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# ORGANISATION OF MIGRATION AND ASYLUM POLICIES IN THE SLOVAK REPUBLIC



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## Preface

This study was compiled by the IOM International Organization for Migration Bratislava in its function as National Contact Point (NCP) of the Slovak Republic in the European Migration Network (EMN). This national study follows the common outline and methodology prepared by the European Migration Network. The study was compiled by external experts contracted by IOM in 2008. The study covers the period from the establishment of the independent Slovak Republic in 1993 through the end of the year 2008.

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# Executive Summary

The national report presented here is the result of an initiative by the European Commission within the framework of the European Migration Network. The study analyses the migration and asylum policies of the Slovak Republic in relation to third country nationals and not EU nationals executing their right to free movement and mobility within the Union. Information regarding EU citizens is noted only when relevant to policies influencing third country nationals. The division and content of chapters has been determined according to the specifications of the EC and is the same for all EU Member States. The report covers the period from the establishment of the independent Slovak Republic in 1993 through the end of the year 2008.

After establishing its purpose and methodology, the study offers a short overview of the organisation of the political, legal and institutional context in which migration and asylum policies are developed and implemented in the SR. Chapter 2 offers a description of activities of institutions and organisations responsible for the management of migration in the SR, ranging from ministries and governmental bodies to international and non-governmental organisations which provide counselling and assistance to migrants, as well as research institutions. Subchapter 2.2 contains a concise description of the main laws guiding residence of foreigners in the SR, such as asylum seekers and other groups of migrants. Legislation is more broadly analysed in Chapter 4.

Chapter 3 contains a short overview of the historical development of asylum and migration policies from 1993 through 2008. The chapter is divided into four subchapters: basic information on the general migration situation in Slovakia; changes after the creation of the independent republic; development of non-governmental sectors; and the situation after the accession of the SR to the EU. These subchapters enable

the reader to gain a chronological overview of how the SR has adjusted within a short period of time to significant challenges posed by what have been the highest numbers of asylum seekers in the country's history and necessitating the long-term need to respond to regulations and standards set by the EU.

The largest chapter is the fourth which consists of two subchapters. The subchapters are further divided into sections which treat third country nationals falling under the category of asylum separately from those falling under the category of general migration. Subchapter 4.1, Asylum and migration, elaborates on entry procedures, conditions for residence of third country nationals, access to the labour market and returns to countries of origin. Quantitative data on asylum seekers granted asylums and migrants from third countries is also provided in this chapter. Subchapter 4.2 focuses on the link between migration and asylum policies of the SR and other policies—namely foreign, development and labour market policies—and the issue of illegal migration. Although aspects of this chapter relate directly to the field of integration policy, the specifications for this study do not allow for a deeper analysis of this subject.

The concluding chapter, Analysis of asylum and migration systems in the SR, is divided into three subchapters: 5.1 Realm of migration policy, 5.2 Realm of asylum policy, and 5.3 Past and future – concluding notes. This chapter describes how, since its accession to the EU, Slovakia has made significant and positive advances in the quality of services it provides to asylum seekers and recognised refugees, but that the services the country provides to other groups of migrants, despite a relatively small number of projects established to address this problem, are still insufficient.

# List of Abbreviations

**APD** – Alien Police Department (Oddelenie cudzineckej polície)  
**BBAP** – Bureau of Border and Alien Police (Úrad hraničnej a cudzineckej polície MV SR)  
**CEAS** – Common European Asylum System (Spoločný európsky azylový systém)  
**COLSAF** – Central Office of Labour, Social Affairs and Family (Ústredie práce, sociálnych vecí a rodiny)  
**CSFR** – Czech and Slovak Federal Republic (Česká a slovenská federatívna republika)  
**CR** – Czech Republic (Česká republika)  
**CVEK** – Centre for the Research of Ethnicity and Culture (Centrum pre výskum etnicity a kultúry)  
**DBFP** – Directorate of Border and Alien Police (Riaditeľstvo hraničnej a cudzineckej polície)  
**DMIF** – Department of Migration and Integration of Foreigners (Odbor migrácie a integrácie cudzincov)  
**DPC** – Directorate of Police Corps (Prezídium policajného zboru)  
**EEA** – European Economic Area (Európsky hospodársky priestor)  
**EMN** – European Migration Network (Európska migračná sieť)  
**EC** – European Commission (Európska komisia)  
**ERF** – European Refugee Fund (Európsky utečenecký fond)  
**EU** – European Union (Európska únia)  
**IOM** – International Organization for Migration (Medzinárodná organizácia pre migráciu)  
**MECOMIC** – Inter-departmental Commission on Labour Migration and Integration of Foreigners (Medzirezortná komisia pre oblasť pracovnej migrácie a integrácie cudzincov)  
**MFA** – Ministry of Foreign Affairs (Ministerstvo zahraničných vecí)  
**MIC** – Migration Information Centre of the IOM (Migračné informačné centrum IOM)  
**MO** – Migration Office of the Ministry of the Interior of the SR (Migračný úrad MV SR)  
**MoLSAF** – Ministry of Labour, Social Affairs and Family of the SR (Ministerstvo práce, sociálnych vecí a rodiny SR)

**MoF** – Ministry of Finance of the SR (Ministerstvo financií SR)  
**MoE** – Ministry of Education of the SR (Ministerstvo školstva SR)  
**MoH** – Ministry of Health of the SR (Ministerstvo zdravotníctva SR)  
**MoI** – Ministry of the Interior of the SR (Ministerstvo vnútra SR)  
**MoJ** – Ministry of Justice of the SR (Ministerstvo spravodlivosti SR)  
**NGO** – Non-governmental Organisation (mimovládna organizácia)  
**OLSAF** – Office of Labour, Social Affairs and Family (Úrad práce, sociálnych vecí a rodiny)  
**PC** – Police Corps (Policajný zbor)  
**SAS** – Slovak Academy of Sciences (Slovenská akadémia vied)  
**SHC** – Slovak Humanitarian Council (Slovenská humanitná rada)  
**SR** – Slovak Republic (Slovenská republika)  
**UNHCR** – United Nations High Commissioner for Refugees (Zastupiteľský úrad Vysokého komisára OSN pre utečencov)  
**ZMOS** – Association of Slovak Towns and Communities (Združenie miest a obcí Slovenska)

# 01

## Introduction: Purpose and Methodology

The main aim of this national study according to the European Commission is to provide the National Contact Points of the European Migration Network as well as the EC with transparent information on the development and current state of political, institutional and legislative system determining the migration and asylum policies of the Slovak Republic ("SR"). The specific aim of the study, one that is of particular importance on the national level, is to summarise and systematise information offered in a wide range of publications, many available only in English. The overview offered here can serve as a basis for further analysis of different aspects of asylum and migration policies on the national level. The study describes developments in the field of migration and asylum from the establishment of the independent SR on 1 January 1993 through the end of 2008.

The study targets policy makers on both the national and European levels, researchers, representatives of non-governmental organisations, academics, students, as well as the broader public.

The report builds on available literature, articles, studies, internet sources, information provided on the websites of key institutions and organisations, press and statistical information. As required by the EMN specifications, the report is not the result of independent research by the authors but is rather a synthesis based on secondary sources. Missing and updated information were added by means of qualitative research assembled through a combination of interviews and open questionnaires sent electronically to representatives of relevant governmental institutions and non-governmental organisations. The main sources of this additional information were interviews or correspondence with representatives of the Human Rights League, the International Organization for Migration and the Department of Documentation and International Cooperation of the Migration Office of the Ministry of the Interior. Key information on return policy was provided by the Directorate of the Border and Alien Police of the Ministry of the

Interior. The Department of Risk Analysis and Statistics of the Analysis and Strategic Management Section of the Bureau of Border and Alien Police and the Migration Office of the Ministry of the Interior of the Slovak Republic provided the necessary statistics.

The main literary sources of information for the national study were four publications, the first of which, *Migration Trends in Selected EU Applicant Countries. Volume V Slovakia – An Acceleration of Challenges for Society (2004)*<sup>1</sup>, contains the first general analysis of migration and asylum issues in the SR. The second publication, *Needs of Migrants in Slovakia*<sup>2</sup>, presents the results of research based on interviews with migrants, employers and representatives of relevant institutions and organisations. This research considers various aspects of migrants' integration with society and the labour market in the SR, analyses their needs and listed recommendations for improving the situation in the country. The authors also consulted the recent publication *Integration of Migrants in the Slovak Republic. Challenges and Recommendations for Policy Makers (2008)*, which contains an institutional and legal analysis and culminates not only in general recommendations for integration policy in the SR but for adopting concrete measures in the most important areas of immigrant integration – residence, employment, health care, granting of citizenship<sup>3</sup>. The information here also draws on a complex work by Divinský (2005) *Foreign Migration in the Slovak Republic; State, Trends, Social Relations* and from additional publications and articles by this author. Exceptionally important were the internet resources of relevant state authorities, international organisations and NGOs along with materials published by them such as the brochure *Migration and Asylum in*

*the Conditions of the Slovak Republic*<sup>4</sup> or Številová's (2007) *State of Legislation in the Foreigners' Law in the Slovak Republic* also contains relevant information<sup>5</sup>.

We faced certain limitations when writing this report. First, literature on asylum and migration in the SR is scarce. The authors therefore drew not only on available literature, but also on their own professional knowledge and their experience in counselling migrants along with new information from interviews or internet sources. The extremely broad specifications established for individual chapters also proved challenging. The analysis of the impact of the EU legislation on asylum alone would require several months of additional research, as no work on this subject has been undertaken to date in the SR. Similarly, due to the large scope of the study, it was not possible to devote as much attention as we would have liked to the issue of illegal migration. Gaps in information concerning these areas should be addressed by separate multidisciplinary research. We also confronted statistical challenges when determining the numbers of third country nationals with residence permits granted in the SR during the years covered by this study. The unavailability or insufficient nature of this information is primarily the result of two factors. First, the information system of the Bureau of Border and Alien Police and the related legislation underwent significant changes during the relevant period. Secondly, the SR had itself been a third country during the period prior to its accession to the EU. Due to these factors, the statistics offered in this report only illustrate the numbers of third country nationals since the year 2004.

<sup>1</sup> Initiated and published by the IOM, the author is RNDr. Boris Divinský. The publication is available only in English.

<sup>2</sup> Popper, M. – Lukšík, I. – Bianchi, G. – Szeghy, P. *Potreby migrantov na Slovensku*. Bratislava: Veda et IOM Medzinárodná organizácia pre migráciu, 2006.

Publication available only in Slovak. An unpublished English version is available at the IOM Bratislava Office.

<sup>3</sup> Bargerová, Z. – Divinský, B. *Integrácia migrantov v Slovenskej republike. Výzvy a odporúčania pre tvorcov politik*. Bratislava: IOM Medzinárodná organizácia pre migráciu, 2008. The summary and recommendations are available in English at the IOM Office in Bratislava.

<sup>4</sup> *Migrácia a azyl v podmienkach Slovenskej republiky*, Available only in Slovak. Further in here mentioned as „Migration and asylum“. Available online at: <http://www.ludiaakomy.sk/download/posledna%20S.zip> (consulted on 11 November 2008). Compiled by the Director of the Migration Office of the Mol of the SR, Ing. Bernard Priecl, and the Director of its Department of Migration and Integration, Ing. Vladimír Belo-Caban.

<sup>5</sup> Številová, Z. *Stav platnej legislatívy v oblasti cudzineckého práva v Slovenskej republike*. Available online at [migraceonline.cz](http://migraceonline.cz) (z 20. 4. 2007): [http://aa.ecn.cz/img\\_upload/79a33131c9c4293e0fceb50bfa263ef/ZStevulova\\_CizineckyzakonSlovensko.pdf](http://aa.ecn.cz/img_upload/79a33131c9c4293e0fceb50bfa263ef/ZStevulova_CizineckyzakonSlovensko.pdf) (consulted on 11 November 2008).

In line with the specifications for the compilation of this report, the authors did not include information on the activities of community organisations of migrants living in the SR. These organisations usually function informally and although they provide their fellow nationals with counselling, they are not, strictly speaking, formal institutions. Their role, however, in the field of migration in Slovakia is very important, especially when considering the long-term integration of migrants into the social life of the SR.

# 02

## Overview of the Organisation of the Political, Legislative and Institutional Framework in the Slovak Republic

This chapter presents a general overview of the organisation of the political, legislative and institutional framework related to the field of migration and asylum with the aim of providing a basis for a more detailed analysis in the following chapters of the report. Subchapter 2.1 contains an outline of the political system and institutional context in which challenges inherent to the process of migration to the SR are addressed. Responsibilities and activities of ministries and their departments are explained in Section 2.1.1; activities of other institutions dealing with migration and asylum are described in Section 2.1.2. Subchapter 2.2 offers a very brief overview of the legislative framework relevant to migration and asylum. The legal system and relevant legislation are described in more detail and in relation to the different stages of the migration process into the SR in Chapter 4.

### 2.1 Political System and Institutional Context

The Slovak Republic is a parliamentary democracy. The highest bodies of power and the representatives of the political system in the SR are the National Council of the SR, the Government of the SR, and the President of the SR. Laws relevant to migration and asylum are passed by the National Council – the Parliament – which is the constitutional and legislative body of the state. Laws enter into force after being signed by the President and published in the Collection of Acts. The Government of the SR, as the highest executive body, has 14 ministries. Although nearly all of them have at least a marginal relation to some aspect of migration or asylum, institutionally migration falls under the auspices of three ministries – **the Ministry of the Interior of the SR, the Ministry of Foreign Affairs of the SR and the Ministry of Labour, Social Affairs and Family of the SR.**

### 2.1.1 Relevant State Institutions and Ministries

#### The Ministry of the Interior of the Slovak Republic

The Ministry of the Interior of the Slovak Republic (hereafter also “Ministry of the Interior” or “Mol”) implements its agenda in the field of migration and asylum mainly through two bodies – the Migration Office and the Bureau of Border and Alien Police.

Mol acts as the responsible certifying body for the *Solidarity and Management of Migration Flows* programme for the 2007 – 2013 period.<sup>6</sup> The Department of Foreign Assistance of the Mol is organisationally responsible for the programme.<sup>7</sup>

#### The Migration Office of the Ministry of the Interior of the SR

The Migration Office of the Ministry of the Interior of the Slovak Republic (hereafter also “Migration Office” or “MO”) is the state body responsible for providing comprehensive care for foreigners in need of some form of international protection (asylum, subsidiary protection, temporary shelter). Specifically, the Migration Office determines whether or not to grant asylum or subsidiary protection to individuals, provides basic care to asylum seekers, and facilitates primary integration of recognised refugees and persons with subsidiary protection into society. The office assists them with accommodation, employment, learning the Slovak language, education, as well as social and health care. The Migration Office cooperates with the UNHCR and NGOs, and participates in the formulation of the migration policy of the state. Furthermore, the Migration Office regularly publishes sta-

6 Information available at the website of the Mol: MV SR a EÚ, Solidarita a riadenie migračných tokov, <http://www.minv.sk/?podujatia> (consulted on 14 November 2008).

7 Mol of the SR: <http://www.minv.sk/?system-riadenia-a-kontroly-fondov-programu-solidarita-a-riadenie-migracnych-tokov> (consulted on 14 November 2008).

tistics on asylum in Slovakia.<sup>8</sup>

#### The Bureau of Border and Alien Police of the Ministry of the Interior of the SR

The Bureau of Border and Alien Police of the Ministry of the Interior of the SR (hereafter also “BBAP”) is a body of the Ministry of the Interior which directly manages tasks in the field of border control and border protection, fighting illegal migration and the smuggling of migrants, granting residence to foreigners and controlling it, deportations, visa issues, and, to a limited extent, in asylum procedures and the implementation of the Dublin Directive.<sup>9</sup> Due to organisational changes, the Bureau of Border and Alien Police separated from the organisational structure of the Directorate of Police Corps on 1 June 2007. Subsequently, the Bureau became part of the organisational structure of the Ministry of the Interior. The Director of the Bureau of Border and Alien Police is directly accountable to the Minister of the Interior.

#### The Ministry of Labour, Social Affairs and Family of the SR

The Ministry of Labour, Social Affairs and Family (hereafter also “Ministry of Labour” or “MoLSAF”) establishes legal norms and determines legal regulations for employing foreigners and sets up criteria for the entry of different categories of foreign nationals into the Slovak labour market, including conditions for granting work permits. The Ministry establishes legal norms regarding social care for foreigners, recognised refugees, repatriated persons, Slovaks living abroad, etc. *The Department of Social Inclusion* of the Ministry

8 These duties are fulfilled by the departments of the Migration Office: Organisational and Legal Department, Procedural Department, Department of Migration and Integration, Department of Documentation and Foreign Cooperation, Department of Economy and Maintenance, Dublin Centre, Integration Centre in Zvolen, reception centre (“záchytný tabor”), accommodation centres (“pobytové tábory”) and centres for accommodation of foreigners with subsidiary protection. Available online at IOM Migration Information Centre: Spolupráca: <http://mic.iom.sk/sk/sluzby-pre-klientov/spolupraca-mic.html> and Migration Office: <http://www.minv.sk/?migracny-urad-mv-sr> (consulted on 11 November 2008).

9 Available online at BBAP: <http://www.minv.sk/?uhcp> (consulted on 11 November 2008).

of Labour is responsible for the implementation of the National Action Plan on Social Inclusion and the National Employment Action Plan. These plans identify a target group of migrants (immigrants, recognised refugees, unaccompanied minor migrants) most vulnerable in the areas of employment and social needs, and who require specific protections through Ministry measures.<sup>10</sup> In 2007, a new department was created – *the Department of Migration and Integration of Foreigners* – as part of the International Relations Section. The Department is responsible for formulating the Strategy of the Integration Policy of the SR. In practice, social care for migrants is carried out by the local *Offices of Labour, Social Affairs and Family*, falling under the authority of the Central Office of Labour, Social Affairs and Family.

