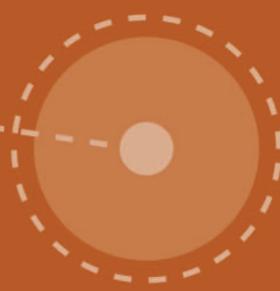




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PRACTICAL MEASURES FOR REDUCING IRREGULAR MIGRATION IN THE SLOVAK REPUBLIC



Practical Measures for Reducing Irregular Migration in the Slovak Republic

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The opinions presented in this publication are those of the authors and do not necessarily represent the opinions of the Government of the Slovak Republic, the European Commission or IOM International Organization for Migration

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Preface

This report was compiled by the IOM International Organization for Migration Bratislava in its function as the National Contact Point of the European Migration Network in the Slovak Republic. This report follows the common specifications and the methodology prepared by the European Migration Network.

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List of Abbreviations

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| AFIS | – Automated Fingerprint Identification System |
| BBAP PFP | – Bureau of the Border and Aliens Police of the Police Force Presidium |
| BCD PF | – Border Control Department of the Police Force |
| BPD | – Border Police Directorate |
| CEPOL | – European Police Academy |
| COLSAF | – Central Office of Labour, Social Affairs and Family |
| EASO | – European Asylum Support Office |
| EBF | – European External Borders Fund |
| EC | – European Communities |
| EEA | – European Economic Area |
| EMN | – European Migration Network |
| EU | – European Union |
| EUBAM | – European Border Assistance Mission to Moldova and Ukraine |
| EURODAC | – Database serving for storing, processing, transfer and comparison of fingerprints of asylum seekers, aliens apprehended upon illegal crossing of the external borders of the European Union, and aliens apprehended during their illegal stay in the territory of the European Union Member States |
| FRA | – European Union Agency for Fundamental Rights |
| FRAN | – FRONTEX Risk Analysis Network |
| FRONTEX | – European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union |
| IOM | – International Organization for Migration |
| ICMPD | – International Centre for Migration Policy Development |
| IPCO PFP | – International Police Cooperation Office of the Police Force Presidium |
| MEPA | – Central European Police Academy |
| MIC | – Migration Information Centre of the IOM International Organization for Migration in the SR |
| MoLSAF SR | – Ministry of Labour, Social Affairs and Family of the Slovak Republic |
| MO MoI SR | – Migration Office of the Ministry of Interior of the Slovak Republic |
| MoI SR | – Ministry of Interior of the Slovak Republic |
| MoFA SR | – Ministry of Foreign Affairs of the Slovak Republic |
| NUCIM | – National Unit to Combat Illegal Migration |
| ODA | – Official Development Aid |
| PF | – Police Force |
| PFP | – Police Force Presidium |
| RACD | – Risk Analysis and Coordination Department |
| RF | – European Return Fund |
| SIS | – Schengen Information System |
| VIS | – Visa Information System |
| Coll. | – Collection of Laws |

Executive Summary

Illegal migration continues to be one of the most significant challenges faced by developed countries in the field of international migration at the beginning of the 21st century.¹ According to the World Migration Report 2010 published by the IOM International Organization for Migration², of the total of about 214 million migrants in the world at present, approximately 10-15 per cent are irregular migrants. In this regard, especially European countries or European Union Member States face increased migration pressures, including illegal migration. In 2006, there were almost 8 million irregular migrants within the European Union, with around 80 per cent of them within the Schengen Area.³

The data on the total size and flows of irregular migrants on the local, national, regional and global levels are varied and often inaccurate. Yet, it can be stated in general that, along with the global growth in overall international migration, illegal migration increases, too.⁴

Illegal migration relates to many negative phenomena, such as smuggling of migrants; trafficking in human beings; cross-border crime; or low-paid, difficult and dangerous black work. Illegal migration complicates the control of entry and movement of aliens in the territories of target countries, contributes to the growth of a shadow economy, increases tax avoidance, forms new security threats, gives rise to hostile feelings towards countries of origin, deepens social conflicts and integration problems, often leads to extreme political solutions, etc.⁵

Being aware of all the factors related to the phenomenon of illegal migration, the European Union adopted several documents, initiatives and legislative measures stressing the importance of the fight against illegal migration. In this respect, this study aims at providing an overview of existing approaches, mechanisms and measures implemented in the different EU Member States to combat illegal migration in such way as to enable the EU to react with further proposals for joint measures.

The Slovak Republic is predominantly a transit country, but as a Member State of the European Union and of the Schengen Area it is also becoming a target country. With regard to migration control and introduction of measures to combat illegal migration, the accession to the European Union and the Schengen Area represented key moments for the Slovak Republic.

This study provides an overview of the policies, legislation and, in particular, practical measures to combat illegal migration in the Slovak Republic, and also summarises and analyses related and available statistical data.

The first chapter of the study contains an introduction to the topic, specification of the methods used to compile this study, and the definition of basic terms used in this study on the basis of EU legislation and Slovak legislation.

The second chapter deals with the policies and legal regulation of illegal migration in the Slovak Republic, describes the impacts of EU legislation, and provides information on the institutions of the Slovak Republic that carry out activities to combat illegal migration or contribute to the mitigation of the negative effects associated with this phenomenon.

The third chapter of the study describes the practical measures implemented in the SR to combat illegal migration before a migrant's entry into the SR, i.e. while staying in the country of origin; at the stage of entry; and at the stage of a migrant's stay in the territory of the Slovak Republic. This chapter also provides selected examples of good practice applied by the SR in this area. The possibilities of irregular migrants to regularise their stay in the SR are also described in this chapter.

The fourth chapter presents cooperation between the Slovak Republic, EU countries and neighbouring countries, as well as with the countries of origin and transit countries on the basis of bilateral and multilateral agreements and treaties, and in the framework of the EU or under joint projects aimed at combating illegal migration.

The fifth chapter describes in detail the impacts of EU legislation on national policies and national legislation concerning the fight against illegal migration in a broader historic context.

The sixth chapter analyses the available statistics and, at the same time, provides an overview of the estimated size of irregular migrants residing and working in the SR.

In line with the focus of the European Migration Network, this study deals with the migration flows of third-country nationals, and not of EU nationals or nationals of the European Economic Area.

¹ Divinský B.; Undocumented migration. Counting the uncountable. Data and Trends across Europe, December 2008 (analysis compiled under the CLANDESTINO project).

² World Migration Report 2010; The Future of Migration: Building Capacities for Change; IOM 2010.

³ Future Tools to Tackle Illegal Migration and Migrant-Smuggling in the European Union, IOM 2008 (European Commission, DG SBS ARGO Programme 2006)

⁴ World Migration Report 2010; The Future of Migration: Building Capacities for Change; IOM 2010

⁵ Divinský, B.; Nelegálna migrácia na Slovensku, available at <http://www.zahranicnapolitika.sk/index.php?id=820&tl=13> (consulted on 03 June 2011)



Introduction

The compilation of this study entitled *Practical Measures for Reducing Irregular Migration in the Slovak Republic* was approved by the Steering Board of the European Migration Network in the framework of its Work Programme 2011. This study forms part of a summary study with the same focus at EU level, which summarises the results of the national studies compiled by the EU Member States. The main objective of this study is to provide an overview of existing measures, mechanisms and approaches to combat illegal migration in the Slovak Republic. The study is expected to present the national policies and legislation in this area; cooperation with the countries of origin, transit countries and other EU Member States; and especially practical measures implemented by the Member States, including the Slovak Republic, with the aim to reduce illegal migration, whereas the measures described herein have proven to be as good as to serve as examples of good practice for other countries. The study also provides an overview of available statistical data on the basis of which the numbers and flows of irregular migrants in the SR can be analysed or estimated.

This study should become a source of information especially for policy makers and experts working in the field of illegal migration, providing them with an overview of the practical measures to prevent and combat illegal migration, and defining examples of best practice. These measures can be discussed to a greater detail at EU level and implemented in the general policies, legislation and practice at the level of the European Union.

1.1 Methodology

As for methodology, this study is based on the compilation and analysis of available documents, expert consultations and available statistical data collected in the period May – September 2011, the main sources being, in particular:

- Available literature dealing with the topic of illegal migration or, in general, with migration in the SR and abroad, compiled by the IOM International Organization for Migration and by other actors or under other projects and activities carried out in this field;

- Slovak legal regulations;
- Strategic documents of the Slovak Republic concerning migration and border protection;
- Analyses and internal regulations of the Ministry of Interior of the SR;
- Legal acts of the EU regulating migration (illegal migration);
- Statistical databases and websites of the Bureau of the Border and Alien Police of the PFP and Migration Office of the MoI SR or of the Ministry of Interior of the SR (www.minv.sk), National Labour Inspectorate (www.safework.gov.sk), Ministry of Labour, Social Affairs and Family of the SR (www.employment.gov.sk), and of other institutions with available information and statistics related to the phenomenon of illegal migration;
- Previous studies of the European Migration Network, especially Annual Reports on Migration and Asylum Policies and Annual Statistical Reports on Migration and International Protection;
- Information provided by experts working in the field of prevention and fight against illegal migration, especially experts at the Bureau of the Border and Alien Police of PFP;
- Practice and personal experience of the authors.

In the Slovak Republic, there has not been any complex research or analysis of illegal migration conducted so far. Several studies and analyses on the migration phenomenon as such, made in the Slovak Republic, contained chapters or references to illegal migration, but no explicit complex research on illegal migration has been conducted to date. For obtaining information and an overview of available statistical data on this topic, the report prepared in the framework of CLANDESTINO project is of special importance. The statistical data in this study is presented in the same form as collected by the competent institutions in the SR and analysed under the CLANDESTINO project. The Slovak Republic neither collects nor processes estimates of the size of irregular migrants residing in its territory; it was therefore not possible to provide certain information to such extent as required by this study's assignment. In the preparation of the study, it was also necessary to take into consideration the fact that the measures to combat illegal migration often have an operative nature and that this information cannot be presented to the general public in full scope.

In spite of the facts described above, no significant problems occurred during the compilation of this study that would complicate its preparation. All the contacted experts and institutions provided the required information for the purpose of its analysis and subsequent summarisation in this study, and contributed to providing a complex overview of these issues in the Slovak Republic.

Though, this study should be rather considered as a primary research that could form the basis for a future in-depth research of this topic.

1.2 Definitions

This part of the study presents definitions of the main terms concerning illegal migration. The definitions are based on the legislation of the SR, and those terms that are not defined by the Slovak legislation comply with the Glossary of Terms published by the European Migration Network (EMN).⁶

⁶ Available at www.emn.ec.europa.eu (consulted on 29/09/2011)

Illegal migration – the movement of a person to a new place of residence or transit using irregular or illegal means, without valid documents or carrying false documents. The Slovak legislation does not define this term, and does not use the term *irregular migration* either. For the purposes of this study, illegal migration is used in the same meaning as irregular migration.

Irregular migrant – a third-country national who enters, and/or resides and/or works in a Member State of the Schengen Area without the necessary documents, permits, registration. The Slovak legislation does not define this term, and does not use the term *irregular migrant* either. For the purposes of this study, illegal migrant is used in the same meaning as irregular migrant.

Illegal stay – presence on the territory of the SR of a foreign national contrary to the law, special regulation or international treaty.

Illegal crossing of external borders – entry or departure of a person through the external border outside of the border crossing point, or through a border crossing point outside of the set working hours, or at the time of closure of the border crossing point, unless such entry or departure through the external border is allowed by virtue of an international treaty, law or special regulation.

Residence permit – Any authorisation issued by the authorities of a Member State of the Schengen Area allowing a third-country national to stay legally in its territory, in accordance with the provisions of Article 1(2)(a) of Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals. Irrespective of the different forms of international protection of foreign nationals, the Slovak legislation defines three types of residence permits: temporary residence, permanent residence, and tolerated stay.

Marriage of convenience – contracting a marriage for the purpose of obtaining a residence permit.

Illegal work – dependent work performed by a natural person for a legal entity or for a natural person who is an entrepreneur, where such natural person

- Has not established a labour relation or a legal relation with the legal entity or the natural person who is an entrepreneur according to a special regulation, or
- Is a national of a country which is not an EU Member State or other contracting state of the EEA Agreement or the Swiss Confederation, or is a stateless person, and does not hold a temporary residence permit for the purpose of employment and an employment permit; unless a special regulation or an international treaty by which the SR is bound stipulates otherwise.

Illegal work is also work performed by a natural person for a legal entity or for a natural person who is an entrepreneur, where such natural person has not established a legal relation under a special regulation.

Illegal employment – employment by a legal entity or natural person who is an entrepreneur, who uses the dependent work of

- A natural person with whom no labour relation has been established under a special regulation;
- A natural person on the basis of a labour relation under a special regulation who fails to meet the obligations under that special regulation until the commencement of the control of illegal work and illegal employment, or

- A third-country national without the permanent residence permit for the purpose of employment and employment permit, if required by a special regulation and unless an international treaty by which the SR is bound stipulates otherwise.

Illegal employment is also employment by a legal entity or natural person who is an entrepreneur that uses the work of a natural person without establishing a legal relation under a special regulation. Illegal employment also means employment of a third-country national staying on the territory of the SR contrary to a special regulation, and performing dependent work.

Smuggling – organisation of unauthorised crossing of the state border of the SR, transit through the territory of the SR, facilitation of such conduct or enabling such conduct for the benefit of a person who is not a citizen of the SR or a person with permanent residence in the SR. Criminal liability for such conduct, as well as for producing, procuring, providing or holding a false travel document or of a false identity document for the purpose mentioned above, or for enabling or helping to remain or get employment in the SR illegally with the intention to get financial benefits or other material benefits for themselves or for any other person directly or indirectly is equally drawn in accordance with the provisions of the Penal Code relating to smuggling.

Overstayer – a person who has legally entered in the SR or another Member State of the Schengen Area on the basis of a valid residence permit, a visa or under a visa-free regime, and has not departed and remained in the Schengen Area without a permit after expiration of the term of his/her permitted stay.

Third-country national – any person who is neither a citizen of the SR nor a citizen of any EU Member State or a Member State of the EEA or Swiss Confederation; a stateless person is also considered a third-country national.

Foreign national (alien) – any person who is not a citizen of the SR.

Member State – further to the new Act on Stay of Aliens, a Member State means an EU Member State except of the SR, other contracting state of the EEA Agreement and the Swiss Confederation.



Policy and Legal Framework in Relation to Irregular Migration in the Slovak Republic

2.1 National Policy and Legislation

The development of the migration situation in the Slovak Republic was largely affected by two key events – accession to the European Union on 01 May 2004, and the joining of the Schengen Area on 21 December 2007, as a result of which the need to harmonise national legislation with the *acquis communautaire* increased, as well as the need to define new tasks and respond to the challenges in the field of illegal migration. This development was accompanied by an increasing life standard, enhanced economic opportunities, and a more stable social background resulting in gradual transformation of the SR from a transit country to a destination country of migration, as well as in the need to promote the level of cooperation in issues related to legal migration management and suppression of illegal migration.

National Policy

Combating illegal migration in the SR forms part of its migration policy, which was summarised in the document *Migration Policy Concept of the Slovak Republic* in 2005.⁷ The principles defined in this document reflected Slovakia's membership in the EU and its will to be involved in the harmonisation of migration policies and in an efficient migration management at EU level. In order to control illegal migration efficiently, it should be restricted through the regulation of legal migration and the adoption and implementation of measures of preventive and restrictive nature. The national policy of the SR concerning illegal migration is characterised by a restrictive and repressive approach, whereas the so-called soft (unrestrictive) policies to reduce it are only applied partially, or have been completely

⁷ The Migration Policy Concept of the Slovak Republic was adopted by Government Resolution No. 11 of 12 January 2005; available at <http://www.minv.sk/?azyl-migracia> (consulted on 07/07/2011).

ignored.⁸ The annual *Summary Reports on the State of Implementation of the Commitments from the Concept of Migration Policy of the Slovak Republic by the Governmental Departments*⁹ represent a summary of the most important tasks carried out in the period since the adoption of the Migration Policy Concept of the Slovak Republic. As for unwanted migration, it is important to mention the last Annual Report of 2010 which summarises the recent legislative changes, observing new or unusual trends in illegal migration.

The Migration Policy Concept of the Slovak Republic of 2005 was updated through the document *Conceptual Plans of the Migration Policy of the Slovak Republic for the Period 2011–2015*¹⁰ which specifies the areas requiring attention in the period until adoption of a new migration policy. As for prevention and suppression of illegal migration, the need to promote international cooperation by concluding readmission agreements and by being engaged in the process of third-country nationals' resettlement through transfers with time-restricted duration of stay in the territory of the SR, as well as by receiving migrants from other EU Member States which face large influxes of migrants is stressed in the document. Emphasis is also put on harmonisation of national legislation with EU legislation, promotion of border protection and border control efficiency, implementation of measures to enhance and regulate work migration in line with labour market demands, and creation of conditions to increase labour force mobility. As for conceptual plans, the basic strategic policies include the Global Approach to Migration launched at EU level in 2005 as a reaction to the need to intensify partnerships with the countries of origin of migration flows and transit countries to ensure a more effective monitoring, evaluation and regulation of migration not only to the benefit of host countries within the EU, but countries of origin, as well. This strategy is characterised by perceiving migration as a phenomenon with a positive potential, an inseparable part of which is illegal migration. The SR makes efforts to create conditions for active involvement in the implementation of instruments used by the Global Approach to Migration, such as partnerships for mobility, building of migration partnerships and migration missions.

