiency of the return procedure and on the process of granting international protection. In particular, four specific aspects of effectiveness are considered: the effectiveness in reaching and executing fast and fair decisions on the immigration status of third-country nationals, cost efficiency, respect for fundamental rights, and reducing the risk of absconding. The data could be processed and evaluated to a limited extent only, either due to partial data or due to the small number of used alternatives which do not represent a representative sample for a more in-depth analysis and comparison.

No specific conclusions could be drawn from the analysis of available data on the assessment of the efficiency in reaching decisions in the return and international protection procedure on detentions or alternatives to detention due to the low number of used alternatives to detention and given the fact that the SR prefers voluntary returns to detention (or alternatives to detention), setting the date of departure in the decision on administrative expulsion in the cases laid down in law. With regard to cost efficiency, only data on costs related to detention was available. Since these costs includes not only the cost of food, accommodation, etc., but also the expenditure related to civil staff and the police working in the police detention facilities, the number of which is much higher than the number of employees dealing with alternatives to detention at the different police departments, it can be assumed that the alternatives to detention are more efficient with respect to costs. As previously mentioned, the SR prefers a less costly

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solution to detention and alternatives to detention in cases laid down in law – assisted return with a deadline for departure, i.e. enable the third-country national to return on their own within the set deadline (voluntary return).

Since no research or evaluation has been published yet dealing primarily with the impact of detention and alternatives to detention on the fundamental rights of third-country nationals or with the concrete number of complaints lodged by detained persons and persons under an alternative to detention, only the available publications and documents partially dealing with this issue could be analysed for the purposes of this study.

Also, it was not possible to compare and evaluate the share of third-country nationals who escaped from detention and those having complied with the conditions of the alternatives to detention in the total number of detained third-country nationals/those provided an alternative to detention given the low number of used alternatives. In 2013, three persons out of the total number of 195 detained third-country nationals escaped from police detention facilities. With two alternatives used, the success rate of complying with the conditions was 100%.

The study also contains an annex with statistics which provide available data on the number of third-country nationals who were detained and those provided an alternative by categories, on the average duration of detention, on the activities of the police detention facilities during the period 2009–2013, and on issued decisions on the expulsion of third-country nationals during 2011–2013.

## Executive Summary (Synthesis Report)

### Synthesis Report (up to three pages)

*Executive Summary of Synthesis Report: this will form the basis of an EMN Inform, which will have EU and National policymakers as its main target audience.*

### Section 1: Overview of EU *acquis* (Maximum 2 pages)

*This section of the Synthesis Report will briefly outline the EU legal framework guiding national legislation in relation to detention and alternatives to detention. It will provide a mapping of the substantive and procedural provisions in the EU *acquis* that regulate immigration detention and apply to different migration situations. The section will also highlight how the EU *acquis* relates to the broader international legal framework on immigration detention.*

***This section will be developed by the EMN Service Provider and no input from the EMN NCPs is required.***

### Section 2: Categories of third-country nationals that can be detained, national provisions and grounds for detention (Maximum 3 pages)

*This section aims at providing an overview of the categories of third-country nationals that can be placed in detention in (Member) States according to national law and practice. The section also examines whether the possibility to detain each category of third-country national is enshrined in national legislation, the grounds for detention that apply and whether national legal frameworks include an exhaustive list of grounds. EMN NCPs are asked to provide their answers to these questions in the table provided overleaf. The section considers whether special provisions regarding detention are in place for persons belonging to vulnerable groups, including minors, families with children, pregnant women or persons with special needs. Finally, the section examines national provisions on (release) of detention of persons who cannot be returned and/or are granted tolerated stay.*

**Legal regulation of the grounds for detention of third-country nationals in the SR**

The detention of third-country nationals in the Slovak Republic is governed by the Act No. 404/2011 Coll. of 21 October 2011 on Residence of Aliens and on changes and amendments to some acts, as amended (hereinafter referred to as the “Act on Residence of Aliens”). The relevant Articles 88–100 concern the grounds for detention of third-country nationals<sup>4</sup>, in particular grounds for detention of applicants for asylum<sup>5</sup>, specify the conditions for providing alternatives to detention<sup>6</sup>, the obligations of the police department and police detention facility<sup>7</sup>, as well as the rights and obligations of detained aliens in such facility<sup>8</sup>. The provisions of the act also specify the conditions and a separate detention regime in police detention facilities<sup>9</sup>, the placement of detained aliens<sup>10</sup>, the conditions of the inspection of a detained person<sup>11</sup>, and the provision of food and healthcare provided to detained persons<sup>12</sup>.

In line with the Return Directive, the SR transposed into the Act on Residence of Aliens the provisions<sup>13</sup> concerning legal grounds for detention which entered into effect in January 2012. Under these provisions, the police officer is entitled to detain the third-country national:

- subject to administrative expulsion proceedings in order to ensure his/her departure to the country of origin, transit country, any other third-country to which the third-country national chooses to voluntarily return and which receives him/her, or to the territory of a Member State in which s/he has been granted the right to residence or international protection, if there is a risk of absconding or a risk of avoiding or hampering the preparation of his/her administrative expulsion to be executed;<sup>14</sup>
- for the purpose of execution of administrative expulsion or expulsion;<sup>15</sup>
- for the purpose of the preparation or execution of his/her transport under a special regulation<sup>16</sup>, if there is a significant risk of absconding;<sup>17</sup>
- for the purpose of his/her return under an international treaty (readmission agreement), if s/he has illegally crossed the external border or is residing illegally in the territory of the Slovak Republic.<sup>18</sup>

A third-country national may be detained for as reasonable time as necessary, but not more than six months. The police department may use the six-month period of detention of any third-country national as a whole, or it may split this period of time into several shorter periods of detention, whereas the sum of such shorter periods of detention may not exceed six months. If it can be anticipated that in spite of necessary steps taken to execute

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<sup>4</sup> See Art. 88 of Act on Residence of Aliens.

<sup>5</sup> See Art. 88a of Act on Residence of Aliens.

<sup>6</sup> See Art. 89 of Act on Residence of Aliens.

<sup>7</sup> See Art. 90 of Act on Residence of Aliens.

<sup>8</sup> See Art. 96 - Art. 99 of Act on Residence of Aliens.

<sup>9</sup> See Art. 92 and Art. 93 of Act on Residence of Aliens.

<sup>10</sup> See Art. 94 of Act on Residence of Aliens.

<sup>11</sup> See Art. 100 of Act on Residence of Aliens.

<sup>12</sup> See Art. 91 and Art. 95 of Act on Residence of Aliens.

<sup>13</sup> See Art. 88 of Act on Residence of Aliens.

<sup>14</sup> See Art. 88, par. 1a) of Act on Residence of Aliens.

<sup>15</sup> See Art. 88, par. 1b) of Act on Residence of Aliens.

<sup>16</sup> So-called Dublin returns executed under Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (EU OJ L 180, 29. 6.2013).

<sup>17</sup> See Art. 88, par. 1c) of Act on Residence of Aliens. This provision was amended by an amendment to the Act on Residence of Aliens which entered into effect on 01 January 2014 (amendment to the Act on Residence of Aliens No. 495/2013 Coll.).

<sup>18</sup> See Art. 88, par. 1d) of Act on Residence of Aliens.

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the administrative expulsion or the punishment of expulsion of the third-country national the execution will be prolonged due to poor cooperation of the third-country national or because the representative office fails to issue a substitute travel document within the period of six months, the police department may decide, again repeatedly, to extend the period of detention, whereas the entire extended period of detention may not exceed 12 months. The police department may use the 12-month period of detention as a whole, or it may split this period of time into several shorter periods of detention, whereas the sum of such shorter periods of detention may not exceed 12 months. Whether the police department uses the period of detention as a whole or splits it into several shorter periods of time depends on the individual assessment of the specific case of detention of a third-country national with an emphasis on due justification of the purpose of the time of detention. The period of detention may not be extended by further 12 months in the case of families with children, vulnerable persons, or applicants for asylum.<sup>19</sup>

With effect from 01 January 2014, new provisions were incorporated in the Act on Residence of Aliens concerning grounds for detention of applicants for asylum. If the purpose of detention cannot be achieved by any less severe means, applicants for asylum may be detained on the following grounds<sup>20</sup>:

- a) in order to ascertain or verify his/her identity or nationality,
- b) in order to ascertain the facts that constitute the basis of his/her asylum application, which could not be obtained without detention, especially if there is a risk of absconding,
- c) in the case of a third-country national detained under the assisted return procedure with the aim to ensure his/her departure to the country if there is a risk of absconding or a risk of avoiding or hampering the preparation of the execution of his/her assisted return, or in the case of a person detained for the purpose of execution of his/her administrative expulsion or the punishment of expulsion who applied for asylum, if there is reasonable suspicion that s/he applied for asylum in order to delay or frustrate his/her administrative expulsion;
- d) if it is necessary due to a threat to national security or public order, or
- e) for the purpose of ensuring the preparation or execution of his/her transfer under the Dublin Regulation, if there is a significant risk of absconding.

In line with the specifications of the focussed study, table below presents the legal grounds for detention of the categories of third-country nationals listed in the table.

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<sup>19</sup> See Art. 88, par. 4 of Act on Residence of Aliens.

<sup>20</sup> See Art. 88a of Act on Residence of Aliens.

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Q1. Please complete the table below with regard to the categories of third-country nationals that can be detained in your Member State. Children and other vulnerable groups are not included in this table as they are a cross-cutting category; instead, they are dealt with in a separate question (Q2) after the table.

<b>Categories of third-country nationals</b>	<b>Can third-country nationals under this category be detained? (Yes/No)</b>	<b>If yes, is the possibility to detain laid down in legislation? (Yes/No)</b>	<b>If the possibility to detain third-country nationals exists in your (Member) State but is not laid out in national legislation, please explain whether it is outlined in 'soft law' or policy guidelines</b>	<b>Please list the <u>grounds</u> for detention for each category of migrant that can be detained in your (Member) State. Is there an <u>exhaustive list</u> of grounds outlined in your national framework?</b>
<b><i>Applicants for international protection in ordinary procedures</i></b>		Yes <sup>21</sup>		The Act on Residence of Aliens provides an exhaustive list of grounds for detention of applicants for asylum if the purpose of detention cannot be achieved by any less severe means. The grounds for detention are listed above the table.
<b><i>Applicants for international protection in fast-track (accelerated) procedures</i></b>		Yes		All grounds listed for the category of third-country nationals who are applicants for international protection apply in this case; this category of third-country nationals is subject to common procedures.
<b><i>Applicants for international protection subject to Dublin procedures</i></b>		Yes <sup>22</sup>		The Act on Residence of Aliens explicitly specifies as a ground for detention of a third-country national the purpose of ensuring the preparation or execution of his/her transfer under the Dublin Regulation, if there is significant risk of absconding.
<b><i>Rejected applicants for international protection</i></b>		No		The national legislation does not explicitly list the category of third-country nationals who are "rejected

<sup>21</sup> See Art. 88a of Act on Residence of Aliens.

<sup>22</sup> See Art. 88, par. 1, letter c) of Act on Residence of Aliens, or Art. 88a, par. 1e) of Act on Residence of Aliens.

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				<p>applicants for asylum” with respect to detention. However, persons falling into this category can be detained. Rejected applicants for asylum are considered persons who fail or cease to meet the conditions for entry or stay in the territory of the SR, i.e. irregular migrants<sup>23</sup>. In this regard, the grounds for detention applying to third-country nationals<sup>24</sup> and listed above the table are also applicable to rejected applicants for international protection.</p>
<b>Rejected family reunification applicants</b>		No		<p>The national legislation does not explicitly mention this category of third-country nationals. Rejected family reunification applicants, however, may be detained if they fail or cease to meet the conditions of entry or stay in the territory of the SR, i.e. when they are considered irregular migrants. In such case, the following grounds for detention may apply to rejected family reunification applicants with respect to third-country nationals under Art. 88, par. 1, letters a), b) and d):</p> <p>a) subject to administrative expulsion proceedings in order to ensure his/her departure to the country if there is a risk of absconding, or avoiding or hampering the preparation process of his/her administrative expulsion to be executed,</p> <p>b) for the purpose of administrative expulsion execution or expulsion punishment execution;</p>

<sup>23</sup> During the examination of their application for international protection they are entitled to stay in the territory of the SR under Art. 22, par. 1 of the Act on Asylum. Once their application is rejected, they are no more entitled to stay in the territory of the SR, as they are no more registered as applicants for international protection.

<sup>24</sup> Art. 88, par. 1 of Act on Residence of Aliens.

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				d) for the purpose of his/her return under an international treaty (readmission agreement), if s/he has illegally crossed the external border or is residing illegally in the territory of the Slovak Republic.
<b><i>Other rejected applicants for residence permits on basis other than family reunification (Please provide details)</i></b>		No		See the reply above with respect to the category of rejected family reunification applicants.
<b><i>Persons detained at the border to prevent illegal entry (e.g. airport transit zone) who have not applied for international protection</i></b>		No		<p>This category is not specified explicitly in the act with respect to grounds for detention. Any of the grounds for detention referring to third-country nationals under Art. 88, par. 1 of the Act are applicable to persons detained at the border to prevent illegal entry, in particular:</p> <p>a) subject to administrative expulsion proceedings in order to ensure his/her departure to the country if there is a risk of absconding, or avoiding or preventing the preparation of his/her administrative expulsion to be executed;</p> <p>b) for the purpose of administrative expulsion execution or expulsion punishment execution;</p> <p>c) for the purposes of his/her transfer or preparation thereof under the Dublin Regulation, if there is a significant risk of absconding;</p> <p>d) for the purpose of his/her return under an international treaty (readmission agreement), if s/he</p>

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				has illegally crossed the external border or is residing illegally in the territory of the Slovak Republic.
<b>Persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) subject to a return decision</b>		Yes <sup>25</sup>		The ground for detention of such person is detention for the purpose of return under an international treaty (readmission agreement), if such person has illegally crossed the external border or is residing illegally in the territory of the SR. In such case, the detained third-country national subject to the procedure of extradition to the territory of a neighbouring state under an international treaty is placed for a temporary period of time in a police department. From the total time of detention determined by the police department in its decision on detention, the third-country national may be temporarily placed in a police department for a maximum of seven days from detention. Unless the third-country national is extradited within seven days following his/her detention, s/he must stay further in the police facility.
<b>Persons who have been issued a return decision</b>		Yes <sup>26</sup>		A third-country national who has been issued a return decision may be detained for grounds under Art. 88, par. 1, letters b) and d): b) for the purpose of administrative expulsion execution or expulsion punishment execution; d) for the purpose of his/her return under an international treaty (readmission agreement), if s/he has illegally crossed the external border or is residing illegally in the territory of the Slovak Republic.

<sup>25</sup> Art. 88, par. 1, letters d) and Art. 88, par. 11 of Act on Residence of Aliens.

<sup>26</sup> Art. 88, par. 1, letters b) and d) of Act on Residence of Aliens.

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<b><i>Other categories of third-country nationals (Please specify the categories in your answer)</i></b>	N.A			
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*Q2. Is it possible, within the national legal framework of your (Member) State, to detain persons belonging to vulnerable groups, including minors, families with children, pregnant women or persons with special needs? Please indicate whether persons belonging to these vulnerable groups are exempt from detention, or whether they can be detained in certain circumstances. If yes, under which conditions can vulnerable persons be detained? NCPs are asked in particular to distinguish whether children can be detained who are (a) accompanied by parents and (b) unaccompanied.*

Under the Act on Residence of Aliens, a vulnerable person<sup>27</sup> is especially a minor, a disabled person, a victim of trafficking in human beings, a person older than 65 years, a pregnant woman, a single parent with an underage child, or a person subjected to torture, rape or other serious forms of psychological, physical or sexual violence; in justified cases even a person younger than 65 years may be considered an “older person”.

Almost all categories of vulnerable persons can be detained, but only where reasonably necessary (for example, if a third-country national represents a security risk to the SR<sup>28</sup>) and for the time reasonably needed up to a maximum of six months. The period of detention cannot be extended in the case of vulnerable persons. An exception in this regard is a minor person<sup>29</sup> without a legal representative. Such person may not be detained under any circumstances.

Where detained families with children are placed in a facility together and the facility decides to separate the family, it must always consider the consequences of such separation to be reasonable to the grounds (for more details see also Section 4). Families with children may also be detained for a reasonable time only, whereas the period of detention may not be extended.

In case a detained person is identified as a victim of trafficking in human beings, the decision on detention would become invalid upon the inclusion of such victim in the programme of support and protection of victims against trafficking in human beings of the Ministry of Interior.

*Q3. Concerning persons, who cannot be removed and/or are granted tolerated stay, please provide information on any provisions in your (Member) State regulating the release from detention of this category of third-country nationals.<sup>30</sup>*

Under Article 15(4) of the Return Directive, when it appears that a reasonable prospect of removal no longer exists for legal or other considerations or the conditions laid down in Article 15(1) of the Directive no longer exist, detention ceases to be justified and the person concerned shall be released immediately.<sup>31</sup> Hence, the Act on Residence of Aliens establishes the obligation of the police detention facility for aliens to release the detained third-country national without undue delay:

<sup>27</sup> Art. 2, par. 7 of the Act on Residence of Aliens.

<sup>28</sup> Guidelines for the procedure of administrative expulsion of aliens, detention of third-country nationals, and voluntary return of third-country nationals from the territory of the Slovak Republic. BBAP PFP.

<sup>29</sup> A minor person is anyone under the age of 18 years.

<sup>30</sup> According to Article 15(4) of the Return Directive, in situations when it appears that a reasonable prospect of removal no longer exists for legal or other considerations detention ceases to be justified and the person concerned shall be released immediately.

<sup>31</sup> Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process, in particular when: a) there is a risk of absconding or b) the third-country national concerned avoids or hampers the preparation of return or the removal process.

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- if the purpose of detention has ceased to exist;
- on the basis of a valid court decision,
- when the period of detention has expired,
- if the detention decision ceased to be effective upon the inclusion of the person in the programme of support and protection of victims against trafficking in human beings of the Ministry of Interior, or
- if the third-country national gave financial guarantee to the account of the Police Force in accordance with the decision of the police department.