#### The Central Office of Labour, Social Affairs and Family

The Central Office of Labour, Social Affairs and Family (hereafter “Central Office of Labour” or “COLSAF”) is the institution of the Ministry of Labour that directs, controls and coordinates the work of 46 local Offices of Labour, Social Affairs and Family in the regions of Slovakia. Responsible for providing social services and the management of social and employment issues,<sup>11</sup> COLSAF maintains a central data base of employed foreigners, processes relevant statistics and participates in combating the illegal employment of foreigners.<sup>12</sup>

10 Available online at IOM Migration Information Centre: Spolupráca, <http://mic.iom.sk/sk/sluzby-pre-klientov/spolupraca-mic.html> (consulted on 9 November 2008).

11 Office of Labour, Social Affairs and Family of the SR: <http://www.upsvar.sk/rsi/rsi.nsf/0/8BE0B48750DDBA68C12571170031391A?OpenDocument> (consulted on 13 November 2008).

12 IOM Migration Information Centre: Spolupráca: <http://mic.iom.sk/sk/sluzby-pre-klientov/spolupraca-mic.html> (consulted on 9 November 2008).

#### The Department of Migration and Integration of Foreigners at the International Relations Section of the Ministry of Labour, Social Affairs and Family of the SR<sup>13</sup>

Within the Ministry of Labour, the Department of Migration and Integration of Foreigners (hereafter also “DMIF”) is the coordinating department for all issues related to labour migration and integration of foreigners. The Department of Migration and Integration of Foreigners is also responsible for making policy and preparing strategies for labour migration and integration of foreigners into society. DMIF also formulates proposals for bilateral agreements on the employment of third country nationals, negotiates agreements on social insurance for migrant workers, and coordinates related tasks. It is responsible for the analysis of relevant legislation and measures concerning the Slovak labour market as they relate to the status of foreigners. This department also monitors the social integration of foreigners into the country and proposes measures and changes in legislation in order to improve it.

#### The Ministry of Foreign Affairs of the SR

The Ministry of Foreign Affairs (hereafter also “Ministry of Foreign Affairs” or “MFA”) is the central body of the state administration in the field of foreign policy and relations of the SR with other states and international organisations.<sup>14</sup> It participates in the development of a unified foreign policy and implements it. Within the framework of its consular agenda, the Ministry of Foreign Affairs fulfils and, to a certain extent, performs tasks related to issuing visas and granting residence to foreigners via its consulates and embassies abroad. The Ministry of Foreign Affairs also assists with the voluntary return of migrants, deportations or the preparation of re-admission agreements. It is also responsible for

13 Ministry of Labour, Social Affairs and Family, International Relations Section: <http://www.employment.gov.sk/new/index.php?SMC=1&id=12358> (consulted on 11 November 2008).

14 Article 14 section 1 of the Act No.575/2001 Coll. on the Organisation of the Operation of Government and Bodies of Central State Administration.

determining the status of a Slovak living abroad. The MFA is additionally responsible for development policy and providing development aid.<sup>15</sup>

### The Centre for Legal Assistance of the Ministry of Justice of the SR (Centrum právnej pomoci Ministerstva spravodlivosti SR)

The Centre is an organisation of the Ministry of Justice which on the basis of the new amendment to the Act on Asylum in force since 1 December 2008<sup>16</sup> provides free legal assistance to asylum seekers appealing unfavourable decisions. A right to free legal assistance is guaranteed to those asylum seekers whose applications the Ministry of the Interior denied as obviously unjustified, whose procedures were aborted due to *res iudicata*, or whose status the Ministry changed either by refusing to prolong subsidiary protection or by withdrawing asylum status.<sup>17</sup> In the interim period during 2009, free assistance will also be provided to unsuccessful asylum seekers by NGOs which make financial resources available through projects established for this purpose. However, from 2010 onwards, the exclusive mediator of free legal assistance will be the Centre of Legal Assistance.

### Regional and local level of state administration

#### Offices of Labour, Social Affairs and Family

Consideration of applications for work permits, their granting/non-granting, falls under the authority of the local Offices of Labour, Social Affairs and Family (hereafter also "labour offices" or "OLSAFs"), which are located in every district town. In addition, unemployed migrants or migrants in need can apply for social benefits at the Departments of Social Affairs of OLSAFs in their places of residence. In compliance with

15 Divinský, B. *Zahraničná migrácia v Slovenskej republike. Stav, trendy, spoločenské súvislosti*. Bratislava: Friedrich Ebert Stiftung a Výskumné centrum Spoločnosti pre zahraničnú politiku, 2005, P.149.

16 Amendment No. 451/2008 Coll. of the Act on Asylum.

17 Migration Office: Poslanci schválili možnosť bezplatnej právnej pomoci pre žiadateľov o azyl. Available online at: <http://www.minv.sk/?tlacove-spravy-6&sprava=poslanci-schvalili-moznost-bezplatnej-pravnej-pomoci-pre-ziadatelov-o-azyl> (consulted on 13 November 2008).

binding legislation, social benefits are granted to eligible migrants in the same manner as they are to citizens of the SR. OLSAFs also assist migrants eligible for the service with job searches in the SR. The local labour offices are also in charge of care for unaccompanied minor migrants apprehended in the territory of Slovakia.<sup>18</sup> The Offices of Labour, Social Affairs and Family fall under the authority of the Centre Office of Labour, Social Affairs and Family of the Ministry of Labour, Social Affairs and Family.

#### Alien Police Departments (Oddelenia cudzi-neckej polície)

In accordance with Article 54 of the Act on Residence of Foreigners, Alien Police Departments (hereinafter also "APDs") are entitled to investigate the legality of a foreigners' residence, his/her fulfilment of the conditions required for residence, and his/her adherence to the requirements for foreigners according to this law. These departments are also entitled to question other natural persons or legal entities in relation to their investigations concerning the residence of foreigners in the territory of the SR. In accordance with the provision noted above, when executing the requirements of its office, APDs can freely enter the premises of employers, entrepreneurial or educational facilities, and also accommodation facilities.

On the regional and local levels of public administration, additional public offices are also relevant, namely the **Departments of General Internal Administration (Odbory všeobecnej vnútornej správy)** and the subordinate **Subdepartments of Citizenship and Registry (Oddelenia štátneho občianstva a matrík)**, both of which are incorporated into the structure of the **Regional County Offices (obvodné úrady krajov)**. These offices receive applications for citizenship from foreigners at their places of residence within the SR. Subsequently, these departments and offices forward the applications to the Ministry of the Interior.<sup>19</sup>

18 OLSAF: <http://www.upsvar.sk> (consulted on 13 November 2008).

19 Bargerová – Divinský, 2008. P. 114.

Although in Slovakia the management of all aspects of migration and asylum policy is a top-down process, so far migration and asylum issues have not been significantly addressed on the regional level. That said it has been a long-term intention of the state bodies to transfer new responsibilities in the area of migration policy to municipalities. Migration-related issues have so far been a matter of concern to only a very small number of residential areas. Only those towns and villages where asylum centres are located were involved in offering services required by migration policy. In the effort to include regions in the process of formulating migration policy, state institutions wish to cooperate more closely with the **Association of Slovak Towns and Communities (Združenie miest a obcí Slovenska – ZMOS)**.

Especially in the areas of facilitating institutional, material, technical and financial preconditions for the integration of migrants, greater autonomous involvement by local government is inevitable. The Association is a voluntary organisation uniting over 95% of all towns and villages in the SR. It represents their interests to the National Council of the SR, the Government, central bodies of state administration and other bodies and organisations in the country and abroad.<sup>20</sup>

20 Between 2006 and 2007, the Migration Office carried out a series of information and educational lectures on the major aspects of migration and asylum for the managing structures of the ZMOS, and heads of self-governments of towns and villages. The purpose was to promote cooperation with them. They were organised thanks to the project „Pozitívne ovplyvňovanie verejnej mienky majoritnej spoločnosti v záujme ušahčenia integrácie azylantov a migrantov do spoločnosti“, carried out under the leadership of the Goodwill Society, in cooperation with the Slovak Humanitarian Council and Association for Education of Self-governments (Asociácia vzdelávania samosprávy). For more information see: [http://www.ludiaakomy.sk/sr\\_a\\_utecenci6.php](http://www.ludiaakomy.sk/sr_a_utecenci6.php) and Migration and Asylum: 51.

## 2.1.2 Other Institutions Addressing the Issue of Asylum and Migration

### 2.1.2.1 International Organisations

#### United Nations High Commissioner for Refugees (UNHCR)

The role of the UNHCR in the SR has changed over time from providing direct assistance to asylum seekers and recognised refugees through partner organisations to functioning more as monitor. Nevertheless, projects undertaken on the basis of UNHCR grants in collaboration with partner NGOs throughout the country of Slovakia still focus on the provision of legal, social and psychological counselling and assistance, as well as on the implementation of educational, cultural, retraining, leisure and support programmes. The commission also offers material aid and financial assistance to asylum seekers during asylum proceedings in refugee centres and to recognised refugees during their integration process.<sup>21</sup> Monitoring of the eastern border of the EU, which is over 2.610 km long, is currently one of the UNHCR's main activities in the region of Central Europe.<sup>22</sup>

#### International Organization for Migration (IOM)

The IOM in Slovakia has consistently worked on return programmes for asylum seekers, unsuccessful asylum seekers, migrants and irregular migrants. In the general area of migration, IOM has been for a long time addressing the issue of trafficking in human beings, focusing primarily on prevention activities. The IOM has also played an important role in initiating research projects on migration in the country. The national office has accomplished pioneering work in the area of migrant integration. From 2006 through the end of 2008 it ran the **Migration In-**

21 Information collected for the UNHCR website: <http://www.unhcr.sk> (consulted on 13 November 2008).

22 UNCHR: Slovensko – nová dohoda o monitorovaní hraníc a letiska (18 September 2007). Available online at: [http://www.unhcr.sk/slovakia/index.php?option=com\\_content&task=view&id=112&Itemid=59](http://www.unhcr.sk/slovakia/index.php?option=com_content&task=view&id=112&Itemid=59) (consulted on 13 November 2008).

formation Centre (MIC) that provided legal and social counselling to foreigners planning to live or already living in Slovakia with the goal of facilitating their integration into both the labour market and society at large.<sup>23</sup>

### 2.1.2.2 Non-Governmental Organisations

Four non-governmental organisations, all contract partners of the UNHCR, are currently the most active: the Human Rights League, the Slovak Humanitarian Council, the Goodwill Society and the Ecumenical Council of Churches in the SR. Also active is the Slovak Refugee Council. The organisation People in Peril also addresses the issue of asylum and migration, however marginally.

#### The Human Rights League (Liga za ľudské práva)

The Human Rights League provides free and comprehensive legal counselling to asylum seekers, recognised refugees and persons with other forms of protection. Currently, the League is implementing a project of monitoring the entry of foreigners to the territory of the SR and into the asylum procedure. The project intends to utilise the acquired information for improving procedures at the borders, airports and when detaining foreigners. The aim of these activities is to guarantee the right of persons applying for asylum to enter the territory of the SR and to start the asylum process. Also, it aims at providing support to the representatives of the Bureau of Border and Alien Police and other agencies involved in these procedures.<sup>24</sup>

23 This centre was part of the project Migration Information Centre to Assist Migrants and Trafficked Persons in Their Integration into the Labour Market and Society. The centre was opened in Bratislava with a branch in Košice. MIC offered counselling services related to social and labour integration of foreigners via personal consultations, a hotline, e-mail, and the website, which is still available online at: <http://mic.iom.sk>. The project was financed by the European Social Fund, within the Community Initiative EQUAL. Interview with IOM Slovakia.

24 The Human Rights League was established in April 2005, as a new entity after the Slovak Helsinki Committee ceased to exist. Information is available online at: O nás, <http://www.hrl.sk/?a=about> (consulted on 15 November 2008) and Projekty, Projekt monitoringu vstupu na územie SR a do azylového konania (AMAS): <http://www.hrl.sk/?a=projects#amas> (consulted on 15 November 2008). A specific aim of the AMAS project is to monitor the situation of persons who are

#### The Goodwill Society (Spoločnosť ľudí dobrej vôle)

The Goodwill Society has been working with asylum seekers and recognised refugees since the 1990s. It has its seat in the city of Košice, but operates throughout the country.<sup>25</sup> It has continuously provided social and psychological counselling, legal representation of refugees in administrative procedures, and assistance to individuals and families with accommodation and employment. The organisation also provides settlement grants and grants for accommodation as well as organising retraining courses, social events, etc.<sup>26</sup>

#### The Slovak Humanitarian Council (Slovenská humanitná rada)

The Slovak Humanitarian Council is a national volunteer centre, coordinating 175 humanitarian and charity organisations, civic associations and foundations working in a broadly defined area of social affairs throughout Slovakia. It provides its members with direct financial assistance for administration and humanitarian projects. Since 1999, the Council has been the implementation partner of the UNHCR in a project of material assistance and social counselling for asylum seekers in refugee centres. The organisation has implemented several projects in the field of asylum, such as monitoring and crisis assistance before the entry into the asylum procedure, facilitating integration of recognised refugees, social assistance to unaccompanied minor migrants, and general social and legal counselling.<sup>27</sup>

#### The Ecumenical Council of Churches in the SR (Ekumenická rada cirkví v SR)

This organisation is a community of churches which recognise The Lord Jesus Christ as the Redeemer and Head of Church. It implemented

potentially in need of international protection, and are thus persons of interest to the UNHCR.

25 The Goodwill Society: <http://www.cassovia.sk/sldv/> (consulted on 11 November 2008).

26 Website of the EQUAL project People like us (Ľudia ako my): [http://www.ludiaakomy.sk/partner\\_sldv.php](http://www.ludiaakomy.sk/partner_sldv.php) (consulted on 11 November 2008).

27 The Slovak Humanitarian Council has been active in Slovakia since 1990. Website: <http://www.shr.sk/ktosme.htm> (consulted on 11 November 2008).

several projects focusing on the integration of recognised refugees into society. Within the framework of the project God's Care, which ended in September 2008, the Ecumenical Council provided various social services in the accommodation centre in the town of Gabčíkovo, and also contributed to the integration of recognised refugees at the integration centre in the town of Zvolen. As they do not have a project focused on recognised refugees or migrants, they provide the same services on a voluntary basis.<sup>28</sup>

#### The Slovak Refugee Council (Slovenská utečenecká rada)

The Slovak Refugee Council is located in the town of Zvolen and its main area of activity is assisting with the integration of recognised refugees into society. They have implemented various projects targeting recognised refugees, asylum seekers and foreigners with subsidiary protection.<sup>29</sup>

#### People in Peril (Človek v ohrození)

This civic association is primarily active in development and humanitarian work abroad. Since 2005, however, it has also provided assistance to refugees within Slovakia. Projects focused on language education and the professional training of recognised refugees, their integration into the labour market, social assistance and counselling, financial and material assistance, and leisure activities. Between 2005 and 2007, the organisation worked on the EQUAL project *Language and Professional Assistance for Asylum Seekers and Recognised Refugees*. Currently, however, the organisation does not have any active projects in this area.<sup>30</sup>

28 For more see: <http://www.ekumena.sk> (consulted on 11 November 2008). Information was provided by the coordinator of the project God's Care, Ms Miroslava Franková.

29 Slovak Refugee Council: [http://www.srscs.eu/index.php?option=com\\_content&task=view&id=12&Itemid=33](http://www.srscs.eu/index.php?option=com_content&task=view&id=12&Itemid=33) (consulted on 11 November 2008).

30 People in Peril was established in Slovakia in 1999. Their projects included: Language and Professional Assistance for Asylum Seekers and Recognized Refugees (2005 – 2007), financed by the initiative EQUAL, and Social Assistance and Integration of Refugees in Slovakia (2005), supported by the UNHCR. Website: [http://www.peopleinperil.sk/index.php?option=com\\_content&task=blogcategory&id=111&Itemid=301](http://www.peopleinperil.sk/index.php?option=com_content&task=blogcategory&id=111&Itemid=301) (consulted on 11 November 2008).

### 2.1.2.3 Research Institutions and Migration Research in the SR

Research on migration, or more precisely cross-border migration, is very limited in the SR, and has basically started only in the year 2004. It is usually project-based and its financing has so far come from the various framework programmes of the EU. In contrast to other EU Member States, there is no state or non-state institution in Slovakia to provide a systematic approach to research on migration and related social phenomena, processes or problems.

An important role as an initiator of research projects has been assumed in Slovakia by the **International Organization for Migration**. The IOM implemented the first comprehensive research on migration in the SR, the outcome of which was published in 2004 as *Volume V Slovakia – An Acceleration of Challenges for Society*, one of a set of publications entitled *Migration Trends in Selected EU Applicant Countries*.<sup>31</sup> The second and more important research on migration was carried out by the IOM partner organisation as part of an EQUAL project – the **Department of Social and Biological Communication of the Slovak Academy of Sciences**.<sup>32</sup> The resulting publication, *Needs of Migrants in Slovakia*, appeared in 2006.<sup>33</sup> A recent publication, *Integration of Migrants in the Slovak Republic (2008)*, was also initiated by the IOM office in Slovakia.<sup>34</sup>

Migration is marginally addressed as well by the **Institute for Labour and Family Research (Inštitút pre výskum práce a rodiny)**<sup>35</sup>, which is an organisation within the Ministry of Labour, Social Affairs and Family. Multiculturalism is the

31 Written by RNDr. Boris Divinský. The publication is available only in English.

32 See: <http://www.kvsbk.sav.sk/indexenglish.php?id=engposlanie>.

33 Popper, M. – Lukšík, I. – Bianchi, G. – Szeghy, P. Potreby migrantov na Slovensku. Bratislava: Veda et IOM Medzinárodná organizácia pre migráciu, 2006.