The plan to reflect more effectively the migration situation development and the changing needs of the SR lead to adopting a new basic document on migration policy which replaces and, with its nature and contents, follows the Migration Policy Concept of the Slovak Republic of 2005. The *Migration Policy of the Slovak Republic Perspective until 2020*¹¹ summarises the basic objectives in this area in the Slovak circumstances, which comprise, among others, the fight against illegal migration, increasing border control efficiency, and development of cooperation with EU countries, countries of origin and transit countries within the global approach to migration. As for suppression of illegal migration, emphasis is put on adopting legislative, organisational and administrative measures in the field of control and sanctions in the case of illegal employment of migrants; implementation of measures to increase safety of documents protection; introduction of technical means to reveal forged and falsified documents; security checks of foreigners when verifying invitations and granting

⁸ Divinský, B.; Nelegálna migrácia na Slovensku, 30 July 2009, www.zahranicnapolitika.sk (consulted on 23/06/2011).

⁹ The last report is the Summary Report on the State of Implementation of the Commitments from the Concept of Migration Policy of the Slovak Republic by the Governmental Departments in 2010; Government Resolution No. 306 of 11 May 2011, available at <https://lt.justice.gov.sk/Material/MaterialDocuments.aspx?instEID=44&matEID=3857&langEID=1> (consulted on 24/06/2011).

¹⁰ The Conceptual Plans of the Migration Policy of the Slovak Republic for the Period 2011–2015 was adopted by Government Resolution No. 67 of 02 February 2011, available at <http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=19140> (consulted on 23/06/2011).

¹¹ The Migration Policy of the Slovak Republic Perspective until 2020 was adopted by Government Resolution No. 574 of 31 August 2011; available at <http://www.rokovanie.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=20174> (consulted on 22/09/2011).

residence permits; readmission; and fight against smuggling and trafficking in human beings. The ambition to establish an Immigration and Naturalisation Office under the Mol SR as a single authority enabling the performance of tasks related to complex implementation of the migration policy, including its regular evaluation, has not been fulfilled yet. The competences of this office should include carrying out of activities related to aliens' entry to the SR, residence permissions, first-instance proceedings in matters concerning international protection, granting of citizenship, or integration into the society. The new migration policy represents a move forward by establishing an obligation for all stakeholders to prepare action plans, within the set deadlines, specifying particular measures in terms of time, material and financial aspects, whereas such plans would be continuously updated. Yet, the new migration policy remains predominantly a framework document.

The most important measures to combat illegal migration started to be implemented in connection with Slovakia's entry to the Schengen Area; in this regard, the **Schengen Action Plan** of the Slovak Republic 2008–2009¹² is regarded as one of the most important strategic documents from the point of view of national policy, summarising the measures that were planned to be implemented in that given period. The required measures were identified on the basis of a thorough analysis by the competent authorities and resulted from the accession of the Slovak Republic to the Schengen Area, from the need to apply the Schengen acquis and standards, and from recommendations of the Schengen evaluation commission of the European Union. The outcomes of these measures were summarised separately in two documents in the respective years entitled **Report on the Implementation of Measures of the Schengen Action Plan of the Slovak Republic 2008–2009**¹³. As for combating illegal migration, the following commitments were important: completion of the system of technical and physical protection of the state border of the SR and Ukraine; promotion of the training of the police carrying out border control concerning detection of false and forged travel documents and providing for the technical means for this purpose; building of an analysis and information system for the revealing and documentation of crimes related to illegal migration, smuggling and other crimes; active involvement in the activities of FRONTEX agency, completion of the Visa Information System which should become a part of the visa system at EU level; continuation in the preparations to launch the 2nd generation of SIS operation; issuing of new travel documents of the SR with one, and later with two biometric features; harmonisation of visa policy; use of assistance tools in cases of expulsion of third-country nationals by air; and mutual recognition of expulsions among Member States. The majority of measures specified by the Schengen Action Plan have been fulfilled. Of the total number of 133 measures, 114 measures were reported as fulfilled in 2008 and 2009. The next Schengen evaluation of the Slovak Republic will be conducted in 2012 and 2013, due to which it is necessary to continue consistently implementing the Schengen acquis. The ambition to get positive results in the Schengen evaluation is also included in the Government Manifesto of the SR 2010–2014 and in the new National Border Control Management Plan of the Slovak Republic for the Years 2011–2014.

Another strategic middle-term and long-term planning document concerning protection of the EU's external border with an impact on the elimination of illegal migration was the **National State Bor-**

¹² The Schengen Action Plan of the Slovak Republic 2008–2009 was adopted by Government Resolution No. 163 of 12 March 2008; available at <http://www.minv.sk/?dokumenty-na-stiahnutie> (consulted on 24/06/2011).

¹³ Report on the Implementation of Measures of the Schengen Action Plan of the Slovak Republic 2008–2009, available at https://lt.justice.gov.sk/Attachment/03%20vlastny%20mat_doc.pdf?instEID=-1&attEID=21131&docEID=106603&matEID=2544&langEID=1&tStamp=20100225095416343 (consulted on 17/06/2011).

der Protection Management Plan of the Slovak Republic¹⁴, adopted prior to Slovakia's entry to the Schengen Area and prepared for the period 2007–2010. This plan contains a list of measures related to legislation, creation and completion of organisational structures, training, and material and technical facilities which were specified with the objective to ensure development and transformation of the state border protection system, and an efficient use of capacities with regard to cancellation of controls on the internal borders of the Schengen Area Member States. As for its contents, the plan is based on the Schengen Catalogue of Recommendations for a proper application of the Schengen acquis and best practice in the control of external borders, expulsion and readmission; with regard to the implementation of measures, the plan is divided into two stages: period until full involvement of the Slovak Republic in the Schengen Area, and period after cancellation of controls on the internal borders. Attention is paid to activities on the Member States' external borders, on the territory of the SR, in third countries with an accent on the countries of origin of unwanted migration and transit countries, and on international cooperation. The practical implementation of these measures is expected to contribute to solving unwanted migration within the conditions of the SR. The fight against illegal migration primarily focuses on the territory of the SR as such, and in particular on carrying out controls of illegal employment of foreigners, activities aimed at combating crimes related to illegal migration (unauthorised state border crossing, smuggling, falsification and forging of documents), repatriation of aliens illegally staying in the SR, or possibly temporary renewal of controls on the internal borders. With a view to the growing phenomenon of overstayers, increased attention should still be paid to combating illegal migration not only on the external borders, but on the entire territory of the SR. The document mentioned above is followed by the new **National Border Control Management Plan of the Slovak Republic in 2011–2014**¹⁵, which builds on the achieved successes in the field of border control of the SR and on the planned Schengen assessment in 2012 and 2013.

Another strategic document is entitled **Strategy of Ensuring Protection of the Schengen-Type State Borders**¹⁶, prepared for the years 2002 – 2003, 2004 – 2006 to 2010. The primary objective of this document was to ensure state border protection in terms of personnel and technical facilities by building a model of integrated state border security in line with the requirements of the EU countries and the Schengen Convention with the aim to eliminate illegal migration and related crimes.

Since the dealing with the problem of illegal migration is a joint priority also on the EU level and the Member States face similar challenges, the national policy of the SR in this field is based on several strategic documents with an international dimension, also referred to in the conceptual plans of the SR. Combating illegal migration primarily by ensuring the return of illegally staying foreign nationals to their country of origin or transit country represents, along with the development of partnerships with countries of origin and transit countries, and with enhanced efficiency of border control, legal migration management and support for integration, the fundamental commitments arising from the **European Pact on Immigration and Asylum**, adopted in October 2008, which forms the basis of

¹⁴ The National State Border Protection Management Plan of the Slovak Republic was adopted by Government Resolution No. 465 of 30 May 2007; available at http://www.minv.sk/swift_data/source/mvsr/ochrana_hranice/ochrana_hranic.rtf (consulted on 16/06/2011).

¹⁵ The National Border Control Management Plan of the Slovak Republic in 2011–2014 was adopted by Government Resolution No. 473 of 06 July 2011; available at <http://www.rokovania.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=19962> (consulted on 25/09/2011).

¹⁶ The Strategy of Ensuring Protection of Schengen-Type State Borders was adopted by Government Resolution No. 835 on 07 August 2002.

the joint migration policy.¹⁷ The SR fully applies the relevant provisions and ensures fulfilment of the particular objectives through national legislation instruments. Another strategic international document, adopted in 2009, is the **Stockholm Programme** determining the legislative agenda in the field of security and internal affairs of the EU in the period 2010–2014, to the participation in which the Slovak Republic committed itself.

National Legislation

The basic law relating to illegal migration is Act No. 48/2002 Coll. on Stay of Aliens and on Changes and Amendments of Certain Other Acts (hereinafter referred to as the **Act on Stay of Aliens**) which, in this context, stipulates the conditions of entry and stay of aliens in the SR; forced return of aliens in the form of administrative expulsion; assisted voluntary returns; as well as control and sanction measures for the purpose of preventing illegality and in cases of breach of the set obligations. Depending on the particular breach of obligations, sanctions are primarily imposed on aliens, but in some cases also on the person providing accommodation, on schools, carriers or airport operators. Sanctions usually have the form of financial penalties, in connection to which the law differentiates between sanctions for offences and sanctions for administrative offences; in cases of illegal entry and stay, administrative expulsion and apprehension are also considered as sanctions of non-financial nature. Another relevant law is Act No. 477/2003 Coll. on State Border Protection (hereinafter referred to as “**Act on State Border Protection**”) which partially serves the purpose of preventing illegal migration by regulating the competences of the Police Force in state border protection, by laying down the rights and obligations of natural persons and legal entities, including sanctions in the event of breach of obligations, as well as the use of technical devices to detect, document and prevent illegal state border crossing.

At the end of 2010, a new **Act Stay of Aliens** (hereinafter referred to as **new Act on Stay of Aliens**) started to be drafted; was enacted on 21 October 2011 and is expected to enter into effect on 01 January 2012. The new Act on Stay of Aliens will combine and replace the two laws mentioned above. The new legislation introduces definitions of the terms illegal crossing of the external border, illegal stay, or marriage of convenience. The changes to the current legislation are described below.

Tolerated stay, which represents a specific tool for regularising an illegal stay of the alien on the territory of the SR, will be available to a new category of aliens. Namely, the scope of persons eligible to obtain tolerated stay will extend, while respecting their private and family lives and under the conditions that they do not hold a valid travel document and can credibly prove their identity in any other manner, present a document certifying their integrity and documents to manifest the facts justifying the granting of this type of tolerated state. This category will also include persons who are entitled to apply for a temporary residence permit for the purpose of family reunification or for a permanent residence permit for a period of five years¹⁸, who have until recently been excluded from the possibility to obtain tolerated stay for the given purpose. The provisions on tolerated stay are further

¹⁷ European Pact on Immigration and Asylum, available at <http://register.consilium.europa.eu/pdf/en/08/st13/st13440.en08.pdf> (consulted on 17/06/ 2011).

¹⁸ Art. 27, par. 1; and Art. 43, par. 1, letters a) to d) of the new Act on Stay of Aliens; this category includes, for example, a family member of a third-country national with temporary or permanent residence; a relative in direct ascending line of an asylum-seeker under 18 years of age; a dependent person under an international treaty; a spouse of a Slovak citizen with permanent residence in the SR or dependent relative in direct line of a Slovak citizen with permanent residence in the SR; a single child under 18 years of age entrusted to the care of a third-country national who is the spouse of a Slovak citizen with permanent residence in the SR.

modified to increase support provided to victims of human trafficking.¹⁹ The new law introduces a 15-day period for the Police Department to make a decision on the application for tolerated stay or on the application for extending the tolerated stay; and this period commences on the day of filing such application. This law also introduces the possibility to appeal against a decision on cancellation of tolerated stay that does not have a derogatory effect. Excluded is also the derogatory effect of the appeal against a decision on refusal of an application for tolerated stay and against the decision on refusal of an application for extending the tolerated stay granted on the ground of an obstacle to administrative expulsion or impossibility of departure and inexpediency of detention. A minor found on the territory of the SR who has been granted tolerated stay due to its status for a minimum period of three years is entitled to obtain a permanent residence permit for an indefinite period of time even without meeting the conditions stipulated by this law, provided that such minor studied at school in the SR during that period. The law also stipulates the Police Department’s obligation to record data on aliens obtained upon ensuring border protection, on unwanted persons and on aliens with illegal stay in the PF information systems operated by the MoI SR. The provisions concerning administrative expulsion, including the definition thereof, reasons for administrative expulsion, enforcement of the decision and suspended enforcement of the decision on administrative expulsion, as well as the provisions on detainment have been modified.²⁰ The specification of offences and administrative offences, and the imposition of fines for breaking the law have changed, as well. A fine of up to EUR 800 can be imposed for illegal border crossing, and a fine of up to EUR 1,600 for presenting someone else’s travel document or any other document authorising the holder of the document to cross the external border, or of a visa as his/her own document. An EU national or his/her family member can be imposed a fine of up to EUR 300 for such offences. The fine for illegal stay on the territory of the SR can reach up to EUR 1,600.

Since work is a frequent motive for breaching the obligations related to residence, illegal migration and illegal stay are closely linked to illegal employment. There are several legal regulations that represent an efficient tool to combat it. Act No. 5/2004 Coll. on Employment Services and on Changes and Amendments of Certain Other Acts (hereinafter referred to as “**Act on Employment Services**”) is a law that, among other things, details the conditions of access of the different categories of aliens to the Slovak labour market; employers’ obligations; control activities of the MoLSAF SR, COLSAF and of the offices of labour, social affairs and family focused on detecting illegal work, illegal employment and compliance with other legal obligations; as well as sanctions imposed for illegal employment. Act No. 82/2005 Coll. on Illegal Work and Illegal Employment and on Changes and Amendments of Certain Other Acts (hereinafter referred to as “**Act on Illegal Work and Illegal Employment**”) lays down a general ban on illegal work and illegal employment, specifies the control duties of labour inspectorates, COLSAF and of the offices of labour, social affairs and family, as well as sanctions for illegal work; sanctions against employers in cases of illegal employment are further detailed in the Act No. 125/2006 Coll. on **Labour Inspections** and on Changes and Amendments of Certain Other Acts. All these three laws reflect the changes associated with the transposition of Directive 2009/52/EC with effect from 20 July 2011.²¹

¹⁹ For more details on changes concerning tolerated stay refer to Chapter 5.

²⁰ For more details on administrative expulsion and detention refer to Chapter 5.

²¹ For more details on illegal work and illegal employment refer to Chapter 5.

Criminal legislation in connection with illegal migration and its negative impacts represents an important restrictive instrument. In this context, the principal provisions of the Act No. 300/2005 Coll. Criminal Code (hereinafter referred to as “**Criminal Code**”) specify the organisation, facilitation and/or provision of help upon state border crossing or transit through the territory of the SR, i.e. smuggling, in the case of which sanctions in their strictest form can result in imprisonment of up to 20 years. Another important provision from the point of view of suppression of illegal migration concerns facilitation or provision of help in relation to illegal stay or illegal employment in the SR; by virtue of this provision, individuals willing to obtain illegal financial or other property benefits through such activities will be held criminally liable, and the upper limit of imprisonment will be 8 years. One of the types of forced returns is expulsion that can be imposed by court for a period of 1 to 15 years as single punishment, or along with other types of punishment, if required in order to ensure safety of persons, property or other public interest. Nationals of EU Member States or of a contractual state of the EEA Agreement, as well as persons who were granted asylum or subsidiary protection are excluded from the possibility of being imposed punishment in the form of expulsion. The law also specifies other cases where imposition of this type of punishment is excluded. With regard to combating organised and multinational crime, an important role is played by the provisions concerning human trafficking and trafficking in children as negative accompanying phenomena of illegal migration.

Act No. 480/2002 Coll. on Asylum and on Changes and Amendments of Certain Other Acts (hereinafter referred to as the “**Act on Asylum**”) also concerns illegal migration; this law stipulates the conditions and procedures in granting international protection – asylum or temporary shelter against persecution for reasons laid down in the Convention Relating to the Status of Refugees or in the Constitution of the SR, or against serious injury in the country of origin, and can be considered as one more instrument enabling regularisation of an illegal stay in the SR.

There is an indirect relation between illegal migration and Act No. 576/2004 Coll. on **Healthcare and Healthcare-Related Services**, which establishes the right of everyone, including foreign nationals irrespective of their legal status on the territory of the SR, to free provision of urgent healthcare. The **Constitution of the SR**, too, implicitly stipulates the right to education for children illegally residing in the SR by laying down the right to education for everybody, i.e. compulsory school attendance for everybody, including children without a residence permit. This implicit provision, however, causes ambiguities among affected persons and also among educational institutions, since the Act on Stay of Aliens stipulates the obligation of schools in the SR to inform the police department about commencement of study of each foreign national. In practice, such situation should result in granting a residence permit to such child, provided that the legal representative of the child (in the majority of cases its parent) is residing in the SR legally.