The procedure for the release of a detained third-country national from the PDCA is detailed in the internal regulation of the Ministry of Interior of the SR<sup>32</sup> and in the Guidelines of the BBAP PFP<sup>33</sup>. The police department issuing a decision on detention and the BBAP in which the third-country national is placed is obliged to examine throughout the entire period of detention whether the purpose of detention persists. When assessing the purpose, it is examined whether it can be actually presumed in the case of a third-country national placed in the PDCA that it will be possible to execute his/her expulsion from the territory of the SR within the maximum or extended legal period of detention (for example, whether it is realistic to obtain a substitute travel document).<sup>34</sup> If it is found out by the police department that the purpose of detention ceased to exist, it shall inform the PDCA which would immediately release the third-country national. If this fact is found out by the PDCA, it shall inform the competent police department that issued the decision on detention, and shall request its opinion.<sup>35</sup> If the purpose of detention ceased to exist, the PDCA is obliged to immediately release the third-country national.<sup>36</sup> If there is an obstacle to the administrative expulsion of the third-country national,<sup>37</sup> the PDCA shall act immediately and shall inform the police department that decided on the detention about the release of the third-country national.<sup>38</sup>

The PDCA shall release the third-country national also in the case of a lawful court decision on his/her release. If the court accepts the appeal of the third-country national, the police department must review the grounds for the cancellation of the decision on the detention of the third-country national stated by the court in its decision, and if the court decides that the detention of the third-country national is inadmissible in any case, the PDCA shall release the third-country national after the court decision cancelling the decision on detention comes into force.<sup>39</sup>

Upon expiry of the period of detention, the third-country national is released by the PDCA on the basis of a notice by the police department that detained the third-country national. The PDCA shall release the third-country national on the basis of a decision of the PDCA director or authorised police officer at the latest on

<sup>32</sup> Regulation of the Minister of Interior of the Slovak Republic No. 26/2007 on procedures concerning the placement of aliens in police detention facilities for aliens, as amended.

<sup>33</sup> Guidelines for procedures concerning administrative expulsion of aliens, detention of third-country nationals, and voluntary return of third-country nationals from the territory of the Slovak Republic. BBAP PFP.

<sup>34</sup> *Ibidem*.

<sup>35</sup> *Ibidem*.

<sup>36</sup> Art. 90, par. 2, letter b)1 of Act on Residence of Aliens.

<sup>37</sup> Obstacle to administrative expulsion under Art. 81 of Act on Residence of Aliens.

<sup>38</sup> Guidelines for procedures concerning administrative expulsion of aliens, detention of third-country nationals, and voluntary return of third-country nationals from the territory of the Slovak Republic. BBAP PFP.

<sup>39</sup> *Ibidem*.

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the last day prior to the expiry of the detention period, including cases where the police department that detained the third-country national did not notify the PDCA in time about the reason for his/her release.<sup>40</sup>

The release from detention of a third-country national who has been included in the programme of support and protection of victims against trafficking in human beings of the Ministry of Interior is executed by the PDCA on the basis of a confirmation of his/her inclusion in the programme. Such confirmation is issued by the State Secretary of the MoI SR or by other authorised person.<sup>41</sup>

After giving a financial guarantee to the account of the Police Force as one of the alternatives to detention on the basis of a decision of the police department, the PDCA shall release the detained third-country national.<sup>42</sup>

The police department shall grant tolerated stay to third-country nationals who have been released from detention and whose departure is not possible and detention is not reasonable, or if there is an obstacle to their administrative expulsion<sup>43</sup> or have become victims of trafficking in human beings, provided that the legal conditions have been met.

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<sup>40</sup> Regulation of the Minister of Interior of the Slovak Republic No. 26/2007 on procedures concerning the placement of aliens in police detention facilities for aliens, as amended.

<sup>41</sup> Art. 14, par. 6 of Regulation of the Minister of Interior of the Slovak Republic No. 26/2007 on procedures concerning the placement of aliens in police detention facilities for aliens, as amended.

<sup>42</sup> Art. 14, par. 7 of Regulation of the Minister of Interior of the Slovak Republic No. 26/2007 on procedures concerning the placement of aliens in police detention facilities for aliens, as amended.

<sup>43</sup> Under Art. 81 of Act on Residence of Aliens.

### Section 3: Assessment procedures and criteria for the placement of third-country nationals in detention (Maximum 5 pages)

*This section examines the assessment procedures and criteria/benchmarks that are used by (Member) States in order to decide whether detention is justified in individual cases. It begins with a series of questions which explore the extent to which individual assessment procedures (e.g. interviews) are used in all cases before placing third-country nationals in detention, or whether individual assessment procedures are only used in the case of certain categories of third-country national. Where individual assessments are used, EMN NCPs are asked to describe the procedures involved and whether they include an assessment of the vulnerability of the individual in question. Finally, EMN NCPs are asked to provide information on the challenges associated with the assessment procedures in their Member States and to identify any elements of good practice.*

*Q1. Please indicate whether an **individual assessment** procedure is used to determine the appropriateness of detention in the case of any of the categories of third-country nationals selected in Section 2 (Table Q1). Yes/No.*

*If yes, please list the categories of third-country nationals where individuals are subject to individual assessments.*

*If individual assessment procedures are not used, please indicate the mechanism used to determine the appropriateness of detention e.g. are all individuals within a particular category of third country national automatically placed in detention?*

**Yes.**

The SR assesses and examines the grounds for administrative expulsion of a third-country national on an individual basis, as well as the grounds for detention under the detention procedure. Such individual approach is applied with respect to all categories of third-country nationals listed in Section 1 Q1.

*Q2. Where individual assessment procedures are used, and specific criteria exist to help the competent authorities decide whether particular grounds for detention apply, please indicate the **legal basis** on which these individual assessment procedures are exercised (for example legislation, soft law/guidelines).*

The individual approach to the administrative expulsion and detention procedures is governed by the Act No. 71/1967 Coll. on Administrative Proceedings (Administrative Order). The Administrative Order lays down the general procedural rules for administrative procedures which apply to all state (or administrative) bodies deciding under administrative procedures.<sup>44</sup> The Act on Residence of Aliens stipulates that all types of special administrative procedures under this act are governed by the provisions of the Administrative Order, unless the Act on Residence of Aliens explicitly excludes the application of the Administrative Order provisions.<sup>45</sup>

*Q3. Where individual assessments are used, does the third-country national receive detailed information on the consequences of the interview before the individual assessment procedure? If yes, is there an emphasis on all possible options/outcomes of the assessment?*

A third-country national is informed by the police department by means of an interpreter<sup>46</sup> about the fact that a detention procedure has commenced against him/her. The third-country national, however, is not informed

<sup>44</sup> Available at: <http://www.viajuris.sk/aktivity/prva-pravna-pomoc/ako-sa-zucastnit-na-ochrane-zivotneho-prostredia/zakladnymanual-ochrana/vseobecne-o-spravnom-konani.html> (consulted on 04/04/2013).

<sup>45</sup> Art. 120, par.1 of Act on Residence of Aliens.

<sup>46</sup> The interpreter is present upon the execution of actions related to the detention of a third-country national until a decision on detention is issued. That means that all documents related to detention (e.g. record, request for legal assistance, detention decision) are interpreted to the third-

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specifically on all possible consequences of the interview and on further possible procedures that may arise on the basis of his/her statements.

*Q4. Where individual assessments are used, please indicate whether the procedure includes an assessment of the **vulnerability** of the individual in question. (Yes/No) If yes, please describe the vulnerability assessment procedure used.*

The individual approach in the detention procedure includes an assessment of the vulnerability of the alien. The facts manifestly showing vulnerability of the third-country national (if it is manifestly an underage person, a disabled person, a pregnant woman, etc.) or facts stated by the alien himself/herself are taken into account already during the administrative expulsion procedure. In the event that new facts arise during the interview or during the preparation of the record on the detention procedure that were not apparent or known during the administrative expulsion procedure and which indicate vulnerability of the person, such findings are taken into account, and it is examined whether they are true/justified. The police officer is obliged, in particular, to find out by means of mandatory questions and in line with the internal regulation<sup>47</sup>, whether the alien is a potential victim of trafficking in human beings.<sup>48</sup>

*Q5. Please provide more detailed information on **the criteria /indicators** used to decide whether particular grounds for detention apply in individual cases. EMN NCPs are asked to answer this question by listing the criteria / indicators that are used to determine the circumstances in which the following grounds for detention, permitted in EU law, apply. However, if the grounds for detention are not applicable in your (Member) State, EMN NCPs may identify the criteria/indicators that are used to determine the circumstances in which other grounds for detention apply.*

As previously mentioned, the police department assesses and examines individual grounds for detention with regard to every third-country national under the administrative procedure. The police department is obliged to examine under the detention procedure whether the detention of the third-country national would meet the grounds arising from the relevant legal provisions, and whether the decision on detention does not constitute unreasonable infringement of his/her rights under other legal regulations. A prerequisite for detaining a third-country national is a positively assessed purpose of such action. When assessing the purpose of detention, the police department examines, in particular, the fact whether it can be actually assumed that the expulsion from the territory of the SR of the person placed in the PDCA can be carried out within the maximum or extended legal period of detention (e.g. whether there is an actual possibility of acquiring a substitute travel document; whether there is a country to which the third-country national can be expelled, etc.)<sup>49</sup>

After hearing the third-country national, the police officer acting in the case draws a report<sup>50</sup> on the statement of the party to the procedure, and the alien has the right to give opinion on all support documents and evidence and to complete his/her statement before a decision is issued on the matter.<sup>51</sup> If the police department finds out

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country national by the interpreter. Once documents have been interpreted, they are signed by the third-country national and by the interpreter.

After the execution of all required actions, the third-country national is handed over the detention decision in the presence of the interpreter.

<sup>47</sup> Instruction No. 5/2011 of the Director of Bureau of the Border and Aliens Police of the PFP of 12 December 2011 on issuing a guideline for members of the Border Police Service and Aliens Police Service and members of the National Unit to Combat Irregular Migration of the BBAP PFP to ensure common identification of potential victims of trafficking in human beings.

<sup>48</sup> For more details see: Kubovičová (2013): Identification of Victims of Trafficking in Human Beings in the Process of International Protection and Forced Returns in the Slovak Republic. European Migration Network, IOM Bratislava, pp. 34–35.

<sup>49</sup> Guidelines for procedures concerning administrative expulsion of aliens, detention of third-country nationals, and voluntary return of third-country nationals from the territory of the Slovak Republic. BBAP PFP.

<sup>50</sup> Art. 22 of the Administrative Order.

<sup>51</sup> Art. 33, par. 2 of the Administrative Order.

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that the detention of the third-country national is justified and reasonable<sup>52</sup>, the third-country national is immediately issued a written decision on detention under the Administrative Order and on his/her placement in the PDCA.

Every decision on detention, apart from other formalities, must also contain the ground for detention, the relevant legal provision, and the justification of the police department on the basis of what evidence/indicators it used to come to the given decision. The grounds, facts and indicators leading to the decision on detention are provided as examples in the table below.

a) **Ground 1: If there is a risk of absconding**

Art. 88, par. 2 of the Act on Residence of Aliens stipulates that the risk of absconding of a third-country national means the condition when there is a justified reason to believe or a direct threat that the third-country national will escape or hide, especially if:

- *it is impossible to identify him/her immediately,*
- *if s/he has not been granted a residence permit pursuant to the Act on Residence of Aliens, or*
- *if it is imminent that s/he would be banned entry for a period of more than three years.*

Other evidence/indicators that the law does not explicitly stipulates but are based on practice include:

- *the third-country national had already escaped or attempted to escape from the detention facility;*
- *declares that s/he does not want to return to his/her country of origin;*
- *has breached the alternative to detention;*
- *has presented false identity documents;*
- *a third-country national who has already breached the rules of voluntary return;*
- *has breached the ban on entry.*

b) **Ground 2: If the third-country national avoids or hampers the preparation of a return or removal process**

- *the alien does not cooperate and does not communicate;*
- *breaches the obligation of reporting his/her stay;*
- *conceals his/her identity;*
- *does not cooperate in the identification of his/her person in order to have a substitute travel document issued;*
- *pretends health problems.*

c) **Ground 3: If required in order to protect national security or public order**<sup>53</sup>

<sup>52</sup> The police department is obliged to examine the purpose of detention throughout the entire period of detention of the alien.

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- *criminal activity related to state security;*  
 - *infringements and other administrative offences in the field of border control and stay<sup>54</sup> related to public order.*

**d) Ground 4: Execution of administrative or judicial expulsion**

- *enforceability of the decision*

**e) Ground 5: To ensure the preparation or execution of the transfer of the third-country national under a special regulation<sup>55</sup> if a significant risk of absconding exists**

- *the alien has a hit in EURODAC, which means that he had already escaped in the past.*

**f) Ground 6: To return a third-country national under an international treaty – readmission agreement if s/he has illegally crossed the external border or is residing illegally in the territory of the SR**

- *filing of an application for readmission*

Q6. Is the **possibility to provide alternatives to detention** systematically considered when assessing whether to place a person in detention in your (Member) State?

Besides the fact mentioned above with regard to the justification of detention, the police department must consider the possibility to provide alternatives to detention under every detention procedure. Accordingly, it must be clear from the justification of the decision on detention what facts were considered by the police department, how evidence on the basis of which the decision on detaining the third-country national was obtained and examined, and for what reasons no alternative to detention has been provided but the third-country national has been detained instead.<sup>56</sup>

Q7. Please indicate which **national authorities** are responsible for (i) conducting individual assessment procedures (where these exist) and (ii) deciding on the placement of a third-country national in detention.

Individual assessment in administrative expulsion and detention procedures at local level is performed by the police department (either the aliens police department, or the border police department, or the asylum department) which subsequently decides on detention. All activities related to the execution of expulsion, detention and placement of third-country nationals in the PDCA is ensured and managed by the BBAP PFP which is responsible for the respective police department. The common procedures and the conditions of placement of detained third-country nationals in the PDCA are governed by an internal regulation.<sup>57</sup>

<sup>53</sup> Art. 88a, par. 1 d) of Act on Residence of Aliens.

<sup>54</sup> Articles 116, 117 and 118 of the Act on Residence of Aliens.

<sup>55</sup> I.e. Dublin returns executed under Regulation (EU) No. 604/2013 Coll. of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ EU L 180, 29. 6.2013).

<sup>56</sup> Guidelines for procedures concerning administrative expulsion of aliens, detention of third-country nationals, and voluntary return of third-country nationals from the territory of the Slovak Republic. BBAP PFP.

<sup>57</sup> Regulation of the Minister of Interior of the Slovak Republic No. 26/2007 on procedures concerning the placement of aliens in police detention facilities for aliens, as amended.

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Q8. Please indicate whether **judicial authorities** are involved in the decision to place a third-country national in detention, and if so, at which stage(s) of the decision-making process and in what capacity? (e.g. do judicial authorities make the final decision, do they only make a recommendation, do they only come in if the third-country national appeals against a decision?)

As previously mentioned, a decision on detention of an alien is a decision of an administrative authority which acted in the matter, i.e. of the competent police department which conducted the detention procedure. Immediately after detention, the police department must instruct the alien in a language the alien understands on, *inter alia*, the grounds for detention and on the possibility to examine the legality of the decision on detention.<sup>58</sup> This implies that no statement of a judicial authority on the decision on detention is needed at this stage of the process. Judicial authorities begin to act not before an appeal against the decision on detention<sup>59</sup> or against the decision on extending the period of detention has been lodged. The appeal may be lodged at the police department that issued the appealed decision by the detained alien or by a person authorised by the detained alien within 15 days following the delivery of the decision on detention or of the decision on extending the period of detention. The police department shall present the appeal to the competent court within five working days, including completed file and a written opinion on the appeal, and shall inform the party to the procedure on referring the appeal to the court.<sup>60</sup> The lodging of the appeal does not have a suspensory effect. Both the police department and the police detention department act further in accordance with the respective court decision concerning the alien's appeal.

The police department that issued the decision on detention may also decide on its own in the procedure of appeal against the decision on detention (autoremedy) in case the appeal against the decision on detention is fully satisfied. In such case, the police department issues a decision by which it cancels its previous decision on detention of the third-country national.<sup>61</sup>

The decision of the regional court can be appealed at the Supreme Court of the SR. Courts (regional or supreme) must decide on the appeal immediately.

Q9. Please identify any **challenges** associated with the implementation of existing assessment procedures in your (Member) State.

Please see below.

Q10. Please identify any **good practices** in relation to the implementation of assessment procedures (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)

Slovakia has not yet conducted any research/study on individual assessments in detention procedures. Also, no challenges, obstacles or good practice were identified during the interviews with the BBAP PFP representatives with regard to the use of individual assessments, as they arise directly from the Act on Residence of Aliens and from the Act on Administrative Order.

<sup>58</sup> Art. 90, par.1 of Act on Residence of Aliens also stipulates other obligations of the police department with respect to instructing the alien immediately after detention.

<sup>59</sup> This case is decided by the competent Regional Court under Art. 250l to 250s of Act No. 99/1963 Coll. Civil Procedure Code, as amended.

<sup>60</sup> Described in accordance with the Guidelines for procedures concerning administrative expulsion of aliens, detention of third-country nationals, and voluntary return of third-country nationals from the territory of the Slovak Republic. BBAP PFP.

<sup>61</sup> Guidelines for procedures concerning administrative expulsion of aliens, detention of third-country nationals, and voluntary return of third-country nationals from the territory of the Slovak Republic. BBAP PFP.

**Section 4: Types of detention facilities and conditions of detention (Maximum 5 pages)**

*This section of the Synthesis Report will provide a factual, comparative overview of the types of immigration detention facilities that exist in the EU and the conditions of detention associated with these. It examines whether there are specialised immigration detention facilities and explores whether different types of detention facilities are available for different categories of third-country national. The section also reviews the conditions of third country nationals in these detention facilities, including average surface per person, existence of separate facilities for families, visitation rights, access to medical care and legal assistance.*

*Q1. Are there specialised immigration detention facilities in your (Member) State, which are not prisons? (Yes/No) If yes, please indicate how many exist and how they are distributed across the territory of your (Member) State.*

Yes.

There are two facilities of the BBAP PFP of the Ministry of Interior of the SR in Slovakia – police detention facilities for aliens (third-country nationals) which are not prisons, but are guarded and have a closed character. One such facility is situated in the South-West of Slovakia in Medved'ov, and the other one in the Eastern part of the country near the external border with Ukraine, in Sečovce.

Under the Act on Residence of Aliens<sup>62</sup>, detained third-country nationals who are subject to commenced procedures on extradition to the territory of a neighbouring state pursuant to an international treaty (readmission agreement) may be temporarily kept in a police department that has rooms for temporary detention of third-country nationals, for a maximum period of seven days from the time of detention (for more details see also table in Section 1). In many cases it is border control police departments ("BCPD") situated at the external border of the SR with Ukraine. Unless a third-country national is extradited within seven days from detention, s/he must be placed in one of the above-mentioned PDCA's.

*Q2. Are there different types of specialised immigration detention facilities for third-country nationals in different circumstances (e.g. persons in return proceedings, applicants for international protection, persons who represent a security risk, etc.)? (Yes/No). If yes, please provide a brief overview of the different types of immigration detention facilities.*

No.

Third-country nationals are placed in different PDCA's not on the basis of their circumstances (e.g. applicants for international protection, persons representing a security risk, etc.), but on the basis of the geographical location of their apprehension and according to the occupancy of the facilities and their equipment, while taking into account the age, health conditions, family relationships, and the religious, ethnic or national background of the third-country national.