34 Bargerová, Z. – Divinský, B. Integrácia migrantov v Slovenskej republike. Výzvy a odporúčania pre tvorcov politik. Bratislava: IOM Medzinárodná organizácia pre migráciu, 2008. The publication is the outcome of the above mentioned EQUAL project.

35 Until 28 February 2006, the name of the institution was the Study Centre on Labour and Family (Stredisko pre štúdium práce a rodiny). Website: <http://www.sspr.gov.sk/> (consulted on 23 November 2008).

key research area of the **Centre for the Research of Ethnicity and Culture (Centrum pre výskum etnicity a kultúry - CVEK)**. In 2008, CVEK conducted research on attitudes of primary school pupils towards autochthonous and new minorities (including migrants) in Slovakia. The research analysed how the issues of multiculturalism and cultural diversity are incorporated into the educational system of the SR.<sup>36</sup>

**Milan Šimečka Foundation (Nadácia Milana Šimečku)** is also working on migration. Migration is a subsection of its programme *Education on Human Rights is a Human Right/MultiKulti*, and the foundation focuses on intercultural education and inter-ethnic relations.<sup>37</sup> At present, the foundation is implementing a project called *Migrants among us*.<sup>38</sup>

The most prolific author in migration research is the independent researcher, RNDr. Boris Divinský, who has published several publications and articles on cross-border migration in the SR.

## 2.2 Organisation of the Legal System in the Field of Migration and Asylum – Relevant Legislation

The subject of asylum is covered by Act No. 480/2002 Coll. on Asylum and Amendment of Some Acts (hereafter “Act on Asylum”). The Act on Asylum establishes the rights and duties of asylum seekers and conditions for the provision of subsidiary protection and temporary shelter to foreigners. Asylum seekers, recognised refugees and persons with temporary shel-

ter or subsidiary protection also fall under the scope of the Act on Residence of Foreigners. In accordance with this act, these individuals are eligible for residence in the territory of the SR automatically, even without a prior decision on applications for residence permit and fulfilment of legal conditions.

The most significant recent change in Slovak legislation, carried out under the directives of EU legislation in the field of asylum, is the transposition of the *Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (the so-called Procedural Directive)*. It was transposed into the Slovak legal system by amendment No. 643/2007 Coll. of the Act on Asylum, in effect from 1 January 2008. Another change was the transposition of Article 15 (“right to legal assistance and representation”) of this directive resulting in the newest amendment No. 451/2008 Coll. and the attendant changes it brought about.

Act No. 48/2002 Coll. on Residence of Foreigners and Amendment of Some Acts (hereafter “Act on Residence of Foreigners”) established the imperative legal norm governing the field of residence of foreigners. The Act was amended in relation to the transposition of three EU directives which came into effect on 1 January 2007.<sup>39</sup> The Act also partially regulates conditions for the entry of foreigners to the territory of the SR.

39 1. Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of human trafficking or who have been the subject of an action to facilitate illegal immigration, and who cooperate with the relevant authorities; 2. Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third country nationals for the purposes of scientific research; 3. Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third country nationals for the purposes of study, student exchange, unremunerated training or voluntary service.

This chapter offers a chronological overview of the development of asylum and migration policies from the establishment of the independent Slovak Republic in 1993 through the end of 2008. It is comprised of four subchapters: Basic description of the situation of migration in the SR, Period after the establishment of the independent SR, Development of the non-governmental sector, and Situation in the SR after accession to the EU. The chapter describes how the main institutions responsible for migration and asylum were restructured over time, and how their roles changed under external influences, such as EU requirements.

## 3.1 Basic Description of the Situation of Migration

Since the 1990s, Slovakia has been changing gradually from a traditional country of emigration to a country of transit. According to several experts, Slovakia will slowly become a country of destination as well. In spite of the intensive pace of economic development in the SR over the last few years, factors such as higher wages and better jobs in other countries have continued to compel residents of Slovakia to migrate abroad and engage in all forms of labour (short-term, long-term and also circular migration).<sup>40</sup>

Until 1993, residents of the Czech Republic (hereafter also “CR”) comprised the majority of immigrants into the SR (in 1993 80% of all registered new residents came from the CR). In a neat reversal, 99% of all emigrants from the SR went to the CR.<sup>41</sup> Since the creation of the independent state, migrants from Europe have accounted for 80 – 90% of all registered new residents. In subsequent years the ratio has been declining. The ratio of immigrants from Asia has been growing. The ratio of immigrants from America remained for a long period near 10%, a figure that has declined sharply in recent years.

40 This trend is especially visible in those regions of the country where high unemployment rates have persisted over a long period of time. Therefore it can be concluded that since the SR's accession to the EU, the trend of emigration to EU countries for work continues.

41 Divinský, 2005. P. 46. From Vaňo et al., 2003, Jurčová et al., 2004.

# 03

## Development of Asylum and Migration Systems

The number of immigrants from Africa, Australia or Oceania has not been significant so far.<sup>42</sup>

In 2006, migrants from European countries represented the largest group – 9,970 (79.6%). The second most numerous group were immigrants from Asia – 2,017 (15.99%), mainly from China, Korea and Vietnam. In comparison with the year 2005, the number of immigrants from Asia in 2006 grew by 100%. Immigrants from America made up 3.37%; from Africa 1.24%; from Australia and Oceania 0.21%; and from other countries 0.13%. At the end of 2006, foreigners accounted for 0.6% (32,130) of all residents of the SR, while the share of citizens of third countries was 0.26% (13,944).<sup>43</sup>

Through the first half of the year 2008, residence was granted to 47,196 foreigners. Out of this number, 37,207 received permanent residence permits, 9,700 temporary and 289 tolerated re-

sidence status.<sup>44</sup> Among third countries, Ukraine, Vietnam, Russia and Korea were the most represented.

As indicated in various publications, since 1993 the net migration of the SR has until now always been positive. However, experts doubt the accuracy of this data. In his 2005 publication, Divinský, for example, rightly points out the differences between the statistical data showing low numbers of emigrants from the SR into specific target countries registered by the Statistical Office of the SR (Štatistický úrad SR), and the high numbers of immigrating Slovaks in these target countries as registered by their statistical offices (e.g. CR, USA, Canada and Germany). These astounding differences resulted not only from lax registration of residents, but also from the inadequacies of emigration registration practices in the SR. Divinský conclude that “the officially proclaimed positive net migration in the

**Table 1: Number of granted residence permits in the SR as of 30 June 2008 – 10 quantitatively most represented countries of origin**

Citizenship	Type of residence permit			Sum
	Temporary	Tolerated	Permanent	
Czech Republic	85	17	6,333	6,435
Ukraine	2,082	50	2,133	4,265
Poland	19	2	4,156	4,177
Romania	48	6	4,092	4,146
Germany	29	4	3,427	3,460
Hungary	10	8	3,272	3,290
Vietnam	1,088	20	776	1,884
Austria	10	2	1,611	1,623
Russia	467	16	948	1,431
Korea	705	0	656	1,361

Source: BBAP Yearbook 2008 (Ročenka UHCP 2008). Official statistics have been registered since 1995.

42 Divinský, 2005. P. 47.

43 ÚHCP (2008). Statistical report for EMN for the year 2006 - Annual Report on Asylum and Migration Statistics in the Slovak Republic Reference Year 2006, December 2008. P. 15-16.

44 Ministry of the Interior, OBMP, Centre for analysis and strategic management, Department of Risk and Statistics Analysis. 1st half of 2008. Chapter 1.3.2. Number of granted asylums in the SR as of 30 June 2008. [http://www.minv.sk/swift\\_data/source/policia/hranicna\\_a\\_cudzinecka\\_policia/rocnky/rok\\_2008/2008-rocenka-uhcp-sk-polrok.pdf](http://www.minv.sk/swift_data/source/policia/hranicna_a_cudzinecka_policia/rocnky/rok_2008/2008-rocenka-uhcp-sk-polrok.pdf) (consulted on 18 November 2008).

Slovak Republic is a sheer myth.” By his estimates, 15,000 to 20,000 persons emigrate annually from Slovakia. The author argues that these losses will have substantial demographic and social consequences. Moreover, migration from Slovakia has become easier since the country's accession to the EU.<sup>45</sup>

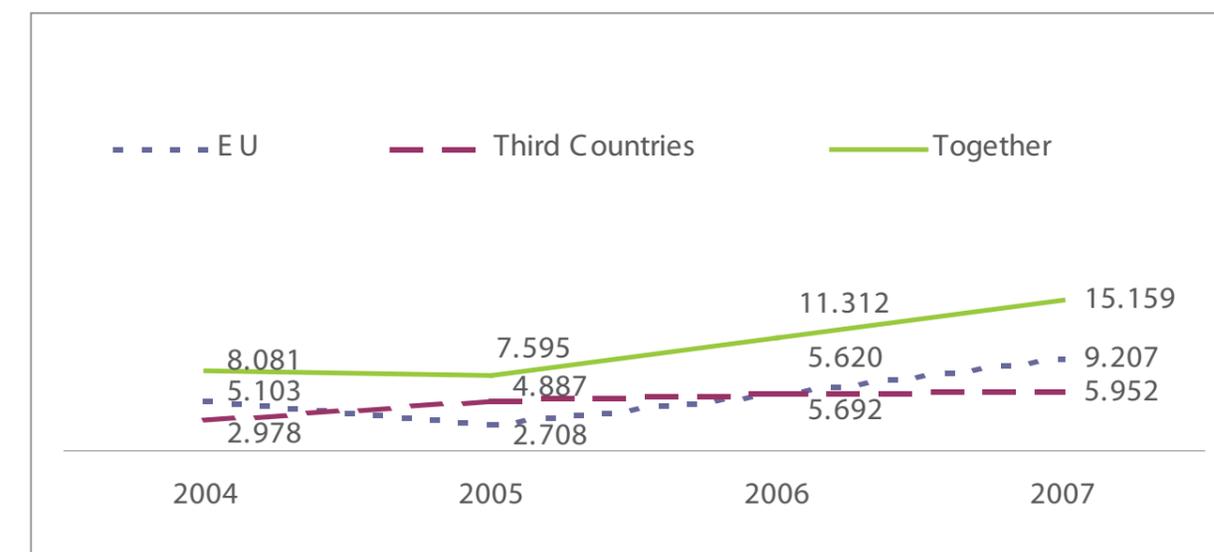
Nevertheless, no current research on the problems of registering migrants has been undertaken since Divinský's study and no more recent analysis of the situation is available. Statistically it remains a fact that the SR is gaining in terms of immigration (in 2007 net immigration was 6,793 persons), while the volume of cross-border migration between the SR and foreign countries has tripled since the entry of the SR into the EU.<sup>46</sup>

### 3.2 Period after the Establishment of the Independent SR

The Geneva Convention on Refugees and the New York Protocol on the Status of Refugees became binding for the Czech and Slovak Federal Republic (CSFR) on 24 February 1992. On 1 January 1993 the independent Slovak Republic was created. After the split of the CSFR, the Slovak Republic honoured all of its international commitments. The asylum issues in particular represented a new social phenomenon. The SR found it necessary to establish an institutional basis and pass respective legislative and governmental provisions in order to address issues related to asylum and migration.

**The Migration Office of the Mol** was established as a successor to the *Secretariat of the Deputy of the Government of the SR on Refugee Issues (Sekretariát splnomocnenca vlády SR pre otázky utečencov)*. It was entrusted with the responsibility of creating and implementing the migration policies of the SR in the area of asylum. Facilities

**Chart 1: Development of granted residence permits between 2004 and 2007 in the SR**



Source: BBAP.

45 Divinský, 2005. P. 52.

46 Statistical Office of the SR, Zahraničné sťahovanie a cudzinci v Slovenskej republike v roku 2007, p. 6.

such as reception centres, accommodation centre, and an integration centre were established under its aegis. Concurrently, the office addressed personnel, material and technical needs.<sup>47</sup>

The first *Principles of Migration Policy of the Slovak Republic* were agreed upon by the Government in November 1993. The document outlined both the duties of the state regarding foreigners as well as the duties of foreigners regarding the SR upon entering Slovakia.<sup>48</sup>

After the establishment of the independent SR, the Police Corps (Policajný zbor) were entrusted with competencies linked to the provision of foreigner's regime and passport service. On 1 January 1993 a separate *Department of Alien Police and Passport Service (Odbor cudzineckej polície a pasovej služby)* was created and incorporated into the structure of the Directorate of the Police Corps. Before the creation of this new department, it had been the responsibility of the Directorate to grant entry and residence to foreigners, as well as to issue passports, and manage the alien police at border crossings.<sup>49</sup>

In January 1994, the UNHCR began its work in Slovakia. In November 1996, the IOM opened an office in Bratislava. In 2000 a branch office opened in the town of Košice in the eastern part of Slovakia. Each organisation is important in helping the state manage migration flow both through the projects they implement and their institutional know-how.

From 1994 until 2004, the number of applications for asylum in the SR increased by 81 per cent, creating a need for institutional oversight of this situation.<sup>50</sup> Between 2001 and 2004, the numbers of asylum seekers reached a climax (see chart 2 and table 2). Despite limited finan-

cial resources, state institutions established and administered refugee centres. Gradually, important new legal norms regarding asylum were proposed and passed. Increasingly there was a focus on the issue of integrating recognised refugees into society, an area in which the UNHCR and NGOs took a strong interest.<sup>51</sup>

With the goal of improving the operation of the border and alien police forces, on 1 May 2000 an independent *Bureau of Border and Alien Police of the Police Corps Directorate (Úrad hraničnej a cudzineckej polície Prezídia policajného zboru)* was created as a department of the Ministry of the Interior under the Directorate of the Police Corps. Within the structure of this law enforcement body, the *National Unit to Combat Illegal Migration (Národná jednotka boja proti nelegálnej migrácii ÚHCP PPZ)* was established in 2002.<sup>52</sup>

### 3.3 Development of the Non-Governmental Sector Active in the Field of Asylum and Migration

The non-governmental sector active in the field of asylum and migration began to constitute itself and then gain experiences during the 1990s as the number of asylum seekers arriving in Slovakia grew. Until 2005, the following NGOs were most active in providing assistance to asylum seekers and recognised refugees – Slovak Helsinki Committee (Slovenský helsinský výbor), Björnson Society (Björnsonova spoločnosť), Slovak Humanitarian Council (Slovenská humanitná rada) and the Goodwill Society (Spoločnosť ľudí dobrej vôle). People in Peril (Človek v ohrození) started working on assistance projects for refugees in 2005.

The situation has changed since that time. The Slovak Helsinki Committee, which was set up in 1990, ended its work in 2005. It was replaced by the Human Rights League. The Björnson Socie-

51 Divinský, 2005.

52 Divinský, 2005. P. 143-144.

ty still exists, but is no longer active in the field of assisting refugees. The Slovak branch of the *Czech Organisation for Assistance to Refugees (Organizácia na pomoc utečencom)* which offered social, legal and psychological counselling to asylum seekers and recognised refugees beginning in 1994 has not been active in the SR since 2002.<sup>53</sup> Similarly, the authors of this report have not found evidence of any relevant activities by organisations such as the Slovak Catholic Charity (Slovenská katolícka charita), Evangelical Diaconie ECAV (Evanjelická diakonia ECAV), Slovak Red Cross (Slovenský červený kríž) or Freedom – The Association for Refugees Assistance, all organizations which at one time were at least marginally active in the field. After a long period of inadequate counselling services to asylum seekers, recognised refugees and other groups of migrants, additional organisations and institutions embarked on the task of improving services. Their activities are briefly described in section 2.1.2.2.

### 3.4 Situation in the SR after accession to the EU

Until 2004, the majority of immigrants to the SR were residents of the Czech Republic, most of them former citizens of the Czecho-Slovak Federated Republic returning to Slovakia. Since its accession to the EU, Slovakia's main category of immigrants has been citizens of the EU member states.<sup>54</sup>

On 1 May 2004, Slovakia acceded to the EU. This political act was accompanied by many organisational changes in the institutions responsible for migration management. For instance, the Police Corps underwent several changes. The Alien Police Departments were strengthened; the number of managing units was lowered to four directorates of Border and Alien Police in Bratislava, Nitra, Banská Bystrica and Prešov.<sup>55</sup> The Migration Office also changed – at the be-

53 For more on their activities in the past see Divinský, 2005. P. 159 – 160.

54 Divinský, 2007. P. 77.

55 Divinský, 2007. P. 77.

ginning of May 2004; the Dublin Centre began its operations. Its mission is to accomplish tasks determined by the Member State responsible for the assessment of an application for asylum filed in a Member State in accordance with the Dublin Regulation.<sup>56</sup>

In 2005, the *Strategy of Migration Policy of the SR (Konceptia migračnej politiky Slovenskej republiky)—a document still in force today—*was approved by the Government as the fundamental statement in the field of migration management.<sup>57</sup>

In 2006, a new refugee reception centre opened in the town of Humenné in eastern Slovakia. The establishment of this centre by the Ministry of the Interior was a response to criticism that refugee centres were until then only established near the western borders of Slovakia where migrants could easily travel further west to the Czech Republic or Austria. The new centre's purpose also included facilitating potential transfers of asylum seekers and irregular migrants back to the countries from which they came.<sup>58</sup>

On 5 September 2007, a new agreement on the monitoring of borders and airports between the UNHCR, the Bureau of Border and Alien Police and the Human Rights League was signed. The main aim of the monitoring agreement is to ascertain whether asylum seekers are granted entry to the territory of the EU and to the asylum procedure. The agreement formalises cooperation, tasks, duties and working procedures of all parties involved.<sup>59</sup>

The Ministry of Labour, Social Affairs and Family created the critically important Department of Migration and Integration of Foreigners on 1 October 2007. It is the main department focusing on the integration of foreign nationals into the

56 Divinský, 2005. P. 147.

57 Mol: Konceptia migračnej politiky Slovenskej republiky. Available online at: <http://www.minv.sk/?zamer-migracnej-politiky-slovenskej-republiky&subor=10500> (consulted on 13 November 2008).