The **Act on the Organisation of Government Activities and on the Organisation of the Central State Administration** can be considered as a law relevant to combating illegal migration. This law lays down the competences of the state administration authorities in various fields, including migration and combating illegal migration.²² The particular competences in ensuring state border protection, the rights and obligations of the police in executing their duties, and the situations in which the police can be sent outside of the territory of the SR are specified in the **Act on the Police Force**. The

²² For more details on the institutional framework refer to Chapter 2.2.

Border Police Service and the Aliens Police Service, both within the Police Force structure, are entitled to check the legality of aliens’ residence in the SR. During the search for persons who illegally entered the SR or stay in the SR illegally, members of the Police Force have the right to stop vehicles and check their luggage compartments, as well as persons and their luggage. These rights apply to state border protection irrespective of the distance of the location of measures from the state border, and hence, to the entire territory of the SR.

With regard to the continuously relatively low number of third-country nationals in the territory of the SR and the unpopular nature of the issues concerning illegal migration, an open public debate on this topic is missing in Slovakia, and these facts do not form a sufficient basis either for an urgent need to solve this problem at the political or legislative level. As already mentioned above, Slovakia’s accession to the EU and to the Schengen Area represented a crucial factor for changes in the national legislation and national policy in connection to which the SR was obliged to adopt and implement stricter reforms in this area.

2.2 Institutional Framework

The main responsibilities and activities of the state authorities are laid down in the Act No. 575/2001 Coll. on the Organisation of Government Activities and on the Organisation of the Central State Administration. In this regard, the following institutions are the principal state actors in combating illegal migration.²³

Ministry of Interior of the SR

The Ministry of Interior of the SR is the sponsor of international migration and asylum issues at the conceptual/legislative and implementation level. It is the central state administration body for state border protection and administration, entry to the territory of the SR and residence of foreign nationals in this territory, travel documents, and matters concerning asylum and persons who departed from the SR. In areas related to combating illegal migration, the ministry implements measures mainly through the Police Force Presidium departments. The ministry also executes the tasks of the responsible certification body for the General Programme Solidarity and Management of Migration Flows for the Period 2007–2013.

Bureau of the Border and Aliens Police of the Police Force Presidium

The Bureau of the Border and Aliens Police of PFP is a section of the Police Force Presidium which directly manages the organisational units in carrying out duties related to state border protection, combating illegal migration and smuggling, border control, granting of residence permits to aliens, check of the legality of aliens’ residence (including searching for illegally employed persons), expulsion of aliens, visas (as the central visa body); focuses on countering falsification of travel documents and other documents; sponsors the exchange of information with foreign partners in suppressing illegal migration and in state border control; compiles analytical reports; and provides statistical data

²³ Since it is not possible, in line with the study’s assignment, to strictly put the state institutions into the four basic categories according to their scope of work (prior to alien’s entry to the country, and at the time of entry, stay and departure), as their scopes of work overlap in several stages, we provide a general structure of the institutional framework covering the fight against illegal migration in the SR.

on illegal migration. BBAP PFP thus fulfils duties at the stage of alien's entry, stay and also expulsion from the SR. At the stage preceding an alien's entry to the SR, BBAP PFP collaborates, in particular, with the Slovak foreign missions abroad which provide basic information on the conditions of entry and residence in the SR through, among others, police liaison officers in selected countries. Basic information on issues concerning entry and residence is provided to foreign nationals also through the websites of the Ministry of Interior of the SR and BBAP PFP.

The services of the Border Police and of the Aliens Police are implemented at regional and local levels through the organisational units of BBAP PFP, namely the *Border and Aliens Police Directorate, Border Police Directorate, and Aliens Police Directorate*, and their subordinate units – *Border and Aliens Police Departments, Risk Analysis and Coordination Departments, Aliens Police Departments, Border Control Departments, and "mobile units"*.²⁴ The subordinate units of BBAP PFP also include *police detention units for aliens* which carry out activities associated with apprehensions, returns and expulsions of third-country nationals.

Within the BBAP PFP structure, the *National Unit to Counter Illegal Migration* was established to deal with combating smuggling. This unit carries out duties in the field of prevention, detection and documentation of crimes related to illegal migration (illegal state border crossing, smuggling, falsification and forging of documents) and other cross-border crimes on the entire territory of the SR up to internationally organised illegal migration. The unit also determines the basic directions of operative and investigation activities, assesses security conditions, makes analyses and keeps statistical overviews of illegal migration related crimes.²⁵ At the local level, the unit's activities are performed through the *Departments of Operative and Investigation Activities*.

International Police Cooperation Office of PFP

The International Police Cooperation Office of PFP is the subordinate body of the Police Force Presidium. In combating illegal migration, its principal duty is to act as the National Bureau of SIRENE, which is a special unit ensuring exchange of additional information and personal data for records processed within the Schengen Information System. IPCO PFP also acts as the national centre for Interpol and Europol.

Railway Police

The Railway Police is an organisational unit of the Police Force Presidium. With regard to combating illegal migration, the Railway Police mainly cooperates with the Border and Aliens Police Service on railways.

Ministry of Finance of the SR

The Ministry of Finance of the SR is involved in countering illegal migration mainly through tax and custom authorities.

²⁴ The principal activity of mobile units is to check compliance with the system of alien measures (legality of aliens' residence in the SR); search for persons or things; and carry out tasks in criminal proceedings within determined scope. IN: National Border Control Management Plan of the SR for the Years 2011–2014, available at <https://lt.justice.gov.sk/Attachment/vlastnymat.rtf?instEID=-1&attEID=36223&docEID=185596&matEID=4117&langEID=1&tStamp=20110617142046080> (consulted on 27/06/2011)

²⁵ Grušovský Š.; Ochrana vonkajších hraníc EÚ, Police Force Academy, 2008

The Tax Directorate and the subordinate tax offices play their role in combating illegal migration mainly in detecting illegal work and illegal employment in close collaboration with labour inspectorates.

The Customs Directorate and the subordinate Customs Crime Office and customs offices cooperate with the Border and Aliens Police services mostly in checking the export and import of goods, and also – within the scope of their competences – in detecting illegal migration and smuggling. Joint offices of police and customs authorities were created on the Schengen airports, and operational agreements were signed to ensure their mutual cooperation in border control at border crossing points along the land border.

Ministry of Foreign Affairs of the SR

The Ministry of Foreign Affairs of the SR is the central state administration body for foreign policy and relations between the SR and other countries and international organisations. Within their consular agenda, Slovak foreign missions perform, within their competence, duties related to issuing short-term and long-term visas, receive applications for residence permits in the SR, and conduct interviews with applicants for the purpose of preliminary assessment of their applications.²⁶ Foreign missions provide basic information on the conditions of entry and stay in the SR, which is also available on the website of the MoFA SR. Foreign missions also collect and process information on the situation in the country of their operation, which is important to analyse threats of illegal migration from the given country and for the visa policy of the SR.²⁷ MFA SR also assists in voluntary returns of migrants, and in expulsions and preparation of readmission agreements.²⁸

Ministry of Labour, Social Affairs and Family of the SR

The Ministry of Labour, Social Affairs and Family of the SR mainly executes duties related to the entry and stay of aliens in the SR with regard to their employment. MoLSAF SR drafts legal regulations applying to the employment of aliens in the SR, the criteria of entry to the labour market for different categories of foreign nationals, including the conditions for granting employment permits, social care for aliens, and shapes the integration policy of the SR. Basic information for aliens is also available on the MoLSAF SR website as a contribution to the prevention of illegal migration.

Central Office of Labour, Social Affairs and Family and Offices of Labour, Social Affairs and Family

The Central Office of Labour, Social Affairs and Family is a budget organisation of MoLSAF SR; it carries out duties relating to granting of employment permits to aliens and third-country nationals, and keeping records on employed aliens through 46 subordinate *Offices of Labour, Social Affairs and Family* at the local level. Their scope of work in the field of aliens' employment also includes provision of information to aliens and counselling them on employment possibilities in their respective district,

²⁶ Grethe Guličová, M.; Bargerová, Z.; Organisation of Asylum and Migration Policies in the Slovak Republic, European Migration Network, Bratislava, May 2010.

²⁷ National State Border Protection Management Plan of the Slovak Republic, Bratislava 2007, available at http://www.minv.sk/swift_data/source/mvsr/ochrana_hranice/ochrana_hranic.rtf (consulted on 16/06/2011)

²⁸ Guličová, Bargerová (2010)

keeping records on information cards on the employment of EU Member States nationals and aliens who do not need an employment permit in the given district, and granting of employment permits, recording and providing information on the number of granted employment permits, and also control of illegal work and illegal employment. The competences of labour offices also comprise care for unaccompanied foreign minors, their placement in foster homes, a role in the family reunification process or return of unaccompanied foreign minors. They also act as guardians of unaccompanied foreign minors. Employees of OLSAFs also participate in international work fairs, providing information on the terms of employment in the SR.²⁹

National Labour Inspectorate and Labour Inspectorates

The National Labour Inspectorate is a budget organisation of MoLSAF SR and deals, among other things, with control of illegal work and illegal employment through eight subordinate *Labour Inspectorates* at the local level. This institution assesses the risk of illegal employment of third-country nationals, identifies the economic sectors with the concentration of illegal employment, and subsequently carries out control of illegal employment in these sectors in particular. The National Labour Inspectorate also provides the European Commission with information on the number and results of such controls. It also keeps a central, publicly available list of natural persons and legal entities that violated the ban on illegal employment.

In detecting illegal work and illegal employment, the Labour Inspectorates cooperate with BBAP PFP, with *Regional Directorates of PF, Offices of Labour, Social Affairs and Family*, and also with the *tax authorities of the Ministry of Finance of the SR – tax offices*, and with the *Social Insurance Agency*.³⁰

Ministry of Justice of the SR

The Ministry of Justice of the Slovak Republic prepares legislation in the field of constitutional law, criminal law, civil law, commercial law, family law, bankruptcy law and international private law. With regard to illegal migration, the amendments to the Criminal Code were of particular importance, now defining smuggling, human trafficking and extremism as crimes. The Ministry of Justice is actively involved in activities of international organisations related to crime, including illegal migration.

The *Legal Aid Centre* belongs to the scope of work of the Ministry of Justice. Its competence will extend, among others, to second-instance proceedings in matters concerning administrative expulsion of aliens in line with the new amendment (Nb. 332/2011) to the Act on Provision of Legal Aid to Persons in Material Need from 01 January 2012.

Besides state authorities, it is in particular the **IOM International Organization for Migration** that carries out activities in the field of migration in the SR. The main scope of activities which can be considered as part of the fight against illegal migration and prevention of illegal migration include operating the Migration Information Centre (MIC IOM). MIC IOM provides third-country nationals who are willing to live or who live in Slovakia with legal, labour and social counselling with the aim to promote their integration in the labour market and in society.³¹ IOM in the SR is the only organisation

29 Grethe Guličová, M.; Bargerová, Z.; Organisation of Asylum and Migration Policies in the Slovak Republic, European Migration Network, Bratislava, May 2010, www.upsvar.sk (consulted on 08/06/2011)

30 <http://www.safework.gov.sk/> (consulted on 08/06/2011)

31 For more information on the particular activities of MIC IOM refer to Chapter 3.1.

implementing programmes of assisted voluntary returns for asylum-seekers, unsuccessful asylum-seekers and irregular migrants, in close collaboration with BBAP PFP. In the framework of the voluntary returns programme, IOM also provides selected returnees with reintegration assistance in their country of origin, for example, by providing help to launch business or in the form of education or material assistance.³²

IOM has dealt with trafficking in human beings for many years, focusing in particular on training activities and assistance to victims of human trafficking.

The majority of non-governmental organisations working in this area focus on providing assistance to asylum-seekers or to persons under international protection. Several non-governmental organisations have recently conducted researches on migration; yet, none of them dealt with illegal migration, but rather on foreigners' integration. From among NGOs, counselling to foreigners in matters related to their residence, or legal counselling in, for example, asylum granting procedures or expulsion procedures at the time of their detention at the Department of Police Detention of Aliens, is provided to a larger extent by the **Human Rights League, the Slovak Humanitarian Council, and at present also by the Slovak Catholic Charity**.

The policies dealing with illegal migration in the SR are predominantly characterised by a restrictive/repressive approach³³, while non-governmental or international organisations only act, with the exception of the programme of assisted voluntary returns³⁴, only as counselling centres for foreigners already settled or legally arriving to Slovakia, or those willing to arrive to Slovakia, thus fulfilling predominantly a preventative function in the field of illegal migration. In general, the issue of illegal migration in the SR is only dealt with at the level of state institutions by ensuring protection of the external borders and implementing measures to capture irregular migrants upon entry to or stay in the SR without involving the third sector.

32 Both the programme and reintegration assistance are funded through the European Return Fund. Solidarity and Management of Migration Flows.

33 Divinský, B.; Nelegálna migrácia na Slovensku available at <http://www.zahranicnapolitika.sk/index.php?id=820&tl=13> (consulted on 03/06/2011)

34 For more details refer to Mittelmánová, M.; Programmes and Strategies of Assisted Returns in the Slovak Republic and Reintegration in Third Countries, European Migration Network, Bratislava, January 2010

03

Practical Measures to Reduce Irregular Migration

The practical measures in the SR aimed at combating illegal migration are grouped into five categories (pre-entry stage, stage of entry, stage of stay, cross-sectional chapter on education, and the possibilities of regularising one's residence) to comply to the largest extent possible with the study's assignment. In connection with the selected practical measures that can be considered as examples of good practice, the efficiency and impacts thereof are also assessed in this study, and the importance of the implemented measures is outlined. With regard to all practical measures summarised in this study it should be taken into consideration that in the majority of cases these measures have an operational nature and that it is not possible to present more detailed information on such measures to the general public in full extent, as such information is not available.

3.1 Pre-Entry: Practical Measures Undertaken to Address Irregular Migration before the Migrant Arrives in the SR

In general, the practical measures aimed at preventing illegal migration at the stage before a migrant's entry to the territory of the target country include **information campaigns and activities to raise awareness about the target country in third countries**. However, the SR has not implemented yet any major information campaign in third countries for the purpose of reducing illegal migration into its territory, since the national policy of the SR in the field of illegal migration is not aimed at using soft instruments.³⁵ Yet, certain activities are conducted within the SR, though in a limited scope, with the purpose of preventing illegal migration and raising migrants' awareness about the SR. These activities are mostly carried out in cooperation with non-governmental and international

³⁵ Boris Divinský, Nelegálna migrácia na Slovensku, 30 July 2009, www.zahranicnapolitika.sk (consulted on 23/06/2011).

organisations and focus on two areas in particular.

The first area of activities of the SR aimed at preventing illegal migration is provision of information on the possibilities of legal entry and residence and stay in the territory of the SR.³⁶ Information is mainly provided by Slovak foreign missions in the countries of origin. This type of information is also available on the websites of competent ministries – MoLSAF SR, MoFA SR and MoI SR in Slovak and English languages.

Information to foreigners who wish to travel to the SR for various purposes is also provided by the Migration Information Centre (MIC IOM) of the IOM International Organization for Migration.³⁷

MIC IOM provides foreigners with complex counselling on different areas of life in Slovakia (residence, family reunification, employment, business, citizenship, social security, health insurance) through the website www.mic.iom.sk in three foreign languages (Slovak, English and Russian), brochures in six languages (Slovak, English, Russian, Vietnamese, Chinese and Arabic), information leaflets, through a hotline and by e-mail. MIC brochures are distributed at the MoFA SR, Slovak foreign missions abroad, labour offices and Aliens Police Department in the SR.³⁸

As shown in **Table 1**, throughout the duration of individual projects from March 2006 to August 2011 (with a break from November 2008 to March 2009, inclusive)³⁹ MIC provided up to 7,381 consultations to third-country nationals or Slovak citizens who needed advice concerning specific cases of third-country nationals. These consultations were conducted in person, by e-mail or by phone. MIC IOM statistics do not observe at present whether it was a third-country national already staying in the SR, or – in the case of phone or e-mail communication – whether he/she stayed outside of the SR (for example, in any of the EU Member States or in his/her country of origin). In the given period, MIC was contacted by 3,280 clients in total, which justifies the existence of a centre providing counselling to migrants in the SR and outside of the Slovak territory.

An analysis of the data on visits to the www.mic.iom.sk website that provides information to foreigners in foreign languages on, for example, how to obtain a residence permit or how to get legal employment, shows that the website was visited by a total of 149,957 unique visitors from different countries, including Slovakia. Of this number, 986 were visitors from unidentified countries⁴⁰ (less than 0.7 per cent) and 14,128 were visitors from third countries⁴¹ (9.4 per cent). Russia, Ukraine and the USA were countries⁴² from which people visited the website most frequently (see **Table 2**). A comparison with the countries of origin of illegally-residing aliens apprehended in the SR with the highest rate of occurrence (see statistics in **Chapter 6, Table 8**) shows that also in this case online visitors

³⁶ National State Border Protection Management Plan of the Slovak Republic. Bratislava 2007; available at http://www.minv.sk/swift_data/source/mvsr/ochrana_hranice/ochrana_hranic.rtf (consulted on 29/09/2011).