Third-country nationals apprehended at the border or along the border with Ukraine are placed in the PDCA

<sup>62</sup> Art. 88, par. 6 of Act on Residence of Aliens.

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in Sečovce. It is a newer facility with a better layout. Preferably women, families with children or accompanied children (legal representative) and other vulnerable groups<sup>63</sup> are placed in this facility. In case applicants for asylum are placed in this PDCA, they are accommodated in separated blocs/corridors, if possible.<sup>64</sup>

The PDCA in Medved'ov serves primarily for the placement of third-country nationals from the entire territory of the SR, preferably males.<sup>65</sup> This facility often serves for the purpose of transfers through the territory of the SR.<sup>66</sup>

*Q3. Which authorities/organisations are responsible for the day-to-day running of the specialised immigration detention facilities in your (Member) State?*

The Police Force of the MoI SR is responsible for daily operation of both PDCAs. PDCA directors issue the internal rules which lay down the details on the rights and obligations of third-country nationals in these facilities.<sup>67</sup>

*Q4. Please describe any measures taken by your (Member) State to deal with situations where the number of third country nationals to be placed in detention exceeds the number of places available in the detention facilities.*

The current capacities of both PDCAs are sufficient. The capacity of the PDCA Medved'ov is 152 persons (112 males and 40 females), and the capacity of the PDCA Sečovce is 176 persons (104 males and 72 females and children).<sup>68</sup> Table 3 on PDCA activities in 2009–2013 in the Annex suggests that the number of third-country nationals placed in PDCAs has gradually declined since 2009 (582 persons placed in detention in a PDCA, with the smallest number recorded in 2012 (175 persons placed in detention in a PDCA). That means that the capacities of both PDCAs have not been fully used throughout the past three years. The smaller number of detained persons corresponds to the overall decline in irregular migration and in migration due to asylum.

In the event of a significant increase in the number of detained third-country nationals and potential lack of capacities of these facilities, the cancelled asylum facilities of the MO MoI SR MV SR<sup>69</sup> or other facilities of the MoI SR would be used for these purposes.

<sup>63</sup> In case the formalities related to their case must be handled in Bratislava, they can also be placed in the PDCA Medved'ov within a separated block to prevent their travelling across Slovakia.

<sup>64</sup> Interview with the BBAP PFP representatives.

<sup>65</sup> Ibidem.

<sup>66</sup> Mittelmannová M., Številová Z.: Detention and Alternatives to Detention in the Slovak Republic. National Report. Human Rights League, 2011.

<sup>67</sup> Act on Residence of Aliens.

<sup>68</sup> Report for the Government of the Slovak Republic on the Visit to the Slovak Republic by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Council of Europe. CPT/Inf (2010)1. Available at: <http://www.cpt.coe.int/documents/svk/2010-01-inf-svk.pdf> (consulted on 22/04/2014).

<sup>69</sup> For example, the accommodation centre in Gabčíkovo, the accommodation centre in Brezová pod Bradlom, the reception centre in Vlachy, or the reception centre in Adamov – Gbely.

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Q5. Are third-country nationals detained in prisons in your (Member) State? (Yes/No) If yes, under which circumstances?

In general, third-country nationals may not be detained in prisons, not even in the event of a lack of PDCA capacities. Detention in prison is only possible in the case of serving a custodial sentence. If the competent court orders custody of an accused third-country national, such person must be placed in a prison, as the execution of custody is governed by the Criminal Code. In such case, the affected third-country nationals are held in prison together with other prisoners.<sup>70</sup>

Q6. If third-country nationals are detained in prisons in your (Member) State, are they held separately from general prisoners? If yes, please provide information on the mechanisms to separate third-country nationals under immigration detention from general prisoners?

See answer to Q5.

Q7. Please provide the following information about the conditions of third-nationals who have been placed in an immigration detention facility in your (Member) State: (Please indicate if the facilities in question are prisons or specialised immigration detention facilities).

Conditions of detention	Statistics and/or comments
Please provide any statistics on the average available surface area per detainee (in square meters)	<p>The average available surface area of a room per detainee is 3.58m<sup>2</sup> in the PDCA Medved'ov and 3.25m<sup>2</sup> in the PDCA Sečovce.<sup>71</sup> The total average available surface area of a room per detainee in a PDCA is 3.42m<sup>2</sup>. A detained person, however, is provided not only the accommodation room, but can also use other premises, such as areas for leisure and sports activities, sanitary facilities, etc. Data on the available average surface area in m<sup>2</sup> per detainee is not available.</p> <p>The room for detainees has electrical lighting, a table, chairs, beds and a locker for personal items, the number of which corresponds to the number of accommodated third-country nationals.<sup>72</sup> There is natural light in rooms. Both facilities apply a “corridor regime” which enables the detained persons to move freely</p>

<sup>70</sup> Interview with BBAP PFP staff.

<sup>71</sup> BBAP PFP questionnaire.

<sup>72</sup> Ibidem.

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	between rooms, sanitary facilities and other common premises within each unit. <sup>73</sup>
Please provide any statistics on the average number of detainees placed in one room per detention facility	The maximum number of persons that can be placed in one accommodation room is four within the PDCA Medved'ov, and eight within the PDCA Sečovce. <sup>74</sup> The number of persons accommodated in one room depends on the number of detained third-country nationals and the capacity of the facility. Information on the average number of detainees in one room is not available.
Are families accommodated in separate facilities?	Yes, in the PDCA Sečovce (Please see the answer to Q2)  When placing a third-country national in a detention facility, his/her age, health condition, family relationships, and the religious, ethnic or national background are taken into account.
Can children be placed separately from their parents? (e.g. in a childcare facility). Under what circumstances might this happen?	Family members are placed together. Children can be placed separately from their parents if the facility decides to separate the family. In such case, it must be taken into account that the consequences of such separation are reasonable to its grounds. <sup>75</sup>
Are single women separated from single men?	Yes.  Men are separated from women, and persons under 18 years are separated from older persons. An exception can be granted to third-country nationals in a family relationship.
Are unaccompanied minors separated from adults?	Unaccompanied minors are not placed in PDCAs, as they may not be detained under the Slovak legislation. They are placed in specialised facilities/foster homes designed for unaccompanied minors.

<sup>73</sup> Report for the Government of the Slovak Republic on the Visit to the Slovak Republic by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Council of Europe. CPT/Inf (2010)1. Available at: <http://www.cpt.coe.int/documents/svk/2010-01-inf-svk.pdf> (consulted on 22/04/2014).

<sup>74</sup> BBAP PFP questionnaire.

<sup>75</sup> Art. 94 of Act on Residence of Aliens.

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<p>Do detainees have access to outdoor space? If yes, how often?</p>	<p>Yes.</p> <p>Every PDCA has a designated area for spending time outdoors. Third-country nationals have the right to two walks per day within designated spaces and at times specified in the internal rules of the facility (there are exact times set in the morning and in the afternoon) under the supervision of the facility guards. A walk takes not less than one hour. Sports activities are also performed during walks. In line with the daily timetable, the shift leader may permit, depending on the weather conditions and the overall security situation in the facility, a walk on fresh air during detainees' spare time after dinner, but only before dark. Walks are cancelled in exceptional cases only – due to bad weather conditions or for other serious reasons, if decided by the facility director.<sup>76</sup></p> <p>The walks of ill persons and pregnant women are performed in accordance with the instructions of the shift leader and always with the consent of the facility doctor within areas in front of the medical centre of the facility and under the supervision of guards. Mothers with children placed in the PDCA Sečovce usually go to the children's playground where detained minors (under 15 years of age) can carry out leisure-time activities, including games and recreational activities appropriate to their age. The walks of third-country nationals placed under a separate regime of detention is organised by the permanent service staff on an operative basis according to the state of forces and means within the designated area which is separated from the other parts of the facility by protective fencing.<sup>77</sup></p>
<p>Are detainees allowed to have visitors? If yes, which visitors are allowed (for example, family members, legal representatives, etc.) and how often?</p>	<p>Yes.</p> <p>Visits to detained third-country nationals in a PDCA are permitted by the facility director, and are made in the presence of guards within the</p>

<sup>76</sup> Internal Regulations of the PDCA Medved'ov and PDCA Sečovce.

<sup>77</sup> Internal Regulations of the PDCA Medved'ov and PDCA Sečovce.

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designated areas of the facility – visit rooms located on the ground floor of the administrative building. Visits are permitted on the basis of a written request by the detainee for receiving a visit, without interfering with the fulfilment of facility tasks. A third-country national is entitled to receive visits by not more than two persons once every three weeks for a duration of 30 minutes.<sup>78</sup> The facility director may allow an exception in justified cases. The Act on Residence of Aliens does not explicitly list the categories of persons that can visit detainees, such as family members or other persons. The act only mentions the staff of the International Organization for Migration (IOM), other non-governmental or inter-governmental organisations, and persons providing legal assistance to third-country nationals. All such persons are entitled to enter the facility throughout the period of detention of the third-country national with the consent of the facility director at times which do not interfere with the fulfilment of facility tasks. The third-country national is entitled to receive such persons without restrictions. The representatives of the organisations/entities listed above are expected to inform the PDCA in advance.

During visits, the visited room is supervised by facility guards. If the detainee is visited by persons providing legal protection under the criminal proceedings conducted against the detainee, the facility guards supervise the entry to the visiting room. Visitors must respect the instructions of the police officer on duty and the principles of the PDCA internal rules.<sup>79</sup> Detainees placed in rooms under the separate

<sup>78</sup> Art. 98 of Act on Residence of Aliens.

<sup>79</sup> For example, they are required to leave their arms, mobile phones, audio-visual technology or items (including alcoholic drinks, drugs, psychotropic substances, precursors, toxic substances, explosives and other similar substances) that could threaten the life and health of persons in the facility, move within the facility area always accompanied by a police officer on duty or an authorised person, and have a visible sign on their clothes (for example, a visitor tag) before entering the facility. A person that refuses to follow the instructions specified in the internal rules and the instructions of the police officer on duty would not be allowed to visit the facility. Source: Internal Rules of the PDCA Sečovce.

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	<p>detention regime are not entitled to receive visits.<sup>80</sup></p> <p>Detainees may visit each other within designated areas during walks or in the visit room. In justified cases, the doctor may prohibit mutual visits of detainees placed in the patient section of the medical facility.<sup>81</sup></p>
<p>Are detainees allowed contact with the outside world via telephone, mail, e-mail, internet? If yes, are in- and/or out-coming messages screened in any way?</p>	<p>Yes.</p> <p>Besides visits, further contact with the outside world is possible via mail, telephone, internet, TV, and national or foreign printed media that third-country nationals can order at their own cost, if available in the SR.</p> <p>Detained third-country nationals have the right to receive and send from the PDCA letters which are not opened according to the information from the BBAP PFP.<sup>82</sup> They may also receive a delivery once every two weeks containing items of personal use of up to five kilograms,<sup>83</sup> the content of which is checked by the PDCA staff.<sup>84</sup> The delivery may contain personal items, such as food, sanitary products and other items, like tobacco products, postal stamps, telephone cards or batteries for small appliances. The list of such items is provided in the PDCA internal rules and is different in each PDCA. The PDCA Medved'ov also specifies the permitted amounts in its internal rules. Exceptions from such lists may be allowed in justified cases by the facility director.<sup>85</sup> A third-country national is also allowed to send mail at his/her own expense. If s/he files applications or complaints to Slovak</p>

<sup>80</sup> Internal Rules of the PDCA Medved'ov and PDCA Sečovce.

<sup>81</sup> Ibidem.

<sup>82</sup> Interview with BBAP PFP staff.

<sup>83</sup> This restriction does not apply to packages with clothes.

<sup>84</sup> Items and substances that could compromise the safety of persons or property or threaten or damage health, items that could assist in an escape, or addictive substances (e.g. alcohol) are not handed over to the third-country national but sent back to the sender at his/her expense. Source: Art. 99 of Act on Residence of Aliens.

<sup>85</sup> Internal Rules of the PDCA Medved'ov and PDCA Sečovce.

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state authorities, the PDCA would immediately send such documents.<sup>86</sup> If a third-country national has his/her own financial resources, the mailing costs are covered on his/her own. In case the third-country national has no financial resources, the mailing costs are covered from the budget of the Ministry of Interior of the Slovak Republic.

Upon the person's entry check, the person placed in detention in a PDCA is disposed of his/her personal items, especially of his/her mobile phone in order to ensure security in the facility and to prevent absconding or crimes. Detainees, however, may use public payphones which are available in both PDCAs, and may also use them to receive phone-calls. Except for the first phone-calls to inform their relatives, lawyer or respective consular office, in general, the detainees must pay for their prepaid phone cards on their own<sup>87</sup> or such cards can be paid or provided by non-governmental organisations carrying out activities within the PDCA. Non-governmental organisations also provide a mobile phone that a detained third-country national may use upon request once a week during approx. 10 minutes.<sup>88</sup> According to the information from the BBAP PFP staff, the phone communication of detainees is not monitored.

Detainees may ask for communication with their lawyer or other persons through the PDCA staff or a social workers working in the respective PDCA.<sup>89</sup>

The visit room in the PDCA Medved'ov is equipped with a computer with internet connection. Detainees have limited access to this

<sup>86</sup> Art. 97 of Act on Residence of Aliens.

<sup>87</sup> Pursuant to the Act on Residence of Aliens, the third-country national is allowed to receive money without limitation, and the PDCA would arrange that it is deposited.

<sup>88</sup> Report of the Public Defender of Rights on the availability of legal assistance to detained third-country nationals. Office of the Public Defender of Rights Bratislava, June 2013. Available at: <http://www.vop.gov.sk/files/Dostupnos%C5%A5%20pr%C3%A1vnej%20pomoci%20zaisten%C3%BDm%20cudzincm.pdf> (consulted on 22/04/2014).

<sup>89</sup> Report for the Government of the Slovak Republic on the Visit to the Slovak Republic by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Council of Europe. CPT/Inf (2010)1. Available at: <http://www.cpt.coe.int/documents/svk/2010-01-inf-svk.pdf> (consulted on 22/04/2014).

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	<p>computer and can use it only in the presence of the PDCA staff. Persons placed in the PDCA in Sečovce also have limited access to the internet three times a week, in the presence of an NGO worker and PDCA staff. In both PDCAs detainees may use the internet only for searching information; e-mail communication is prohibited. Detainees are helped by social workers while searching information, but only in case it is justified and if approved by the director of the PDCA Sečovce.<sup>90</sup></p>
<p>Are education programmes provided (e.g. school courses for minors and language classes for adults)?</p>	<p>Yes.</p> <p>Under the Act on Residence of Aliens, a third-country national under 15 years of age has the right to education if his/her detention is longer than three months. The education of such person is ensured on the basis of a project of the non-governmental organisation The Slovak Humanitarian Council. This organisation provides a teacher who is involved in the education process directly in the PDCA premises. Depending on the duration of his/her stay in the facility, social workers are also involved in the planning of appropriate education in concurrence with the appointed non-governmental organisation.<sup>91</sup> Slovak language training is also provided. There are almost no education programmes provided to adult detainees in the PDCA. In case a non-governmental organisation organises Slovak language training for minors, such courses can also be attended by adults according to their interest.</p>

<sup>90</sup> Report of the Public Defender of Rights on the availability of legal assistance to detained third-country nationals. Office of the Public Defender of Rights Bratislava, June 2013. Available at: <http://www.vop.gov.sk/files/Dostupnos%20pr%C3%A1vnej%20pomoci%20zaisten%C3%BDm%20cudzincm.pdf> (consulted on 22/04/2014).

<sup>91</sup> Two social workers hold the social worker position in both PDCAs. One of them has a labour contract with the PDCA, and the other one is a professional worker of the non-governmental organisation The Slovak Humanitarian Council. The social worker of the Slovak Humanitarian Council ensures in the PDCA complex coverage of the personal needs of third-country nationals guaranteed by a project which is co-financed by the European Return Fund: Solidarity in Migration Flows Management. Source: BBAP PFP.

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<p>Do detainees have access to leisure activities? If yes, which leisure activities are provided in the detention facility? And if yes, how often?</p>	<p>Yes.</p> <p>Detained third-country nationals have access to leisure activities in the PDCA. It is mainly cultural and sports activities performed daily at times specified in the PDCA internal rules (in the morning, in the afternoon, and in the evening during spare time, or in the morning and in the afternoon during walks). Cultural activities include mainly reading newspapers and magazines, writing letters, playing social games and other activities the nature of which is not contrary to the purpose of detention. Detainees have also access to television in the TV room. Sports activities focus on exercises on the playground during walks or in designated premises (in a new gym, for example).<sup>92</sup></p> <p>In the PDCA Sečovce, cultural and leisure activities of detained minors accompanied by their legal representatives are provided in the game room located within the accommodation premises for families with children or in the gym equipped with sports tools, where detained minors can do sports activities also during bad weather. During good weather conditions minors can use the outdoor children's playground. The leisure activities for minors are also planned by social workers.<sup>93</sup></p>
<p>Can persons in detention leave the facility and if yes, under what conditions? Can persons move freely within facility or are their movements restricted to some parts/rooms of the facility?</p>	<p>Detainees are not allowed to arbitrarily leave the PDCA under any circumstances. They may leave the facility accompanied by a guard if their presence is needed at another place, for example, in court proceedings or hospitalisation.</p> <p>The freedom of movement of third-country nationals is also restricted within the PDCA. They can move freely within designated areas – between accommodation rooms, sanitary facilities and other common premises within each unit where they can move at designated times. The movement of detainees is restricted</p>

<sup>92</sup> Ibidem.

<sup>93</sup> Ibidem.

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	under the separate detention regime.
Are detainees entitled to legal advice / assistance? If yes, is it free of charge?	<p>Detained third-country nationals are entitled to legal advice and legal assistance within the PDCA, for example, upon appealing against an administrative expulsion decision or against a detention decision. Legal advice and legal assistance in the PDCA are provided free of charge by workers of the state budgetary organisation Legal Aid Centre (LAC) as well as workers of the civil association Marginal under the Garant project.<sup>94</sup> Paid legal assistance is provided by lawyers.</p> <p>According to the BBAP PFP Guidelines,<sup>95</sup> when placing a third-country national in detention the PDCA must immediately instruct the third-country national on the possibility to request the provision of free legal assistance by handing him/her over a copy of the bilingual instruction on the possibility to request legal assistance<sup>96</sup>, the receipt of which the third-country national confirms by signature. In case the third-country national does not speak Slovak or English, the PDCA would ensure interpreting of the instruction to a language the third-country national understands or to a language which s/he presumably understands.<sup>97</sup> If the third-country national wishes to receive free legal assistance, s/he is given a request for legal assistance form<sup>98</sup>, and the PDCA staff checks whether the filled data is complete and correct. In the event of minor errors the PDCA can help the third-country national to correct them with his/her consent, or may fill in the form on behalf of the</p>

<sup>94</sup> From 01 October 2013 to 30 June 2014, the civil association Marginal has been implementing a project financed from the European Return Fund, general programme Solidarity and Migration Flows Management. The main aim of the project is to improve, with special emphasis on vulnerable groups, the legal awareness of detained third-country nationals in the PDCA in Sečovce and Medveďov by means of legal counselling, and to ensure their access to legal services through legal representation in administrative or judicial procedures.