58 Divinský, 2005. P. 146.

59 UNHCR: Slovensko – nová dohoda o monitorovaní hraníc a letiska (18 September 2007). Available online at: [http://www.unhcr.sk/slovakia/index.php?option=com\\_content&task=view&id=112&Itemid=59](http://www.unhcr.sk/slovakia/index.php?option=com_content&task=view&id=112&Itemid=59) (consulted on 13 November 2008).

SR, yet many administrative, legal and financial competencies remained under the authority of the Ministry of the Interior. On 30th November 2007, the *Inter-departmental Committee on Labour Migration and Integration of Migrants (Medzirezortná komisia pre oblasť pracovnej migrácie a integrácie cudzincov)* was established by the same Ministry. Its aim is to provide a platform so that the representatives of relevant state and non-state institutions, departments, organisations as well as independent experts can engage in a mutual exchange of information about their work, experience and needs in the field of migration and integration.<sup>60</sup>

Slovakia became a part of the Schengen Area on 21 December 2007. The entry into the area has not brought any substantial changes in the SR regarding the provision of international protection to foreigners. The protection of the external Schengen border has become a central focus along with the fight against illegal migration and cross-border crime. The SR's becoming part of the Schengen Area made the innovation of carrying out asylum procedures at international airports in Bratislava, Košice and Poprad possible. Thus, the foreigner who enters Slovakia by air is able to file an application for asylum directly with the police unit located in the transit areas of these international airports. By becoming part of the Schengen Area, the SR also became a part of the SIS (Schengen Information System).<sup>61</sup>

In effect since 1 January 2008, the amendment of the Act on Asylum transposed the Procedural Directive as part of Slovak law. The amendment refines regulations concerning interviewing an asylum seeker (especially in regard to particular rights of unaccompanied minor migrants).<sup>62</sup> It

<sup>60</sup> Bargerová – Divinský, 2008.

<sup>61</sup> Information from the Migration Office. After undertaking required actions, the agency shall decide whether the asylum seeker will be transported to an asylum facility, remain at the airport, or be returned to the alien police. However, if no action has been taken on the application within 7 days from the interview or a remedy has not been determined by the court within 30 days following its filing, the asylum seeker must be transferred from the reception centre at the airport to the relevant asylum facility.

<sup>62</sup> An interview with an unaccompanied minor migrant can be carried out only in the presence of his/her guardian, who will have the opportunity to inform her/him about its significance and possible consequences and would have the opportunity to prepare the minor for it.

also redefines the reasons for refusing an application as obviously unjustified.<sup>63</sup> In October 2008 the National Council of the SR passed a new amendment to the Act on Asylum which entered into force on 1 December 2008. This amendment further brings Slovak asylum legislation into accord with the asylum legislation of the EU. As Article 15 of the Procedural Directive stipulates that Member States provide an unsuccessful asylum seeker with free legal assistance for his/her appeal, the amendment establishes that this service will be provided by the **Centre of Legal Assistance of the Ministry of Justice of the SR (Centrum právnej pomoci Ministerstva spravodlivosti SR)**.<sup>64</sup>

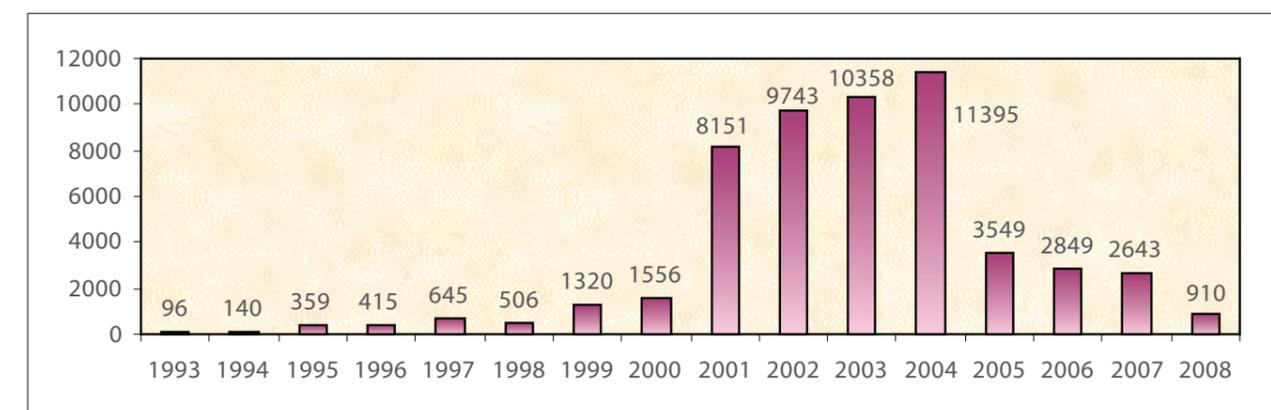
The future activities of the main state institutions will most likely be closely related to membership in the Schengen Area. These institutions will also cooperate in the inter-sector working committee for the creation of organisational and legislative preconditions that will necessarily arise once the **Immigration and Naturalisation Bureau (Imigračný a naturalizačný úrad SR)**, is established in 2010 as planned.<sup>65</sup>

<sup>63</sup> It refers, for instance, to the cases of asylum seekers who did not fulfil conditions for the granting of asylum or subsidiary protection, and entered the territory of the SR illegally, and without a credible reason did not apply for international protection, or who do not allow the taking of their dactyloscopic fingerprints, or represent a danger to the security of the SR or society. Migration Office: Od roku 2008 Slovensko uplatňuje v azylovom práve procedurálnu smernicu EÚ (12 May 2008). Available online at: <http://www.minv.sk/?tlacove-spravy-6&sprava=od-roku-2008-slovensko-uplatnuje-v-azylovom-prave-proceduralnu-smer-nicu-eu> (consulted on 13 November 2008).

<sup>64</sup> Migration Office. Poslanci schválili možnosť bezplatnej právnej pomoci pre žiadateľov o azyl. Available online at: <http://www.minv.sk/?tlacove-spravy-6&sprava=poslanci-schvalili-moznost-bezplatnej-pravnej-pomoci-pre-ziadatelov-o-azyl> (consulted on 13 November 2008).

<sup>65</sup> Migration Office. Zámerom migračnej politiky Slovenskej republiky je zabezpečiť... Available online at: <http://www.minv.sk/?zamer-migracnej-politiky-slovenskej-republiky> (consulted on 13 November 2008).

Chart 2: Number of asylum seekers in the SR between 1993 and 2008.



Source: Migration Office of the Mol. Statistical Report – Year 2008.

Table 2: Overview of asylum seekers in the SR between 1992 and 2008.

Year	Asylum seekers	Granted asylum	Non-granted asylum	Granted/non-granted subsidiary protection	Stopped procedures	Citizenship granted
1992	87	89	0		0	0
1993	96	41	20		25	0
1994	140	58	32		65	0
1995	359	80	57		190	0
1996	415	72	62		193	4
1997	645	69	84		539	14
1998	506	53	36		224	22
1999	1,320	26	176		1,034	2
2000	1,556	11	123		1,366	0
2001	8,151	18	130		6,154	11
2002	9,743	20	309		8,053	59
2003	10,358	11	531		10,656	42
2004	11,395	15	1,592		11,782	20
2005	3,549	25	827		2,930	2
2006	2,849	8	861		1,940	5
2007	2,642	14	1,177	82/646	1,693	18
2008	909	22	414	65/272	452	4
Total	54,720	632	6431	147	47,296	203

Source: Migration Office of the Mol. Statistical Report – Year 2008.

# 04

## The Organisation of Policies

The lengthiest chapter of this study consists of two main subchapters dealing with the organisation of the migration system in Slovakia. Subchapter 4.1, entitled Asylum and Migration, explains entry procedures, conditions for accepting foreign migrants, residence in Slovakia of foreigners from third countries, access to the Slovak labour market as well as the issue of returning foreign migrants to their countries of origin. The topics of asylum and migration are dealt with separately in discrete sections. In those sections we explain the difference in approach regarding various categories of migrants from third countries. Subchapter 4.2 discusses the relationship of migration and asylum issues to other policy areas in the Slovak Republic, such as employment or development policy, for example.

This chapter was originally meant to include a description of the effects, influences and changes brought about by the adoption of European legislation by the SR, and the influence of European institutions on the SR, however to analyze these areas of great importance effectively a separate comprehensive study would be necessary. Only a full study devoted solely to this subject could effectively treat the impact on the SR of the EC directives in the areas of asylum and migration, and especially in the area of migrant integration. Given the limited scope of this chapter and the range of this entire study, it is impossible to assess fully how these changes have influenced migration policy in Slovakia.

Generally we can establish that the fundamental changes made since Slovakia entered the European Union have affected mainly EU/EEA citizens (and their families). It is well worth noting, however, that third country nationals are still at a disadvantage when compared to the Slovak and EU citizens in regards to their legal status. The manner in which migration policy is organised has not fundamentally changed.

### 4.1 Asylum and Migration

For the citizens of third countries – those individuals from countries outside the EU/EEA and the Swiss Confederation (hereafter also referred to as “foreigners”) – the decisive phase of migration occurs at the very beginning of the process. This critical phase includes pre-entry procedures and the moment at which a foreigner enters Slovak territory. The nature of the process before and after a foreigner enters Slovak territory is determined by two main laws relating to the presence of foreigners in Slovakia: the Act on Residence of Foreigners and the Act on Asylum (hereafter also indicated as “Asylum Act”).

In general, these laws concern two main groups of migrants: (a) persons who applied for asylum and whose rights and obligations in Slovakia are therefore governed by the Asylum Act; and (b) persons migrating voluntarily for personal reasons. The rights and obligations of those in the second category are governed by the Act on Residence of Foreigners. The legal position of migrants in Slovakia, however, is much more diverse than these two laws might suggest. Based on the difference in pre-entry procedures and the means of legalizing residence in Slovakia, migrants can be divided into several additional categories. The individual categories are determined by the type of the residence and the reason for staying in Slovakia:

1. A foreigner who does not need an entry visa and plans a short-term stay in Slovakia (up to 3 months), e.g. as a tourist or a person requiring health treatment.
2. A foreigner who needs an entry visa and plans a short-term stay in Slovakia for the purpose of tourism or health treatment.
3. A foreigner with a long-term visa (for a period longer than 3 months), which was granted because it was necessary to complete the residence permit procedure or to fulfil an obligation based on an international treaty.
4. A foreigner with a first permit for permanent residence in Slovakia who is:
  - a. a spouse of a Slovak citizen with permanent residence in the Slovak territory
  - b. a dependent direct relative, i.e. a parent or a child, a grandparent or a grandchild of a Slovak citizen with permanent residence in the Slovak territory
  - c. an unmarried child (younger than 18 years of age) placed in the custody of a foreigner who is a spouse of a Slovak citizen with permanent residence in Slovak territory
  - d. an unmarried child (younger than 18 years of age) of a foreigner who was granted a permanent residence permit
  - e. an unmarried child (younger than 18 years of age) placed in the custody of a foreigner who was granted a permanent residence permit
  - f. an unprovided for child (older than 18 years of age) of a foreigner who was granted a permanent residence permit
  - g. a foreigner whose stay is in the interest of the Slovak Republic
  - h. a so-called privileged foreigner, i.e. a relative of an EU citizen with permanent residence in Slovakia.
5. A foreigner with a further permit for permanent residence.
6. A recognised refugee who is entitled to a permanent residence permit based on the provisions of the Asylum Act.
7. A foreigner who does not need an entry visa and holds a temporary residence permit for the purpose of:
  - a. employment
  - b. business
  - c. study or
  - d. family reunion, who is:
    - i. a spouse of a foreigner with a temporary or a permanent residence permit, if both spouses are older than 18 years of age
    - ii. an unmarried child (younger than 18 years of age) of a foreigner with a temporary or a permanent residence permit, of this foreigner’s spouse, or of a person who has been granted asylum or of a spouse of such a person if the child has been placed in their custody

- iii. an unprovided for child (older than 18 years of age) of a foreigner with a temporary or a permanent residence permit or of a spouse of such foreigner
  - iv. a direct relative in the ascending line of the person who was granted asylum and is younger than 18 years of age
  - v. a single parent dependent on the care of a foreigner with a permanent residence permit or a temporary residence permit granted for the purpose of employment or business (Articles 19 and 20, Par. 1) or
  - vi. a dependent person, as defined by an international treaty.
- e. performing special activities in the capacity of:
- i. a lecturer,
  - ii. an artist,
  - iii. a sportsman/sportswoman, or
  - iv. an intern in a course of study outside the Slovak territory.
- f. performing duties as a member of the civilian units of the Armed forces.
8. A foreigner with a temporary residence permit which was granted based on the subsidiary protection provision of the Asylum Act.
  9. An asylum seeker, up to one year from filing the asylum application.
  10. An asylum seeker, later than one year from filing the asylum application, if there is no legally binding decision, with the exception of a case in which the application was dismissed as “unfounded” or “impermissible”.
  11. A foreigner who was granted a tolerated stay permit because there is an obstacle to his/her administrative expulsion from the Slovak Republic.
  12. A foreigner who was granted a tolerated stay permit because his/her leaving Slovakia is not possible and detention of such a foreigner is not effective.
  13. A foreigner who was granted a tolerated stay permit with respect to his/her private and family life.
  14. A foreigner who was granted a tolerated stay permit based on a temporary shelter of-

ferred to him/her by the Slovak government according to the Asylum Act.

15. A foreigner who is a victim of the crime of human trafficking (older than 18 years of age) and has been granted a tolerated stay permit.
16. A foreigner who was granted a tolerated stay permit, as of the day when he/she requested voluntary return to the country of origin.
17. A foreigner who was granted a tolerated stay permit because he/she is a child younger than 18 years of age found in the territory of the Slovak Republic.

For each of the above-mentioned categories there are different rules which apply to entering Slovakia and there is also a different set of rules and obligations which apply to the period of a foreigner’s stay in Slovakia, e.g. conditions for access to the local labour market and rules for starting businesses, etc.

#### 4.1.1 Entry Procedures

##### 4.1.1.1 Asylum – Entry Procedures

Once the foreigner applies for asylum in Slovakia, his/her application is considered by the Migration Office of the Ministry of the Interior, which means that this process is not governed by the Act on Residence of Foreigners. The entry and residence of the asylum seeker are administered by a different set of rules than the entry and residence of all other migrant groups.

As for the entry to Slovakia, there are no special requirements for the asylum seekers. Once the foreigner applies for asylum in the territory of the Slovak Republic or at the border, he/she cannot be automatically returned. Slovakia does not have the pre-screening system some other EU member states have. Neither are there any integration arrangements which have to be met before asylum seekers enter Slovak territory. At the current time, it is not possible to apply for asylum abroad, e.g. at the Embassy or the Consulate.

Foreigners who claim asylum in Slovakia remain under the care of by the Migration Office which also provides them with all necessary social assistance during their stay in the centres for asylum seekers until their asylum application is decided. Social assistance is provided under the provisions of the Asylum Act. The application for asylum is first processed by the Asylum Department of the Bureau of Border and Alien Police which starts the asylum procedure. Interviews with asylum seekers are then conducted by the Migration Office.

As mentioned in Chapter 3, an amended version of the Asylum Act came into force on 1 December 2008 in order to further bring Slovak asylum law into compliance with EU legislation. Article 15 of the Council Directive 2005/85/EC, the so-called Procedural Directive, asks EU member states to provide free legal help to all unsuccessful asylum seekers during the appeal process. In Slovakia, this service is provided by the *Centre of Legal Assistance* (under the Ministry of Justice). The amended Asylum Act changes several provisions based on practical experience. For example, it abolishes the dual review of obstacles to administrative expulsion. Before the amendment to the Asylum Act, there was a review by the Ministry within the asylum procedure as well as a subsequent review by the police based on the Act on Residence of Foreigners. In accordance with the amendment, obstacles to administrative expulsion are only subject to review by the respective body of the Bureau of Border and Alien Police. The amendment also extended the deadline for appealing a decision to dismiss an asylum application as “unfounded” or “impermissible” from 7 to 20 days.<sup>66</sup> Since these amendments were only recently enacted, it is not yet possible to judge their effects on the asylum system in Slovakia.

<sup>66</sup> The webpage of the Migration Office of the Ministry of the Interior. The parliamentary deputies approved the possibility of a free legal assistance for the asylum seekers. Available online (in Slovak language) at: <http://www.minv.sk/?tlacove-spravy-6&sprava=poslanci-schvalili-moznost-bezplatnej-pravnej-pomoci-pre-ziadatelov-o-azyl> (consulted on 13 November 2008).

#### 4.1.1.2 Migration – Entry Procedures

All activities related to granting residence permits, registering the residence of foreigners, and detecting and preventing illegal migration, are overseen by the Ministry of the Interior which executes them through specialised offices and departments. The Bureau of Border and Alien Police actively oversee the above-mentioned cases. As for granting residence permits to foreigners from third countries, the Bureau of Border and Alien Police is responsible for conducting the approval process and for reviewing the applications for a permanent, temporary or tolerated stay.

##### Granting Visa and Accepting Residence Permit Applications

Granting Schengen Visas and accepting applications for temporary or permanent residence in Slovakia has been transferred from the Interior to the Foreign Ministry. The Slovak diplomatic missions abroad now review visa applications, receive most of the temporary residence applications, and, in some cases, permanent residence applications.

The diplomatic mission of the Slovak Republic attached to the applicant’s country of origin will receive residence permit applications and forward them for review to the Alien Police Department which has jurisdiction over the applicant’s intended place of residence in Slovakia. It is not possible to apply in Slovakia, except in the cases listed specifically in the Act on Residence of Foreigners. An applicant for a permanent residence permit, for example, has the right to choose whether to apply personally at the Alien Police Department or the relevant Slovak diplomatic mission abroad.

Detecting and combating illegal migration falls under the competence of the National Unit to Combat Illegal Migration whose activities are discussed in greater detail in Chapter 2. As far as we know, there is no governmental, non-governmental, or independent organisation in

Slovakia which would officially provide advice or assistance to irregular migrants under any conditions.