³⁷ MIC IOM is financed as a project of the European Fund for the Integration of Third-Country Nationals and co-financed from the state budget of the Ministry of Interior of the SR.

³⁸ In Bratislava and Košice, MIC also provides consultations in person and individual labour counselling to migrants residing in the SR, and contributes with financial resources training/re-qualification courses to those interested in attending such courses. In Bratislava, MIC also provides free open courses of Slovak language.

³⁹ As a consequence of project termination and failure to obtain funds to continue in these activities.

⁴⁰ This data means unidentified countries in which the website visitor stayed and the data of which was recorded in the Google Analytics system.

⁴¹ This data may mean the country of origin or the country of temporary or permanent residence, or the destination in which the website visitor stayed.

⁴² This data may mean the country of origin or the country of temporary or permanent residence, or the destination in which the website visitor stayed.

include persons who connected to the website from Ukraine, India or Russia, i.e. Top 10 countries of origin of irregular migrants apprehended in the period 2005–2010 (see **Chart 1**).

MIC IOM activities thus partially contribute to countering and preventing illegal migration by providing information before migrants' entry to the SR on the possibilities of obtaining legal residence or work in the SR, and by advising of the rights and obligations arising from the Slovak legislation. At the same time, third-country nationals are also provided during their residence in the territory of the SR with personal consultations on the possibility of extending their residence, on their obligations towards authorities, information brochures are distributed in institutions mostly visited by foreigners, and many other activities of mostly information nature are carried out. The statistics show a year-to-year increase in the numbers of clients and consultations, as well as website visits.

Table 1 Number of clients of the IOM Migration Information Centre

| Project duration | Clients | Consultations |
|-------------------------|--------------|---------------|
| 01/03/2006 – 31/10/2008 | 760 | 2,900 |
| 01/04/2009 – 31/12/2009 | 527 | 741 |
| 01/01/2010 – 31/10/2010 | 842 | 1,627 |
| 01/11/2010 – 31/08/2011 | 1,151 | 2,113 |
| Total | 3,280 | 7,381 |

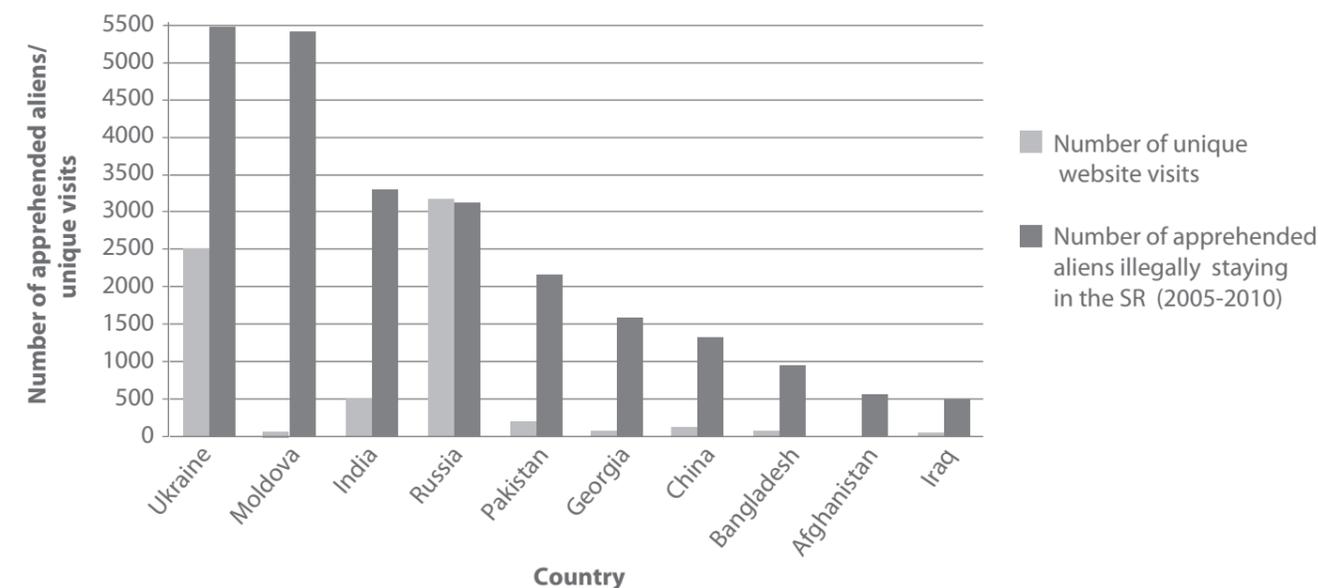
Source: IOM

Table 2 Top 10 visits to MIC IOM website, by countries

| Country | Unique website visits |
|-----------|-----------------------|
| Russia | 3,136 |
| Ukraine | 2,469 |
| USA | 2,326 |
| Canada | 554 |
| India | 501 |
| Belarus | 484 |
| Serbia | 471 |
| Australia | 385 |
| Egypt | 251 |
| Turkey | 213 |

Source: IOM

Chart 1 Comparison of Top 10 countries of origin of aliens illegally staying in the SR and unique website visits



Source: IOM

In 2008, MoLSAF SR came with the proposal to build mobility information centres in selected countries by 2015. Such information centres were supposed to inform about the labour market of the SR, vacant jobs and about formal requirements. Besides Slovak nationals, they were expected to motivate also foreign nationals to come to work in the SR.⁴³ Unfortunately, with a view to the on-going economic crisis, this proposal was suspended and the creation of mobility information centres gave up to the need to resolve more urgent problems on the labour market.⁴⁴

The second area of activities of the SR in the prevention of illegal migration, though in a limited extent, is assistance and development of migration management in countries of origin and in transit countries⁴⁵ through international official development aid projects and international cooperation aimed at capacity building. Even though Slovak development aid is provided also to countries which are important countries of origin and transit of migrants (e.g. Ukraine, Georgia, Moldova and others), the primary focus of the projects is not migration; migration issues are dealt with within a broader scope of capacity building and promotion of the European perspective of these countries.

43 Vláda chce späť Slovákov zo zahraničia, IN: Pravda daily, available at http://spravy.pravda.sk/vlada-chce-spat-slovakov-zo-zahranicia-dhr-/sk_domace.asp?c=A080623_132730_sk_domace_p23 (consulted on 29/09/2011).

44 Report on the State Policy of Care for Slovaks Living Abroad and on State Subsidies Granted to Slovaks Living Abroad in 2009, together with the draft Programme of State Policy of Care for Slovaks Living Abroad in 2011. Available at: [https://lt.justice.gov.sk/\(S\(fgdx55l5ebblbnemvcz345\)\)/Attachment/Spr%C3%A1va%20o%20C5%A1t%C3%A1tnej%20politike_doc.pdf?instEID=-1&attEID=25681&docEID=123956&matEID=2941&langEID=1&tStamp=20100719124301047](https://lt.justice.gov.sk/(S(fgdx55l5ebblbnemvcz345))/Attachment/Spr%C3%A1va%20o%20C5%A1t%C3%A1tnej%20politike_doc.pdf?instEID=-1&attEID=25681&docEID=123956&matEID=2941&langEID=1&tStamp=20100719124301047) (consulted on 29/09/2011).

45 National State Border Protection Management Plan of the Slovak Republic, Bratislava 2007, available at http://www.minv.sk/swift_data/source/mvsr/ochrana_hranice/ochrana_hranic.rtf (consulted on 29/09/2011).

For example, the following concrete projects were implemented in 2010: *Promotion of the adaptation and bespoke assistance with regard to the integration of the resettled families in the Khobi region in Georgia and Equal labour opportunities and livelihood for Bosnian, Serbs and Croats affected by exploded land mines – “FRUIT, not MINES”*.⁴⁶

In the framework of international cooperation aimed at capacity building, the SR mainly focused on strengthening cooperation with the most frequent countries of origin of migrants arriving at the SR, either through individual projects or under FRONTEX agency activities, mobility partnerships with Moldova, or EUBAM mission on the Moldova-Ukraine border.⁴⁷

The decisions in the visa granting procedure and sanctions against carriers are also used as **control tools before arrival at the external borders**, and hence as tools of prevention in countering illegal migration.

In practical work, the SR uses legally established procedures for the assessment and verification of visa applications, which are similar for Schengen Visas and national visas. The procedures of the MoI SR and MoFA SR in granting visas comply with the Visa Code and with the national legal regulations in this field. The Consular Department of MoFA SR in cooperation with the MoI SR publishes practical instructions and guidelines for foreign missions used in the visa granting procedures. Besides foreign missions, the BBAP PFP also issues visas in exceptional cases – at border crossing points and through BCD PF. In addition, BBAP PFP provides consultations to foreign missions on the granting of visas, and carries out security checks of applicants. There is regular communication between the consular staff abroad and the MoI SR through information communication networks. These offices exchange information on false documents, on inviters and travel agencies that are suspicious of ensuring purposeful invitations, information published in printed and electronic media on the possibilities of obtaining visas or residence permits in the SR, and practical knowledge on the entry and residence of foreigners in the SR on the basis of which it is possible to identify certain trends in illegal migration.⁴⁸

A third-country national subject to the visa obligation must file the visa application at the foreign mission abroad. The application must be presented on an official form accompanied by required documents, and the foreign mission may ask submission of other documents beyond the scope laid down in the law.⁴⁹ After receiving the applications, the data presented by the applicants is processed by the MoFA SR and by the respective FM abroad, and the visa may be issued upon previous opinion by the MoI SR. The authorised staff of the foreign mission abroad or of BPD PF at the border crossing point shall enter the applicant's data and supporting documents to the visa information system (VIS) which also keeps records on applicants in connection with residence permits, inviters and invitees and screening, and in the framework of which consultations are conducted between the Member States concerning issuing of Schengen visas under VISION. The national component of VIS system

46 Potočková, I.: Annual Report on Migration and Asylum Policies. Slovak Republic 2010; National Study for the European Migration Network. IOM International Organization for Migration. Bratislava 2011.

47 For more information on international cooperation in combating illegal migration refer to Chapter 4.

48 Mrlianová, A., Szlobodová, L., Ulrichová, N., Zollerová, M.: Visa Policy and Its Impact on Migration Flows to the Slovak Republic. National Study for the European Migration Network. IOM International Organization for Migration. Bratislava 2011.

49 Document proving financial security; document on the manner of transportation, and invitation certified by a police department and subject to security check by MoI SR.

under the MoI SR is used to process the received applications. The national component of VIS under MoFA SR keeps records on applicants for visa and issues visas at foreign missions and border crossing points.⁵⁰ The Central Visa Authority of the Aliens Police Department of BBAP PFP performs a security check in the information systems of the MoI SR and in the VISION network (in the case of consultations under Article 22 of the Visa Code).⁵¹ The assessment of the visa application involves checking the duration of previous stays and possible overstays during previous permitted residence. In cases of previous negative decisions by another Member State, the foreign mission verifies the reasons for refusal. The foreign mission also assesses whether the applicant represents a risk and whether he/she intends to leave the Schengen Area prior to the visa expiry. The foreign mission may request the applicant to present an invitation verified by a police department and a criminal record statement for this purpose. All these measures aim at preventing unwanted migration and eliminated security risks.

Another preventative measure in countering illegal migration yet before entering the territory of the SR is the obligations and sanctions against carriers under the Slovak legislation which motivate carrier companies to check the travel documents of transported persons. A carrier providing transport of persons to the SR through the external border (except for cross-border transport) must not carry to the border crossing point a third-country national without a valid travel document or a visa (a visa can be replaced with a residence permit). This obligation also applies to carriers who transport persons on regular international bus lines.⁵²

A carrier that transports a third-country national through a border crossing point who is subsequently denied entry to the SR or is returned by authorities of another Member State which he/she transited en route to the SR or whom another carrier refused to transport to another country on a connecting transport line is obliged to transport the foreign national to the country from which that third-country national was transported or to the country which issued the travel document he/she was holding, or to any other country in which his/her acceptance has been ensured at the latest by the date set upon an agreement with the police department at the border crossing point. Hence, the carrier is obliged to immediately ensure transportation or substitute transportation of the third-country national and bear the related costs, or if substitute transportation is not possible, the carrier must take over responsibility for the costs of accommodation and return of the third-country national.⁵³ Besides carriers, also airport operators may be imposed financial sanctions depending on the breach of legal obligation.

The development of technical equipment and facilities also forms part of the practical measures for preventing illegal migration. Within the stage before a migrant's entry to the SR, it is namely material facilities and equipment used by the border and aliens police and consular office staff in processing visa applications. Before entry to the Schengen Area in 2007, the foreign missions and general consulates were equipped with technology for issuing of visa with the N-VIS system (computers, printers, scanners, fingerprint reading devices, document readers, photo booths, devices scanning

50 National Border Control Management Plan of the Slovak Republic for the Years 2011–2014. Bratislava 2011; available at <https://lt.justice.gov.sk/Material/MaterialHome.aspx?instEID=-1&matEID=4117&langEID=1>, (consulted on 29/09/2011)

51 National Border Control Management Plan of the Slovak Republic for the Years 2011–2014. Bratislava 2011, available at <https://lt.justice.gov.sk/Material/MaterialHome.aspx?instEID=-1&matEID=4117&langEID=1> (consulted on 29/09/2011)

52 New Act on Stay of Aliens

53 New Act on Stay of Aliens

the digital face image, UV lamps, magnifiers, retro-checks). The SR also uses information systems in combating illegal migration. After entering the Schengen Area, Slovakia started implementing measures to connect to the Visa Information System VIS through N-VIS. N-VIS system consists of N-VIS of the Mol SR and N-VIS of the MoFA SR, which are inter-connected on-line. N-VIS of the Mol SR is composed of four parts: the VISION communication network; requests for opinion on granting visas; requests for screening in order to check invitations; and requests for screening for the purpose of granting residence permits.⁵⁴ Also, the information system SIRENE of the national bureau was completed as of the contact office for the Schengen Information System in the SR.⁵⁵ The MIGRA information system was launched, as well.⁵⁶

An important role in the prevention of illegal migration at the stage before a migrant's entry to the territory of the target country is played by **police liaison officers and advisors on documents** who help the consulate staff by checking the documents submitted with visa applications or applications for residence permits, and prepare analyses on falsification and forging of documents.⁵⁷ Advisors on documents are sent by the SR to the General Consulate of the SR in Uzhgorod in Ukraine as the most important country of origin of migrants in the SR. In 2009, a pilot project to send an advisor on documents to Vietnam was also implemented.

Since June 2007, BBAP PFP has been regularly sending three advisors on travel documents to the General Consulate in Uzhgorod once a month, who are rotated in -month intervals. These advisors are directly liable to the head of the Consular Office in Uzhgorod. According to the Border Police Directorate (BPD) in Sobrance, after their first month of work the percentage rate of refused visa applications increased from about 3 to 20 per cent, where the reason for refusal was mainly submission of false documents, false supporting documents or falsification of stamps which these trained staff with long-year experience discovered⁵⁸ (see development in 2007 – **Chart 2**). Since the deployment of advisors to the Consular Office in Uzhgorod started (June 2007), the share of refused applications in the total number of visa applications increased. This trend continued also in the years 2008–2010 (See **Table 3**).

After introducing secondary biometry into the permits for small cross-border traffic with Ukraine, the advisors at the consulate should be also responsible for collecting biometric data. It is also expected that these advisors will be involved in cooperation with the foreign missions of other Member States in connection with illegal migration, crimes and counter-terrorism.

Since the activities of advisors on travel documents proved useful, the Mol SR, in cooperation with the MoFA SR, decided to send under a pilot project an advisor on documents to Vietnam at the foreign mission in Hanoi. The deployment of an advisor on documents to China (Beijing) is also considered. The SR plans to send advisors on documents also to some other third countries regularly, at least twice a year for periods of one month.⁵⁹

54 Potočková, I.: Annual Report on Migration and Asylum Policies. Slovak Republic 2010; National Study for the European Migration Network. IOM International Organization for Migration. Bratislava 2011.