Source: <http://www.marginal.sk/aktualne> and <http://www.crz.gov.sk/index.php?ID=1078134&l=en> (consulted on 22/04/2014).

<sup>95</sup> Guidelines for procedures concerning administrative expulsion of aliens, detention of third-country nationals, and voluntary return of third-country nationals from the territory of the Slovak Republic. BBAP PFP.

<sup>96</sup> The instruction is in English and Slovak language.

<sup>97</sup> For example, in the language in which the administrative expulsion or detention procedures were conducted.

<sup>98</sup> The request form is in Slovak. If the third-country national has problems with filling in the form, the PDCA would provide for an interpreter, or would fill in the form on his/her behalf with the consent of the third-country national and check it.

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	<p>third-country national and with his/her consent and check the verification (signature) on the request form. The PDCA would subsequently ensure the sending of the request together with the decision on detention to the respective branch office of the LAC. The LAC workers would then visit the detained third-country national on the basis of the request.<sup>99</sup> As previously mentioned, the third-country national may receive visits of such workers without limitation.</p>
<p>Are detainees entitled to language support (translation / interpretation services)? If yes, is it free of charge?</p>	<p>Yes.</p> <p>In the case of situations where it is required that the detained third-country national not speaking Slovak understands the procedure, interpreters are invited to assist, or forms written in foreign languages are used, if possible. If the police department acting in the detention procedure finds out before the arrival of the detained third-country national that s/he cannot speak Slovak, it would immediately, upon the commencement of the procedure, invite an interpreter registered in the list of experts, interpreters and translators of the Ministry of Justice of the SR, or appoint an interpreter<sup>100</sup>, drawing an official report thereof. The cost of interpreting and other possible travel costs for the interpreter are covered by the MoI SR.</p> <p>Under the Act on Residence of Aliens, detained third-country nationals have the right to be instructed, immediately after their detention and in a language they understand, on the reasons for detention, on the possibility to make the representative office of the country which they are nationals of aware of their detention, on the possibility to inform any of their close persons and their legal representative of their detention,</p>

<sup>99</sup> Guidelines for procedures concerning administrative expulsion of aliens, detention of third-country nationals, and voluntary return of third-country nationals from the territory of the Slovak Republic. BBAP PFP.

<sup>100</sup> If it is not possible to get an interpreter registered in the list of interpreters for reasons such as incapacity to work due to illness, stay abroad, too long distance from the place of interpreting, it would appoint a person who is not registered in the list of interpreters, but has appropriate language skills to provide for interpreting.

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	<p>and on the possibility of examining the legality of the detention decision. At the same time, third-country nationals must be instructed in a language they understand or in a language which can be reasonably presumed as a language they understand, of the possibility to request assisted voluntary return, the possibility to contact non-governmental organisations, and, if the third-country national requested asylum or expressed his/her intention to file such request, of the possibility to contact the United Nations High Commissioner for Refugees.</p> <p>Immediately after their placement in the PDCA, third-country nationals must be informed in a language they understand or in the language which can be reasonably presumed as a language they understand, of where they are, of the rights and duties resulting from their placement in the facility, as well as of internal rules and free of charge legal assistance.</p> <p>The cost of interpreting and translations for other reasons<sup>101</sup> are covered by third-country nationals on their own.</p>
<p>Is medical care available to detainees inside the facilities? Is emergency care covered only or are other types of medical care included?</p>	<p>Yes.</p> <p>Medical care is available to detained third-country nationals in both PDCAs. The PDCAs also have well-equipped medical facilities with patient rooms, and a doctor and medical staff working full-time or part-time (depending on the PDCA). Fast access to emergency care and specialised medical care is also ensured.<sup>102</sup></p> <p>The Act on Residence of Aliens stipulates that the third-country national must undergo a medical examination as specified by a doctor, including necessary diagnostic and laboratory</p>

<sup>101</sup> The interpreting and translation of documents of private and personal nature which do not relate to the detention process and to the placement of the third-country national in a PDCA, e.g. translation of civil registry documents in the case of child birth.

<sup>102</sup> Report for the Government of the Slovak Republic on the Visit to the Slovak Republic by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Council of Europe. CPT/Inf (2010)1. Available at: <http://www.cpt.coe.int/documents/svk/2010-01-inf-svk.pdf> (consulted on 22/04/2014).

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	<p>examination, vaccination and precautionary measures defined by the health protection authority. Special attention is paid to vulnerable persons.</p> <p>For the purpose of health protection and during quarantine due to infectious disease or other health-related reason, the affected third-country nationals are placed in PDCA premises with a separate detention regime. If the health condition of a third-country national requires health care which the PDCA is unable to provide, it shall be arranged by the facility in a health care facility outside the PDCA, while being permanently guarded.</p> <p>If the third-country national causes intentional injury to his/her health, s/he is obliged to pay for the costs of health care provided and the actual costs incurred for supervision and transport to the health care facility.</p>
<p>Are there special arrangements for persons belonging to vulnerable groups? Please describe</p>	<p>Third-country nationals falling into the category of vulnerable persons have a special status in the PDCA and certain benefits given their position, as specified in the internal rules of the PDCA. As mentioned above, they are subject to different arrangements related to walks, leisure activities or accommodation/placement. Different rules apply also with regard to personal hygiene, when women and children in the PDCA Sečovce may have a shower every day (men are allowed to have a shower at least once a week), and food. For example, in the PDCA Sečovce, they get besides three meals per day also two snacks in the morning and in the afternoon, and pregnant women get extra food (e.g. milk and milk products). The period of detention in the case of vulnerable persons may not be extended pursuant to the Act on Residence of Aliens (for more details see Section 2).</p>
<p>Are there special arrangements for persons considered to be security risks for others and/or themselves? Please describe</p>	<p>Detained persons who represent a security risk to other detainees or to themselves are placed in premises with a separate detention regime. Under the Act on Residence of Aliens, the third-country national is placed in premises with a separate detention regime if there is a justified</p>

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	<p>concern that s/he would threaten the purpose of detention, is aggressive or requires increased supervision for other reason or in order to protect the health, rights and freedoms of other third-country nationals, if s/he breaches the internal rules of the facility, or during a period of quarantine due to infectious illness or other health-related reasons. The facility must immediately notify the prosecutor about the placement of a detained third-country national in a facility with a separate detention regime.<sup>103</sup></p> <p>There are two rooms in the PDCA Medved'ov and four rooms in the PDCA Sečovce serving as premises with a separate detention regime. The premises with a separate detention regime consist of an accommodation room/cell which may be locked only from outside and is equipped with a separated sanitary facility and signalling device. The premises also include a yard for walking, which is separated by protective fencing from the other parts of the facility.</p>
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<sup>103</sup> Source: Art. 93 of Act on Residence of Aliens.

Section 5: Availability and practical organisation of alternatives to detention(Maximum 6 pages)

*This section explores the availability of different types of alternatives to detention for different categories of third-country national. It further explores the practical organisation of the alternatives to detention, including information on the authorities/organisations responsible for administering the alternatives; the conditions that must be met by the third-country national who has been provided an alternative to detention; and information on the mechanisms in place in order to monitor the third-country national's compliance with these conditions. EMN NCPs are further requested to provide information on the challenges associated with the implementation of the alternatives, and any examples of good practice in their (Member) State that they may wish to share.*

*Q1. Please indicate whether any alternatives to detention for third-country nationals are available in your (Member) State and provide information on the practical organisation of each alternative (including any mechanisms that exist to monitor compliance with/progress of the alternative to detention) by completing the table below.*

The Act on Residence of Aliens specifies two options of alternatives to detention that a police department may provide instead of detaining a third-country national under the administrative expulsion procedure: the obligation to report the place of stay, or the obligation to give a financial guarantee. In case a deadline for departure is set within the administrative expulsion procedure, no detention procedure is conducted and, hence, no alternative to detention is assessed. An alternative to detention therefore only applies in cases where no deadline for departure has been set under the administrative expulsion procedure and where a detention procedure has commenced. This obligation may not be imposed if the administrative expulsion procedure is conducted due to the fact that the third-country national represents a serious threat to the national security or public order, or threatens the national security, public order or public health.<sup>104</sup>

Alternatives to detention	Yes/ No (If yes, please provide a short description)
Reporting obligations (e.g. reporting to the policy or immigration authorities at regular intervals)	<p><b>Yes.</b></p> <p>The police department may impose the duty to report the place of stay only if the third-country national under the detention procedure provides proof of accommodation<sup>105</sup> for the duration of this duty and financial coverage of the stay in the officially set amount covering the cost of stay of aliens in Slovakia, which corresponds to the current subsistence</p>

<sup>104</sup> Art. 82, par. 2, letter a) or, letter b) of Act on Residence of Aliens.

<sup>105</sup> Under Art. 122 of the act on Residence of Aliens, the following documents shall be understood documents confirming the provision of accommodation:

- a) the title deed or the extract from the title deed of the Real Estate Register issued in favour of the third-country national;
- b) certified lease contract concluded with a real estate owner or user and extract from the title deed or other document proving the entitlement to use the real estate;
- c) confirmation of the accommodation facility on the provision of accommodation; or
- d) certified statutory declaration of the natural person or legal entity on provision of accommodation to the alien in the territory of the Slovak Republic and the extract from the title deed or the document proving the entitlement to use the real estate.

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	<p>minimum amount per each month of stay of an adult person.<sup>106</sup> Financial coverage is assessed on an individual basis, having regard to the anticipated time until the execution of the return. The third-country national who has been imposed this duty is obliged to reside at the address specified and report his/her stay regularly in person at the police department within the defined period, as well as any changes to his/her stay. Neither the Act on Residence of Aliens nor the related guidelines specify the interval of these reportings; this decision is to be made individually by the police department which decides on the detention, though it is recommended to report the place of stay twice a week.<sup>107</sup> The police department makes an official record of every reporting of stay and adds it to the file. During the period the alternative to detention is used, the third-country national does not have his/her travel document. The travel document is withheld during the administrative expulsion procedure. A decision is drawn on the use of the alternative to detention and on the conditions thereof. It is not possible to appeal against the decision on imposing a duty. If the third-country national wishes to change the address of his/her stay, s/he must do so in advance. In such case, a new decision on providing an alternative to detention is issued, specifying the new address of stay. This type of alternative to detention was only provided in two cases in 2013 (see Table 1 in the Annex).</p>
Obligation to surrender a passport or a travel document	It is not a specific alternative to detention in the Slovak context. Under the administrative expulsion procedure, however, the police officer is entitled to withhold the alien's travel document. This suggests that when an alternative to detention is provided under the Slovak legislation, the alien would no more hold his/her travel document.
Residence requirements (e.g. residing at a particular address)	It is not a specific requirement, but the requirement to stay at the address specified by the alien, as mentioned above, is part of the conditions for providing one of the alternatives to detention that the Slovak legislation allows using.
Release on bail (with or without sureties)	<b>Yes.</b>

<sup>106</sup> The current subsistence minimum amount per adult natural person is EUR 198.09 with effect from 01 July 2013 to 30 June 2014. The third-country national must prove a monthly amount multiplied by the subsistence minimum amount for adult persons. The amount of the subsistence minimum for underage persons is half of that amount. Source: Ministry of Labour, Social Affairs and Family.

<sup>107</sup> Interview with BBAP PFP staff.

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<p><i>If the alternative to detention "release on bail" is available in your (Member) State, please provide information on how the amount is determined and who could be appointed as a guarantor (e.g. family member, NGO or community group)</i></p>	<p>The third-country national who was imposed a duty according to paragraph 1 b) shall be obliged to pay a financial guarantee, in the amount and within the period specified by the police department, to the account of the Police Force. The amount of the cash warrant deposit is determined on an individual basis depending on the personality of the third-country national and his/her situation. The financial guarantee on behalf of the third-country national may be paid by a person close to the third-country national.<sup>108</sup> The person paying the financial guarantee is required to notify the police department of the bank account number which the financial guarantee should be returned to, or the address where s/he will be residing at for the purposes of returning the financial guarantee.<sup>109</sup> The third-country national is also obliged to reside at the address specified, report any change of the place of stay, and prove financial coverage of his/her stay. If the third-country national possesses a travel document, it is withheld during the administrative expulsion procedure. This alternative to detention has not yet been provided in the SR (see Table 1 in the Annex).</p> <p>The Police Force shall return the financial guarantee to the person who paid it immediately after the execution of the administrative expulsion of the third-country national, after his/her departure within assisted voluntary returns, or if s/he was granted a residence permit, asylum or provided subsidiary protection. The costs of returning the financial guarantee shall be borne by the person who paid it. If the person fails to collect his/her financial guarantee within one year from the date of the decision on the return of the financial guarantee becoming effective (in case s/he provided the address to which the money is to be returned), the financial guarantee is forfeited to the state.<sup>110</sup></p> <p>The police department may decide to impose the obligation to give a financial guarantee also during the period of detention of the third-country national, i.e. also under the procedure of extending the detention or throughout the entire period of detention.</p>
Electronic monitoring (e.g. tagging)	<b>Not available</b>

<sup>108</sup> Close person is defined pursuant to Art. 116–177 of the Civil Code.

<sup>109</sup> Art. 89, par. 5 of Act on Residence of Aliens.

<sup>110</sup> Art. 89, par. 7 of Act on Residence of Aliens.

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Guarantor requirements <i>If this alternative to detention is available in your (Member) State, please provide information on who could be appointed as a guarantor (e.g. family member, NGO or community group)</i>	<b>Not available</b>
Release to care worker or under a care plan	<b>Not available</b>
Community management programme	<b>Not available</b>
Other alternative measure available in your (Member) State. Please specify.	-

Q2. For each of the alternatives to detention that are available in your (Member) State, please indicate the categories of third country nationals that may be provided an alternative to detention, making use of the list provided below and adding any additional categories as applicable. If there are variations in the practical organisation of any of the alternatives to detention provided to different categories of third country national, please indicate this is the case and briefly illustrate the variations.

- Applicants for international protection in ordinary procedures; **YES**
- Applicants for international protection in fast-track (accelerated) procedures; **YES**
- Applicants for international protection subject to Dublin procedures; **NO**
- Rejected applicants for international protection; **YES**
- Rejected family reunification applicants; **YES**
- Persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) subject to a return decision) **YES**
- Persons who have been issued a return decision; **YES**
- Other categories of third-country nationals;
- Vulnerable persons (such as minors, families with very young children, pregnant women and persons with special needs. **YES**

With regard to the categories of third-country nationals listed in the study specifications, any of the alternatives to detention described above can be provided to all of them, including vulnerable persons, with the exception of the category of applicants for international protection who are subject to detention due to the execution of the Dublin transfer. The reason behind is the fact that this category of third-country nationals is not subject to the administrative expulsion procedure. The practical organisation of both alternatives is the same for all categories of third-country nationals.

Q3. For each of the alternatives to detention that are available in your (Member) State, please indicate the legal basis on which they may be granted to particular categories of third country nationals (for example legislation, soft law/guidelines, other).

Alternatives to detention constitute a relatively new measure in the SR, and were incorporated in Art. 89 of the Act on Residence of Aliens. These provisions entered into force in January 2012. Though the provisions

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of this article regulating the obligation to report the place of stay and the obligation to give a financial guarantee do not explicitly state that these measures are “alternatives to detention”, the nature of the matter and the wording of the provisions suggest that they represent alternative measures that the police department can use instead of detention.

*Q4. For each of the alternatives to detention that are available in your (Member) State, please indicate the authorities/organisations responsible for (a) deciding and (b) administering the alternative. Please indicate in particular whether the responsible organisation is a non-governmental organisation.*

The use of an alternative to detention is decided by the competent police department (aliens police department, border police department, or asylum department) acting in the administrative expulsion procedure. The administration of the obligation is performed by the same police department.

*Q5. For each of the alternatives to detention that are available in your (Member) State, please provide information on any consequences if the third-country national does not follow the conditions of the alternative to detention.*

If the third-country national fails to report the change of his/her place of stay or avoids administrative expulsion, the police department shall decide on his/her detention and on the forfeiture of the financial guarantee to the state (see also Q1 in Section 5).

*Q6. Please indicate any challenges associated with the implementation of the alternatives to detention in your (Member) State. (based on existing studies/evaluations or information received from competent authorities)*

The SR has not published yet any analysis or study evaluating the implementation of alternatives to detention. In 2011, the Human Rights League non-governmental organisation published a national report *Detention and Alternatives to Detention in the Slovak Republic* under the project financed from the European Return Fund: *Steps to Freedom. Monitoring detention and promoting alternatives to detention of asylum seekers in Latvia, Lithuania, Estonia, Slovakia and the Czech Republic.*<sup>111</sup> At the time of publishing the report the alternatives to detention did not form part of the current legislation, and the report only described the proposal for alternatives to be adopted under the amendment to the Act on Residence of Aliens. The authors of the report defined the need to improve access to information about the possibilities for third-country nationals and the assessment of the specific conditions of every single case as the main challenge for authorities.<sup>112</sup>

According to the statements of the BBAP PFP staff, given the relatively low number of used alternatives the SR has not faced any challenges in relation to their implementation. With regard to the provided alternatives, third-country nationals complied with the conditions and the administrative expulsion decisions were executed. The respective legal provisions are appropriate to their implementation so far. The small number of used alternatives also relates to the fact that the category of persons where the possibility of providing an alternative to detention is considered is very small given the fact that where a police department sets a period for departure of a third-country national in its decision under the administrative expulsion procedure, no further steps are made with respect to detention, as a result of which it is irrelevant to consider any options of providing an alternative to detention. This is also confirmed by statistics. A comparison of the data in Tables 3 and 4 in the Annex suggests that from the total number of issued expulsion decisions (AE/JE) to third-

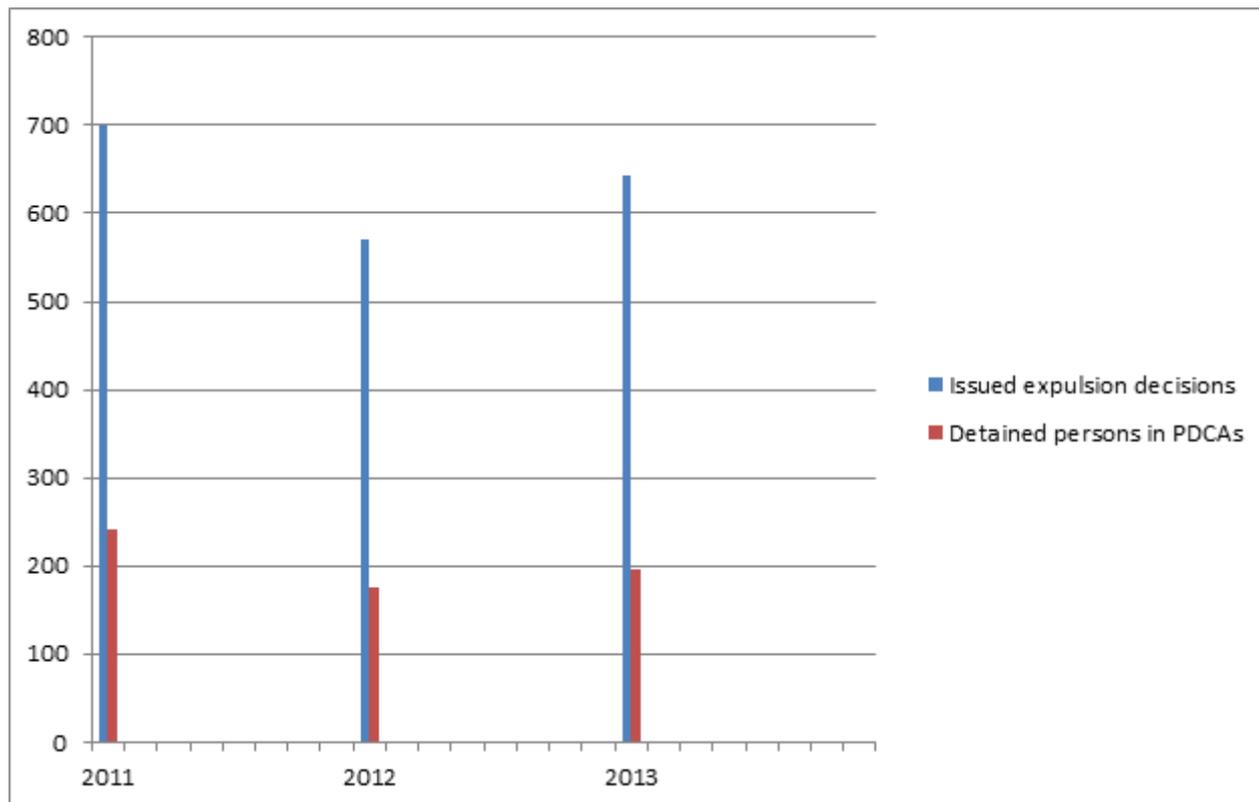
<sup>111</sup> Mittelmanová M., Številová Z.: *Detention and Alternatives to Detention in the Slovak Republic*. Human Rights League, 2011.