### 4.1.2 Conditions of Acceptance

The conditions for accepting foreigners into Slovak territory depend on the purpose of their stay. In principle, we can distinguish two main types: asylum or other state protection; and other purposes defined by the Act on Residence of Foreigners.

#### 4.1.2.1 Asylum – Conditions of Acceptance

Asylum applications are reviewed by the Migration Office, the decision-making body that grants asylum, subsidiary protection or temporary shelter.

#### The Entry of Asylum Seekers

Asylum applications are reviewed by decision-makers in the Migration Office. After applying for asylum, the applicant is placed in a reception centre (run by the Migration Office). At the centre, an applicant receives primary care, including a health check and temporary accommodation (generally for up to 30 days). During quarantine, applicants cannot leave the reception centre. Satisfactory health is the only condition for the applicant's transfer to the accommodation centre and subsequent movement within Slovakia.

Applicants are registered in reception centres and issued a photo ID designating them as asylum seekers which serves as a form of identification during their stay in Slovakia. During their residency at the centre, asylum seekers receive free accommodation, food, health care, social and psychological counselling, and pocket money, as well as other necessary material assistance and sanitary supplies. The centres also provide social activities. Applicants can leave the centres only with a valid permit and after meeting certain health requirements determined by a mandatory health check. The permits

to leave the centre are issued for 24 hours by the centre manager or another authorised employee.<sup>67</sup> Currently there is only one reception centre in Slovakia – in the eastern Slovak town of Humenné.<sup>68</sup> After an initial period at the reception centre, applicants are transferred to an accommodation centre.

#### Irregular Migrants

Irregular migrants who enter the Slovak territory illegally, illegally stay in Slovakia and do not claim asylum are placed in police detention facilities for foreigners run by the Ministry of the Interior. They are detained and placed in these facilities pursuant to Act No. 48/2002 Coll. on the Residence of Foreigners, as later amended.<sup>69</sup> They are detained in these facilities until a decision regarding their administrative expulsion is taken. Currently, there are two detention facilities for foreigners – in the town of Medveďov, in western Slovakia, and town of Sečovce, in the east of the country.<sup>70</sup>

#### 4.1.2.2 Migration - Conditions of Acceptance

The applications for a temporary residence permit and in some cases for a permanent residence permit have to be filed in person, with the exception of immobile applicants and when waiving this requirement is in the interest of the Slovak Republic. Applications are accepted by the Slovak diplomatic missions abroad and the responsible police departments, i.e. Alien Police Department whose jurisdiction includes the applicant's intended place of residence in Slovakia. However, the decision on the residence permit can be made only by the Alien Police Departments under the jurisdiction of the Bureau of Border and Alien Police. Each and every application is reviewed individually.

In 2010 a new immigration authority expected

<sup>67</sup> Migration and Asylum. P. 33 – 36.

<sup>68</sup> The centre in Liptovské Vlachy no longer accepts asylum seekers and the reception camp in Opatovska Nova Ves was transformed into an accommodation centre.

<sup>69</sup> They can be interned in these facilities for up to 180 days.

<sup>70</sup> Divinský, 2005. P. 145.

to be designated the Immigration and Naturalisation Bureau, will begin operating and which, based on recent legislation, would take over some of the current responsibilities of the Bureau of Border and Alien Police including the review of residence permit applications.

To a certain extent, the Bureau of Border and Alien Police covers all migrant categories, which are divided according to a migrant's intended purpose of stay. However, we must take into account the different legal statuses of distinct groups of migrants and the additional needs they might represent which other bodies and organisations would have to meet.

The process of accepting migrants involves to some degree other central state bodies. For instance, other governmental departments would be required to assist in the process when the Bureau of Border and Alien Police require proof of certain objective facts (such as verification of any security issues, confirmation of public interest, etc.).

For migrants intending to reside in Slovakia there are no fixed conditions regarding their integration into society. In some cases, the extent of a migrant's integration might become a factor in decisions to grant residence permits pursuant to the relevant provision of the Act on Residence of Foreigners (Art. 39, Par. 1c). According to this provision, the Alien Police Department takes into the account the extent of the foreigner's integration when deciding on the permanent residence permit. The relevant police department is fully authorized to decide on the extent of the applicant's integration into society. The above-mentioned provision does not specify in any way the nature of the process that leads to the police department's determination about a given migrant's status regarding integration. There are no specific regulations in place to guide this decision-making process. Foreigners in Slovakia have no access to particular courses or literature which would help them prepare for a possible interview meant to determine the extent of their integration into Slovak society.

#### Unaccompanied minors form a special group of foreigners.

This group of migrants are cared for not only by the Ministry of the Interior but also the Ministry of Labour, Social affairs and Family which provides care for this migrant group through: (a) a guardian, usually the Office of Labour, Social affairs and Family (irrespective of whether they are minors claiming asylum or other minor foreigners); and (b) a foster care facility (designated as a children's home) for unaccompanied minors based in the town of Horné Orechové.

### 4.1.3 Residence of Foreigners from Third Countries in Slovakia

According to the Act on Residence of Foreigners, a "foreigner" is anyone who is not a Slovak citizen, i.e. even a citizen of other EU/EEA member states. Foreigners from designated third countries (outside EU/EEA) need to meet a set of conditions before entering the Slovak Republic and residing in the country. Some require the Schengen Visa to enter the Schengen Area (Art. 8 of the Act on Residence of Foreigners) and an invitation for both private and business visits.

#### 4.1.3.1 Asylum – Residence of Foreigners in Slovakia

The Asylum Act stipulates that asylum seekers and everyone who is granted a temporary shelter or a supplementary protection has an automatic right to a temporary or a tolerated stay permit in Slovakia. This right is not subject to the review of their residence permit application or meeting any other legal condition. Persons who are granted asylum also gain a permanent residence permit.

#### Residence of Asylum Seekers

After the required period spent in the reception centre, asylum seekers are moved to the accommodation centre (both are facilities overseen by the Migration Office), where they stay until the status of their asylum applications is determined. If granted asylum, they can stay in the cen-

tre for a period of time deemed necessary. Asylum seekers receive basic healthcare, can take part in the various social activities of the centre, and study the Slovak language. They can also attend re-qualification courses and take part in other activities organised by non-governmental and international organisations. Pre-school age children can attend kindergarten at the centre and older children can go to public school in the town where the centre is located.<sup>71</sup> There are currently two accommodation centres in Slovakia, one in Opatovská Nová Ves and the other in Rohovce.<sup>72</sup>

### Residence of Asylum Seekers within the Slovak Republic

While the authorities consider their applications, asylum seekers reside in Slovakia legally. Their movements within the country are restricted by a requirement to notify authorities in the centre or the Alien Police Department where they are staying. Once moved to the accommodation centre, they are issued an Asylum Seeker ID which serves as an official form of identification until the status of their application is decided. If asylum seekers wish to leave the centre, they must ask for a short-term permit to do so. Such permits, allowing asylum seekers to leave the centre for up to a week, are issued by centre administrators. If they wish to live outside the accommodation centre, asylum seekers must apply for a long-term permit with the decision-maker of the Migration Office. In such cases, the applicant must prove he/she has a valid lease for his/her accommodation and the necessary means to meet his/her financial obligations. It is also possible for another person to sign a declaration of honour, stating that the applicant will live with him/her and that her/she will cover all necessary expenses. This declaration must be verified by a public notary. A long-term permit is issued for up to a month. An applicant granted such a long-term permit must notify the Alien

Police Department within three days of the address where he/she is staying. A long-term pass can be repeatedly renewed.<sup>73</sup>

### Length of Asylum Seekers' Stay in Slovakia

The duration of the asylum process varies for different applicants. All cases are individually considered and the time it takes to arrive at decisions varies accordingly. Based on the law, the Migration Office is obliged to give its decision within three months (90 days) after the asylum application is made. If the Migration Office declines to grant asylum, the applicant can appeal to the Regional Court (Krajsky sud) in Bratislava or Košice. In cases where this court confirms the determination of the Migration Office, an applicant may appeal the decision to the Supreme Court of the Slovak Republic. It is not uncommon for applicants to wait several months (in some cases decisions have taken over two years) for a final decision on an application for asylum.<sup>74</sup>

### Various Decisions on Asylum Applications and Appeal Options

1. In the case of a favourable decision, the Migration Office grants asylum in the territory of the Slovak Republic. This decision is followed by a process to help the recognised refugee integrate into Slovak society.

2. (a) The Migration Office may decide not to grant asylum but to grant the foreigner subsidiary protection for one year. If sufficient reasons for subsidiary protection still exist after a year, this status can be extended for an additional year. During this period of subsidiary protection, the foreigner has the right to a temporary residence permit, pocket money, accommodation and food, and he/she can be employed.<sup>75</sup> (b) The Migration Office may decide not to grant asylum or subsidiary protection. In this case, the Alien Police Department considers whether the-

71 Migration and Asylum (Migrácia a azyl)

72 The centre in Rohovce became an accommodation centre after the centre in Brezová pod Bradlom was destroyed by fire. Until recently the accommodation centre in the southern Gabčíkovo was the largest residence facility for asylum seekers in Slovakia. However, as of the beginning of 2009 it will house only foreigners with subsidiary protection.

73 The Legal Clinic of the University in Trnava: FAQ. [http://utecenci.alfaomega.sk/index.php?option=com\\_content&task=view&id=26&Itemid=42](http://utecenci.alfaomega.sk/index.php?option=com_content&task=view&id=26&Itemid=42) (consulted on 24 November 2008).

74 The Legal Clinic of the University in Trnava: FAQ. [http://utecenci.alfaomega.sk/index.php?option=com\\_content&task=view&id=26&Itemid=42](http://utecenci.alfaomega.sk/index.php?option=com_content&task=view&id=26&Itemid=42) (consulted on 24 November 2008).

75 The Legal Clinic of the University in Trnava: FAQ.

re is an obstacle to the administrative expulsion of the foreigner. If such an obstacle exists, the foreigner can then apply for a tolerated stay with the Alien Police Department with jurisdiction over the place where he/she is staying. A tolerated stay permit is granted for up to 180 days. During this period, the foreigner cannot conduct business or be employed.<sup>76</sup> All types of residence and stay will be explained in detail later.

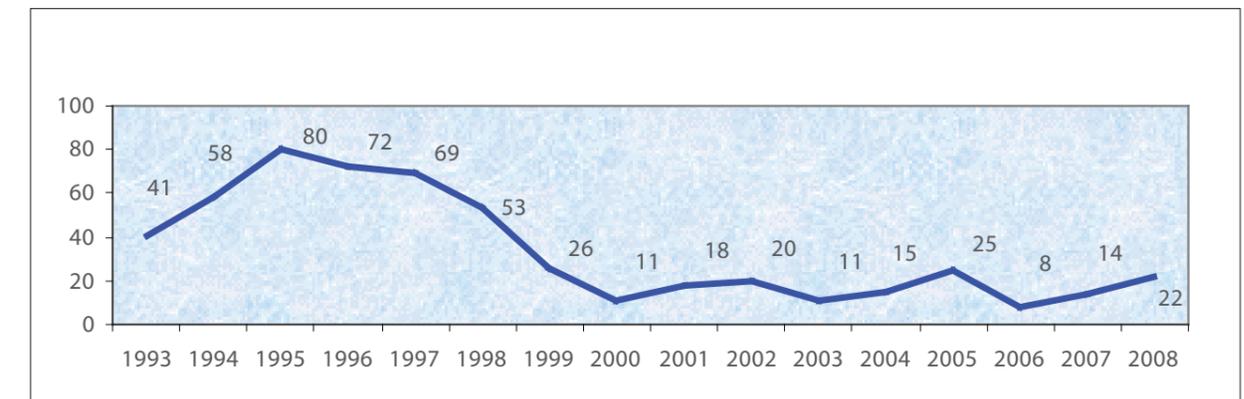
3. The Migration Office may decide not to grant asylum or subsidiary protection and that there

is no obstacle to the administrative expulsion of the applicant. The applicant can appeal to the Regional Court (Krajsky súd) in Bratislava or Košice.<sup>77</sup>

### Subsidiary Protection with Temporary Residence Permit

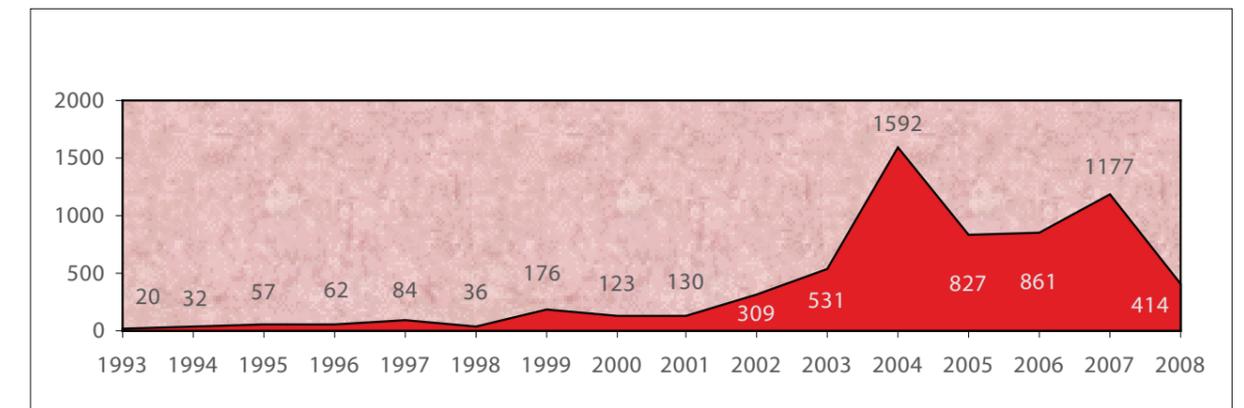
The institution of subsidiary protection was introduced by an amendment to the Asylum Act which came into force on 1 January 2007. Based on this provision, the Slovak Ministry of the Interior will provide subsidiary protection to an applicant whose asylum application has

Chart 3: The number of cases when the asylum was granted to an applicant in Slovakia (1993 – 2008)



Source: Migration Office of the Ministry of the Interior. The Statistics Report for the Year 2008.

Chart 4: The number of cases when asylum was not granted to an applicant in Slovakia (1993 – 2008)



Source: Migration Office of the Ministry of the Interior. The Statistics Report for the Year 2008.

76 The Legal Clinic of the University in Trnava: FAQ.

77 It is possible to appeal in the case of any negative decision. The Legal Clinic of the University in Trnava: FAQ.

been denied if there are substantive reasons to suppose that after returning to the country of origin the applicant may be subject to serious injustice or ill-treatment. For the purpose of family reunification, the Ministry will also provide subsidiary protection to the relatives of such a foreigner. The relatives who may receive protection are specified as follows:

- (a) a spouse of the recipient of subsidiary protection, if the state of marriage is maintained and was in force at the time when the foreigner left his/her country of origin, provided the foreigner gives his/her agreement to this reunification in writing and in advance
- (b) an unmarried child (younger than 18 years of age) of the recipient of subsidiary protection or a child of his/her spouse
- (c) the parents of an unmarried recipient of subsidiary protection (younger than 18 years of age) or
- (d) a child born in Slovakia to a female recipient of subsidiary protection

Unsuccessful asylum applicants who fear that they would be subject to serious injustice or ill-treatment in their country of origin may apply for subsidiary protection. According to the Asylum Act, all recipients of subsidiary protection have the right to a temporary residence permit in Slovakia.

A foreigner who is a recipient of subsidiary protection can:

- use the facilities of the Ministry of the Interior designated to house recipients of subsidiary protection and where they are provided free accommodation, food or meal allowances, basic toiletries and pocket money
- be employed based on a work permit which is granted without regards to the state of the local job market
- attend free Slovak language lessons provided by the Ministry of the Interior according to the provision of the Asylum Act

- have access to health care. The Ministry of the Interior pays for the health care of the recipient of subsidiary protection who does not have public health insurance in Slovakia to the same extent that a citizen of the SR is covered by public health insurance.

#### 4.1.3.2 Migration - Residence of Foreigners in Slovakia

Based on the Act on Residence of Foreigners, a foreigner may apply for one of the following types of residence in Slovakia:

- A) temporary residence
- B) permanent residence or
- C) tolerated stay.

##### (A) Temporary Residence

A temporary residence permit:

- allows a foreigner to reside in the territory of the Slovak Republic, travel abroad, and return to Slovakia during the period during which the permit is valid
- is granted for a specific purpose which has to be documented in the temporary residence application
- is granted (for the first time) for a period of up to 2 years during which the purpose of the stay exists
- can be granted for the intended length of study (up to 5 years) to a foreigner applying for a temporary residence permit for the purpose of pursuing a course of study in Slovakia
- can be renewed for another 3 years provided the original purpose is still valid (e.g. if the foreigner still continues his/her studies)
- is issued in the form of a sticker placed in the valid passport
- is not subject to a legal claim

The temporary residence permit is a short-term permit which can, but does not have to

lead to the long-term residence of a foreigner in Slovakia. Before this permit expires, the foreigner must apply for an extension or prepare to leave Slovakia when the current permit expires. This permit is granted for the purpose of performing a specific activity, duty or task and allows the foreigner to stay in Slovakia for the period of time granted by the permit. This type of permit is required even for foreigners who do not normally need a visitors' visa to enter Slovakia but wish to pursue one of the following:

- business
- employment
- study
- special activity (research, scientific work, lecturing, sports, arts)
- family reunion
- service within the civilian units of the Armed Forces

In principle, a foreigner from a third country must apply for a temporary residence permit outside Slovakia. The application must be filed in person at the Slovak diplomatic mission established in the country which issued the applicant's travel document or where he/she resides. In special cases, a foreigner may ask the Slovak Ministry of Foreign Affairs and the Ministry of the Interior to designate a different diplomatic mission with the authority to accept his/her application for a temporary residence permit in the Slovak Republic.