55 Ibidem.

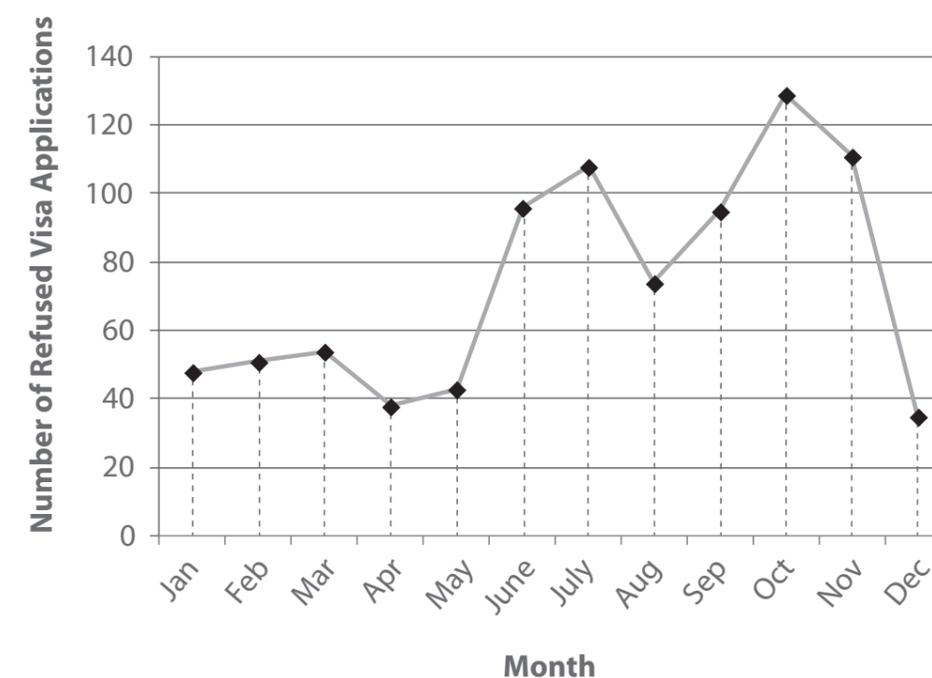
56 For more information on the MIGRA system, also refer to Chapter 3.2.

57 Information on police liaison officers is also provided in Chapter 4.2.

58 Information provided by BBAP PFP.

59 National Border Control Management Plan of the Slovak Republic for the Years 2011–2014. Bratislava 2011, available at <https://>

Chart 2 Number of refused visa applications at the General Consulate in Uzhgorod in 2007, by months



Source: BBAP PFP

Table 3: Number of requested visas and refused visa applications at the General Consulate in Uzhgorod in 2005-2010

| Years | Received applications | Refused applications | Share of refused applications (%) |
|-------|-----------------------|----------------------|-----------------------------------|
| 2005 | 25 220 | 511 | 2,03 |
| 2006 | 36 595 | 425 | 1,16 |
| 2007 | 25 220 | 882 | 3,50 |
| 2008 | 15 825 | 1 264 | 7,99 |
| 2009 | 10 651 | 266 | 2,50 |
| 2010 | 12 158 | 286 | 2,35 |

Source: BBAP PFP

The identification of illegal migration routes is another important measure in combating illegal migration at the stage before a migrant's entry to the SR. The main route of illegal migration after entering the Schengen Area is in the direction from Ukraine to the SR through the external land border of the EU. As for internal borders, the Slovak-Polish state border section is considered as a potential

it.justice.gov.sk/Material/MaterialHome.aspx?instEID=-1&matEID=4117&langEID=1 (consulted on 29/09/2011)

risk direction.⁶⁰ The SR is involved in the activities of various international organisations (e.g. ICMPD) and other international forums (e.g. Building of Migration Partnerships) the objective of which is identification, analysis and cooperation concerning movement and routes of irregular migrants.⁶¹

3.2 Entry: Practical Measures Undertaken to Identify and Detect Irregular Migrants at Borders (on the Slovak-Ukrainian Border - External Schengen Border)

The practical measures aimed at preventing illegal migration at the stage of a migrant's entry to the territory of the country of destination include **border controls and the use of technical equipment and facilities to control the external borders**. The first-line and second-line control of the Slovak external borders is ensured by a combination of physical and technical protection, and by operational and search activities at road and railway border crossing points and at international and small airports. The infrastructure at road and railway border crossing points meets the best Schengen standards, which was specifically mentioned in the evaluation report of EU Council's Evaluation Commission for Schengen Evaluation.⁶² SR is also engaged in the pilot project of testing the European Border Surveillance System (EUROSUR). Until 2013, it is planned to establish a National Cooperation Centre (NCC) under BCD Sobrance.⁶³

The system of physical and technical protection of the Slovak-Ukrainian state border was built during preparations for Slovakia's entry to the Schengen Area. The Slovak-Ukrainian border is subject to permanent monitoring by means of the system of management and coordination of external borders control at the regional and local levels. At the regional level, the operational centre of the Border Police Directorate in Sobrance represents the tactical surveillance centre, which monitors the entire section of Slovakia's external borders with Ukraine. At the local level, it is on-site guards carrying out patrolling and rounding activities.⁶⁴ Various static and mobile technical equipment and information systems are used at both the regional and local levels. The current practice has proven the efficiency of border control using national databases for data checking.

Prior to the entry to the Schengen Area in 2007, the relevant BBAP PFP departments (workplaces) were equipped with material and technical facilities (computers, printers, scanners, fingerprint reading facilities, document readers, photo booths, devices scanning the digital face image, UV lamps, magnifiers, retro-checks) to ensure issuing of visas under the N-VIS system. Border crossing points which issue visas were also equipped with the necessary equipment (computer sets, printers, scanners, etc.). The resources of the Schengen Transition Fund (co-financed from the state budget) were used to build new buildings for the basic border police units and renovate old buildings and bor-

60 External Borders Fund, Slovak Republic, Multi-Annual Programme 2007–2013. Available at <http://www.minv.sk/?fond-pre-vonkaj-sie-hranice&subor=12402> (consulted on 16/06/2011)

61 For more information on international cooperation refer to Chapter 4.

62 National Border Control Management Plan of the Slovak Republic for the Years 2011–2014. Bratislava 2011, available at <https://lt.justice.gov.sk/Material/MaterialHome.aspx?instEID=-1&matEID=4117&langEID=1> (consulted on 29/09/2011)

63 Potočková, I.: Annual Report on Migration and Asylum Policies. Slovak Republic 2010; National Study for the European Migration Network. IOM International Organization for Migration. Bratislava 2011.

64 National Border Control Management of the Slovak Republic for the Years 2011–2014. Bratislava 2011, available at <https://lt.justice.gov.sk/Material/MaterialHome.aspx?instEID=-1&matEID=4117&langEID=1> (consulted on 29/09/2011)

der crossing points, and to equip the respective border and aliens police units with special technology (especially with monitoring motor vehicles to control the external border and detect illegal migration, and Schengen buses), as well as the customs administration units (technical facilities and equipment for inspection of vehicles and goods, for detection of drugs and psychotropic substances, and measurement of radioactive materials – modern inspection scanning system THSCAN 1215HS, railway inspection scanning system RF 6010, mobile control vehicle VAN902 to check passengers' luggage, and mobile scanning vehicle HCV – MOBILE to scan personal vehicles and trucks). Under reconstruction works, monitoring equipment and camera systems for the reading and recording of car licence numbers and container codes were installed at border crossing points, and special devices for checking travel documents and identification documents were purchased.⁶⁵

The external air border of the Schengen Area in the territory of the SR is formed by three international airports in Bratislava, Poprad and Košice. These three airports have been renovated and equipped with new computer and communication technology. Only the airports in Bratislava and Košice have infrastructures that comply with Schengen standards.⁶⁶ Other small airports are equipped with mobile technical facilities.

According to Slovakia's recent experience in illegal migration, irregular migrants usually cross the external border outside of the border crossing point by foot, organised in small groups with the help of a smuggler or foreigners who already dispose of a residence permit on the basis of an asylum application or for the purposes of business or family reunification.⁶⁷ The most frequent points of crossing are in close proximity to municipalities and towns on the Ukrainian side with developed road infrastructure. However, the points of illegal entry to the Slovak territory depend on many factors, such as climate, season of the year or terrain.

One third of the Slovak-Ukrainian state border (southern section) is plain and the other two thirds (northern section) is mountainous.

The southern section of the Slovak-Ukrainian border is secured with a camera chain (approx. 30km).⁶⁸ The cameras serve for 24-hour border monitoring. The camera chain is also supported by an innovative detection system SENSTAR which analyses electromagnetic radiation over the ground. SENSTAR works on the basis of receiving and emitting electromagnetic waves, thus eliminating false alarms along the camera chain based on a movement detection system.

In the mountainous and forest area of the northern part of the Slovak-Ukrainian border it is not always possible to determine the point of border crossing. The summer months are particularly critical. Police dogs trained in special and traditional cynology are used in this hard terrain.⁶⁹ In the criti-

65 Potočková, I.: Annual Report on Migration and Asylum Policies. Slovak Republic 2010; National Study for the European Migration Network. IOM International Organization for Migration. Bratislava 2011.

66 National Border Control Management Plan of the Slovak Republic for the Years 2011–2014, available at <https://lt.justice.gov.sk/Material/MaterialHome.aspx?instEID=-1&matEID=4117&langEID=1> (consulted on 29/09/2011)

67 Summary Reports on the State of Implementation of the Commitments from the Concept of Migration Policy of the Slovak Republic by the Governmental Departments in 2010, available at <https://lt.justice.gov.sk/Material/MaterialHome.aspx?instEID=44&matEID=3857&langEID=1> (consulted on 29/09/2011)

68 Information provided by BBAP PFP

69 National Border Control Management Plan of the Slovak Republic for the Years 2011–2014, available at <https://lt.justice.gov.sk/Material/MaterialHome.aspx?instEID=-1&matEID=4117&langEID=1> (consulted on 29/09/2011)

cal section of the northern part of the border, a radio-barrier system is used working on the basis of recording seismic quakes in the ground by means of underground detectors.⁷⁰

For the purpose of ensuring state border protection in the northern part of the Slovak-Ukrainian border which is mountainous and forested, certain solutions were elaborated for a system of technical and physical border protection. Namely, it is two innovative and unique pilot instruments in countering illegal migration: a dual detection system for controlling the movement of persons, the so-called *Virtual Fence*, the operation of which was first launched in the southern part of the Slovak-Ukrainian border in 2009; and a portable/mobile detection system for controlling the movement of persons (*Kufor – Suitcase*). Both pieces of equipment use the same system developed in cooperation with a private company and are designed to assist in the detection of illegal crossing of the EU's external borders. The technical facilities in this mountainous section are planned to be completed by the end of 2012.⁷¹

Virtual Fence uses the RALEN EPOFAT⁷² detection system which works on the basis of comparing homogenous electromagnetic fields. It is a stationary, ecological, linear security system designed to detect presence of live humans in protected areas. The system is self-sufficient in terms of power, without the need to connect it to any external source of electric energy, as it uses natural light and power.⁷³ The system is set exclusively for the electromagnetic field of humans, and does not react to other electromagnetic fields of live organisms (animals). It also serves for detecting the presence of live persons moving through extremely inaccessible terrains, such as swamps and water flows.⁷⁴ Since it is a pilot and costly project, the Virtual Fence is used only at a 2.3km long border section for the moment.⁷⁵

The mobile detection device *Kufor* or *Watchman*, also using the RALEN EPOFAT system, serves for the detection of live humans. The system is set exclusively for the electromagnetic field of humans. By means of six detectors, the device detects the presence of a live human within a minimum radius of 600m². The system can be also operated in hardly accessible forest areas and under extreme climate conditions, since it is equipped with a GPS satellite navigation system.⁷⁶

The RALEN system is also used at railway and road border crossing points at the southern border section, in which a completely new system of detectors was installed. These detectors are able to spot the presence of a person hidden in a truck or in a wagon with 100% efficiency.⁷⁷

The data recorded by all detection systems and sensors on the border is processed in the centralised architecture within the automated operation regime using the EBAS MS software solution (Ericsson Border and Area Security Management System), thanks to which the operator of the border police

70 Information provided by BBAP PFP.

71 Ondera P.: Pozitíva v bezpečnosti na cestách i boji s organizovaným zločinom. Rozhovor s Ministrom vnútra Robertom Kaliňákom. IN: Euroreportplus. Časopis na prezentovanie Slovenska v Európskej únii. Február 2010. InfoSERVIS, available at: <http://www.artix.sk/strazan4/assets/casopisy/pdf/euroreport-02-2010.pdf> (consulted on 20/07/2011)

72 For more details refer to <http://www.ralen-rc.sk/ralen.htm> (consulted on 29/09/2011)

73 Available at http://www.ralen-rc.sk/virt_plot.htm (consulted on 29/09/2011)

74 Available at http://www.ralen-rc.sk/virt_plot.htm (consulted on 29/09/2011)

75 Information provided by BBAP PFP.

76 Available at <http://www.ralen-rc.sk/watchman.htm> (consulted on 29/09/2011)

77 Potočková, I.: Potočková, I.: Annual Report on Migration and Asylum Policies. Slovak Republic 2010; National Study for the European Migration Network. IOM International Organization for Migration. Bratislava 2011.

operation centre in Sobrance has an overview of the events along the monitored border section. This system serves for receipt and analysis of information on alarms signalling infringement, assists in getting an overview about the condition and arrangement of sensors and mechanic barriers or about the mobile guards protecting the border on-site, their quick activation and management.⁷⁸

The impacts of the above-mentioned measures designed to protect the southern part of the state border with Ukraine and its northern part (Ubl'a border crossing point only) with the aim to combat illegal migration are shown in the tables below (**Tables 4 and 5**).

Both tables imply a clear decline in the number of irregular migrants.⁷⁹

Table 4 shows that the share of events recorded in the southern section of the Slovak-Ukrainian border using signalling by the EBAS system exceeded 66 per cent of the total number of events in the given section in almost every monitored year. A lower share was recorded only in 2007 when EBAS was launched in the month of October. In 2008, this share was over 81 per cent.

A similar trend can be observed also in connection with persons apprehended as a result of signals recorded and processed in the EBAS system. In almost every monitored year, this share exceeded 46 per cent of the total number of persons apprehended in the southern section. Also in this case a lower share was observed only in 2007 when EBAS was launched in October of that year, and the highest share (over 69 per cent) was reached in 2008. These figures prove the efficiency of measures implemented on the Slovak-Ukrainian state border to target illegal migration.

The available statistics concerning the northern part of the border (only one border crossing point at Ubl'a) suggest that the share of events recorded on the given border crossing point using signals processed in the EBAS system exceeded 6 per cent of the total number of events in almost every monitored year. The highest share was attained in 2009. A similar development can be observed also in connection with persons apprehended as a result of signals recorded and processed in the EBAS system. In almost every monitored year, this share exceeded 3.6 per cent of the total number of persons apprehended within the given border crossing point. The highest share was reached in 2010.

The lower share of events and persons apprehended within the Ubl'a border crossing point in the northern section (Table 5) compared to the southern section is caused, on one hand, by the preventative nature of the measures implemented in the southern section (which is the most exposed section in relation to illegal migration, as it disposes of good road infrastructure), and also by gradual installation of detection systems in the northern part of the border and the subsequent decline in illegal migration in both sections as a result of the measures (both visible and invisible detectors).

According to BBAP PFP, these measures resulted in lower illegal migration pressures on the Slovak-Ukrainian state border, and the number of other illegal cross-border activities (e.g. smuggling of goods) declined, too. BBAP PFP considers these measures and the innovative pilot solutions (such as the Virtual Fence) as well-established, and plans to continue implementing them in the other parts of the border, as well.

78 Hranicu s Ukrajinou pomáha strážiť Ericsson. IN: EUROREPORT plus, Časopis na prezentáciu Slovenska v Európskej únii. INFOservis. January 2008, available at <http://www.euroreportplus.sk/pdf/200801.pdf> (consulted on 19/09/2011)

79 For more information on statistical data refer to Chapter 6.

Table 4 Number of events/apprehended persons in the southern part of the Slovak-Ukrainian state border in 2006–2010 and from October 2007 along the camera chain (BCD PF Vyšné Necké, Maťovské Vojkovce, Veľké Slemence and Čierna nad Tisou)

| Period | Year 2006 | Year 2007 I-IX | Year 2007 X-XII | Year 2008 | Year 2009 | Year 2010 |
|--|-----------|----------------|-----------------|-----------|-----------|-----------|
| Southern part – total (number of events/number of detained persons) | 126/576 | 44/152 | | 122/275 | 70/152 | 54/115 |
| Whereof EBAS (number of events/number of apprehended persons) | - | - | 18/30 | 100/190 | 48/70 | 36/70 |

Source: BBAP PFP

Table 5 Number of events/apprehended persons in 2006–2010 along the camera chain at the Ublá border crossing point

| Period | Year 2006 | Year 2007 I-IX | Year 2007 X-XII | Year 2008 | Year 2009 | Year 2010 |
|--|-----------|----------------|-----------------|-----------|-----------|-----------|
| Ublá – total (number of events/number of apprehended persons) | 67/350 | 20/89 | | 47/137 | 39/103 | 30/88 |
| Whereof EBAS (number of events/number of apprehended persons) | - | - | 0/0 | 3/5 | 4/4 | 2/10 |

Source: BBAP PFP

Border crossing points, as well as international airports and selected organisational units of the BBAP PFP were equipped with additional modern technology for the detection of false travel documents (VSC 600, VSC 4, new retrochecks, comparison devices and trinocular stereoscopic microscopes)⁸⁰, and with technology for the control of persons upon crossing the external borders (travel document readers, fiberscopes, thermal cameras) which assists in detecting illegal crossing of the EU's external borders. Upon border control, the Border Control Departments of PF can check passengers' biometric data, but the check of fingerprints recorded electronically in travel documents is not possible yet.