<sup>112</sup> Mittelmanová M., Številová Z.: *Detention and Alternatives to Detention in the Slovak Republic*. Human Rights League, 2011, p. 35.

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country nationals in the period 2011–2013, around 30–35 per cent of third-country nationals were placed in a PDCA in each reference year (see also Chart 1 below). Since alternatives to detention were only provided in two cases in the SR in 2013 (see Table 1 in the Annex), it can be concluded that detention or alternatives to detention are not preferred options in Slovakia, and are only used in cases laid down in the law, and third-country national have the option to leave the SR individually within the deadline set in the AE/JE.

Chart 1: Comparison of the total number of issued expulsion decisions to third-country nationals and the total number of third-country nationals detained in PDCAs (2011 – 2013)



Q7. Please provide any examples of good practices regarding the implementation of the alternatives to detention in your (Member) State. Please specify the source (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)

The BBAP PFP plans in the future to analyse the costs of the execution of returns and include them in a decree of the Ministry of Interior of the SR.<sup>113</sup>

According to the BBAP PFP staff, examples of good practice include, for example, training courses<sup>114</sup> for police department staff on case evaluation, as well as on assessment of the extent of risk to the execution of administrative expulsions.<sup>115</sup>

<sup>113</sup> Interview with BBAP PFP staff.

<sup>114</sup> Five training courses were organised in 2013 for police department staff working with aliens issues.

<sup>115</sup> Interview with BBAP PFP staff.

## Section 6: Assessment procedures and criteria used for the placement of third-country nationals in alternatives to detention (Maximum 5 pages)

*This section explores the type of assessments made by the competent authorities when considering whether to place a third-country national in an alternative to detention. It includes a number of questions which explore the timing of this assessment – in particular whether the assessment is conducted on all third-country nationals who are apprehended, or only on those third-country nationals who have completed a period in detention. It also includes questions about the practical implementation of the assessment procedure, in particular whether an individual assessment is conducted, what this involves and which organisations are involved in the assessment procedure.*

*Q1. In Section 2, Q1, you have identified the grounds on which detention can be authorised for particular categories of third-country national. In what circumstances can those grounds be displaced in favour of an alternative to detention in your (Member) State? Please provide answers in relation to each of the relevant categories of third-country national. If there is a separate set of grounds for providing third-country nationals an alternative to detention in your (Member) State, please indicate this is the case.*

The legislation of the SR does not provide for individual specific grounds on which an alternative to detention should be provided. The circumstances under which the grounds for detention (pursuant to Art. 88, par. 1a), b) and d) of the Act on Residence of Aliens) may be replaced by providing an alternative are various and are assessed on an individual basis in every single case. When making a decision, the personality of the third-country national, his/her situation and the level of risk to the purpose of detention are taken into account, and the decision is about the type and the way of imposing the duty. It is considered what is more proper for executing the return, and how the provision of an alternative could threaten the execution of the return. The fact that the third-country national has previously stayed in the SR legally, has accommodation and/or ties in the SR, or that is a vulnerable person or is cooperative in the execution of the administrative expulsion can be taken into account as circumstances when considering the option of providing an alternative to detention.<sup>116</sup> Moreover, an inevitable logical precondition for providing an alternative is the fact that the third-country national has, besides accommodation, the possibility to give a financial guarantee and has enough funds to ensure his/her stay until the execution of the return.

The cost efficiency of the alternatives to detention is not taken into consideration.

*Q2. Which other considerations are made before deciding whether to provide the third-country national concerned an alternative to detention, e.g. considerations regarding the availability of alternatives, the cost of alternatives, and vulnerabilities of the third-country national?*

See Q1 above.

*Q3. Please indicate whether an individual assessment procedure is used to determine whether the grounds on which detention can be authorised can be displaced in favour an alternative to detention. Yes/No. If yes, please list the categories of third-country nationals where individuals are subject to individual assessments.*

**Yes.** The actual possibility of providing one of the alternatives or a combination thereof depends on the individual situation of the third-country national. The SR individually evaluates and assesses the grounds for assessment of the third-country national within the detention procedure, and such individual approach applies to all categories of third-country nationals. The option of providing an alternative to detention is

<sup>116</sup> Interview with BBAP PFP staff.

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considered in every such procedure.

*Q4. Where individual assessments are used, please indicate whether the procedure includes an assessment of the vulnerability of the individual in question. Yes/No. If yes, please describe the vulnerability assessment procedure used.*

**Yes.** Individual assessments include an assessment of the vulnerability of the person. As mentioned in Section 1, Q2, the vulnerability of the person is assessed under the administrative expulsion procedure and further in the detention procedure until new facts arise that were not known before.

*Q5. Are assessment procedures for providing alternatives to detention conducted on all third-country nationals who are apprehended, or only on those third-country nationals who have already completed a period in detention?*

Individual assessment procedures for providing an alternative to detention are conducted for all categories of third-country nationals<sup>117</sup> who are apprehended.

The police department may decide to provide the alternative of giving a financial guarantee at any time during the detention of the third-country national or under the extended period of detention.

*Q6. Please indicate which national authorities are responsible for (i) conducting individual assessment procedures (where these exist) and (ii) deciding on alternatives to detention*

Individual detention procedures and, hence, the assessment of whether to provide/not to provide an alternative to detention are conducted by the competent police department at local level (the aliens police department, the border police department, or the asylum department). The police department also decides on detention or on providing an alternative to detention.

*Q7. Please indicate whether judicial authorities are involved in the decision to provide an alternative to detention, and if so, at which stage(s) of the decision-making process and in what capacity? (e.g. do judicial authorities make the final decision, do they only make a recommendation, do they only come in if the third-country national appeals against a decision?)*

Slovak judicial authorities do not have decision-making powers in providing an alternative to detention, and do not give recommendations to the competent police department deciding on the case. The law does not allow a third-country national to appeal against a decision on imposing the duty to report the place of stay or give a financial guarantee. If the third-country national wishes to appeal against the decision on detention, which also lists the reasons why s/he has not been provided an alternative to detention, s/he can do so by lodging an appeal against the decision on detention or against the decision on extending the period of detention; in this case, the procedure is identical to the one described in Section 3, Q8.

<sup>117</sup> The possibility of using an alternative to detention does not apply to the category of aliens subject to the Dublin Regulation.

## Section 7: Impact of detention and alternatives to detention on the effectiveness of return and international protection procedures (Maximum 5 pages)

*This section aims at exploring the impact of detention and alternatives to detention on the effectiveness of (Member) State return and international protection procedures. The questions are formulated as a comparison between the impact of detention and alternatives to detention; they do not attempt to compare the impact of detention (or alternatives to detention) on the effectiveness of return and international protection procedures in the case of third country nationals whose freedom of movement is not restricted at all.*

*Four specific aspects of effectiveness are considered: (i) effectiveness in reaching prompt and fair decisions on the immigration status of the individuals in question, and in executing these decisions; (ii) cost-effectiveness; (iii) respect for fundamental rights; and (iv) effectiveness in reducing the risk of absconding.*

*Whilst an attempt is made to compare the impact of detention and alternatives to detention on each of these dimensions of effectiveness, it is recognised that the type of individuals placed in detention and in alternatives to detention (and their corresponding circumstances) are likely to differ significantly and therefore the comparisons made need to be treated cautiously.*

### **7.1. Effectiveness in reaching prompt and fair decisions on the immigration status of the individuals in question, and in executing these decisions**

#### **7.1.1. Effectiveness in reaching decisions on applications for international protection**

*Q1. Have any evaluations or studies (including studies of the views of detainees of alternatives to detention) in your (Member) State considered the impact of detention and alternatives to detention on the efficiency of reaching decisions on applications for international protection? (for example, by affecting the time it takes to decide on international protection status). Yes/No.*

*If Yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report.*

In general, there is a lack of publications on migration and asylum in Slovakia. No evaluation has so far been performed and no research has been conducted to describe the impacts of detention and alternatives to detention on the effectiveness in reaching decisions on applications for international protection, and no research has been published on mapping the opinions of third-country nationals using alternatives to detention. One of the reasons is the fact that alternatives to detention have been laid down in law just since 2012, and the SR has so far provided an alternative to detention in two cases only (see Table 1 in the Annex and Section 5).

The only research, mentioned in Section 5, Q5 and dealing with this issue, was published as a national report in 2011 by the Human Rights League.<sup>118</sup> It should be mentioned, though, that this publication describes and evaluates the legislation in 2010 and 2011<sup>119</sup>, and partially describes the changes in legislation which were planned at that time and entered into effect in January 2012.

This report does not directly deal with the impacts of detention on the effectiveness in reaching decisions on applications for international protection, but the chapter on obstacles and encountered problems states that in spite of constant improvements of the situation in the field of detention, the period of the procedure related to the filing of an asylum application under detention, among others, was identified as an obstacle and a problem. At that time, the Asylum Act did not stipulate, nor does it do today, the actual duration of

<sup>118</sup> Mittelmannová M., Številová Z.: Detention and Alternatives to Detention in the Slovak Republic. Human Rights League, 2011.

<sup>119</sup> At that time, no alternatives to detention were laid down in the Slovak legislation.

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the period between expressing an interest in applying for asylum (which can be done in writing or orally) and the actual filing of the application. In 2011, the research monitored cases where the total duration of the period between expressing an interest in requesting asylum and the receipt of the asylum application was one month. According to the authors of the report, this was mainly caused by problems with ensuring interpreting.<sup>120</sup>

*Q2. Please provide any statistics that might be available in your (Member) State on the average length of time needed to determine the status of applicants for international protection who are held in detention and who are in an alternative to detention. Please provide the statistics for the latest year(s) available (for example "2013" or "2011-2013") and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).*

*Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection.*

*Where no information is available, please indicate "No information" and briefly state why no information is available.*

*Where it is not applicable, please indicate "Not applicable" and briefly state why.*

An applicant for international protection may be detained only in certain cases laid down in law (see Section 2). The detention of such persons may not exceed six months, and this period may not be extended. The average length of time needed to make a decision on granting/non-granting of international protection to a detained applicant was up to three months in the SR in 2013, specifically 2.96 months (see table below).

Since an alternative to detention in Slovakia was only provided in two cases which, however, did not refer to applicants for international protection (the data with regard to alternatives to detention is not provided in the table below for this reason), it is not possible to compare and evaluate whether the average length of time needed to reach a decision on granting/non-granting of international protection to an applicant with an alternative to detention would be shorter or longer compared to a detained applicant. Hence, it is not possible to assess the impacts of detention and alternatives to detention on the effectiveness in reaching decisions on applications for international protection.

<i>Applicable year: 2013</i>	<i>Detention</i>	<i>Alternatives to detention</i>	
		<i>A1</i>	<i>A2</i>
<i>Average length of time in determining the status of an applicant for international protection (in months)</i>	2,96	:	:

Source: Procedural Department of the MO MoI SR and BBAP PFP

A1 – obligation to report the place of stay

A2 – obligation to give a financial guarantee

: Not applicable. An alternative to detention in the SR was only provided in two cases which, however, did not relate to applicants for international protection.

<sup>120</sup> Mittelmanová M., Številová Z.: Detention and Alternatives to Detention in the Slovak Republic. Human Rights League, 2011.

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The average length of time needed to reach a decision on granting/non-granting asylum and on granting/non-granting of subsidiary protection in 2013 was calculated on the basis of the data provided by the Procedural Department of the MO MoI SR on the number of third-country nationals who were detained in 2013 and subsequently applied for international protection, and who were issued the first decision on granting/non-granting of international protection in 2013.

With regard to applicants for international protection who are subject to the Dublin Regulation, the average length of time needed to issue a decision on granting/non-granting of international protection was one month and three weeks. The MO MoI SR recorded eight such cases in 2013.<sup>121</sup>

Q3. Please provide any other evidence that may be available in your (Member State) on the impact of detention and alternatives to detention on effectiveness in terms of reaching decisions on applications for international protection and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)

NA (see answer to Q1)

### 7.1.2 Effectiveness in reaching decisions regarding the immigration status of persons subject to return procedures and in executing returns

Q4. Have any evaluations or studies in your (Member) State considered the impact of detention and alternatives to detention on:

- The length of time from apprehending an irregular migrant to issuing a return decision? **No**
- The length of time that transpires from issuing a return decision to the execution of the return? **No**
- The share of voluntary returns out of the total number of returns? **No**
- The total number of removals completed? **No**

If Yes, please summarise the main findings here and include a reference to the evaluation or study in an annex to your national report

NA

Q5. Please provide any statistics that might be available in your (Member) State on (i) the average length of time that transpires from the decision to return a person in detention, and in (different) alternatives to detention, to the execution of the return procedure; (ii) the proportion of voluntary returns and (iii) the success rate in the number of departures among persons that were placed in detention and in alternatives to detention. Please provide the statistics for the latest year(s) available (for example "2013" or "2011-2013") and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State. (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).

Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection.

Where no information is available, please indicate "No information" and briefly state why no information is available.

<sup>121</sup> Information provided by the Procedural Department of the MO MoI SR.

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Where it is not applicable, please indicate "Not applicable" and briefly state why.

Statistics on the success rate in the number of departures should be provided as the number of persons who were issued a return decision and who have returned to their country of origin, and the number of persons who were issued a return decision and who have not returned to their country of origin. Please provide both the numbers and the share they represent out of the total number of persons issued a return decision.

As previously mentioned, only one research has so far dealt with detentions and alternatives to detention in the SR. This research was conducted in 2011 when the Slovak legislation did not contain any provisions on alternatives to detention. Also, given the low number of alternatives to detention used so far, it is not possible to evaluate the use and the effectiveness of this measure in terms of relevant statistics. It is therefore not possible to compare and assess, as provided in the study specifications, what is the impacts of detention and alternatives to detention on the length of time from apprehending an irregular migrant to issuing a decision on his/her expulsion/return (AE/JE), on the length of time that transpires from issuing a return/expulsion decision to the execution of the return, on the number of voluntary returns, or on the total number of removals completed.

Though the table below provides available data on the basis of the study specifications, its further analysis does not allow drawing relevant conclusions on the impacts of detention and alternatives to detention on the effectiveness in reaching a decision on the immigration status of third-country nationals who have been issued an expulsion/return decision (AE/JE) or on the effectiveness of the execution of their return.

The table below provides data from the latest year (2013) on the average length of time from apprehending an irregular migrant to issuing a decision on his/her expulsion/return (AE/JE), on the average length of time that transpires from issuing a return/expulsion decision (AE/JE) to the execution of the return, on the number of voluntary returns of third-country nationals who were detained or were provided an alternative to detention, and information needed to determine the success rate of removals of third-country nationals who were detained or were provided an alternative to detention.

It is, however, not possible to draw specific conclusions from this data in favour of detentions or alternatives to detention, as an alternative to detention has only been provided in two cases in the SR, as mentioned above. It should also be mentioned that certain statistical data requested in the study specification are not directly monitored in the SR, and the data in the table below is therefore derived directly from relevant legislation or from available data the specificities of which are provided in the notes underneath the table.

<i>Applicable year: 2013</i>	<i>Detention</i>	<i>Alternatives to detention</i>	
		<i>A1</i>	<i>A2</i>
<i>Average length of time from apprehending an irregular migrant to issuing a return decision</i>	2 days (for AE) <sup>1</sup> 10 – 15 days (JE) <sup>2</sup>	1 day	:
<i>Average length of time from issuing a return decision to the execution of the return</i>	19 days <sup>3</sup>	4 days	:
<i>Number of voluntary returns (persons who opted to return voluntarily)</i>	15 persons <sup>4</sup>	0	:

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Number of persons who were issued an expulsion/return decision (AE/JE) and who returned to their country of origin	77 <sup>5</sup>	2 <sup>6</sup>	:
Number of persons who were issued an expulsion/return decision (AE/JE) and who did not return to their country of origin	18 <sup>7</sup>	0	:
Number of all expulsion/return decisions issued	95 <sup>8</sup>	2	:
<i>Success rate in the number of removals</i>	81.05%	100%	:

Source: BBAP PFP

Notes:

A1 – obligation to report the place of stay

A2 – obligation to give a financial guarantee

<sup>1</sup> Legal period for issuing a decision on administrative decision. The police department is expected to issue a decision on the administrative expulsion of a detained person in the shortest period of time which may not exceed 48 hours.

<sup>2</sup> The average length of time from apprehending an irregular migrant who has been detained pursuant to the Act on Residence of Aliens or Act on the Police Force, or apprehended under the Criminal Code to imposing the punishment of expulsion by court.