##### Who can apply for a temporary residence permit in Slovakia<sup>78</sup>

There are certain groups of foreigners who may apply for a temporary residence permit in Slovakia through the relevant Alien Police Department. One such group, for example, is comprised of persons who do not need a visa to enter and stay in Slovakia. Another group is made up of those who apply for a temporary residence permit for the purpose of employment, provided that the work permit in this case can be granted without assessing the local job market

<sup>78</sup> Art. 24 par. 2 of the Act No. 48/2002 Coll. on Residence of Foreigners, as amended.

situation (according to a separate law). Certain relatives who intend to reunite with a foreigner who holds a residence permit in Slovakia (this does not apply to a spouse of such foreigner) also fall under this category.

According to the current laws, organisations other than the Ministry of Foreign Affairs of the Slovak Republic and the Slovak Ministry of the Interior are not authorised to make determinations concerning the residence of foreigners from third countries in Slovakia.

Based on the Asylum Act, the right to temporary residence in Slovakia also applies to all foreigners who are granted subsidiary protection. Unsuccessful asylum applicants who fear they would be subject to a serious threat of injustice or ill-treatment in their country of origin can ask for subsidiary protection (for more, please see Subsection 4.1.3.1 entitled Supplementary Protection with the Temporary Residence Permit).

##### (B) Permanent Residence

A permanent residence permit allows a foreigner to reside in the territory of the Slovak Republic, travel abroad, and return to Slovakia during the period when the permit is valid. The permit for a permanent residence is first issued for 5 years (the so-called "first permit"). After this time, the permanent residence permit can be renewed for an unlimited period (the so-called "further permit").

##### (B1) First Permit

The first permit can be issued to a foreigner who is:

- a spouse or a dependent relative of a Slovak citizen with a permanent residence in Slovakia
- an unmarried child (younger than 18 years of age) placed in the custody of a foreigner who is the spouse of a Slovak citizen with a permanent residence in Slovakia
- an unmarried child (younger than 18 years of age) of a foreigner with a permanent residen-

ce in Slovakia or an unmarried child (younger than 18 years of age) placed in the custody of a foreigner with a permanent residence in Slovakia

- an unprovided for child (older than 18 years of age) of a foreigner with a permanent residence in Slovakia; or
- a person whose permanent residence status in Slovakia is in the interest of the Slovak Republic

### (B2) Further Permit

The further permit for permanent residence can be issued to a foreigner who:

- was granted the first permit (which can be renewed after 5 years)
- was granted a temporary residence permit for the purpose of employment or business and has maintained continuous temporary residence in Slovakia for a minimum of five years prior to applying for the permanent residence permit, or if he/she is a family member of a person who has held a temporary residence permit for at least five years prior to applying for the permanent residence permit
- is a spouse of a foreigner with a permanent residence permit and has held a temporary residence permit for at least five years prior to applying for the permanent residence permit
- is a single parent dependent on the care of a foreigner with a permanent residence permit and has held a temporary residence permit for at least five years prior to applying for the permanent residence permit
- is a child (younger than 18 years of age) of a foreigner who holds the further permit
- already had had a further permit which expired because the foreigner was granted a long-term residence in another EU/EEA state or because he/she resided outside Slovakia for 6 years
- already held a further permit which was cancelled because the foreigner resided outside the EU/EEA territory for twelve consecutive months

When considering the application for a perma-

nent residence permit, the Alien Police Department will take into account the following: public interest, security issues, economic needs of Slovakia, the current state and development of the job market, public health, the personal, family and financial situation of the foreigner, the length of his/her stay in Slovakia as well as the extent of his/her integration into Slovak society.

The permanent residence permit can expire or be cancelled if:

- the first permit expired and the foreigner did not apply for the further permit
- the foreigner was sentenced to an administrative expulsion or had already been expelled from Slovakia
- the foreigner gained Slovak citizenship<sup>79</sup>
- the Alien Police Department cancelled the permanent residence permit based on the provisions of the Act on Residence of Foreigners

### (C) Tolerated Stay

A tolerated stay is a specific provisional type of residence, which can be granted to a foreigner repeatedly, provided that:

- there is an obstacle to the administrative expulsion of the foreigner from Slovakia
- the foreigner was offered temporary shelter in Slovakia
- his/her leaving Slovakia is not possible and detention is not effective
- is a minor child found in Slovak territory
- is a victim of the crime of human trafficking and is older than 18 years of age
- is necessary because of a need to respect his/her private and family life (according to Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, also called the “European Convention on Human Rights”)

<sup>79</sup> Because of the fact that Slovak citizens follow different rules for the permanent residence registration.

A foreigner’s time in police custody or time of serving a prison sentence is also regarded as a tolerated stay.

The tolerated stay permit is issued for a maximum of 180 days but it is possible to renew it repeatedly. The permit is granted at the discretion of the Alien Police Department after review of the case and the indicated reasons for the tolerated stay.

The tolerated stay permit is also issued for a shorter period of 40 days to persons who became victims of human trafficking. After this initial period it is possible to renew the tolerated stay permit for a further 180 days. The following is also regarded as a tolerated stay: a period starting on the day when the foreigner requests a voluntary return to the country of origin or the day when the foreigner withdraws his/her asylum application.

While the subsidiary protection, as defined in the Asylum Act, can be given only to the unsuccessful asylum seeker, the tolerated stay permit may be granted even to a foreigner from a third country (outside the EU/EEA) who never claimed asylum. A tolerated stay permit can be granted to a foreigner in Slovakia for certain designated reasons who cannot apply for a temporary or a permanent residence permit.

The tolerated stay permit may be granted to a foreigner who divorced a Slovak citizen and subsequently had his/her permanent residence permit cancelled, provided they have a child together. The position of the Ministry of the Interior, however, does not recognize the existence of a spouse as a reason for granting a tolerated stay permit.

### The Rights and Obligations of Foreigners holding a Tolerated Stay Permit

- In general, persons with this status cannot be employed or conduct business. However, some foreigners on a tolerated stay permit can be employed. This applies to those who hold a tolerated stay permit for the following

reasons:

- i. the requirement to respect their private and family life
- ii. the Slovak Government offered them temporary shelter
- iii. they are victims of the crime of human trafficking, their tolerated stay permit was renewed after the initial 40 days, and they were granted a work permit

- A foreigner who was granted a tolerated stay permit because of an obstacle to his/her administrative expulsion and who held the permit continuously for three years may apply for a temporary residence permit for the purpose of employment (he/she also requires a work permit).
- Foreigners who hold a tolerated stay permit have the right to a material need allowance. Based on the Act on Assistance in Material Need, both citizens and foreigners in Slovakia have the right to receive a material need allowance if the cumulative income of their household is below the minimum level specified by the law. However, persons holding a tolerated stay permit who wish to apply for financial assistance under this provision must provide a contact address to which benefits should be delivered. As those who hold a tolerated stay permit include individuals without homes, the requirement to provide an address can become an obstacle to securing this state benefit.
- They cannot have public health insurance (with the exception of the victims of human trafficking).
- They cannot receive any accommodation assistance.

If a foreigner applies for a tolerated stay permit because of an obstacle to administrative expulsion, the Alien Police Department must conduct a review to determine if the obstacle is credible – both before granting the permit and then continuously during the period when the permit is valid. If in reviewing a case of administrative expulsion the Ministry of the Interior of the Slovak Republic finds that there is a potential threat to a foreigner if he/she were to return to the coun-

try of origin, he/she will be granted a tolerated stay permit.

In both cases, it is ultimately the Ministry of the Interior – through the Bureau of Border and Alien Police or the Migration Office – which determines whether or not there is a potential threat to a foreigner if he/she were to return to the country of origin, and grants a tolerated stay permit.

The regulation of free movement and stay of foreigners within the territory of the Slovak Republic is thus fully within the authority of the Ministry of the Interior. As mentioned above, other ministries (e.g. Ministry of Foreign Affairs or Ministry of Labour, Social Affairs and Family) may be involved to some degree in such affairs depending on the legal status of the migrant concerned.

#### **Renewal of the Residence Permit**

If a renewal of a residence permit is required, the foreigner has to apply for renewal before the valid permit expires.

The application for the renewal of a temporary residence permit must include the same documents required for the first application. The application must be filed in person at the respective local Alien Police Department.

As for the permanent residence permit, the foreigner must apply for a further permit at least 60 days before the first permit expires (Art. 38, Pars. 1a) and 1b) of the Act on Residence of Foreigners).

If the applicant meets these conditions and the police department does not reach a decision on the new application before the expiration of the original permit, then the original permit remains valid until the new decision is rendered. This provision protects the status of the applicant in case of police inactivity.

After considering the application, the Alien Police Department can renew the temporary resi-

dence permit: (a) for a maximum of 180 days if the permit was issued for the purpose of seasonal work for less than 180 days and if the completion of work requires a permit, (b) for a maximum of 3 years if the anticipated stay of the foreigner in Slovakia is at least three years, or (c) for a maximum of 5 years if the foreigner has maintained long-term residence in Slovakia.

#### **Change of the Purpose of the Stay**

The temporary residence permit is granted for a specific purpose listed on the application. If a foreigner wishes to pursue an activity other than the one for which the permit was granted, he/she can apply for a change of purpose.

A change of purpose – which would require a change of the permit – can be made only in the case of a temporary residence permit. The foreigner can apply in Slovakia only if the request involves a change in the purpose of employment or business, or a change from the purpose of study to the purpose of employment, provided that this foreigner has completed his/her studies in the same area in which he/she plans to work.

Such a request is not allowed in the case of a foreigner granted a temporary residence permit for the purpose of seasonal work and a foreigner with a temporary residence permit for the purpose of family reunification with another foreigner who holds or held a temporary residence permit for the purpose of employment or business.

In the case of a tolerated stay permit, it is possible to apply for a change of purpose if the circumstances and the reason for granting the permit have changed significantly. This is however not explicitly a change of the permit but the foreigner must apply for a new tolerated stay permit.

#### **Integration Measures in the Process of Granting a Temporary Residence Permit**

There are no specified integration goals attached to the process of granting temporary residence permits. When granting these permits,

the authorities primarily take into account the maintenance of public order, public health and security. This legal status of temporary residence is not intended to lead to permanent settlement or integration other than by long-term temporary residence in Slovakia. This intention is reflected in the provision of the Act on Residence of Foreigners which allows a foreigner to apply for permanent residence after 5 years of temporary residence. Furthermore, current legislation denies some categories of migrants the access to legal employment or public health insurance (e.g. a spouse of a foreigner with a temporary residence permit for the purpose of employment) which further complicates integration for migrants with this status.

#### **Integration Measures in the Process of Granting a Permanent Residence Permit**

When granting a permanent residence permit, the authorities are required to consider the extent of a foreigner's integration with Slovak society. However, the Act on Residence of Foreigners does not make clear the criteria for assessing the extent of integration. The application requires predominantly objective facts independent of the applicant's personal intentions, such as the purpose of the stay and the applicant's relationship to the sponsor (marriage or other family relationship), probity, financial and material security during period of residency in Slovakia, etc. When renewing the permanent residence permit, the Alien Police Department can request proof that the foreigner attended a Slovak language course.

#### **Integration Measures in the Process of Granting Citizenship**

Determining a foreigner's integration into Slovak society is an important aspect of considering an application for Slovak citizenship. Applicants are tested in several areas specified by law. A foreign citizen of a third country (outside EU/EEA) applying for Slovak citizenship needs to prove the validity of certain objective facts as well as demonstrating his/her integration into Slovak society.

Apart from cases exempt by law, the applicant must meet a minimum length of residence requirement – 8 years of continual permanent residence in Slovakia immediately prior to applying for citizenship. The rationale for this requirement is that integration and the time of residence in the country are directly proportional.

Apart from meeting the above-mentioned condition, an applicant needs to prove his/her command of the Slovak language as determined by:

- (a) an interview during which the applicant is questioned about his/her personal information and circumstances, his/her family or intimates and general topics such as history, geography and the socio-political development of the Slovak Republic;
- (b) reading aloud a randomly chosen article of at least 500 words in length from the Slovak press and given to the applicant shortly before the reading test;
- (c) writing a summary of the given article in 30 minutes.

Any exceptions to these requirements are listed in the Citizenship Act. Some groups of foreigners have certain advantages, such as spouses of Slovak citizens, refugees and persons whose stay would be advantageous to the Slovak state. Certain groups do not have to prove command of the Slovak language and a general knowledge of Slovakia. Under this category fall children younger than 14 years of age and applicants who have made a significant contribution to Slovakia in the areas of economics, science, technology, culture, society or sports. The requirements for language proficiency and general knowledge can also be waived in the interest of the Slovak Republic for any other reason. In the case of such applicants, a statement from a relevant state body is sufficient.

#### 4.1.4 Labour Market Access

Employment of foreigners from third countries is governed by a different legal regime than employment of the citizens of EU/EEA member states. There are different rules for the employment of asylum seekers, foreigners with a tolerated stay permit or those who are provided subsidiary protection.

The legislative framework consists of the following acts: the Act on Residence of Foreigners No. 48/2002 Coll., as amended; the Act on Asylum No. 480/2002 Coll., as amended, the Employment Services Act No. 5/2004 Coll., as amended; the Act on Illegal Work and Illegal Employment No. 82/2005 Coll., as amended; and Labour Code - Act No. 311/2001 Coll., as amended.

Whether a foreigner requires a work permit depends on the provisions of the Employment Services Act, the kind of employment he/she wants to pursue, the type of residency and other facts. If the law stipulates that a foreigner requires a work permit and a temporary residence permit for the purpose of employment, he/she needs to apply for both before becoming employed or any beginning any other activity in Slovak territory. Otherwise he/she is in breach of the law for illegal work. The Act on Illegal Work and Illegal Employment specifies illegal work as dependent work by a foreigner for an employer without a work permit and a temporary residence permit for the purpose of work as required by the law.

A work permit is not required if the foreigner holds a permanent residence permit in Slovakia, a temporary residence permit for the purpose of a family reunion for a period longer than 12 months or for the purpose of study<sup>80</sup>, or if he/she maintains the status of a Slovak Living Abroad<sup>81</sup>. This exemption also applies to recognised refugees and asylum seekers whose asylum application has not been decided upon within one year from the beginning of the asylum process or to persons who have been offered temporary

shelter in Slovakia.

##### 4.1.4.1 Asylum - Labour Market Access for Asylum Seekers and Refugees

###### Separate Legal Regime

###### (a) Asylum Seekers

Asylum seekers whose asylum application has not been decided within one year are not required to hold a work permit with the exception of those foreigners whose asylum application has been dismissed as “unfounded” or “impermissible”. Therefore, an asylum seeker whose application has not been lawfully decided upon within 1 year can obtain employment if he/she meets the required qualifications.

###### (b) Foreigners with Subsidiary Protection

Persons who are provided subsidiary protection because they are subject to a real threat of ill-treatment in their country of origin can be awarded a work permit without consideration for the condition of the Slovak labour market.

###### (c) Foreigners with Tolerated Stay Permits

In general, foreigners with tolerated stay permits cannot be employed, work on contract or conduct business. However, there are certain exceptions to this rule. These exceptions apply to foreigners who:

- were offered temporary shelter and therefore are not required to have a work permit;
- were granted a tolerated residence permit for the reason of respect for private and family life and may therefore obtain a work permit without consideration for the condition of the Slovak job market;
- are the victims of human trafficking and hold tolerated residence permits that were extended after 40 days and who therefore can obtain work permits without consideration for the condition of the Slovak job market.

As has already been noted, asylum seekers are not required to hold a work permit in Slovakia if the authorities have not made a final decision

regarding their application within one year.<sup>82</sup> The legal department of the Migration Office issues a certificate confirming that they are asylum seekers entitled to work because the asylum procedure has taken more than a year. Such asylum seekers can legally work in Slovakia in any area they wish.

Experts in migration and asylum regard this provision very highly as it allows these asylum seekers to integrate into society and learn the Slovak language more easily. Thanks to various projects financed mainly by the Community Initiative EQUAL, many asylum seekers and refugees were able to attend re-qualification and educational courses during the period of 2005 – 2008. These courses helped them gain qualifications and skills that allowed them to compete in the labour market. According to experts it would be beneficial to allow these asylum seekers to work legally even earlier (e.g. after six months) thus preventing illegal employment, abuse of migrants as a work force and psychological discomfort resulting from being unable to take an active part in society. Experts maintain that working asylum seekers would not be dependent on state social support and their eventual integration into society would be smoother. However, this would also mean that asylum seekers would gain a considerable advantage over other groups of migrants who must meet the conditions of the Act on Residence of Foreigners in order to work legally in Slovakia. We believe that it would be beneficial to devote greater attention to this aspect of the lives of migrants in Slovakia.

Refugees have the same rights as Slovak citizens in the labour market. They do not need a work permit and are not in any other way restricted in the area of employment. However, in many cases, practical integration into the labour market is complicated by the fact that a refugee's command of Slovak may not be sufficient to allow him/her to compete with Slovak speakers and that the higher education degrees they may have obtained in their home countries are not

usually recognised by Slovak authorities.

##### 4.1.4.2 Migration - Labour Market Access

###### General Legal Regime

The procedure of employing foreigners consists of two main steps – granting a work permit and subsequently a temporary residence permit for the purpose of employment. Before coming to Slovakia, the foreigner who wishes to work in the SR must apply for a work permit, either in person, through his/her future employer or the legal entity or natural person he/she will be working for. This application must be filed with the appropriate Labour Office in the district where the foreigner plans to work.