Besides the above-mentioned material and technical equipment on the Slovak-Ukrainian border, the SR also uses information systems, such as the national VIS or IS MIGRA. Besides foreign missions

⁸⁰ Summary Reports on the State of Implementation of the Commitments from the Concept of Migration Policy of the Slovak Republic by the Governmental Departments in 2008, available at [https://lt.justice.gov.sk/\(S\(nrt24xff3vlosj45jwmd2iea\)\)/Document/DocumentDetails.aspx?instEID=44&matEID=1381&docEID=54590&docFormEID=25&docTypeEID=12&langEID=1&Stamp=20090716095624310](https://lt.justice.gov.sk/(S(nrt24xff3vlosj45jwmd2iea))/Document/DocumentDetails.aspx?instEID=44&matEID=1381&docEID=54590&docFormEID=25&docTypeEID=12&langEID=1&Stamp=20090716095624310) (consulted on 29/09/2011)

abroad, seven field offices of the BBAP PFP at selected border crossing points of the SR on the EU's external borders (three international airports and four Border Control Departments of PF on Slovakia's Eastern border with Ukraine) are connected to the N-VIS system of MoFA SR. These field offices issue visas at border crossings and international airports through the N-VIS system of MoFA SR in exceptional cases only. However, members of the border police dispose of all access rights at a consular level and are entitled to enter in the system data from visa applications, the changes thereof and decisions, and to print visa stickers.⁸¹

After entering the Schengen Area, the SR was expected to ensure regular sending of statistical data on migration. However, the MoI SR did not dispose of the necessary technical and software equipment.⁸² In order to ensure collection of high-quality and complex information on illegal migration in the SR and monitoring of migration flows, the IS MIGRA analytical/recording information system for migration and international protection was implemented. IS MIGRA is designed to record actions in dealing with aliens on the border, inland and in asylum-granting procedures, as well as to record actions related to human smuggling. This system consists of two modular components. On the side of BBAP PFP and MO MoI SR, it serves to register an alien from his/her entry to the territory of the SR until his/her departure or regularisation of residence. On the side of the National Unit to Combat Illegal Migration (NUCIM BBAP PFP), the system serves to record irregular migrants and smugglers. The system can produce outputs in the form of different indicators, code lists, lists and statistics, provides information for the BBAP PFP and for MO MoI SR, and unifies the system of aliens' records.⁸³ The system enables clear identification of a person on the basis of fingerprints recorded in IS MIGRA by being integrated under AFIS and EURODAC, and it makes data on all procedural actions concerning illegal residence in the SR or granting of any form of international protection available. The pilot operation of IS MIGRA was launched on 26 October 2010.⁸⁴ The system can be accessed by all units of the border and aliens police, and by other PF units in the form of alpha-numerical screening.⁸⁵

The system is inter-connected with other PF information system. It contributes to the creation and management of the migration policy of the SR, as it provides complex information on illegal migration in the SR at central, regional, local and EU levels that were not available before.

These systems are also used at the stage before an alien's entry to the SR.

Another practical measure targeting illegal migration at the stage of a migrant's entry to the territory of the country of destination is the **collection of intelligence information and strategic analysis of risks** by the Risk Analysis and Coordination Department (RACD) of the BBAP PFP. At the local level, information on illegal migration is collected through the IS MIGRA system and on the basis of situation reports. The Risk Analysis and Coordination Department closely collaborates with the operation

⁸¹ Bargerová, Z.; Številová, Z.: Annual Report on Migration and Asylum Policies. Slovak Republic 2008, National Study for the European Migration Network. IOM International Organization for Migration. Bratislava 2009.

⁸² Foreign Aid News. 2009/10. Available at http://www.minv.sk/swift_data/source/mvsr_a_eu/o_zahranicnej_pomoci_zk/fan/2009/FAN_10.pdf (consulted on 19/07/2011)

⁸³ Foreign Aid News. 2009/10. Available at http://www.minv.sk/swift_data/source/mvsr_a_eu/o_zahranicnej_pomoci_zk/fan/2009/FAN_10.pdf (consulted on 19/07/2011)

⁸⁴ Potočková, I.: Potočková, I.: Annual Report on Migration and Asylum Policies. Slovak Republic 2010; National Study for the European Migration Network. IOM International Organization for Migration. Bratislava 2011.

⁸⁵ National Border Control Management Plan of the Slovak Republic for the Years 2011–2014. Bratislava 2011, available at <https://lt.justice.gov.sk/Material/MaterialHome.aspx?instEID=-1&matEID=4117&langEID=1> (consulted on 29/09/2011)

centre of the Border Control Directorate in Sobrance (on the eastern Schengen border) which compiles situation reports on the external land border. Since the other directorates do not have operation centres, the basic units under their competence report events concerning illegal migration to the central operation centre of PF. On the basis of events, tactical and operational risk analyses are carried out at the local and regional level of the directorates, representing a source of information for strategic analyses of illegal migration. Crisis management and strategic management fall under the competence of the respective sections of BBAP PFP at the central level which compile national periodic statistics about legal and illegal migration, analyses of risks and threats, as well as ad hoc analyses.⁸⁶ In this field, the SR also cooperates with its foreign partners, in particular with the EU Member States under different working groups (e.g. FRAN and RAU agencies, FRONTEX, CIRCA, etc.)⁸⁷

No complex information system exists in the SR for the collection, processing and analysis of data on illegal migration, although BBAP PFP is the sponsor of several information systems, such as records on unwanted persons (IS INBO), IS ECU, SIS II, VIS, MIGRA, ACHERON⁸⁸ and others.

With regard to cooperation between the SR and the United States in combating illegal migration and detecting human smuggling, a functional information system model in its basic configuration was implemented using rsCase technology with the possibility of being expanded by other models that extend its functionality.⁸⁹

The border control of the SR is expected to eliminate traffic by persons using false or forged documents. **The identification and registration of false and forged document on the border** is another measure aimed at the prevention of illegal migration at the stage of a migrant's entry to the SR. The control of documents is carried out by means of the Central Screening Console (CSC) which is interconnected to several systems (SIS, MIGRA) and to a FADO documents register. The NUCIM BBAP PFP is also involved in the control by providing information in concurrence with other BBAP PFP units. This unit uses the ACHERON information system in its work.

If the police department discovers, by verifying information and checking the documents in CSC or by means of UV lamps, Inspecta Docuboxes and other devices, that a foreign national presented a false or forged document, it is entitled to hold such document back. The police department may also hold back a document that has not been issued with the name of the controlled foreigner and which the foreigner presents as his own document, or if the country that issued the document has declared that document invalid or stolen. Such foreigner may be imposed a fine of up to EUR 1,600.

An important measure to prevent illegal migration at the stage of a migrant's entry to the SR is **reinforcement of police cooperation** both at the bilateral level (for example, with neighbouring countries, where cooperation with Ukraine is of special importance), and at the multilateral level (for example, under FRONTEXT Agency).⁹⁰

⁸⁶ Ibidem

⁸⁷ Ibidem

⁸⁸ ACHERON information system of the PF is used to analyse risks in countering illegal migration. The system processes information flows and assesses risks, thus contributing to the investigation of cross-border crimes.

⁸⁹ Potočková, I.: Annual Report on Migration and Asylum Policies. Slovak Republic 2010; National Study for the European Migration Network. IOM International Organization for Migration. Bratislava 2011.

⁹⁰ For more information on international cooperation refer to Chapter 4.

In the framework of the Agency, Slovakia is involved, for example, in activities targeting the prevention of illegal migration at the stage of a migrant's entry to the territory of the SR. In the majority of operations, the Slovak experts sent are specialised in the detection of false and forged travel documents. The focus of such operations is varied, yet their primary objective is to improve the efficiency of border control on the south-eastern route of illegal migration, to counter cross-border crime, and to implement measures against persons who illegally crossed the state border. The SR puts great emphasis on operational activities on the external land border of the EU and plans intense cooperation in selected FRONTEX operations also in the years to come.

3.3 Stay: Practical Measures Undertaken to Control Irregular Migration in the SR

The following measures aimed at combating illegal migration at the stage of stay in particular are implemented in the SR: compensation measures; controls for the purpose of checking the legality of residence; activities countering illegal employment of foreigners; activities aimed at discovering victims and human traffickers; expulsion of illegally residing foreigners; the possibility of re-introducing controls on the internal borders; and police cooperation.⁹¹

Compensation measures replace controls on the internal borders of the SR. According to the new Act on Stay of Aliens, which introduces clear control and sanction measures, a police department may check the legality of residence, the fulfilment of the conditions of residence and adherence to the foreigner's obligations arising from law, as well as check adherence to the obligations by other natural persons and legal entities in connection with a foreigner's residence. Upon carrying out residence control, the police is entitled to enter places designed for business, employment or study, as well as the premises of accommodation facilities, and request proving of one's identity and ask explanations with regard to facts that are subject to control.⁹² The police may also stop vehicles and examine their luggage compartments.

Residence controls have various forms and involve several Police Force units. Namely, it can be independent random controls by mobile units at changing check points with the aim to detect illegal migration, infringement of the residence regime, crimes and offences; or regular preventative/security controls according to type plans at selected check-points with higher probability of foreigners' presence or occurrence of illegal conduct, such as motorway rest areas, bus stations and railway stations and stops, accommodation facilities, pubs, roadhouses, market places, etc.; as well as hidden controls by search groups during regular traffic operation on motorways and roads of international importance.⁹³ These activities can be carried out either within one district, or in several districts in parallel. These activities are subsequently evaluated, and even in case no irregular migrant is apprehended or just a small number of irregular migrants are apprehended, these operations represent a successful measure in countering illegal migration, as they have a preventative nature. Information on the possible place of stay of irregular migrants for the purposes of such activities is collected from

⁹¹ Ibidem

⁹² New Act on Stay of Aliens

⁹³ National Border Control Management Plan of the Slovak Republic for the Years 2011–2014. Bratislava 2011, available at <https://lt.justice.gov.sk/Material/MaterialHome.aspx?instEID=-1&matEID=4117&langEID=1> (consulted on 29/09/2011)

different sources, for example, from other state authorities, Criminal Police Office of PFP, MoLSAF SR, general consulates, Slovak Intelligence Service, drugs unit, etc.

The fight against illegal employment of foreigners is also an important measure in combating illegal migration at the stage of a migrant's stay in the SR. In this field, besides the police (border, aliens, customs and patrol police), also the offices of labour, social affairs and family, the Central Office of Labour, Social Affairs and Family, and the Labour Inspectorate carry out control activities on site.⁹⁴ Their coordinated control activities are conducted in cooperation with district, trade licensing and tax offices and with the Slovak Trade Inspection⁹⁵, and are initiated by competent authorities at the local level.

Act No. 223/2011 Coll. which changed and amended the Act No. 82/2005 Coll. on Illegal Work and Illegal Employment transposes the *Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals*. The relevant provisions of this Directive were also transposed in the new Act on Stay of Aliens. Act No. 223/2011 Coll. had an impact on some other acts, too, for example, on the Act on Stay of Aliens, Act on Employment Services and Act on Labour Inspection. The national legislation thus introduced the obligation of the employer to inform the office of labour, social affairs and family, within a set deadline, about the start date of employment of a third-country national, and the obligation to cover the costs of administrative expulsion of an illegally employed foreigner. Under this Act, it is also possible to grant tolerated stay in case a foreigner becomes the victim of illegal employment under particularly exploitative working conditions or if it is an illegally employed minor. In cases of breach of the prohibition to illegally employ third-country nationals residing in the SR illegally, the employer can also be imposed, apart from fines, other sanctions.⁹⁶

If it is found out that an employer employed a person illegally, the employer is put on a public list on the Internet in which natural persons or legal entities can be searched based on their business identification number (IČO), trade name, seat, post code and region.

An illegally working foreigner may be subject to administrative expulsion from the SR, and – depending on his/her particular situation – he/she may be prohibited from entering the country for a period of one up to five years. A foreigner may be imposed a fine of up to EUR 331 for illegal work. This type of offences is dealt by the Central Office of Labour, Social Affairs and Family, by the offices of labour, social affairs and family, and by the Labour Inspectorate.

The measures aimed at **detecting cases of fraudulent acquisition of a residence permit in the SR, such as by marriages of convenience**, are used both at the stage of stay and at the stage before entry of a migrant to the SR. At the stage before entry, these measures serve for the prevention of such conduct, since the competent authorities, upon granting visas and residence permits, thoroughly examine the applications of aliens coming from countries the citizens of which have been administratively expelled from the SR in the past for being accused of contracting marriage of convenience

⁹⁴ For more information refer to Chapter 2.2 on institutions and Chapter 6.2 on statistics analysis.

⁹⁵ National Border Control Management Plan of the Slovak Republic for the Years 2011–2014. Bratislava 2011, available at <https://lt.justice.gov.sk/Material/MaterialHome.aspx?instEID=-1&matEID=4117&langEID=1> (consulted on 29/09/2011)

⁹⁶ For more information on transposition of the Directive refer to Chapter 5.

with a Slovak national (especially nationals of Nigeria, Georgia and Pakistan)⁹⁷. At the stage of stay, the individual cases are analysed on the basis of internal procedures.

3.4 Capacity Building

Capacity building and the training of border control staff and of other persons responsible for practical measures against illegal migration can also be considered as an important practical measure to prevent illegal migration at all stages (stage before a migrant's entry, upon entry and upon a migrant's stay in the SR).

Expert and language training of the border and aliens police, customs officers and consular staff is arranged in a systematic way and also through projects organised by the MoI SR and MoFA SR and in co-operation with FRONTEX Agency. The joint training activities with partners from Ukraine focusing on the fight against illegal migration are also important in this regard. The preparation and organisation of training activities are based on actual needs, the current Schengen acquis, results of risk analyses and new trends.

Training within the MoI SR

In line with the EU classification, mandatory primary police education is provided at special secondary schools of the PF, further permanent education for the police in service is provided at the Police Force Academy (university-type of state college), and also further learning is provided to the PF staff to improve their qualifications.⁹⁸ Besides sectoral police schools and some specialised units, further training of the police staff is also organised through other training institutions and projects co-financed by the EU. In 2007, the Police Training Concept was adopted, which describes the fundamental system changes and measures in police training in the field of basic police preparation, specialised police preparation and further learning.⁹⁹ Based on this Concept, the project of the Police Training Centre of the MoI SR was prepared, and a glossary of terms for the Border and Aliens Police with English equivalents was published.¹⁰⁰

With regard to training, the National Border Control Management Plan of the Slovak Republic for the Years 2011–2014 recommends life-long learning and a balanced training strategy for the police with practical experience. The document also states that it is necessary to expand the knowledge with a focus on specific areas of the police service (such as dog handlers, pyrotechnists, experts in documents), as well as on issues relating to anti-corruption measures. Besides the Border and Aliens Police, other PF unit staff is also expected to be involved in training activities.¹⁰¹

⁹⁷ Information provided by BBAP PFP.

⁹⁸ External Borders Fund, Slovak Republic, Multi-Annual Programme 2007-2013, available at <http://www.minv.sk/?fond-pre-vonkaj-sie-hranice&subor=12402> (consulted on 29/09/2011)

⁹⁹ Annex to the Order of the Minister of Interior of the Slovak Republic No. /2007; Fundamental Tasks Plan of the Ministry of Interior of the Slovak Republic in 2008; Evaluation of the Fundamental Tasks Plan of the Ministry of Interior of the Slovak Republic in 2007, available at http://www.minv.sk/swift_data/source/mvsr/dokumenty/riadenie/plan08.rtf (consulted on 29/09/2011)

¹⁰⁰ Potočková, I.: Annual Report on Migration and Asylum Policies. Slovak Republic 2010; National Study for the European Migration Network. IOM International Organization for Migration. Bratislava 2011.