<sup>3</sup> Average length of time from issuing a AE/JE decision to persons who were detained and placed in a PDCA or in a police department under Art. 88, par. 6 of Act No. 404/2011 Coll. on Residence of Aliens in 2013, irrespective of the time of apprehending them, until executing the expulsion from the territory of the SR in 2013.

<sup>4</sup> Number of persons in the framework of irregular migration who were issued a AE/JE decision, were detained and placed in a PDCA in 2013, and verifiably left the territory of the SR under the assisted voluntary return procedure in 2013.

<sup>5</sup> Number of persons in the framework of irregular migration who were issued a AE/JE decision, were detained and placed in a PDCA or in a police department pursuant to Art. 88, par. 6 of Act No. 404/2011 Coll. on Residence of Aliens in 2013 and subsequently left the territory of the SR (forced return).

<sup>6</sup> Number of persons in the framework of irregular migration who were issued in 2013 a AE decision and were imposed, as an alternative to detention, the obligation to report the place of their stay until removed from the territory of the SR. These persons were expelled in 2013.

<sup>7</sup> Difference between the number of all issued return decisions and the number of persons who were issued a return decision (AE/JE) and who returned to their country of origin. Refers to persons who were released or entered the asylum procedure, or where their return has not yet been executed.

<sup>8</sup> Number of persons who were issued a AE/JE decision in 2013, were detained and placed in a PDCA or in a police department pursuant to Art. 88, par. 6 of Act No. 404/2011 Coll. on Residence of Aliens in 2013 irrespective of the time of apprehending them. This figure serves for information only, as there could have been deviations while entering the data in the system.

\* In the Slovak context, it is persons who requested assisted voluntary return (see Terms and Definitions);

\*\* Share of persons who were issued a return decision and returned to their country of origin to the total number of return decisions issued.

: Not applicable, as this alternative has not yet been provided in the SR.

The average length of time from apprehending an irregular migrant to issuing an expulsion/return decision with regard to AE in the table above represents the legal time-limit for issuing a decision on administrative expulsion, as the police department is expected to issue an administrative expulsion decision to an apprehended and detained person in the shortest period of time which may not exceed two days (48 hours) as per the Act on Residence of Aliens. The average length of time from apprehending an irregular migrant to issuing an expulsion/return decision with regard to judicial expulsions or to imposing the sentence of expulsion (JE) by court in 2013 was 10 to 15 days, including cases where a third-country national was detained pursuant to the Act on Residence of Aliens or the Act on the Police Force or was apprehended pursuant to the Criminal Code. With regard to alternatives to detention, the average length of time from apprehending an irregular migrant to issuing a return decision (AE/JE) was one day only.

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The average length of time from issuing an expulsion/return decision (AE/JE) to the execution of the expulsion/return was 19 days with regard to detentions in 2013, and only four days with regard to alternatives to detention (obligation to report the place of stay). The average length of this time in the case of detentions is largely influenced by the length of time needed to get substitute travel documents in the country of origin of the third-country national.<sup>122</sup>

Since an alternative to detention was provided in two cases only in the form of the obligation to report the place of stay, it is not possible to draw any conclusions, in which cases (detentions or alternatives to detention) the average length of time from apprehending an irregular migrant to issuing a return decision, or from issuing a return decision to the execution of the return is shorter and why.

Third-country nationals who are detained or are provided an alternative to detention can request assisted voluntary return. In 2013, 15 persons opted for returning under this programme. This figure includes the number of third-country nationals who were issued an expulsion decision (AE/JE), were detained and placed in a PDCA, and who verifiably left the territory of the SR under the assisted voluntary return programme organised by the International Organisation for Migration (IOM). (Table 3 in the Annex also provides figures on third-country nationals who were detained and placed in a PDCA in 2012 and who verifiably left the territory of the SR under the assisted voluntary return programme in 2013). No person with an alternative to detention returned under the assisted voluntary return programme.

The success rate of removals is determined on the basis of statistics on the number of persons who were issued an expulsion/return decision during detention and who returned to their country of origin, and on the number of persons who were issued an expulsion/return decision during detention and who did not return to their country of origin to the total number of return decisions.

The number of third-country nationals who were detained and issued an expulsion/return decision (AE/JE) and who subsequently returned to their country of origin under forced return in 2013 was 77 of the total number of all expulsion/return decisions (AE/JE) issued to detainees (95 persons). There were 18 third-country nationals who were detained and did not return to their country of origin, which is the difference between the number of all issued expulsion/return decisions on detainees and the number of persons who were issued an expulsion/return decision (AE/JE) and returned to their country of origin from detention. This figure refers to persons who were released or entered the asylum procedure, or to cases where the return was not executed in 2013. On the basis of this data, the success rate of removals of third-country nationals who were detained is over 81% in 2013, but this figure should be viewed with regard to the available source of statistics.

There were two third-country nationals who were imposed the obligation to report the place of their stay as an alternative to detention until removal in 2013 and who were issued an administrative expulsion decision in 2013 and returned to their country of origin under forced return from the total number of all expulsion/return decisions (AE/JE) issued to persons who were provided an alternative to detention (two persons), which suggests a 100% success rate in the number of removals with respect to this measure.

*Q6. Please provide any other evidence that may be available on the effectiveness in reaching decisions regarding the immigration status of persons subject to return procedures and executing the return, and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)*

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<sup>122</sup> BBAP PFP.

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NA

As stated above, it is not possible to draw any specific conclusions from the analysis of available data in favour of detentions or alternatives to detention due to the low number of used alternatives to detention given the fact that it is a relatively new measure (since 2012), and because the SR prefers the option of voluntary departure to detention (and alternatives to detention) by issuing an administrative expulsion with a time-limit for departure in cases laid down in law (for more details see Section 5, Chart 1).

**7.2. Costs**

Q7. Have any evaluations or studies on the costs of detention and alternatives to detention been undertaken in your (Member) State?

No evaluations have been performed so far and no studies have been published in the SR dealing with the costs of detention and alternatives to detention. The tables below present the available data on the costs of detention during the past two years, as provided by the BBAP PFP. Data on the costs of the alternatives to detention provided so far (obligation to report the place of stay) is not available, as it is not monitored.

Q8. Please provide any statistics available on the costs of detention and alternatives to detention in the table below. Please provide the statistics for the latest year(s) available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).

Where costs can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection to measure the costs.

Where no information is available, please indicate "No information" and briefly state why no information is available.

Where it is not applicable, please indicate "not applicable" and briefly state why

2012	Detention	Alternatives to detention***	
		A1	A2
Total costs	€2,639,147.26	NA	NA
Staffing costs*	€2,449,124.28	NA	NA
Medical costs	€13,032.52	NA	NA
Food and accommodation costs	€114,428.98	NA	NA
Legal assistance	:	NA	NA
Other costs** (This could include any additional costs that do not fall into the categories above e.g. costs of technical tools for administering alternatives to detention, such as electronic tagging). Please specify	€62,561.48	NA	NA

Source: BBAP PFP

Notes:

A1 – obligation to report the place of stay

A2 – obligation to give a financial guarantee

: Data not available. Legal assistance is provided by the LAC free of charge, and is financed from the state budget or under projects funded by the European Return Fund.

\*Total amount of costs related to salaries, insurance payments and contributions to insurance companies for civil workers and police officers working in PDCAs.

\*\*Other costs which do not fall into any of the categories listed above: air tickets for police officers and third-country nationals (€42,600), fuels for PDCA Medved'ov (€15,629.90), interpreting for PDCA Medved'ov (€4,331.58).

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\*\*\* No alternatives to detention were provided in the SR in that year.

2013	Detention	Alternatives to detention***	
		A1	A2
Total costs	€2,140,160.80	No information	NA
Staffing costs*	€1,879,783.44	No information	NA
Medical costs	€107,500.48	No information	NA
Food and accommodation costs	€92,206.51	No information	NA
Legal assistance	:	No information	NA
Other costs** (This could include any additional costs that do not fall into the categories above e.g. costs of technical tools for administering alternatives to detention, such as electronic tagging). Please specify	€60,670.37	No information	NA

Source: BBAP PFP

Notes:

A1 – obligation to report the place of stay

A2 – obligation to give a financial guarantee

: Data not available. Legal assistance is provided by the LAC free of charge, and is financed from the state budget or under projects funded by the European Return Fund.

\*Total amount of costs related to salaries, insurance payments and contributions to insurance companies for civil workers and police officers working in PDCAs.

\*\* Other costs which do not fall into any of the categories listed above: air tickets for police officers and third-country nationals (€26,000), fuels only for the PDCA Medved'ov (€32,161.93), and interpreting for the PDCA Medved'ov (€2,508.44).

\*\*\*An alternative to detention (obligation to report the place of stay) was only provided in two cases in that year. No obligation to give a financial guarantee was imposed.

According to the available data, the total costs of detention (personnel costs, costs of medical care, costs of food and accommodation, other costs (selected costs of the PDCA Medved'ov) reached EUR 2,639,147.26 in 2012. In 2013, the total costs of detention attained EUR 2,140,160.80. The lower amount of costs in 2013 compared to 2012 was caused by reduced personnel expenditure, as major organisational changes were made in the PDCA in that year, and 28 positions were shifted to the new centres of support of the PF regional directorates.<sup>123</sup> The reduced costs of food and accommodation of detained third-country nationals was caused by a decline in the number of persons detained in that year.

*Q9. Please provide any other evidence that may be available in your (Member) State on the cost-effectiveness of detention and alternatives to detention, and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)*

Since only figures on the costs of detention are available and the costs of the two cases of alternatives to detention (obligation to report the place of stay) are not monitored, it is not possible to draw a specific conclusion on the cost-effectiveness of detention or alternatives to detention. Given the fact that the costs of detention include the costs of civil workers and police officers working in PDCAs and their number is higher than the number of workers dealing with alternatives to detention at police departments, it can be

<sup>123</sup> Source: BBAP PFP.

assumed that alternatives to detention are more cost-effective.

It should be mentioned, though, that certain costs of detention or alternatives to detention are covered by third-country nationals on their own, if they can afford it.

In general, after the termination of detention in a PDCA, a third-country national who can pay the costs on his/her own and who had enough finances before detention gets back his/her money reduced by the amount of the costs of detention (costs of food and accommodation) and the costs of expulsion.<sup>124</sup> This does not apply to third-country nationals who were employed illegally.<sup>125</sup> If a third-country national cannot pay the costs on his/her own, the costs are paid by the state<sup>126</sup> through the MoI SR. Pursuant to the Act on Residence of Aliens, a detained third-country national is also required to pay the costs of medical care, personnel costs and the costs of transport in cases where the third-country national causes intentional injury to his/her health; in such case, the third-country national is obliged to pay the costs of medical care and the actual costs of supervision and transport to the medical facility.

With regard to alternatives to detention, the law only stipulates the payment of costs related to the return of the financial guarantee to the person who gave such deposit (third-country national or a close person. As previously mentioned, the SR prefers a less costly option – administrative expulsion with a deadline for departure – to detention and alternatives to detention in cases laid down in law, i.e. enabling the third-country national to return on his/her own within the set deadline (voluntary return).

### 7.3. Respect for fundamental rights

*Q10 Have evaluations or studies been conducted in your (Member) State on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals concerned (for example, with regard to the number of complaints of detainees or persons provided alternatives to detention)?*

No evaluations have been performed so far and no studies have been published in the SR dealing primarily with the impacts of detention and alternatives to detention on the fundamental rights of third-country nationals, or with the specific number of complaints lodged by detained persons and persons with alternatives to detention.

Partial information on this topic is provided in the national report *Detention and Alternatives to Detention in the Slovak Republic* published by the Human Rights League in 2011, i.e. before major legislative changes were adopted in this field. The publication identified obstacles and problems related to detention during the given period:<sup>127</sup> duration of the judicial review of detention decisions; age assessment procedures; existence of a purpose of detention; lack of interpreters for several languages; lengthy procedures related to the filing of asylum applications while in detention and no alternatives to detention in the legislation.<sup>128</sup> The obstacles where according to the report courts decided in favour of detained third-country nationals are described below.

According to the report, the duration of the judicial review of appeals against detention decisions was also

<sup>124</sup> Source: Internal Rules and Instructions at PDCA Medved'ov.

<sup>125</sup> Act on Residence of Aliens.

<sup>126</sup> Unless a decision on expulsion issued by another state is executed.

<sup>127</sup> Mittelmannová M., Številová Z.: *Detention and Alternatives to Detention in the Slovak Republic*. Human Rights League, 2011, p. 19.

<sup>128</sup> Alternatives to detention have been used since 2012.

criticised by the Constitutional Court of the Slovak Republic in several cases, as it did not comply with the meaning of the words “immediately” or “promptly” due to administrative and procedural reasons which, according to the Constitutional Court of the SR, may not constitute the reason for violating the fundamental rights of third-country nationals, as laid down in the ECHR, and the judicial review of the appeal against detention was supposed to last much shorter (several days).<sup>129</sup> This decision of the constitutional court, as anticipated in the report, had a significant impact on legislation, as regional courts are now due to decide in the procedure of appeal against a detention decision within seven working days, and the court of appeal must also decide within seven working days without hearing pursuant to Art. 250 of the Code of Civil Procedure in the wording of Act No. 64/2013 Coll.

The report also states that with regard to age assessment procedures the law did not specify any details on medical examinations to determine the age of third-country nationals. In practice, the medical examination consisted of an x-ray of the wrist and forearm bones. According to the report, the police department appointed a radiological expert for the procedure of determination of the age of unaccompanied minors and s/he came to the conclusion on the basis of the x-ray results that the age of the given persons was over 18 years. These persons were subsequently detained and lodged an appeal against the detention decision. The court upheld this appeal due to the fact, *inter alia*, that the expert opinion failed to meet the legal formalities, and emphasised that the scientific discipline which is primarily competent in age determination is anthropology.<sup>130</sup> As anticipated in the report, a new provision was incorporated in the Act on Residence of Aliens in 2012 concerning the determination of the age of third-country nationals outside asylum procedures.<sup>131</sup> Under this provision a third-country national who proclaims to be an unaccompanied minor is obliged to undergo medical examination to determine his/her age. This shall not apply if the person is obviously minor.<sup>132</sup>

The report also states that the lack of official or unofficial interpreters for some languages spoken by third-country nationals (e.g. Somali) also constitutes a problem. In some cases, third-country nationals under subsidiary protection coming from the same country of origin were appointed as ad-hoc interpreters. There were also cases where a third-country national was assigned an English-speaking interpreter in spite of claiming that English is not his/her mother tongue and is not able to communicate in this language. According to the report, the court upheld these appeals; in the first case, the ability of such ad-hoc interpreter to understand Slovak was not certain and the police department was supposed to find out, according to the court, whether the interpreter speaks or not the specific language dialect used by the person concerned; in the second case, according to the law, a third-country national is entitled to be instructed in a language s/he understands, and if the defendant claims that s/he does not understand the language of the procedure, the authorities should not question the level of his/her actual ability to understand the language of the procedure, but are obliged to appoint an interpreter.<sup>133</sup> Changes related to these issues were made both in the legislation and in the guidelines<sup>134</sup>.

The Human Rights League also implemented two national projects in this field: *Legal assistance to aliens*

<sup>129</sup> Mittelmannová M., Številová Z.: Detention and Alternatives to Detention in the Slovak Republic. Human Rights League, 2011.

<sup>130</sup> Mittelmannová M., Številová Z.: Detention and Alternatives to Detention in the Slovak Republic. Human Rights League, 2011.

<sup>131</sup> The Asylum Act contains provisions on age determination. Source: Mittelmannová M., Številová Z.: Detention and Alternatives to Detention in the Slovak Republic. Human Rights League, 2011.

<sup>132</sup> Mittelmannová M., Številová Z.: Detention and Alternatives to Detention in the Slovak Republic. Human Rights League, 2011.

<sup>133</sup> Ibidem.

<sup>134</sup> Guidelines for procedures concerning administrative expulsion of aliens, detention of third-country nationals, and voluntary return of third-country nationals from the territory of the Slovak Republic. BBAP PFP.

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*in police detention facilities* (from 01 January 2011 to 31 December 2012), and *A child or an adult? Protection of the rights of aliens in age detention procedures and detention procedures* (from 01 October 2012 to 31 March 2013).<sup>135</sup>

The final report on the project dealing with legal assistance to third-country nationals in PDCAs in 2012 suggests that the Human Rights League provided legal assistance to a total of 107 third-country nationals – to 64 persons in Medveďov (out of 99 detainees in 2012) and 43 persons in Sečovce (out of 76 detainees in 2012).<sup>136</sup>

The result of the former project was the publication *Dieťa alebo dospelý? (A Child or an Adult?)*, which brings evaluations and information on the age assessment of third-country nationals by means of x-ray examination of the wrist and on their transfer from the foster home for unaccompanied minors to a PDCA. The publication also presents statistics on the number of such examinations to determine age in the period 2011–2012, and partly describes the cases where regional courts cancelled detention decisions, pointing out an incorrect procedure in age determination.<sup>137</sup>

Cases of detention of asylum applicants under the Dublin procedure are dealt by in the publication *Dublin II Regulation Slovakia National Report* which describes several cases where appeals were lodged against detentions of third-country nationals and where regional courts upheld such appeals.<sup>138</sup>

In 2009, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment visited Slovakia. A report was prepared on this visit (24 March – 02 April 2009) for the Government of the SR which also covered findings on the conditions in detention facilities.<sup>139</sup> The report states that the committee representatives did not observe during the visit any complaints of maltreatment by the PDCA staff, and no evidence of such treatment was identified. The committee representatives had minor objections concerning the regime activities in the PDCAs which should have been extended and included more outdoors activities, and it was also necessary to improve the access of detainees to the day-room and to radio/television and newspaper. The report recommended to immediately inform third-country nationals of their rights and procedures applied in a language they understand. The report also identified the problem with interpreters and pointed out their poor use. The delegation met with several detainees in both police detention facilities visited who were manifestly unable to communicate with authorities and/or the facility staff due to the language barrier. The report also mentions that access to legal assistance for persons<sup>140</sup> who did not file an application for asylum and interpreting services are not used in practice in this category of third-country nationals compared to the category of asylum applicants.<sup>141</sup> Many of the

<sup>135</sup> <http://www.hrl.sk/projekty?page=1> (consulted on 24/04/2014).

<sup>136</sup> Report of the Public Defender of Rights on the availability of legal assistance to detained third-country nationals. Office of the Public Defender of Rights Bratislava, June 2013. Available at:

<sup>137</sup> Fajnorová K., Številová Z.: *Dieťa alebo dospelý. Ochrana práv cudzincov v konaniach o určenie veku a v konaniach o zaistení*. Human Rights League. March 2013. Available at: [http://www.hrl.sk/sites/default/files/publications/hrl\\_dieta\\_or\\_dospely.pdf](http://www.hrl.sk/sites/default/files/publications/hrl_dieta_or_dospely.pdf)

<sup>138</sup> Mittelmannová M., Fajnorová K.: *Dublin II Regulation Slovakia National Report*. European network for technical cooperation on the application of the Dublin II Regulation. December 2012. Available at:

[http://www.hrl.sk/sites/default/files/publications/rapport\\_slovakia\\_final\\_jan2013.pdf](http://www.hrl.sk/sites/default/files/publications/rapport_slovakia_final_jan2013.pdf)

<sup>139</sup> Report for the Government of the Slovak Republic on the Visit to the Slovak Republic by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. Council of Europe. CPT/Inf (2010)1. Available at:

<http://www.cpt.coe.int/documents/svk/2010-01-inf-svk.pdf> (consulted on 22/04/2014).