The application must include a declaration by the employer that the foreigner will be employed by him/her, and must specify the type and place of work. These three points of information are required and are attached to a particular work permit. The work permit application must also include the following documents:

- a copy of a valid ID
- an educational certificate (a diploma or other certificate officially translated into Slovak and verified)
- full power of attorney, given by the foreigner to the future employer, for filing the work permit application and performing all related acts (if the application is filed through the future employer)

The Labour Office may also request the following:

- a confirmation that the future employer of the foreigner duly pays taxes, or similar documents
- other documents based on bilateral international agreements
- an extract from the business registry of the future employer

When deciding on the work permit application, the Labour Office usually considers the condi-

<sup>80</sup> However, only for a maximum of 10 hours' work weekly.

<sup>81</sup> Act 474/2005 Coll. on Slovaks Living Abroad.

<sup>82</sup> The Legal Clinic of the University in Trnava: FAQ.

tion of the labour market, checks the number of job applicants in the requested or similar professions, and examines the reasons for employing the foreigner as given by the employer. According to the Act on Employment Services, the Labour Office must consider the application within 30 days from the day it was delivered and subsequently inform the applicant of its decision on a separate form. The work permit may be granted for a maximum of 2 years. It can be repeatedly extended, but only for up to two years. The only condition for renewal is that the applicant stays with the same employer.

#### 4.1.5 Returns from Slovakia to the Country of Origin

This section of the report describes the way Slovak authorities organise the return of foreigners to their countries of origin. We highlight the differences among the various categories of third country nationals – those who were denied entry into Slovakia; those whose stay in the country was illegal; and those whose residence permit expired.

##### 4.1.5.1 Forced Returns – Administrative Expulsion<sup>83</sup>

The conditions for administrative expulsions and relevant proceedings are specified in the Act on Residence of Foreigners, No. 48/2002 Coll., as amended (Arts. § 56 through § 61).

Further legal sources used in relation to administrative expulsion include the Convention for the Protection of Human Rights and Fundamental Freedoms (also called the “European Convention on Human Rights”), the United Nations Convention on the Rights of the Child; Council Decision 2004/573/EC of 29 April 2004 on the Organisation of Joint Flights for Removals from the Territory of Two or More Member States, of Third-Country Nationals who are Subjects of Individual Removal Orders; and Council Directive

<sup>83</sup> The information was supplied by the Directorate of Border and Alien Police of the Ministry of the Interior.

2003/110/EC of 25 November 2003 on Assistance in Cases of Transit for the Purposes of Removal by Air. On the national level, it is necessary to take into account the Police Force Act No. 171/1993 Coll. (considering the recorded minutes from explanatory proceedings and when identifying foreigners) and the Act on Administrative Proceedings and Internal Regulations No. 71/1967 Coll.

The term “expulsion” can in general be explained as an involuntary transfer of a person from the territory of the Slovak Republic. Slovak Republic authorities recognise two types of expulsion: judicial expulsion and administrative expulsion.

Judicial expulsion is a penalty imposed by the court according to Article §65 of the Penal Code (Act No. 300/2005 Coll.). Based on this provision, as required to protect the safety of people or property or because of some other public interest, the court may impose the penalty of expulsion on an offender who is neither a citizen of the Slovak Republic or of the other EU/EEA member states nor a refugee. This penalty can be imposed for one to fifteen years.

Administrative expulsion is the decision of an administrative body to expel a foreigner from Slovakia. The Act on Residence of Foreigners defines it as a police decision to end the foreigner’s stay in Slovakia and determine the deadline for leaving the country as well as the length of the ban on return. Group expulsion of several foreigners based on one decision is not allowed. The responsible police department is the first decision-making body in the administrative expulsion proceedings. The Directorate of the Border and Alien Police of the Ministry of the Interior makes decisions in the second stage of the proceedings. The foreigner can appeal decisions on administrative expulsion within 15 days from receiving a decision. The police department which made the original decision will then review the appeal and if the appeal is fully accepted (the so-called “auto remedy”), the police department will issue a new decision overruling the original one. If the appeal is not accepted during the first stage, the

police department will forward it to the Directorate of Border and Alien Police within 30 days of receiving it. In general, the appeal procedure does not serve as an instrument of deferral (the only exception is described below). The authorities are empowered to move ahead with expulsion proceedings immediately after a decision is rendered, even if a foreigner appeals it.

A foreigner who receives a decision regarding administrative expulsion is required to leave Slovakia by the date specified in the document, but no later than 30 days from the date the decision was issued. If the foreigner does not leave the country within this specified period, the police department will implement the administrative expulsion. If the decision on administrative expulsion concerns a foreigner who was denied asylum or subsidiary protection pursuant to the Asylum Act (No. 480/2002 Coll. as amended), the police set the deadline for leaving the country within 30 days of the date the decision went into effect. This is the only case when the appeal serves as a deferral instrument. A foreigner released from a police detention facility for foreigners must leave the country within 30 days from his/her release.

The police can issue a decision on the administrative expulsion of a foreigner and set a ban on his/her return only if there is reason to do so. These reasons are explicitly defined in the Act on the Residence of Foreigners. The police department will expel a foreigner and set a ban on return

*(a) for up to ten years, but at least five years, if the foreigner*

1. constitutes a danger to the security of the state, public order or health, rights and freedom of others, or nature (in specified areas)
2. was lawfully sentenced for a deliberate crime and he/she was not sentenced to expulsion

*(b) for five years, if the foreigner*

1. violates regulations on narcotics and psy-

chotropic substances

2. when lawfully asked for identification presents a false or a manipulated document or the identification document of another person
  3. performs activities other than those for which he/she has been granted a temporary residence permit
  4. married with the specific goal to obtain a residence permit
- (c) for up to five years, but at least one year, if the foreigner*
1. illegally enters the territory of the Slovak Republic or illegally remains in the country
  2. refuses to prove his/her identity in a credible way
  3. resides in Slovakia based on an international treaty or a Slovak government decision and acts in conflict with said treaty or the decision
  4. gives false or incomplete information in the residence permit proceedings
  5. neglects to inform the authorities of a change in the purpose for which his/her residence permit was issued
  6. impedes the execution of a state body decision
  7. in any other way seriously or repeatedly violates binding legal rules

The Act on the Residence of Foreigners specifically addresses the conditions for the expulsion of certain categories of persons, such as EEA citizens or their relatives (so-called “privileged foreigners”), foreigners who are victims of human trafficking, etc. In the case of these persons, legal safeguards relating to administrative expulsion have been strengthened. As a result, police departments can expel a foreigner only if he/she presents a serious threat to state security or public order and health. An indication of a serious threat posed by a foreigner to state security, for example, would be the foreigner’s conviction for an exceptionally serious criminal offence. A threat to public health **is not** considered a valid reason for expulsion if a foreigner becomes ill more than three months after entering

Slovak territory.

The police department cannot expel a foreigner if he/she is:

- an EEA citizen who has legally resided in Slovakia for at least ten years, unless this foreigner presents a security threat
- a child younger than 18 years of age, unless expulsion is in the interest of the child – for example, if the child is being expelled together with his/her parents – in accordance with the United Nations Convention on the Rights of the Child
- a foreigner who contracted an illness which is a threat to the public health after he/she was granted a residence permit
- a foreigner who is a victim of a human trafficking crime and who was granted a tolerated stay permit for 40 days (according to the Article §43 Par. 7 of the Act on Residence of Foreigners). Within these 40 days the foreigner has to decide whether he/she will cooperate with the respective authorities in a criminal investigation

Furthermore, the police department cannot expel a foreigner if there are obstacles to his/her administrative expulsion, as listed in Article §58 Pars. 1 and 2 of the Act on Residence of Foreigners. This provision states that a foreigner cannot be expelled to a country where:

- his/her life would be in danger because of his/her race, nationality, religion, political views, or because he/she belongs to a certain social group
- he/she could be subject to torture or cruel, inhuman, or degrading treatment or punishment
- he/she was or could be sentenced to death
- his/her freedoms would be infringed upon because of his/her race, nationality, religion, political views, or because he/she belongs to a certain social group. This does not apply in a case in which the foreigner presents a threat to the security of the Slovak state or if he/she was sentenced for an exceptionally serious

crime and constitutes a danger to the Slovak Republic

If the foreigner does not leave the country by the established deadline, the responsible police department will implement the decision on administrative expulsion. Apart from the above-mentioned case, expulsion can be carried out by the police in the following cases:

- if there exists a reasonable expectation that the foreigner will mar or hinder the execution of the decision on administrative expulsion,
- if, based on an international agreement, the foreigner is to be returned to the state which is a party to this agreement
- if the foreigner cannot travel on his/her own, because he/she does not have a valid travel document or the financial means to travel

The police department will also implement a decision on expulsion issued in another EEA state if:

- (a) the foreigner was sentenced in this state to a prison sentence of at least 1 year
- (b) there is reasonable suspicion that the foreigner committed or tried to commit a crime in this state, or
- (c) the foreigner disobeyed the law governing the entry and stay of foreigners in this state

The decision on expulsion issued in another EEA state will not be implemented in the case of a foreigner who is a family member of an EEA citizen (a co-called “privileged foreigner”).

Before implementing such a decision, the police must obtain a statement from the state which issued the decision or the EEA state where the foreigner legally resides. The police department must also ensure that the expulsion meets all national and international regulations and must fully inform the state which issued the decision of the proceedings. There are certain restrictions, however, on implementing expulsion. Based on the Act on Residence of Foreigners, the police

department will not implement the decision on administrative expulsion if the foreigner:

- (a) does not have a valid travel document and it is not possible to arrange a replacement through the diplomatic mission of the state of which the foreigner is a citizen, the detention period has ended and it is not possible to ensure that the foreigner leaves the country with his/her foreigner’s passport
- (b) requested a voluntary return before the decision on administrative expulsion is implemented; this does not apply if the voluntary return does not happen within 90 days.

The foreigner who is administratively expelled may be allowed to return to Slovakia on humanitarian grounds, mainly in cases of death or serious illness of his/her relative or close person, or if the stay of such a foreigner is in the interest of the Slovak Republic and the issue cannot be dealt with abroad. EEA citizens or privileged foreigners who were administratively expelled from Slovakia can ask authorities to reverse the decision if they can prove that the circumstances which provided the reason for expulsion and the entry ban have significantly changed.

#### 4.1.5.2 Assisted Voluntary Returns<sup>84</sup>

The conditions for assisted voluntary returns are regulated by:

- the Agreement on Co-operation between the International Organization for Migration and the Ministry of the Interior of the Slovak Republic on the Assistance to the Rejected Asylum Seekers and Illegal Migrants with the Return to the Country of Origin (signed in 1998)
- the Asylum Act
- the Act on Residence of Foreigners

#### (a) Assisted Voluntary Returns of the Asylum Seekers to their Country of Origin (pursuant to the Asylum Act)

<sup>84</sup> This information was supplied by the Bratislava office of the Office of the International Organization for Migration (IOM) on 25 November 2008.

According to Article § 44 Par. 2 of the Asylum Act, “The Ministry shall co-operate with the International Organization for Migration in arranging the movement of migrants who want to return voluntarily to their country of origin or to a third country.” The International Organization for Migration (IOM) offers free assistance to unsuccessful asylum seekers as well as those who decide to end asylum procedures voluntarily and wish to return to their country of origin.

The asylum seeker who decides to return to the country of origin – either in the course of the asylum proceedings or after his/her application has been rejected – can request assistance from the IOM. An applicant for voluntary return will register with the *Programme of Assisted Voluntary Returns* by filling out an official IOM registration form supplied by the IOM staff during their visits to the asylum facilities of the Migration Office. If the applicant does not hold a valid travel document, he/she can ask IOM for representation when arranging for replacement travel documents. IOM files applications for replacement travel documents directly at the diplomatic missions of foreign states. The preparation and realization of the return includes assistance with obtaining replacement travel documents, air tickets, transport from the place of residence to the airport, check-in and the passport control at the airport and also assistance at transit airports. Voluntary returns are carried out mostly by air transport and, in exceptional cases, by other modes of travel.

As stipulated in the Act on the Residence of Foreigners, an asylum seeker who decides to withdraw his/her application and voluntarily return is granted a tolerated stay permit for 90 days from his/her registration with the Programme of Assisted Voluntary Returns. Article § 47a of the Asylum Act states: “The foreigner who withdraws his/her asylum application and asks for a voluntary return to the country of origin, can be placed by the Ministry in the residence centre and receive free food and basic sanitary supplies during the length of the tolerated stay.” This article provides for a foreigner to stay in an

asylum facility of the Migration Office during the planning phase and until the voluntary return itself is carried out. At any time, the foreigner can freely decide to leave the programme and not return home.

**(b) Voluntary Returns of Illegal Migrants Detained in the Police Detention Facilities for Foreigners (pursuant to the Act on the Residence of Foreigners)**

According to the Act on the Residence of Foreigners, every illegal migrant detained in a police detention facility has the right to request an assisted voluntary return through IOM. Article § 59 Par. 4 b) of the Act on Residence of Foreigners states that “the police department will not implement the decision on administrative expulsion if the foreigner requests a voluntary return before the decision on administrative expulsion is implemented; this does not apply if the voluntary return is not carried out within 90 days.”

If a foreigner expresses an interest in a voluntary return, the IOM operational staff will register him/her into the Programme of Assisted Voluntary Returns. If the applicant does not have a valid travel document he/she can ask the IOM for representation when arranging for replacement travel documents. The IOM also provides assistance with air tickets, transport to the airport, and assistance at departure and transit airports.

Based on Article § 62 Par. 2 of the Act on the Residence of Foreigners, “claiming asylum or requesting a voluntary return does not lead to the release of the detained foreigner. Pursuant to the Asylum Act, the asylum proceedings are not affected by the foreigner’s detention.” This article specifies that until his/her return, a foreigner must remain in one of the police detention facilities in towns Medveďov or Sečovce. The police detention unit also provides transport to the airport where the returning foreigner is met by IOM staff that assists him/her with check-in, passport and security control. The return itself is carried out without police assistance.

**(c) Voluntary Return of Illegal Foreigners Not Detained in Police Detention Facilities (pursuant to the Act on the Residence of Foreigners)**

Every illegal migrant staying in the territory of the Slovak Republic who was not detained by the police has a right to request an assisted voluntary return through the IOM (based on the Act on the Residence of Foreigners). Illegal migrants who visit the IOM offices in Bratislava or Košice will receive all necessary information on the planning and realization of the voluntary return to their country of origin. During the preparatory stage, the foreigner will not be administratively expelled or detained and placed in a police detention facility for foreigners.

On the day of registration with the Programme of Assisted Voluntary Returns, the illegal migrant is granted a tolerated stay permit. Pursuant to Article § 43 Par. 2 of the Act on Residence of Foreigners “a maximum 90-day period beginning on the date when the foreigner requests a voluntary return in writing or withdraws his/her asylum application is also regarded as a tolerated stay.” During this period, the registered foreigner receives comprehensive assistance with obtaining replacement travel documents, air tickets, and help at the airports in the host and transit countries.

## 4.2 Relation to Other Policies

There is an apparent though often peripheral relationship between migration issues and the foreign, development, employment and social policies of Slovakia. This peripheral relationship is mainly due to the marginal position migration and asylum issues occupy compared to other aspects of policy. Discussion and coordination of work in this area by relevant institutions is extremely important since carrying out policy regarding migrants is usually dependent on the cooperation of several ministries. Two interdepartmental commissions play a key role in this work.

The working commission for coordinating tasks and activities related to the Strategy of Migration Policy of the SR meets under the auspices of the Migration Office. The commission is comprised of the representatives of the Interior, Foreign, Justice, Labour, Education, Finance and Health Ministries, as well as the Office of the Government and Statistical Office, the Association of Towns and Communities of Slovakia, the Union of Towns and Cities of Slovakia, UNHCR, IOM, and the League of Human Rights.<sup>85</sup> The duties undertaken by commission members are regularly monitored and all institutions inform each other about their activities. The second *Inter-departmental Commission on Labour Migration and Integration of Foreigners*, under the leadership of the Ministry of Labour, Social Affairs and Family of the SR, focuses on the issues of migrant workers’ social security and the integration of foreigners into Slovak society.

Foreign and development policies in Slovakia are governed by the Ministry of Foreign Affairs. Allocation of development aid is managed by the Slovak Agency for Official Development Aid formed on 1 January 2007. 2007 also brought new agreements on development co-operation with the Serbian Republic and Montenegro. Some projects supported by the Ministry of Foreign Affairs target states which were formerly the countries of origin of many illegal migrants (e.g. Moldova and Bangladesh). There are aspects of foreign policy related to the problem of illegal migration. The Foreign Ministry’s contribution to building partnerships with the countries of origin of illegal migration is noted in the yearly General Report on the Accomplishment of the Tasks Related to Migration Policy Strategy for 2007.

<sup>85</sup> General report on the implementation of tasks related to the Strategy of Migration Policy in the Slovak Republic adapted for the conditions specific to individual governmental departments in 2007 (as of 11 June 2008). The Strategy of Migration Policy in the Slovak Republic was adopted by the Decree of the Slovak Government no. 11 on 12 January 2005 (also herein designated as the General Report). The document is available only in Slovak: Súhrnná správa o stave plnenia úloh vyplývajúcich z rozpracovania Koncepcie migračnej politiky Slovenskej republiky na podmienky jednotlivých rezortov za rok 2007. Available online at: <http://www.minv.sk/?zamer-migracnej-politiky-slovenskej-republiky&subor=6614> (consulted on 13 November 2008).

The Ministry of Foreign Affairs is responsible for concluding bilateral readmission agreements. The agreement between the European Communities and the Russian Federation, which became effective in 2007, did not require any special implementation measures by the SR. Readmission agreements were also signed with the governments of Croatia, Greece, Lebanon, and Albania. The Slovak diplomatic missions abroad and the police attachés posted to them take an active part in the early warning system monitoring the growth of migration. In their intelligence reports they highlight the need to address migration issues in order to prevent any negative impact which – among other things – may be eliminated by means of readmission agreements. The Ministry of Foreign Affairs immediately analyzes intelligence reports and forwards the results to the Ministry of the Interior.<sup>86</sup>

The Department of Migration and Integration of Foreigners at the Ministry of Labour, Social Affairs and Family of the Slovak Republic produces proposals on bilateral agreements in the area of employment and social security. It also co-ordinates concluding or termination of such agreements, negotiating details within the scope of its authority, evaluating the way the Ministry will meet obligations arising from these agreements, while always co-operating with the responsible units of the ministry.