¹⁰¹ National Border Control Management Plan of the Slovak Republic for the Years 2011–2014. Bratislava 2011, available at <https://lt.justice.gov.sk/Material/MaterialHome.aspx?instEID=-1&matEID=4117&langEID=1> (consulted on 29/09/2011)

The police staff of the BBAP PFP have attended language training (English and German) and special training courses on the new trends and procedures in detecting illegal migration, falsification and forging of travel documents, work at airports within the Schengen Area, and the use of technical equipment employed to ensure control of the external borders. The Border and Aliens Police Directorate, the Aliens Police Directorate in Banská Bystrica, and the Border Police Directorate in Sobrance dispose of a network of trainers specialised in detection, falsification and forging of travel documents and other documents. Together with the staff of the Department of Travel Documents Analysis of the Border Police Section of BBAP PFP and experts of the Forensic Institute of the PF, they organise training activities on the detection of false and forged documents.¹⁰²

The training of the police of the Border and Aliens Police Service of BBAP PFP is conducted through activities organised in the framework of the European Training Day for Border Guards (ETD). Slovakia joined the ETD in 2005 for the first time by organising one-day training sessions for 55 trainers who further trained the Border and Aliens Police Service staff in controlling travel documents with a special focus on detection of false documents.¹⁰³ 2,043 members of the police were trained under the European Training Day, and study brochures and interactive CDs were published, as well.¹⁰⁴ ETDs have also been organised in the following years. The training courses specialised on the Schengen acquis, border protection management, communication, assertiveness, profiling, SIS, index of unwanted and blocked persons, detection and identification of false and forged travel documents, stolen vehicles and special monitoring technology,¹⁰⁵ training of dog handlers, organisation of voluntary returns and risk analysis.¹⁰⁶

In line with the training programme schedule for the years 2010-2011, training courses on the application of the new Visa Code, personal data protection and risk analysis took place at the basic units of the Border and Aliens Police Service of the BBAP PFP and particularly for the police of the BCD Sobrance. As well, training courses on the Schengen Information System and returns of irregular migrants and English language courses were organised in cooperation with the International Police Cooperation Office of PFP.¹⁰⁷

Training within the MoFA SR

MoFA SR also pays great attention to the preparation and training of staff dealing with the visa agenda. The MoFA SR staff members sent abroad attend a training course on all areas of consular work (including visas) one to six months prior to their departure. Migration issues have become a stable part of these training courses in which experts of the BBAP PFP, MO Mol SR and international organisations (e.g. IOM) take part as trainers. Since 2007, when Slovakia joined the Schengen Area, the training courses have also comprised work with the N-VIS system and issues related to the falsification

¹⁰² Ibidem

¹⁰³ Európsky tréningový deň pre hraničnú stráž na Slovensku, available at http://mesto.sk/prispevky_velke/modra/europskytrenin-govy1115194500.phtml (consulted on 29/09/2011)

¹⁰⁴ Potočková, I.: Annual Report on Migration and Asylum Policies. Slovak Republic 2010; National Study for the European Migration Network. IOM International Organization for Migration. Bratislava 2011.

¹⁰⁵ Ibidem

¹⁰⁶ Summary Report on the State of Implementation of the Commitments from the Concept of Migration Policy of the Slovak Republic by the Governmental Departments in 2008, available at [https://lt.justice.gov.sk/\(S\(nrt24xff3vlosj45jwmd2iea\)\)/Document/DocumentDetails.aspx?instEID=44&matEID=1381&docEID=54590&docFormEID=25&docTypeEID=12&langEID=1&StamP=20090716095624310](https://lt.justice.gov.sk/(S(nrt24xff3vlosj45jwmd2iea))/Document/DocumentDetails.aspx?instEID=44&matEID=1381&docEID=54590&docFormEID=25&docTypeEID=12&langEID=1&StamP=20090716095624310) (consulted on 29/09/2011)

¹⁰⁷ Potočková, I.: Annual Report on Migration and Asylum Policies. Slovak Republic 2010; National Study for the European Migration Network. IOM International Organization for Migration. Bratislava 2011.

and forging of official documents. Experts from the MO Mol SR and BBAP PFP and specialists from the Forensic Institute of the Police Force and MoFA dealing with the detection of false and forged documents and with visa and consular agenda were invited to the training courses as trainers.¹⁰⁸ The training courses organised in 2010 also dealt with the issues of identification and assistance to victims of human trafficking.¹⁰⁹

Training within the FRONTEX Agency

The SR is involved in the training activities of FRONTEX Agency in the framework of basic and further police training for basic and middle police management staff and for members of the international RABIT teams in the fields of statistics methods of risk analysis, identification of false and forged travel documents, technical facilities, protection of the external EU borders, identification of stolen motor vehicles and identification of searched or unwanted persons.¹¹⁰ The SR also uses e-learning of English for the police, also covered by the FRONTEX agency. The language training projects are organised and co-financed by the FRONTEX agency and by the Police Force Academy.

Capacity Building Focusing on the Slovak-Ukrainian State Border

Capacity building and training activities are specifically designed for the border protection staff carrying out service on the Slovak-Ukrainian state border and for Ukrainian partners. With this form of cooperation with Ukraine, the SR combats illegal migration and pressures on the eastern Schengen border.

Training courses are also attended by the customs administration staff (e.g. training courses for custom officers on the eastern border on inspection of motor vehicles, anti-corruption training, technical training for the operation of X-rays TH SCAN 1215, TH SCAN and RF 6010, and training by US experts in the operation of radiation detectors.)¹¹¹

In 2010, within the framework of the project *Schengen and the Protection of the EU's External Border*, the Slovak Foreign Policy Association organised training activities for the staff of the competent Ukrainian authorities on the Slovak-Ukrainian border and border crossing points on ensuring and control of travel documents and identification documents, inspection, countering corruption, breach of authority by public officers, and smuggling. The activities included a visit to the Schengen Border Protection Control Centre in Sobrance and to border crossing points. A total of 23 staff members of the competent Ukrainian authorities were trained in the framework of this project.¹¹²

In June 2010, the three-year international project *Increasing public health safety along the new eastern border of the EU* was completed; the aim of this project was to minimise the risks that pose a threat to public health and to develop the capacities of border protection and healthcare staff. Besides Slovakia, other EU Member States (namely Hungary, Poland and Romania), the European Centre for

¹⁰⁸ Ibidem.

¹⁰⁹ Summary Reports on the State of Implementation of the Commitments from the Concept of Migration Policy of the Slovak Republic by the Governmental Departments in 2010, available at <https://lt.justice.gov.sk/Material/MaterialHome.aspx?instEID=44&matEID=3857&langEID=1> (consulted on 29/09/2011)

¹¹⁰ External Borders Fund, Slovak Republic, Multi-Annual Programme 2007-2013, available at <http://www.minv.sk/?fond-pre-vonkajsie-hranice&subor=12402> (consulted on 29/09/2011)

¹¹¹ Potočková, I.: Annual Report on Migration and Asylum Policies. Slovak Republic 2010; National Study for the European Migration Network. IOM International Organization for Migration. Bratislava 2011.

¹¹² Ibidem.

Disease Prevention and Control (ECDC), the FRONTEX agency and the World Health Organisation were also involved in this project. The project was financed by the Directorate General for Health and Consumers of the European Commission and coordinated by the IOM.¹¹³

3.5 Pathways out of Irregularity

No programmes for regularisation of irregular migrants' residence have been discussed or implemented in the Slovak Republic so far.¹¹⁴ This is logically based on the fact that the total number of migrants and apprehended irregular migrants is relatively low in the SR. The estimates also indicate relatively small numbers of irregular migrants working or residing in the SR.¹¹⁵ The Slovak Republic, however, established the institute of tolerated stay which can be considered as a certain way of temporary regularisation of a third-country national's residence, although it can in no way be considered a systematic regularisation programme.

One of the important prerequisites of a successful fight against illegal migration is effective policy of readmission¹¹⁶ and returns¹¹⁷. There are two types of returns recognised in the SR: forced return, i.e. decision on administrative expulsion and punishment in the form of judicial expulsion, and assisted voluntary return.

Assisted voluntary return is a third-country national's return to its country of origin, its last place of residence or any other third country to which a third-country national decides to return and which accepts him/her.¹¹⁸ In the SR, such returns are currently carried out by the BBAP PFP in close cooperation with IOM, and represent the only programme of this type in the SR.¹¹⁹ Any third-country national who stays in the SR illegally and his/her stay is not known to the police department, and any third-country national in the case of which a decision on administrative expulsion has been issued, as well as any third-country national who has been placed in the police detention centre for foreigners for the purpose of expulsion can enrol in this programme. Third-country nationals can enrol in the programme also during the procedure to grant international protection, or after receiving a negative opinion under this procedure. In general, EU Member States prefer assisted voluntary returns, and only if such approach is not possible, it is necessary to execute a forced return¹²⁰, especially because an assisted voluntary return represents a safe, humane and dignified return¹²¹. The SR also applies the rule that in case a third-country national returns under the programme of assisted returns, the prohibition of entry which can be imposed by a decision on administrative expulsion can be cancelled.¹²²

113 Further information on the project is available at the website <http://www.iom.sk/sk/aktivita/ine-aktivita/aktualne-projekty/21-zvysovanie-bezpecnosti-verejneho-zdravia-pozdlz-novej-vychodnej-hranice-eu> (consulted on 18/07/2011).

114 Divinský, B.; Undocumented Migration. Counting the Uncountable. Data and Trends across Europe. Slovak Republic Country Report, CLANDESTINO, December 2008

115 Ibidem. For more details on this data refer to chapter 6.

116 For more information on readmission agreements refer to Chapter 4.

117 National State Border Protection Management Plan of the Slovak Republic, Bratislava 2007, available at http://www.minv.sk/swift_data/source/mvsr/ochrana_hranice/ochrana_hranic.rtf (consulted on 16/06/2011)

118 Art. 2, par. 1 a) of the new Act on Stay of Aliens

119 For more details refer to the study of the European Migration Network Programmes and Strategies of Assisted Returns in the Territory of the Slovak Republic and Re-Integration in Third Countries (available at www.emn.sk)

120 National State Border Protection Management Plan of the Slovak Republic, Bratislava 2007, available at http://www.minv.sk/swift_data/source/mvsr/ochrana_hranice/ochrana_hranic.rtf (consulted on 16/06/2011)

121 <http://avr.iom.sk/navraty/o-programe.html> (consulted on 09/06/2011)

122 Art. 86, par. 1 of the new Act on Stay of Aliens

Judicial expulsion is punishment imposed by court under Art. 65 of the Act No. 300/2005 Criminal Code. By virtue of this provision, if required to ensure safety of persons or assets or if it is in any other public interest, the court may impose punishment in the form of expulsion from the SR on an offender who is not a Slovak national or a national of any other EU Member State or a national of a contracting state of the Agreement on the European Economic Area, or a person who has been granted asylum. This punishment can be imposed for a period from one year up to 15 years.

A third-country national who has crossed the state border illegally and is illegally residing in the SR, and hence is an irregular migrant under the definition provided in Chapter 1.2, may be administratively expelled from the territory of the SR. Under Art. 77 of the new Act on Stay of Aliens, administrative expulsion means a decision of the police department on the basis of which a foreign national does not have the right or has lost the right to stay in the territory of the SR and is obliged to leave the SR, and may state a deadline for departure to the country of origin, transit country or any other third country that accepts him/her, or to an EU Member State in which he/she has the right to residence. Administrative expulsion is only possible for reasons explicitly laid down in the law (Art. 82, par. 1 of the new Act on Stay of Aliens), such as illegal crossing of the external border, illegal residence in the territory of the SR, submission of false, forged or someone else's documents, or contracting marriage of convenience.

Under the conditions stipulated by law¹²³, a third-country national may be detained for the purpose of exercising administrative expulsion or punishment in the form of expulsion, or for the purpose of his/her transport or return under international treaty in case such alien illegally entered the territory of the SR or is illegally residing in the territory of the SR. A third-country national may be detained for an inevitably long period and for a maximum of six months. The police department may decide on extending the period of detention by a maximum of 12 months if it can be assumed that, in spite of the actions required to exercise the alien's administrative expulsion, the exercise of administrative expulsion would be prolonged as a result of insufficient cooperation by the third-country national or failure to issue a substitute travel document by the foreign mission. This shall not apply in case of an asylum-seeker, a family with children or a vulnerable person. In case the expulsion is not exercised, persons within this category must be released after a six-month period, and are granted the tolerated stay if needed. Unaccompanied minors shall not be detained in the SR. Other vulnerable persons may be detained in inevitable cases only and for a shortest period possible. The new Act on Stay of Aliens also introduces certain alternatives to detention, such as the obligation to report one's residence or to give bail. The type and way of imposing such alternative obligations is decided by the police department, whereas the person of the third-country national, his/her circumstances and the extent of threat to the purpose of detention are considered.

Prior to issuing a decision on administrative expulsion the police department must assess the existence of impediments to administrative expulsion, where an impediment to administrative expulsion means impossibility to expel an alien to a country in which his/her life and freedom would be threatened on the grounds of race; nationality; religion; affiliation to a certain social group; or political views, or in which he/she would be under the threat of torturing; cruel, inhumane or humiliating treatment; or punishment. Further, an alien may not be administratively expelled to a country in which

123 Art. 88, par. 1 of the new Act on Stay of Aliens

he/she could be sentenced to death or where it is anticipated that such punishment will be imposed upon him/her within the on-going criminal proceedings. If there is an obstacle to administrative expulsion, the police department shall suspend the administrative expulsion and grant tolerated stay to the third-country national. Administrative expulsion is exercised after the obstacles have ended.

Certain categories of third-country nationals are subject to increased protection, and the police department may expel them administratively under certain conditions only, or may not expel them at all. The condition for administrative expulsion is serious threat to the security of the state or public security in the case of a third-country national holding a permanent residence permit for an indefinite period of time, or a long-term residence permit, or tolerated stay by reason of being a victim of human trafficking or if it is a third-country national with extended tolerated stay in connection with illegal employment. Similarly, a stateless person may be administratively expelled only in case he/she threatens with his/her conduct the security of the state or public order; the obstacles to administrative expulsion shall not apply in this case. Administrative expulsion is not possible in the case of a child under 18 years of age, except where the expulsion is in the child's interest; or in the event of a disease threatening public health; or after granting a residence permit, except if such disease occurs within three months after the third-country national entered the SR; and in the case of a 90-day protection period during which a victim of human trafficking can decide whether he/she would cooperate with the law enforcement authorities in criminal proceedings aimed at clarifying the crime related to human trafficking (Art. 83, par. 7, of the new Act on Stay of Aliens). In these cases, persons remain in the SR on the basis of a valid permit, or can be granted tolerated stay, or the existing residence permit is cancelled provided that the legal requirements have been met.

In general, tolerated stay can be considered as another way of solving the situation of irregular migrants and as a certain form of temporary regularisation of one's residence, although it does not represent any form of a programme or regularisation scheme. Tolerated stay is, in fact, a residence permit for a specific period (usually a maximum of 180 days with the possibility of extending this period) to overcome the period during which the obstacles for an alien to leave the Slovak Republic disappear¹²⁴ or his/her situation is solved.

Hence, by virtue of the new Act on Stay of Aliens, tolerated stay may be granted to a third-country national in the following cases:

- If there is an impediment to administrative expulsion;
- If an alien's departure is not possible, and his/her detention is not expedient;
- If the alien has been provided with temporary shelter;
- The alien is a minor found in the territory of the Slovak Republic;
- If required to respect his/her private and family life;
- If the alien has become a victim of trafficking in human beings;
- If the alien has been illegally employed under particularly exploitative working conditions or the alien is an illegally employed minor and his/her presence is necessary for the purpose of criminal proceedings.

¹²⁴ For more details refer to the study of the European Migration Network on the practices concerning granting of non-EU harmonised protection statuses in the Slovak Republic (November 2009)

Tolerated stay also means a period of maximum 90 days (this period may be extended in justified cases¹²⁵) from the date of filing the written application for assisted voluntary return by a third-country national until departure or withdrawal of such application; or can also be imprisonment or the period during which the victim of human trafficking is deciding whether he/she would cooperate with the law-enforcement authorities in criminal proceedings to clarify the respective crime.

A frequent way of solving the situation of an irregular migrant is filing an application for asylum with the aim to avoid expulsion from the SR, since under Art. 77, par. 6 of the new Act on Stay of Aliens the decision on administrative expulsion is not enforced until a decision is taken on the asylum application. If an alien is granted asylum or subsidiary protection, the administrative expulsion proceedings is suspended. However, the asylum instrument has been misused in many cases and migrants have wilfully left the asylum facility after a very short time (if they arrived to such facility at all), and continued migrating to other countries, often with the help of smugglers.¹²⁶

In the administrative expulsion proceedings, the third-country national has the right to obtain legal representation, and can be represented by a lawyer or other representative of his/her choice. This duty is mostly fulfilled by representatives of non-governmental organisations, or it is also possible to contact the Legal Aid Centre.¹²⁷

¹²⁵ This refers to cases where it is difficult to obtain an emergency travel document.

¹²⁶ Strategic Analysis of Illegal Migration in the SR in 2009; BBAP PFP

¹²⁷ For more details on institutions refer to Chapter 2.2.



Trans-national Cooperation in Reducing Irregular Migration

Since illegal migration is a phenomenon that goes beyond borders and is not limited to the territory of a single state, cooperation between countries in this field is a prerequisite to an effective fight against it.

4.1 Cooperation Agreements

The Slovak Republic concluded several bilateral agreements with EU Member States, neighbouring countries and third countries, both countries of origin of illegal migration and transit countries, the objective of which is, among others, to regulate cooperation and the various aspects of the fight against illegal migration. These agreements include readmission agreements, agreements on cooperation in combating cross-border crime, agreements regulating the regime on common borders, or agreements on police cooperation. Table 6 provides a complex overview of such agreements.