<sup>140</sup> Legal assistance was provided by non-governmental organisations.

<sup>141</sup> Ibidem.

shortcomings stated in the report of 2009 have already been remedied on the basis of legislative changes and changes in the guidelines<sup>142</sup>, internal rules of the PDCA and in the PDCA equipment.

The legal representation of detained third-country nationals is also analysed in the Report of the Public Defender of Rights (ombudsperson) on the availability of legal assistance to detained third-country nationals<sup>143</sup> which responded to the suggestions of non-governmental organisations with regard to the adoption of Act No. 335/2012 Coll. which was approved by the National Council of the Slovak Republic on 18 October 2012 and which changed and amended Act No. 586/2003 Coll. on Advocacy and on changes and amendments to Act No. 455/1991 Coll. on Trade Licensing as amended. With effect from 01 January 2013, this act regulates access of detained third-country nationals to free of charge legal assistance in such way that they can only be represented only by lawyers/advocates in court proceedings (for more details see also Section 4). In the past, they could also be represented by lawyers from non-governmental organisations in court proceedings.<sup>144</sup> The provision of free of charge legal assistance in administrative expulsion procedures was entrusted to the state budgetary organisation Legal Aid Centre (LAC) on 01 January 2012. According to the report of the Public Defender of Rights, the LAC became entitled to represent certain groups of third-country nationals in the administrative expulsion procedures, but the provision of legal assistance to these groups of third-country nationals in detention procedures remained unregulated in law, as the LAC is not bound by this obligation. According to the Public Defender of Rights, third-country nationals who were detained for the purpose of return under an international treaty also remained without free legal assistance, and could only use the legal assistance of advocates. This situation was supposed to be remedied by the adoption of the above-mentioned Act No. 335/2012 Coll. which extended the competence of the LAC. The Parliament, however, did not approve such extension of competences with the explanation that the LAC did not have sufficient financial and personal capacities to satisfy this agenda.<sup>145</sup>

The workers of the Office of the Public Defender of Rights visited both PDCAs four times, and highlighted the situation and also shortcomings in their report.<sup>146</sup> The conclusions of the report state that by the

<sup>142</sup> Guidelines for procedures concerning administrative expulsion of aliens, detention of third-country nationals, and voluntary return of third-country nationals from the territory of the Slovak Republic. BBAP PFP.

<sup>143</sup> Report of the Public Defender of Rights on the availability of legal assistance to detained third-country nationals. Office of the Public Defender of Rights Bratislava, June 2013. Available at: <http://www.vop.gov.sk/files/Dostupnos%C5%A5%20pr%C3%A1vnej%20pomoci%20zaisten%C3%BDm%20cudzincm.pdf>. (consulted on 22/04/2014).

<sup>144</sup> Free of charge legal assistance to third-country nationals was provided in the administrative expulsion and detention procedures by lawyers of non-governmental organisations with the help of financial resources from the European Return Fund. Source: Report of the Public Defender of Rights on the availability of legal assistance to detained third-country nationals. Office of the Public Defender of Rights Bratislava, June 2013. Available at: <http://www.vop.gov.sk/files/Dostupnos%C5%A5%20pr%C3%A1vnej%20pomoci%20zaisten%C3%BDm%20cudzincm.pdf> (consulted on 22/04/2014).

<sup>145</sup> Številová Z.: O tom ako štát „zvyšoval“ garanciu práv cudzincov: Úmysel or povrchnosť? In: Kritický štvrťročník CVEK. Menšinová politika na Slovensku. 04/2012. Available at: [http://www.cvek.sk/uploaded/files/Mensinova%20politika%20na%20Slovensku%204\\_2012.pdf](http://www.cvek.sk/uploaded/files/Mensinova%20politika%20na%20Slovensku%204_2012.pdf) (consulted on 22/04/2014).

<sup>146</sup> For example, no lists of advocates were available, nor any information on the LAC, on the right of detained third-country nationals to receive free legal assistance by the LAC or on the right request the legal assistance of an advocate in the detention procedure, nor any forms of requests for legal assistance in Slovak language and in foreign languages; only information materials in Slovak and English were provided. The actual availability of free legal assistance by the LAC was not confirmed in the PDCA Medveďov, as no personal visits of LAC workers were observed neither in 2012 nor in 2013. The report also stated that a significant number of third-country nationals who had illegally entered the territory of the SR were detained for the purpose of return under readmission agreements near the external borders with Ukraine, and after a short period of detention in a border control department they were returned to Ukraine without access to free legal assistance in the procedure of appeal against detention decisions. The report also highlighted problems with regard to ensuring quality interpreting and partial restriction of the possibility of communication of detainees in the PDCA.

Source: Report of the Public Defender of Rights on the availability of legal assistance to detained third-country nationals. Office of the Public Defender of Rights Bratislava, June 2013. Available at:

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adoption of Act No. 335/2012 Coll., detained third-country nationals were actually deprived of the possibility to get effective legal assistance in the detention procedure. The Public Defender of Rights therefore proposed to delete this provision from the Slovak legislation, which would again enable also non-governmental organisations to provide third-country nationals with legal assistance in their detention procedures. The Public Defender of Rights also proposed to extend the competences of the LAC by the provision of legal assistance to third-country nationals in detention procedures in the act on the provision of legal assistance.<sup>147</sup> The Public Defender of Rights also recommended that the LAC promptly ensure the translation to the respective languages of information on the LAC, on the right of detained third-country national to be provided with free legal assistance by the LAC, and on the right to request the legal assistance of an advocate in the detention procedure, and to make such information available not only in the two PDCAs, but also in all border control departments on the border with Ukraine. The Public Defender of Rights also recommended that all members of the Police Force inform the LAC workers on third-country nationals apprehended on the external border, and that the LAC workers regularly visit the different border control departments.<sup>148</sup>

The BBAP PFP took the recommendations of the Public Defender of Rights into account in Article 5 of the Guidelines<sup>149</sup> concerning the procedure for providing free legal assistance to detained third-country nationals placed in PDCAs. Free of charge legal assistance is provided by the LAC in both PDCAs in accordance with Act No. 327/2005 Coll. on the Provision of Legal Assistance to Persons in Material Need and on changes and amendments to Act No. 586/2003 Coll. on Advocacy and on changes and amendments to Act No. 455/1991 Coll. on Trade Licensing as amended by later regulations and in the wording of Act No. 8/2005 Coll.

*Q11. Please provide any statistics that might be available in your (Member) State on the number of complaints regarding violations of human rights and the number of court cases regarding fundamental rights violations in detention as opposed to alternatives to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table). Please do the same with any statistics that may be available in your (Member) State on the number of voluntary returns.*

*Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection.*

*Where no information is available, please indicate "No information" and briefly state why no information is available.*

*Where it is not applicable, please indicate "Not applicable" and briefly state why.*

According to provided information, the BBAP PFP does not collect statistics on the number of complaints regarding violations of fundamental rights lodged by third-country nationals with non-judicial bodies (for example, ombudsperson, attorney for human rights, etc.), or on the number of justified complaints of violations of fundamental rights upheld by non-judicial bodies, or on the number of court cases where a detention decision

<http://www.vop.gov.sk/files/Dostupnos%C5%A5%20pr%C3%A1vnej%20pomoci%20zaisten%C3%BDm%20cudzincm.pdf> (consulted on 22/04/2014).

<sup>147</sup> Ibidem, p. 17.

<sup>148</sup> Ibidem.

<sup>149</sup> Guidelines for procedures concerning administrative expulsion of aliens, detention of third-country nationals, and voluntary return of third-country nationals from the territory of the Slovak Republic.

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or a decision on non-providing of an alternative to detention was challenged on the basis of human rights violation, and on the number of court cases confirming the legitimacy of the appeal against the detention decision or of the decision on non-providing an alternative to detention due to human rights violation. At the same time, the BBAP PFP does not have data on the number of first-instance and second-instance appeals against detention decisions in 2013. Information on the most frequent types of complaints or on the types of fundamental rights violations is not available either. The table below therefore provides only partial information from publicly available sources.

<i>Applicable year</i>	<i>Detention</i>	<i>Alternatives to detention</i>	
		<i>A1</i>	<i>A2</i>
<i>Number of complaints of violations of fundamental rights <b>lodged</b> with non-judicial bodies (e.g. Human Rights Commissioners/ Ombudspersons) (where possible, please disaggregate by types of complaints and by categories of third-country nationals).</i>	<i>NA</i>	<i>NA</i>	<i>NA</i>
<i>Number of complaints of violations of fundamental rights <b>upheld</b> by non-judicial bodies (e.g. Human Rights Commissioners/ Ombudspersons) (where possible, please disaggregate by types of complaints and by categories of third-country nationals).</i>	<i>NA</i>	<i>NA</i>	<i>NA</i>
<i>Number of court cases in which there have been <b>challenges</b> to the decision to detain / place in an alternative to detention based on violations of fundamental rights (where possible, please disaggregate by types of violation and by categories of third-country national)</i>	<i>NA</i>	<i>NA</i>	<i>NA</i>
<i>Number of court cases in which challenges to the decision to detain / place in an alternative to detention based on violations of fundamental rights have been <b>upheld</b> (where possible, please disaggregate by types of</i>	<i>NA</i>	<i>NA</i>	<i>NA</i>

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<i>violation and by categories of third-country national)</i>			
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Source: BBAP PFP

Notes:

A1 – obligation to report the place of stay

A2 – obligation to give a financial guarantee

The following statistics arise from the final report on the project implemented by the Human Rights League aimed at providing legal assistance to third-country nationals in PDCAs in 2012: In 2012, the Human Rights League lodged a total of 133 petitions: 67 legal remedies against detention decisions with regional courts, five appeals against detention with the Supreme Court, three legal remedies against the extension of detention, 17 appeals against administrative expulsion, one charge against administrative expulsion, 18 charges against illegal intervention, five appeals against denial of entry, 12 appeals against ban on entry, three other petitions, and two constitutional complaints. 90 of these petitions were successful. In 2012, the Human Rights League filed a total of 75 legal remedies against detention/extension of detention: 70 with regional courts, of which 62 were upheld; and five with the Supreme Court, of which three were successful. With regard to appeals against administrative expulsions, the Human Rights League lodged 17 appeals, of which eight were successful.<sup>150</sup> These statistics are not representative ones and are only partial, as they only inform of cases of free legal assistance. As mentioned above, this form of assistance was ensured in the past by lawyers of several non-governmental organisations, and since 2013 it has been provided by the LAC and by the Marginal civil association under the project financed from the European Return Fund.

The collection of opinions of the Supreme Court and of the decisions of the courts of the SR on administrative matters contains a total of four such decisions since 2012. The latest ones from 2013 and 2014<sup>151</sup> concern the following two decisions on detention.

The collection of opinions of the Supreme Court and of the decisions of the courts of the SR in 2014 states in decision No. 77 that if a detained alien requests international protection, this would normally result in termination of detention under Art. 15 of the Return Directive No. 2008/115, as stated by the Court of Justice of the European Union in its decision of 30 May 2013, and the police department will have to release the alien from detention without undue delay; the grounds for the original detention of the alien would thus automatically cease to exist. It is also stated in the decision that if the police department comes to the conclusion that the alien's request for international protection is purpose-made (lodged only with the purpose to delay or even hamper the execution of the decision on expulsion of the alien), it can repeatedly decide under Art. 90, par. 1, letter d) of Act No. 404/2011 Coll. on Residence of Aliens and on changes and amendments to some act that the grounds for the previous detention still exist in spite of the alien requesting international protection. In such decision, the police department explains the specific reason justifying the detention of the alien even after s/he filed a request for international protection.<sup>152</sup>

The collection of opinions of the Supreme Court and of the decisions of the courts of the SR in 2013 states in decision No. 109 that in case it is obvious during the period of making a decision by the administrative

<sup>150</sup> Report of the Public Defender of Rights on the availability of legal assistance to detained third-country nationals. Office of the Public Defender of Rights Bratislava, June 2013. Available at: <http://www.vop.gov.sk/files/Dostupnos%C5%A5%20pr%C3%A1vnej%20pomoci%20zaisten%C3%BDm%20cudzincm.pdf> (consulted on 22/04/2014).

<sup>151</sup> As of 22 April 2014.

<sup>152</sup> Collection of opinions of the Supreme Court and of the decisions of the courts of the Slovak Republic. Opinions and decisions on administrative matters. 5/2014. p. 49. Available at: [http://www.supcourt.gov.sk/data/files/821\\_stanoviska\\_rozhodnutia\\_5\\_2014.pdf](http://www.supcourt.gov.sk/data/files/821_stanoviska_rozhodnutia_5_2014.pdf).

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authority on the alien's detention that the alien entered the territory of the SR with the intention to request asylum, and it is therefore improbable that the purpose of detention, in this case return under a readmission agreement, can be executed due to the obstacle posed by the asylum procedure which has not been lawfully terminated yet, the deprivation or restriction of personal movement cannot be considered compliant with the constitutional rules of the SR, international commitments of the SR concerning the protection of fundamental rights, and with the current legislation and provisions of the Return Directive.<sup>153</sup>

*Q12. Please indicate if studies exist in your (Member) States which show negative effects of the alternatives to detention in practice. (For example, ankle bracelets can be socially stigmatising and cause physical and emotional distress.)*

No study has so far been published in the SR that would analyse the negative impacts of alternatives to detention (obligation to report the place of stay and the obligation to give a financial guarantee), since it is a relatively new instrument that has not yet been used frequently due to reasons described in Section 5. Alternatives to detention, such as the wearing of electronic monitoring bracelets which can be socially stigmatising and cause physical and emotional distress are not used in the SR.

Some published studies or reports<sup>154</sup>, however, refer to psychological and physical consequences that detention may have on persons concerned.

*Q13. Please provide any other evidence that may be available in your (Member) State on the impact of detention and alternatives to detention on the fundamental rights of the third-country nationals, and provide any examples of good practice in this regard. (e.g. cited in existing evaluations/studies/other sources or based on information received from competent authorities)*

See answer to Q10.

#### **7.4. Rate of absconding and compliance rate**

*Rate of absconding* is the share of persons who have absconded from all third-country nationals placed in detention or provided an alternative to detention.

*Compliance rate* is the share of persons who have complied with the alternative to detention.

*Q14. Have evaluations or studies on the compliance rate and rate of absconding of third-country nationals in detention and in alternatives to detention been undertaken in your (Member) State? Please provide details.*

No study or evaluation has so far been published in the SR dealing with absconding from detention or compliance with the conditions of alternatives to detention.

*Q15. Please provide any statistics that might be available in your (Member) State on the rate of absconding and the compliance rate of third-country nationals in detention as opposed to alternatives to detention. Please provide the statistics for the latest year available and, if possible, distinguish between the different types of alternatives to*

<sup>153</sup> Collection of opinions of the Supreme Court and of the decisions of the courts of the Slovak Republic. Opinions and decisions on administrative matters. 7/2013. p. 61. Available at: [http://www.supcourt.gov.sk/data/files/720\\_stanoviska\\_rozhodnutia\\_7\\_2013.pdf](http://www.supcourt.gov.sk/data/files/720_stanoviska_rozhodnutia_7_2013.pdf).

<sup>154</sup> For example, Fajnorová K., Številová Z.: Dieťa alebo dospelý. Ochrana práv cudzincov v konaniach o určenie veku a v konaniach o zaistení. Human Rights League. 2013; or The conditions in centres for third-country nationals (detention camps, open centres as well as transit centres and transit zones) with a particular focus on provisions and facilities for persons with special needs in the 25 EU Member States. STEPS consultation social study for the European Parliament, December 2007. Available at: [http://www.libertysecurity.org/IMG/pdf\\_eu-ep-detention-centres-report.pdf](http://www.libertysecurity.org/IMG/pdf_eu-ep-detention-centres-report.pdf) (consulted on 24/04/2014).

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detention that are available in your (Member) State (The different alternatives are listed as A1, A2, A3 in the table below; please explain what these represent in a key underneath the table).

Where statistics can be disaggregated by categories of third-country nationals, please do so. Please provide information on the methodology and data collection.

Where no information is available, please indicate "No information" and briefly state why no information is available.

Where it is not applicable, please indicate "Not applicable" and briefly state why.

Table 7 provides data on the number of third-country nationals who absconded from a PDCA in 2013. Three escapes were recorded by the PDCA in Sečovce, and no escape was recorded by the PDCA Medved'ov. In 2013, the total number of third-country nationals detained in both PDCAs reached 195, which means that the share of third-country nationals who absconded from a PDCA in the total number of third-country nationals who were detained in that PDCA was 1,5%. The situation is different with regard to alternatives to detention, where the share of third-country nationals complying with the condition of the provided alternative to decision is 100% with respect to the obligation to report the place of stay, since this alternative was granted to a total of two third-country nationals.

Due to the low number of alternatives to detention, the statistics are not analysed further, and no further conclusions are drawn.

<i>Applicable year</i>	<i>Detention</i>	<i>Alternatives to detention</i>	
		<i>A1</i>	<i>A2</i>
Number of third-country nationals who absconded/failed to comply with the conditions of the alternative to detention	3	0	:
Total number of third-country nationals detained in the PDCAs /provided an alternative to detention	195	2	0
<i>Rate of absconding</i>	1,5%	0%	:
<i>Compliance rate</i>	:	100%	:

Source: BBAP PFP

Notes:

A1 – obligation to report the place of stay

A2 – obligation to give a financial guarantee

: Not applicable

Q16. Please provide any other evidence that may be available of the impact of detention and alternatives to detention on the rate of absconding and compliance rate of third-country nationals in detention and in alternatives to detention.

NA

*The Use of Detention and Alternatives to Detention in the Context of Immigration Policies*Section 7: Conclusions (Maximum 2 pages)

The Synthesis Report will outline the main findings of the Study and present conclusions relevant for policymakers at national and EU level.

Annex 1

Statistics from EU-harmonised sources, such as Eurostat and the EMN Annual Policy Report, on inter alia the outcome of international protection applications and return, including voluntary return will be used in the Synthesis Report to contextualise the statistics provided in this annex.