Individual projects related to migration already include some form of assistance to migrants in the country of their origin in order to help stabilise populations which tend to migrate. This assistance can be classified as a form of development aid. For example, the IOM project “Enhancing Mechanisms and Harmonising Standards in the field of Voluntary Return of the Irregular Migrants in the EU Member States of Central Europe” financed by the European Refugee Fund in 2006 – 2008, offered migrants a reintegration grant of 1.500 USD for starting up small businesses upon their return to their country of origin. This financial support was allocated to the applicants based on a business

<sup>86</sup> General Report.

plan written with help of the IOM or social workers in the reception facilities prior to the migrants' return home. The returning migrants also received financial support to cover basic needs upon their return to their country of origin. This project is meant to ensure that migrants become gainfully employed or establish profitable businesses in their country of origin to prevent them from repeatedly migrating.<sup>87</sup>

<sup>87</sup> IOM in Slovakia 2005 – 2006. Activity Report. IOM Bratislava 2006, p. 13.

This final chapter of this report provides a summary of both positive and negative aspects of the asylum and migration system in the SR. It is divided into three subchapters – on migration policy, on asylum policy, and concluding notes – but their topics notably overlap, as in many cases it is not possible to establish a clear division between migration and asylum policies.

## 5.1 Realm of Migration Policy

Many experts on migration in the SR agree that, despite membership in the EU, migrants do not currently consider Slovakia to be a primary country of destination. In spite of the recent pace of economic growth, the country is not a destination for migrants when compared to other Member States. However, the experience gained by the IOM in operating its Migration Information Centre indicates a different scenario, namely that among potential migrants there is a growing interest in living and working in Slovakia, an interest so strong that it is essential for state institutions to provide financing for establishing and maintaining counselling centres for migrants. Since its establishment almost three years ago, the Migration Information Centre has served over 700 clients and has provided more than two thousand consultations – to migrants living or planning to live in the SR as well as their relatives, friends, and acquaintances. As the IOM has emphasised, employers from different regions of the country have a keen interest in employing foreign labour. These employers claim that a large part of officially unemployed Slovak citizens is non-employable, or that they simply are not able to fill their vacancies with Slovak citizens.<sup>88</sup>

Between 2005 and 2008, several projects financed by the EU and the SR through the Community Initiative EQUAL (or other programmes) were implemented in the SR to provide assistance to migrants of different types.<sup>89</sup> These projects

<sup>88</sup> Interview with IOM Head of Office Ms Zuzana Vatrálová and Senior Project Manager Ms Soňa Andrášová.

<sup>89</sup> For example, the mentioned EQUAL projects People like us, JOPA – Language and Professional Assistance for Asylum Seekers and Recognized Refugees, or Migration Information Centre.

# 05

## Analysis of Asylum and Migration Systems in the SR

remarkably and positively filled gaps in various fields related to asylum, migration, and integration of foreigners in the country. The major shortcoming of these initiatives is that they rarely continue after their initial mandate is accomplished and their funding is exhausted. This lack of continuity and the inability or unwillingness to sustain such projects financially contradicts the clearly articulated intention of achieving long-term sustainability for projects financed through the Community Initiative EQUAL. The closing of the Migration Information Centres is but one significant example of a project that offered essential services but could not continue once project financing was terminated. The closing of these centres has left a regrettable gap in providing essential counselling services to migrants of all categories living or planning to live in the country.<sup>90</sup>

A collection of recommendations for the improvement of migration policy was formulated by Bargerová and Divinský (2008) who pointed out specific shortcomings in the Slovak migration system which require, especially from the government, more attention.<sup>91</sup> The main problem lies with the fact that the SR has so far not articulated its migration doctrine. At the same time, a debate on different aspects and the impact of migration is largely absent as a political topic. Nor is there any strategy for the management of labour migration into the country. In the area of legislation, there exist several problematic areas inherently linked to the entry or residence of foreigners in the SR. There are also shortcomings in the area of employing foreigners as well as in such a vital area as health care for foreigners.

A central state institution in charge of the immigration agenda is sorely missing in Slovakia – therefore the establishment of the Immigration and Naturalisation Bureau of the SR in 2010 is a very important development. Its creation should improve the effectiveness of migration management in the country. This office will em-

brace a whole spectrum of tasks related to the presence of foreigners in the SR – from arrival through residency and departure. Related institutions hope that the establishment of this office will also contribute to improved coordination in all fields related to the issue of migration.

Moreover, it is essential that reliable information is available and that counselling centres are established for foreigners in the SR. At the time of writing, no such centres were operating in the SR. Such facilities should be at least partially financed by the state to ensure their long-term existence and keep them from becoming purely project-dependant.

## 5.2 The Realm of Asylum Policy

Asylum policies have undergone several abrupt changes during the existence of independent Slovakia and these changes have often been criticised both by national and international institutions and organisations. As indicated in the publication *Needs of Migrants in Slovakia*, as well as in Divinský<sup>92</sup>, state institutions and non-governmental organisations have differing opinions about the number of foreigners granted asylum in the SR. Asylum seekers and some representatives of NGOs consider the asylum policy of the SR to be too restrictive, the assessment of criteria for asylum too rigorous, asylum procedure too strict, and conditions for the successful integration of recognised refugees insufficient.<sup>93</sup>

In general we note that the transposition of EU legislation into the Slovak legal system has had a positive impact on the asylum policy in the country. Despite the fact that Slovakia usually enacts only the minimum standards required by the relevant directives, the adoption of even these minimum standards represents a positive contribution to the asylum and migrant system

92 Divinský, 2006. *Zahraničná migrácia v SR: Potreba nových prístupov* <http://www.euractiv.sk/socialna-politika/analyza/zahrancna-migracia-v-sr-potreba-novych-pristupov>. The original version of this analysis was published in the magazine *Zahraničná politika*, No. 3/2006. SPPA (further in here Divinský SPPA).

93 Ibidem.

of the SR. A report evaluating the integration of asylum seekers and recognised refugees in the SR prepared by the so-called Multifunctional Team (comprised of representatives of the UNHCR, NGOs and state institutions) states that “in contrast to the past, visible and positive changes have taken place regarding the conditions in which asylum seekers and recognised refugees live in the Slovak Republic.” This positive growth, the report goes on to note, is reflected in “the improvement of the quality of accommodation facilities, fulfilment of basic needs, especially of asylum seekers, and in the initialisation of employment activities of those asylum seekers who are allowed to work.” The report also proposes specific solutions for the elimination of persistent shortcomings.<sup>94</sup> So far, no in-depth analysis of the impact of EU legislation in the field of asylum on the Slovak legislative system exists. It is therefore impossible to look more closely at the process or results of legislative changes which have occurred since 1993. Important primary research of this kind is currently unavailable in Slovakia. To compound the problem, legislation on asylum is amended almost every year; the most recent amendment to the Act on Asylum entered into force on 1 December 2008. Therefore, it is at present a practical impossibility to debate the impact of this legislation. It is essential to monitor the situation closely and assess it carefully as data and knowledge of the effects of legislation in this field accumulate over time.

We nevertheless agree with Divinský’s opinion, that in the SR

within the realm of cross-border migration, the asylum issue had been for a long time considered dominant. It was not really rightfully a subject of a certain ‘hypertrophy’ of interest on the part of state institutions, media or ordinary people, but particularly of international organisations and NGOs. In particular, an absolute majority of NGOs addressing the issue of migrants in the SR selected the categories of asylum seekers and recognised refugees as the target group of their work (counselling, assistance etc.).<sup>95</sup>

94 UNHCR: *Hodnotenie začleňovania žiadateľov o azyl a azylantov v Slovenskej republike s ohľadom na ich vek, pohlavie a iné odlišnosti* (September 2007). Available online at: <http://www.unhcr.sk/slovakia/images/stories/pdf/svgagdm07.pdf> (consulted on 23 September 2008), p. 23-24.

95 Divinský, SPPA.

Yet this situation is changing, however gradually.

The UNHCR asserts that in the area of migration and asylum seekers from different countries and also criminal individuals involved in lucrative trafficking in human beings, the legislative forces of Slovakia (as well as Hungary, Poland and Slovenia) target only illegal migration rather than focusing as well on providing assistance to asylum seekers. The above-mentioned September 2007 agreement between the UNHCR, the Human Rights League and the Bureau of Border and Alien Police regarding the monitoring of borders and international airports seeks to provide asylum seekers with the assistance and protection to which they are entitled under international law.<sup>96</sup>

The UNHCR commends the Government of the SR for consulting and working closely with experts from the UNHCR on proposals for new asylum legislation and incorporating a number of their recommendations. The UNHCR particularly values the introduction of subsidiary protection, the implementation of which resolves many previously open cases (those of a majority of Iraqi asylum seekers in the SR, for example). The commission also deems of equal importance the opening of labour market to persons who were granted subsidiary protection and to asylum seekers who have been in the asylum procedure for over a year. Many of these individuals are already employed and have left state accommodation facilities. Nevertheless, as the transposition of EU directives is not yet complete, UNHCR lawyers are concerned that proposals for changes offer too many formal reasons that an application for asylum may be considered impermissible or ‘obviously unjustified’. As the UNHCR states on its website, “according to the new law, a thorough examination of the core of the case will not take place if asylum seekers provide ‘inconsistent, contradictory or insufficient information’. The UNHCR stresses that

96 UNCHR: *Slovensko - nová dohoda o monitorovaní hraníc a letiska* (18 September 2007). Available online at: [http://www.unhcr.sk/slovakia/index.php?option=com\\_content&task=view&id=112&Itemid=59](http://www.unhcr.sk/slovakia/index.php?option=com_content&task=view&id=112&Itemid=59) (consulted on 13 November 2008).

in many cases the responses of asylum seekers may seem confusing for a variety of reasons: the language barrier, psychological distress, cultural and gender barriers, or a general fear of official institutions, the result of negative experiences in their home countries. Therefore, the UNHCR argues, it is the common responsibility of agencies and asylum seekers alike to determine all necessary facts and resolve discrepancies and misunderstandings.<sup>97</sup>

### 5.3 Past and Future – Concluding Notes

Since 2005, the number of asylum seekers in Slovakia has been decreasing. Additionally, the nature of asylum seekers is changing. Previously migrants came from warring countries or countries which routinely persecuted their inhabitants (the Balkans, Afghanistan, Iraq). Presently, most migrants are from Southeast Asia and Eastern Europe and seek to enter the SR for economic reasons.

At the end of June 2006 the alien police registered only 88 of all recognised refugees still living in Slovakia.<sup>98</sup> We have no current data on the number of recognised refugees presently living in the country but it's likely not much has changed over the last two years. Many recognised refugees continue to leave the SR for various reasons. Impediments to more effective integration of recognised refugees as well as other migrants from third countries persist:<sup>99</sup>

- external factors – in the countries of Western Europe wages are substantially higher, communities of fellow country nationals are larger and better established
- internal factors – in the SR there are no long-term integration programmes, problems with integration in the labour market continue,

public attitudes towards foreigners are not generally favourable, and there is no comprehensive government strategy for integration policy.

Several experts agree with the opinion of Divinský that it is unsuitable to overemphasize the importance of asylum. They argue that adequate attention should be devoted to this area but not at the cost of losing sight of the needs of other categories of migrants whose numbers, importance to the country, and potential problems could prove significantly more substantial than those of asylum seekers. To this end, it is vital that the focus and activity of relevant institutions, the allocation of financial resources, media coverage of the issue and, of course, practical measures in migration management, be adjusted.<sup>100</sup> There is evidence of certain adjustments in such areas and, arguably, of improvement in the country's focus on issues related to migrants and migration.

For instance, the Migration Information Centre of the IOM focused almost exclusively on other groups of migrants from third countries coming to Slovakia to join family, work, study, or conduct research rather than on asylum seekers or recognised refugees. The assistance the centre provides to this second group was coordinated with specialised organisations with more experience in the field of asylum. It remains to be seen if a new organisation will emerge to take on the role the Centre once played, or if the IOM will find the resources necessary to reopen it.

Additionally, despite a few high-quality projects contributing to the improvement of the situation of third country nationals with different types of residence (financed by programmes such as ESF or EQUAL), many of the projects are not sustainable in the long term. The main problem lies with the unavailability of long-term state financing and the resulting establishment of relatively short-term projects by specialised organisations. Limited resources and the difficulty of maintaining uninterrupted financing have re-

sulted in significant negative impacts on many organisations in the field, especially NGOs (in terms of personnel and sustaining institutional memory).

State institutions also face problems. Though the actual numbers of asylum seekers are low, the Migration Office, to cite one example, is nevertheless understaffed and some of its departments are no longer financially viable. Such shortcomings hinder the Office from participating more intensively in EU practice-oriented projects, a problem even more central given the fact that Slovakia is in the process of implementing all EU legal norms and participates in activities involved in the establishment of the Common European Asylum System (CEAS).

As for Slovakia, changes in the future will mainly depend on EU legislation and the related harmonisation of laws. In the year 2009, relevant institutions do not expect any changes in the field of asylum legislation as negotiations on new legislation and amendments within the EC and the Council of the EU have just begun. Beginning in 2010, the SR hopes to participate actively in resettlement programmes; priority will be given to assisting those EU Member States facing high migration flows (e.g. Malta and Cyprus at present). Implementation itself will largely depend on available material, technical, and financial resources.<sup>101</sup>

97 UNHCR., Melita H. Sunjic, Regionálny úrad UNHCR v Budapešti. Nový zákon o azyle prináša utečencom dobré aj zlé správy. Available online at: [http://www.unhcr.sk/slovakia/index.php?option=com\\_content&task=view&id=95&Itemid=72](http://www.unhcr.sk/slovakia/index.php?option=com_content&task=view&id=95&Itemid=72) (consulted on 13 November 2008).

98 Divinsky, SPPA.

99 Divinsky, SPPA.

100 Divinsky, SPPA

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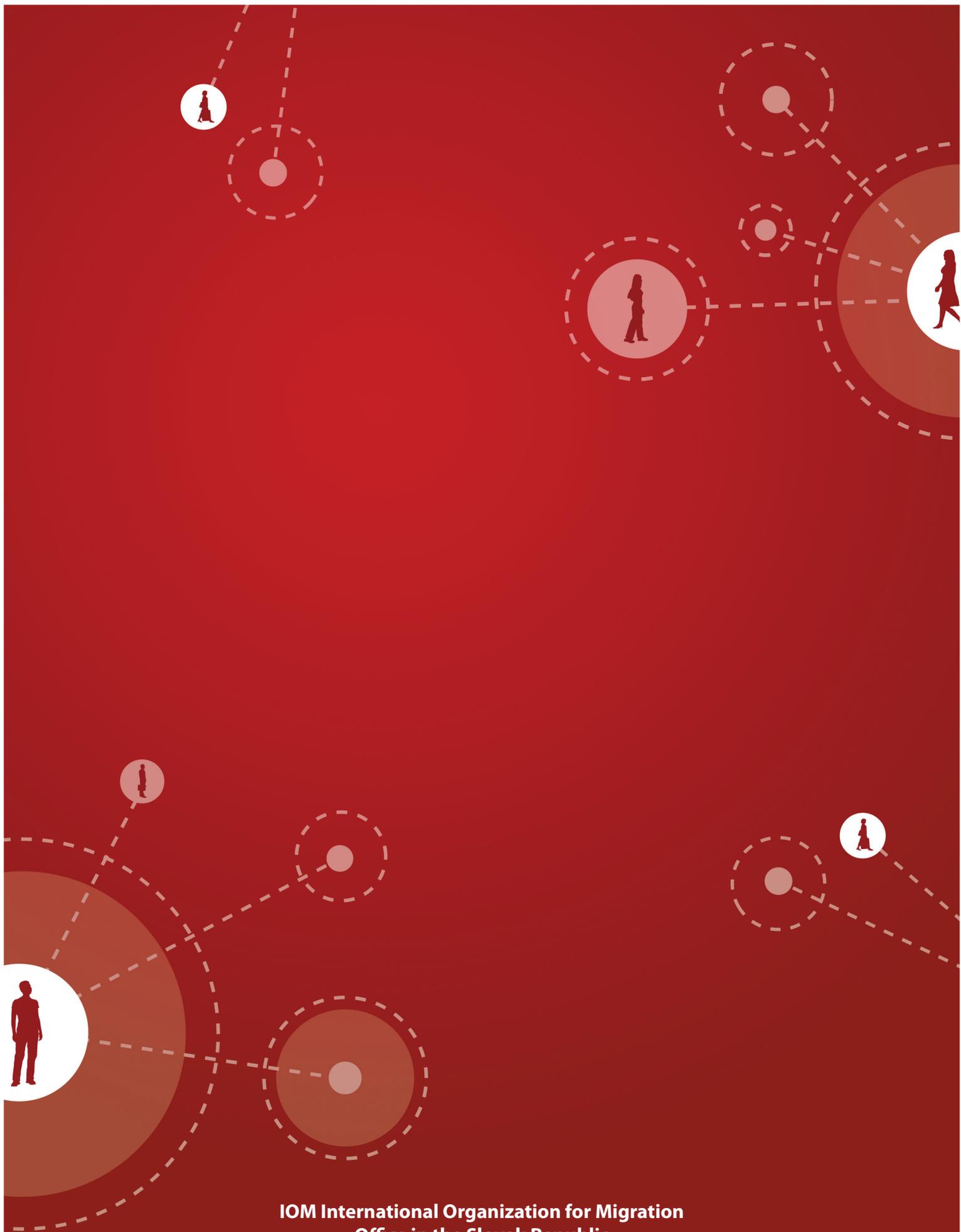
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