**Table 1: Statistics on number of third-country nationals in detention and provided alternatives to detention per category**

**Please provide the cumulative figures (the number of all third-country nationals that have been detained during the year).**

	2009	2010	2011	2012	2013
<b>Statistics on number of third-country nationals in detention per category</b>					
Total number of third-country nationals in detention	<b>582</b>	<b>319</b>	<b>286*</b>	<b>180*</b>	<b>204</b>
Number of third-country national applicants for international protection in ordinary procedures in detention (in the given year, irrespective of whether they applied for asylum in the given year or in the year before).	<b>146</b>	<b>90</b>	<b>56**</b>	<b>48**</b>	<b>57*</b>
Number of third-country national fast-track international protection applicants (accelerated international protection procedures) in detention	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
Number of applicants for international protection subject to Dublin procedures in detention	<b>27</b>	<b>46</b>	<b>18</b>	<b>12</b>	<b>43</b>
Number of rejected applicants for international protection in detention	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
Number of rejected family reunification applicants in detention	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
Number of other rejected applicants for residence permits on basis other than family reunification (Please specify)	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
Number of persons detained to prevent illegal entry at borders in detention	<b>NA</b>	<b>NA</b>	<b>0</b>	<b>0</b>	<b>0</b>
Number of persons found to be illegally present on the territory of the (Member) State who have not applied for international protection and are not (yet) issued a return decision in detention	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>
Number of persons who have been issued a return decision in detention	<b>NA</b>	<b>NA</b>	<b>213***</b>	<b>100***</b>	<b>95*</b>

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Number of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.) and by category	NA	NA	NA	NA	NA
Number of other third-country nationals placed in immigration detention	NA	NA	NA	NA	NA
<b>Statistics on number of third-country nationals provided alternatives to detention</b>					
Total number of third-country nationals provided alternatives to detention	:	:	:	0	2
Number of third-country nationals applicants for international protection in ordinary procedures provided alternatives to detention	:	:	:	0	
Number of third-country nationals fast-track international protection applicants (accelerated international protection procedures) provided alternatives to detention	NA	NA	NA	NA	NA
Number of international protection applicants subject to Dublin procedures provided alternatives to detention	:	:	:	0	
Number of rejected applicants for international protection provided alternatives to detention	:	:	:	0	
Number of rejected applicants for family reunification provided alternatives to detention	:	:	:	0	
Number of other rejected applicants for residence permits on basis other than family reunification (Please specify)	:	:	:	0	
Number of persons found to be illegally present on the territory of the (Member) State (i.e. such as those who have not applied for international protection and are not (yet) been issued a return decision) provided alternatives to detention who have not applied for international protection	:	:	:	0	
Number of persons issued a return decision provided alternatives to detention	:	:	:	0	
Number of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.) and by category provided alternatives to detention	:	:	:	0	
Number of other third-country nationals provided alternatives to detention (Please specify the category(ies))	:	:	:	0	

Source: BBAP PFP

NA – no information; this data is not monitored given the fact that no legal act imposes such duty.

: Not applicable

\* These statistics also include third-country nationals who were placed in a PDCA in the given period (irrespective of the year in which they were issued a return decision (AE/JE)) and third-country nationals who were temporarily placed in a police department and were surrendered over within seven days from detention pursuant to Art. 88, par. 6 of Act No. 404/2011 Coll. on Residence of Aliens, specifically per years: 2011= 44 persons, 2012 = 5 persons, 2013 = 9 persons.

\*\* These statistics also include third-country nationals who were temporarily placed in a police department pursuant to Art. 88, par. 6 of Act No. 404/2011 Coll. on Residence of Aliens and were surrendered over within seven days from detention, specifically per years: 2011= 4 persons, 2012=1 person.

\*\*\*The table presents the number of persons who were issued a decision on AE/JE in the reference year and were detained and placed in a PDCA or in a police department pursuant to Art. 88, par. 6 of Act No. 404/2011 Coll. on Residence of Aliens during the reference period irrespective of the

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time of apprehending such persons. This figure serves for information only, as there could have been deviations while entering the data in the system.

**Table 2: Average length of time in detention**

Please provide information on the methodology used to calculate the average length of time in detention, including whether the mean or the median was used to calculate the average.

<b>Average length of time in detention</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>Source / further information</b>
Average length of time in detention of all categories of third-country nationals in detention	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>2 days (for AE)<sup>1</sup></b> <b>10–15 days (JE)<sup>2</sup></b> <b>19 days<sup>3</sup></b>	<sup>1</sup> <b>Legal period for issuing a decision on administrative expulsion. The Police Force department is due to issue a decision on AE to the apprehended person detained in the police department in the shortest period of time which may not exceed 48 hours.</b>  <sup>2</sup> <b>The average length of time from apprehending an irregular migrant who was detained pursuant to the Act on Residence of Aliens or the Act on the Police Force or apprehended under the Criminal Code to imposing the punishment of expulsion by court.</b>  <sup>3</sup> <b>Average length of time from issuing in</b>

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						<b>2013 a AE/JE decision to persons which were detained and placed in a PDCA or in a police department under Art. 88, par. 6 of Act No. 404/2011 Coll. on Residence of Aliens in 2013, irrespective of the time the person was apprehended, to the execution of expulsion from the territory of the SR in 2013.</b>
Average length of time in detention of applicants for international protection in ordinary procedures	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>2.96</b>	<b>Arithmetic average</b>
Average length of time in detention of fast-track (accelerated) international protection applicants (accelerated international protection procedures)						
Average length of time in detention of applicants for international protection subject to Dublin procedures	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>NA</b>	<b>1 month and 3 weeks</b>	<b>Arithmetic average</b>
Average length of time in detention of rejected applicants for international protection						
Average length of time in detention of rejected family reunification applicants						
Average length of time in detention of other rejected applicants for residence permits on basis other than family reunification (Please specify)						
Average length of time in detention of persons detained to prevent illegal entry						
Average length of time in detention of persons found to be illegally present on the territory of the (Member) State (i.e. such as those who have not applied for international protection and are not (yet) been issued a return decision)						

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who have not applied for international protection						
Average length of time in detention of persons who have been issued a return decision						
Average length of time in detention of vulnerable persons part of the aforementioned categories of third-country nationals - Please, where possible, disaggregate by type of vulnerable persons (for example, minors, persons with special needs, etc.) and by category						
Average length of time in detention of other third-country nationals placed in immigration detention						

Source: Procedural Department of the MO MoI SR and BBAP PFP

NA – no information; this data is not monitored given the fact that no legal act imposes such duty with regard to the main categories listed in the table.

**Table 3: PDCA activities in 2009-2013**

	2009			2010			2011			2012			Total
	Total	PDC A M	PDC A S										
<b>Detained persons – total</b>	<b>582</b>	<b>376</b>	<b>206</b>	<b>319</b>	<b>175</b>	<b>144</b>	<b>242</b>	<b>171</b>	<b>71</b>	<b>175</b>	<b>99</b>	<b>76</b>	<b>195</b>
Whereof: Expelled persons	247	186	61	103	73	30	79	60	19	41	31	10	56
Readmissions	10	10	0	7	7	0	14	14	0	11	10	1	10
Dublin procedures	27	27	0	46	27	19	18	5	3	12	8	4	43
Released persons	161	92	69	98	47	51	113	54	59	95	43	52	62
Asylum applications	146	76	70	90	37	53	52	35	17	47	12	35	57
Voluntary returns*	85	47	37	73	37	36	68	45	23	28	16	12	20

Source: Statistical overview of legal and irregular migration in the Slovak Republic in 2010, 2011, 2012 and 2013<sup>155</sup>

Notes:

PDCA M – PDCA Medved'ov

PDCA S – PDCA Sečovce

PDCA activities – activities with persons performed by PDCA during the period from 01 January to 31 December of the given year while detained in a PDCA.

Detained persons – persons placed in a PDCA in the period from 01 January to 31 December of the given year.

Released persons – transfer to the reception centre, surrendering outside of PDCA, release pursuant to Art. 90, par. 2, letter b) of the Act on Residence of Aliens (in 2012 and 2013), or pursuant to Art. 63, letter f) of Act No. 48/2002 Coll. as amended (in 2009 and 2011).

<sup>155</sup> Available at: <http://www.minv.sk/?rocenky> (consulted on 22/04/2014).

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\*Number of third-country nationals who were issued a decision on AE/JE and who were detained and placed in a PDCA in the given year and in the year before, and who verifiably left the territory of the SR in the given year under the assisted voluntary return programme organised by the International Organization for Migration (IOM).

**Table 4: Issued decisions on expulsion of third-country nationals in 2011-2013**

	2011				2012				2013						
	Total	Irregular migration		Other		Total	Irregular migration		Other		Total	Irregular migration		Other	
		AE	JE	AE	JE		AE	JE	AE	JE		AE	JE		
<b>Issued expulsion decisions</b>	<b>700</b>	576	45	29	50	<b>571</b>	474	40	23	34	<b>643</b>	503	73	29	38

Source: Statistical overview of legal and irregular migration in the Slovak Republic in 2011 and 2013<sup>156</sup>

Notes:

AE: administrative expulsion

JE: judicial expulsion

This overview of issued expulsion decisions provides the number of third-country nationals who were issued a AE or JE decision during the reference period irrespective of the time of apprehending the alien.

Irregular migration AE/SJ: third-country nationals who were issued a AE or JE decision relating to irregular migration, i.e. illegal state border crossing and illegal stay.

Other: third-country nationals who were issued a AE or JE decision by Slovak authorities for having violated generally binding legal regulations which do not relate to irregular migration (in IS MIGRA – “Legal” procedure) and who may be detained in a PDCA.

<sup>156</sup> Available at <http://www.minv.sk/?rocnky> (consulted on 22/04/2014).

## Terms and definitions

The main terms used in this focussed study comply with the study specifications. The definitions are primarily based on the Slovak legislation.<sup>157</sup> The terms not defined in the Slovak legislation are either based on the EMN glossary<sup>158</sup> or on the study specifications<sup>159</sup>, or are defined by the authors of the study.

*Alternatives to detention*<sup>160</sup> – refer to non-custodial measures that allow individuals to reside in the community subject to a number of conditions or restrictions on their freedom of movement. The alternatives can include regular reporting, the surrender of a financial guarantee or travel documents, electronic monitoring, community management programmes.

*Detention*<sup>161</sup> – restriction on freedom of movement through confinement that is ordered by an administrative or judicial authority(ies) in order that another procedure may be implemented

*Detention facility*<sup>162</sup> – specialised facility used for the detention of a third-country national in accordance with national law. In the Slovak context, it is guarded police detention facility(ies) for aliens of a closed character.

*Migrant* – see *third-country national*

*Third-country national*<sup>163</sup> – is everybody who is neither the state citizen of the Slovak Republic nor the citizen of an EU MS<sup>164</sup> or of another state party to the EEA Agreement or of the Swiss Confederation; a third-country national is also understood as a stateless person. For the purposes of this study, this term is identical to the term *migrant*.

*Alien*<sup>165</sup> – everybody who is not the state citizen of the Slovak Republic. For the purposes of this study, the term *alien* also means a third-country national.

*Dublin transfer*<sup>166</sup> – a) the transfer of responsibility for the examination of an asylum application from one Member State to another Member State; b) the transfer of an applicant to the Member State responsible for

<sup>157</sup> The specific legal regulation is provided in the footnote.

<sup>158</sup> Source: EMN Asylum and Migration Glossary 2.0 [[http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/docs/emn-glossary-en-version.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/docs/emn-glossary-en-version.pdf)] (consulted on 17/04/2014).

<sup>159</sup> Source: The use of detention and alternatives to detention in the context of immigration policies. Common Template of EMN Focussed Study 2014.

[http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/reports/docs/emn-studies/illegally\\_resident/emn\\_study\\_detention\\_alternatives\\_to\\_detention\\_common\\_template\\_final\\_24feb2014.doc](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/reports/docs/emn-studies/illegally_resident/emn_study_detention_alternatives_to_detention_common_template_final_24feb2014.doc)

<sup>160</sup> Term defined in the study specifications.

<sup>161</sup> Source: EMN Asylum and Migration Glossary 2.0 [[http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european\\_migration\\_network/docs/emn-glossary-en-version.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/networks/european_migration_network/docs/emn-glossary-en-version.pdf)] (consulted on 17/04/2014).

<sup>162</sup> Source: EMN Asylum and Migration Glossary 2.0, completed with an explanation referring to the Slovak context.

<sup>163</sup> Act No. 404/2011 Coll. on Residence of Aliens and on changes and amendments to some acts as amended (hereinafter referred to as the “Act on Residence of Aliens”).

<sup>164</sup> Under the Act on Residence of Aliens, a MS means EU MS except for Slovakia, other state parties of the EEA Agreement, and Switzerland.

<sup>165</sup> Act on Residence of Aliens.

<sup>166</sup> Term defined in the study specifications and based on the EMN Asylum and Migration Glossary 2.0 and derived from Article 19(1) of Council Regulation No. 343/2003.

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examining the application following a Dublin procedure.

*International protection*<sup>167</sup> – the granting of asylum or subsidiary protection.

*Subsidiary protection*<sup>168</sup> – protection against serious harm in the country of origin.<sup>169</sup>

*Applicant/asylum applicant*<sup>170</sup> – an alien declaring to the police department to seek granting of asylum or subsidiary protection on the territory of the SR.

*Application for asylum*<sup>171</sup> – any statement of an alien which suggests the alien’s intention to request asylum (or provision of subsidiary protection), made at the competent police department. Such statement commences the asylum granting procedure.

*Vulnerable person*<sup>172</sup> – is especially a minor, a disabled person, a victim of trafficking in human beings, a person older than 65 years, a pregnant woman, a single parent with an underage child and a person subjected to torture, rape or other serious forms of psychical, physical or sexual violence; in justified cases even a person younger than 65 years may be considered to be an “older person”.

*Forced return*<sup>173</sup> – the compulsory return of an individual to the country of origin, transit or third country (i.e. country of return) on the basis of an administrative or judicial act.

*Voluntary return*<sup>174</sup> – in the context of the SR, the departure of a third-country national from the SR within the deadline for departure specified in the administrative expulsion decision, i.e. where the third-country national has a set deadline for departure, is not detained, and leaves the territory of the SR on his/her own.

*Assisted voluntary return*<sup>175</sup> – in the context of the SR, the provision of logistical, financial and/or other material assistance to a third-country national who has been administratively expelled from the territory of the SR and opts for returning under the assisted voluntary returns programme which is carried out by the IOM in the SR. Also detained third-country nationals can return under this programme. In the context of this study, voluntary returns mean assisted voluntary returns.

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<sup>167</sup> Act No. 480/2002 Coll. on Asylum and on changes and amendments to some acts, as amended (hereinafter referred to as the “Asylum Act”).

<sup>168</sup> Ibidem.

<sup>169</sup> According to the Asylum Act, *serious harm* means imposition of a death penalty or its execution, torture or inhuman or degrading treatment or punishment, or serious and individual threat to life or inviolability of person by reason of arbitrary violence in situations of international or internal armed conflict.

<sup>170</sup> Source: Art. 26 of Regulation of the Minister of Interior of the Slovak Republic No. 14/2008 changing and amending Regulation No 1/2007 on the procedure of the Migration Office of the Ministry of Interior of the Slovak Republic and Police Force departments in implementing Act No. 480/2002 Coll. on Asylum and on changes and amendments to some acts, as amended.

<sup>171</sup> Asylum Act.

<sup>172</sup> Art. 2, par. 7 of Act on Residence of Aliens.

<sup>173</sup> Source: EMN Asylum and Migration Glossary 2.0.

<sup>174</sup> Term defined by the authors of the study, based on the definition of the term “*voluntary departure*” in the EMN Asylum and Migration Glossary 2.0.

<sup>175</sup> Term defined by the authors of the study, based on the definition of the term “*assisted voluntary return*” in the EMN Asylum and Migration Glossary 2.0.

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*Administrative expulsion*<sup>176</sup> – Administrative expulsion is a decision of the police department that an alien does not have or has lost his/her entitlement to reside in the Slovak Republic territory and is obliged to leave the territory of the Slovak Republic with the option of determining the time by when s/he has to depart back to his/her country of origin, country of transit, or any third country, which the third-country national voluntarily decides to return to and which would accept him/her or to the territory of a member state in which s/he has been granted the right of residence or international protection.

*Judicial expulsion/sentence of expulsion*<sup>177</sup> – The court may, if it is required in the interest of the safety of persons or property or in any other public interest, impose the sentence of expulsion from the territory of the Slovak Republic on the offender who is neither a national of the Slovak Republic, nor a person who has been granted asylum or subsidiary protection.

*Return decision*<sup>178</sup> – expulsion decision – administrative or judicial decision stating or declaring the stay of a third-country national to be illegal or stating an obligation to leave (the territory of the MS).

*Readmission agreement*<sup>179</sup> – an agreement between the EU and/or MS with a third country, on the basis of reciprocity, establishing rapid and effective procedures for the identification and safe and orderly return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territories of the third country or one of the MS of the European Union, and to facilitate the transit of such persons in a spirit of cooperation.

*Tolerated stay*<sup>180</sup> – is a special type of stay in the territory of the SR granted by the police department to third-country nationals in situations anticipated by the law (§ 58 Act on Residence of Aliens).

*Accelerated international protection procedure*<sup>181</sup> – refers to a significantly faster examination procedure of an application for international protection than an ordinary examination of an international protection procedure. In the context of the SR, it is a procedure related to the refusal of the application for asylum as inadmissible<sup>182</sup> or manifestly unfounded<sup>183</sup> where the case is decided within 60 days from the commencement of the asylum granting procedure under the conditions laid down in law.

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<sup>176</sup> Art. 77, par. 1 of Act on Residence of Aliens.

<sup>177</sup> Act No. 300/2005 Coll. Penal Act.

<sup>178</sup> Article 3, par. 4 of Directive No. 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

<sup>179</sup> Source: EMN Asylum and Migration Glossary 2.0.

<sup>180</sup> Term defined by the authors of the study.

<sup>181</sup> Term defined in the study specifications on the basis of the recast Directive 2013/32/EU on common procedures for granting and withdrawing international protection (Preamble, par. 20), and developed by the authors of the study.

<sup>182</sup> Art. 11 of Act on Asylum.

<sup>183</sup> Art. 12 of Act on Asylum.

## List of Abbreviations

AE – administrative expulsion

BBAP PFP – Bureau of the Border and Aliens Police of the Police Force Presidium

BCD PF – Border Control Department of the Police Force

Coll. – Collection of Laws

ECHR – European Convention on Human Rights

EU – European Union

EEA – European Economic Area

EMN – European Migration Network

IOM – International Organization for Migration

JE – judicial expulsion

LAC – Legal Aid Centre

MO MoI SR – Migration Office of the Ministry of Interior of the SR

MoI SR – Ministry of Interior of the Slovak Republic

MS – EU Member State

PDCA – Police Detention Centre for Aliens

PF – Police Force

SR – Slovak Republic

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*The Use of Detention and Alternatives to Detention in the Context of Immigration Policies*

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*The Use of Detention and Alternatives to Detention in the Context of Immigration Policies*

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Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person

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