Table 6 Overview of bilateral agreements signed by the SR to Reduce and Combat illegal migration

| Type of agreement/ Country | EU/EEA Member States | Third countries | Agreements signed at EU/EC Level |
|---|---|--|--|
| Readmission agreements | Belgium, Bulgaria, Czech Republic, France, The Netherlands, Luxembourg, Hungary, Germany, Poland, Austria, Romania, Slovenia, Spain, Sweden, Italy, Norway, Switzerland | Croatia, Vietnam, Ukraine | Albania, Bosnia and Herzegovina, Montenegro, Georgia, Hong-Kong, Macao, the former Yugoslav Republic of Macedonia, Moldova, Pakistan, Russia, Serbia, Sri Lanka, Ukraine |
| Agreements on cooperation in combating organised crime | Cyprus, Czech Republic, Lithuania, Hungary, Malta, Germany, Poland, Romania, Slovenia, Spain, Italy, United Kingdom | Belarus, Bosnia and Herzegovina, Egypt, Croatia, Kazakhstan, the former Yugoslav Republic of Macedonia, Moldova, Serbia, Turkey, Turkmenistan, Ukraine, Uzbekistan | — |
| Agreements on police cooperation | Belgium, Bulgaria, France, Austria | Serbia | — |
| Agreements regu- lating the regime on common borders | Czech Republic, Hungary, Poland, Austria | Russia, Ukraine | — |

The Slovak Republic considers readmission agreements to be an inevitable and effective legal instrument for returning aliens illegally residing in the territory of the SR, and committed itself in several strategic documents¹²⁸ to pay increased attention to their preparation. The importance of such agreements rests not only in the facilitation of cooperation between countries upon return of their own citizens, third-country nationals or stateless persons who must be received by one of the parties, but also in a more advantageous procedure for returned persons mainly with regard to the fact that the issue of decisions on administrative expulsion associated with the prohibition of entry is not required. The SR is bound by twenty bilateral readmission agreements; two of them have been concluded with EEA countries and three of them with third countries. The SR is also a party to readmission agreements concluded between EC/EU on behalf of EU Member States and third countries. In 2010, the SR concluded and signed bilateral protocols implementing readmission agreements at the EU level with Albania, Russia, Moldova and Serbia. In November 2010, readmission agreements were signed between the EU and Georgia, and an agreement between the EU and Pakistan was adopted. Currently, negotiations are being held on the draft protocols implementing the agreements between

¹²⁸ For more information on the national policy refer to Chapter 2.1.

the EU and the former Yugoslav Republic of Macedonia, Montenegro, and Bosnia and Herzegovina, and an agreement between the EU and Turkey is expected to be signed. In the beginning of 2011, the EU expressed its intention to sign a readmission agreement with Libya, and is also interested in launching a negotiation process with China and Algeria. Given the need to put the readmission agreements into practice, the SR plans to sign in 2011 a bilateral protocol implementing the Agreement between the European Union and Ukraine on Readmission of Persons, signed on 18 June 2007, and conclude other bilateral protocols implementing readmission agreements concluded between the EU and third countries, especially with regard to countries which are most relevant from the point of view of migration flows to the SR.

The SR concluded several international bilateral agreements and treaties covering international police cooperation. These are mainly agreements on cooperation in combating organised crime, regulating cooperation in the fight against various forms of crime. These agreements declare, among other things, the intention to suppress illegal migration, illegal residence, illegal border crossing or falsification of public documents. Other types of agreements are general agreements on police cooperation in the reinforcement of cooperation in averting threats to public safety and order and in the prevention and pursue of crimes. Most significant are agreements with neighbouring countries¹²⁹ which, given the specific forms of cooperation, enable the application of Schengen instruments, such as cross-border surveillance and cross-border pursuit, use of common guards,¹³⁰ and creation of common contact offices on the borders.¹³¹ Some of these agreements also mention the institute of liaison officers who can be deployed for a certain period of time to the police authorities or other authorities specialised in combating crime in a contracting Member State and the task of which is facilitation of cooperation between the parties in specific areas of the fight against organised crime (e.g. security and border control, implementation of readmission agreements, etc.). The above-mentioned agreements with Bosnia and Herzegovina, Moldova, the former Yugoslav Republic of Macedonia, Austria, Croatia and Montenegro comprise the possibility of introducing such instruments.

Bilateral agreements with neighbouring countries through which cooperation is developed on the common borders are of special importance. These agreements mostly regulate the regime on common borders, creation of border crossing points and other places for the purpose of state border crossing and border checking. The agreements with the Czech Republic, Austria, Hungary, Poland and Ukraine, concluded prior to entering the Schengen Area, are implemented in such extent as to comply with the Schengen acquis.

The treaties with Ukraine represent a special category, since Ukraine is the only neighbouring country on the external border of the EU. In this regard, it is important to mention the agreement with Ukraine on local border traffic. A Protocol on direct mutual cooperation of operative bodies was concluded between the bodies of the operative border units of the SR and Ukraine. Under bilateral co-

¹²⁹ The SR borders with Austria, the Czech Republic, Hungary, Poland, and Ukraine.

¹³⁰ National State Border Protection Management Plan of the Slovak Republic, Bratislava 2007, available at http://www.minv.sk/swift_data/source/mvsr/ochrana_hranice/ochrana_hranic.rtf (consulted on 16/06/2011)

¹³¹ The main task of these contact offices is the creation and maintenance of contacts, collection and exchange of information, drafting joint situation reports, provision of logistics assistance in joint actions, common inspection teams working in the border area, and hand-over and receipt of aliens on the basis of a bilateral readmission agreement. (Nemčeková, J.; Formy a metódy nelegálnej medzinárodnej migrácie cez hraničné priechody, APZ, Bratislava 2008). The duties of these contact offices were taken over by the Regional Police Force Directorates.

operation, operative meetings are held to deal with concrete cases of illegal border crossing from the Ukrainian side, including exchange of opinions and preparation of concrete strategic solutions for countering illegal migration. BBAP PFP considers these meetings as a well-proven measure thanks to good communication conducted at a high, correct level.¹³²

The staff members of the BBAP PFP participate at operative border meetings at three levels:¹³³

- Border operative meetings of operative staff (four times a month);
- Meetings of regional heads of operative services (once a month);
- Meetings of senior officers of operative services (two or three times a year).

The SR also concluded an agreement on cooperation in border issues with Russia in spite of the fact that the two countries do not share a common border. This agreement regulates, in particular, cooperation in combating different forms of organised crime, including illegal migration, as well as exchange of experience and information, and cooperation in operative actions in order to ensure state border protection.

For the purposes of border control and protection, bilateral treaties on police cooperation are also used.¹³⁴

4.2 Other Forms of Cooperation of Non-Legislative Nature

An important part of the fight against illegal migration are measures and activities of non-legislative nature. This kind of cooperation both with the EU countries and third countries is mainly developed through joint meetings, preparation and implementation of various projects, exchange of experience, and capacity building. Since the SR is a Member State of the EU and of the Schengen Area, this fact also influences cooperation in this field. As for developing cooperation with third countries with a focus on illegal migration, emphasis is put on those countries from which the majority of irregular migrants come, especially Moldova and Ukraine. Ukraine is important as a partner, as it is the only neighbouring third country on the external border of the SR and of the EU.

In this context, we should also mention Slovakia's involvement in the process of implementation of the EU's pilot project on mobility partnership with Moldova, in the framework of which mostly projects aimed at combating illegal migration were carried out. These projects were mainly implemented in 2009 by receiving 10 police officers from Moldova who attended training on combating illegal migration, external border protection, visa and residence regime, returns and readmission.

Through the MO Mol SR, the Slovak Republic is engaged in the international project *Building Training and Analytic Capacities on Migration in Moldova and Georgia (GOVAC)*¹³⁵, the objective of which is to create a basis in both countries for the development and implementation of migration partnerships by enhancing the capacities of state institutions and academia in migration management.

¹³² Information provided by BBAP PFP.

¹³³ Potočková, I.: Annual Report on Migration and Asylum Policies. Slovak Republic 2010; National Study for the European Migration Network. IOM International Organization for Migration. Bratislava 2011.

¹³⁴ National State Borders Protection Management Plan of the Slovak Republic, Bratislava 2007, available at http://www.minv.sk/swift_data/source/mvsr/ochrana_hranice/ochrana_hranic.rtf (consulted on 16/06/2011)

¹³⁵ For more details on the project, visit the website <http://research.icmpd.org/1691.html> (consulted on 22/07/2011).

In 2009, the SR was involved in the practical implementation of the international project *GDISC ERIT Ukraine (Capacity Building and Technical Support to Ukrainian authorities to Effectively Respond to Irregular Transit Migration)*, financed under the AENEAS 2006 programme and implemented by institutions working in the field of migration and asylum in the Czech Republic, United Kingdom, Hungary, the Netherlands, Poland, and the Slovak Republic.¹³⁶

The SR was also engaged in cooperation with the EU Border Assistance Mission to Moldova and Ukraine (EUBAM) which aims, among other things, to improve the fight against cross-border crime on the Moldova-Ukraine border by enhancing national and international cooperation. The SR was involved in the training activities through the presentation and exchange of experience in this area.

At the multilateral level, the SR cooperates with relevant EU countries which share their external borders with Ukraine – Hungary and Poland –, and with Ukraine as such in the form of quadrilateral exchange of information on illegal migration on the common state border under the DSR/MSR system – Daily Statistics Reports/Monthly Statistics Reports. Information is provided on a daily and monthly basis and concern illegal state border crossing, readmission and smuggling. This data is recorded by the contact points which compare their own statistics with the statistics of the countries involved in the project. Analyses on potential risks to the external land borders are made on a monthly basis.¹³⁷

At the bilateral level, information on migration is exchanged through cooperation with the Czech Republic and Germany by sending monthly statistics and analytical results to the analytical department in the Czech Republic and to the police liaison officers of the Federal Republic of Germany in the SR.¹³⁸

From a more global point of view, the SR concentrates on active involvement in the shaping of the so-called *Prague Process* and specifically on the project *Building of Migration Partnerships* aimed at developing partnerships with the EU's neighbouring countries in the eastern and south-eastern region and at implementing the objectives defined by the participating partners in their Joint Declaration during the period 2011–2012 with a link between migration and development and combating migration as the dominant topics. Under this project, the SR participates in the creation of an interactive map of eastern migration routes (i-map). I-map is a useful support information instrument covering the routes of illegal migration along the Baltic, Balkan, Central-European and Eastern-European routes.¹³⁹

The SR has also been involved in other projects of international organisations, EU Member States or national organisations with the objective to promote migration management and the fight against illegal migration primarily through capacity building, exchange of experience and preparation of common analyses.¹⁴⁰

136 Summary Report on the State of Implementation of the Commitments from the Concept of Migration Policy of the Slovak Republic by the Governmental Departments in 2009. Available at: <https://lt.justice.gov.sk/Attachment/vlastnymat.rtf?instEID=44&attEID=22445&docEID=112859&matEID=2687&langEID=1&tStamp=20100423141512280>

137 Potočková, I.: Annual Report on Migration and Asylum Policies. Slovak Republic 2010; National Study for the European Migration Network. IOM International Organization for Migration. Bratislava, February 2011.

138 Ibidem

139 Ibidem

140 For example, the SR has been involved in the project of the Belgian Federal Police *Hermes*, the objective of which is visualisation of migration flows on the main road, railway and water routes. The outcome of the project will be a map of migration routes to provide

An important role in the cooperation with mainly third countries is played by the Official Development Aid (ODA). The National Programme of Official Development Aid of the SR in 2010¹⁴¹ identifies the Eastern Partnership countries as one of the strategic areas of bilateral aid, while considering the level of their economic and social development, transfer of knowledge and experience in transition processes, promotion of integration ambitions, building of administrative capacities and closer connection between the development and migration policies of the SR in project selection and support. In spite of this declaration it should be noted that Slovakia's official development aid is small and is primarily destined for those countries from which the migration flows to the SR are not that extensive.¹⁴² The projects supported from ODA in such countries of origin and transit countries which are relevant to the SR in terms of migration are not primarily focused on prevention of illegal migration or, in general, on migration management. In the majority of projects, migration issues are tackled from a broader perspective of capacity building and with an effort to eliminate unwanted causes and consequences of migration and enhance the European perspective in these countries.¹⁴³

As for cooperation with EU Member States in connection with the expulsion of illegal residing third-country nationals by means of joint return operations by air, the SR has been involved in operations mainly organised by Hungary, Austria and the Czech Republic, in particular returns to the Kosovo province.

Police liaison officers play an important role in countering illegal migration in the field of cooperation with third countries and EU countries. Since the SR does not have and does not plan to deploy specialised immigration liaison officers¹⁴⁴, their duties related to legal and illegal migration (monitoring and analysis of immigration flows) are executed by police liaison officers with a general scope of action, working, for example, in Austria, Hungary, Poland, the Czech Republic, Russia, Bulgaria, Serbia, Croatia, Italy, Romania and Ukraine¹⁴⁵.

The SR also uses the approach laid down in the Schengen Convention of deploying a specific category of immigration liaison officer in third countries, so-called advisors on documents. Their task is advising and providing expertise at foreign missions reporting increased misuse of visas and travel documents. Such advisors on documents are deployed at the General Consulate of the SR in Uzhgorod, and a pilot project to deploy an advisor on documents in Vietnam was launched in 2009.¹⁴⁶

a better overview of internal illegal migration within the EU.

141 Available at <http://www.slovakaid.sk/wp-content/uploads/2010/05/NP-ODA-2010.pdf> (consulted on 23/06/2011)

142 Divinský, B.; Nelegálna migrácia na Slovensku, available at <http://www.zahranicnapolitika.sk/index.php?id=820&tl=13> (consulted on 23/06/2011)

143 For more details on specific projects refer to Chapter 3.1.

144 The plan to deploy immigration liaison officers, which was included in the National State Border Protection Management Plan of the Slovak Republic was cancelled by Government Resolution No. 151 of 18 February 2009.

145 National Border Control Management Plan of the Slovak Republic for the Years 2011–2014, available at <https://lt.justice.gov.sk/Attachment/vlastnymat.rtf?instEID=-1&attEID=36223&docEID=185596&matEID=4117&langEID=1&tStamp=20110617142046080> (consulted on 27/06/2011)

146 Report on the Implementation of Measures of the Schengen Action Plan of the Slovak Republic of 2008–2009 in the year 2009, available at https://lt.justice.gov.sk/Attachment/03%20vlastny%20mat_doc.pdf?instEID=-1&attEID=21131&docEID=106603&matEID=2544&langEID=1&tStamp=20100225095416343 (consulted 21/06/2011); National Border Control Management Plan of the Slovak Republic for the Years 2011–2014, available at <https://lt.justice.gov.sk/Attachment/vlastnymat.rtf?instEID=-1&attEID=36223&docEID=185596&matEID=4117&langEID=1&tStamp=20110617142046080> (consulted on 27/06/2011). For more details on the specific work of advisors for documents refer to Chapter 3.1.

4.3 Cooperation with the EU or International Organisations

In combating illegal migration, the Slovak Republic cooperates with the Member States of the European Union and with third countries under a variety of international organisations.

The activities of the FRONTEX agency hold a special position in multilateral cooperation; this agency coordinates operative cooperation in external borders management among EU Member States, and the Slovak Republic is actively involved in its joint activities, mainly those focused on cooperation with the countries from which the majority of irregular migrants come to the SR (Ukraine and Moldova) and those which deal with the situation along migration routes also used by irregular migrants coming to the SR. Operative actions on the external land border of the EU also represent a priority, such as Operation Jupiter with the basic idea of improving the effectiveness of border controls along the south-eastern route of illegal migration for the purpose of collecting information about organised groups, false documents, etc. Some police experts from third countries (Moldova and Ukraine) participated in these activities as observers, and Slovakia, Poland, Hungary and Romania acted as host countries.

In addition to that, the SR has been actively involved in Operation Poseidon by deploying an expert on falsification and forging of travel documents. The main objective of the operation was to increase the overall effectiveness of border control on the Greek-Turkish sea border, including controls at border crossing points, border surveillance to prevent illegal border crossing, fight against cross-border crime and implementation of measures against persons who crossed the state border illegally.¹⁴⁷ The SR also participated in the Neptune and Contact Points operations (FPO), and in several operations on the sea and air borders, such as Indalo, Minerva or Meteor.

At the same time, the SR created a national reserve of police force staff to be deployed to the Rapid Border Intervention Teams (RABIT) or joint support teams (FJT), the members of which were deployed, equipped with technical facilities, on the Greek-Turkish border in 2010 where the situation characterised by an influx of illegal migration became unbearable.¹⁴⁸

In addition to involvement in joint operations, the SR also participates in the preparation of risk analyses and exchange of information on illegal migration by attending regular meetings of the FRAN community (Frontex Risk Analysis Network) and by means of joint questionnaires or deployment of national experts in FRONTEX. The SR has also joined the training activities of FRONTEX.¹⁴⁹

The SR contributes to the activities of the Fundamental Rights Agency (FRA) which collects, analyses and processes data on fundamental rights, including information and research on migration. The SR is engaged in its activities by providing national data, information and statistics that contribute to a general overview of the situation within the EU and can serve as a background or source of information for future EU measures or legislation in those areas, including combating and preventing illegal migration.

¹⁴⁷ Potočková, I.: Annual Report on Migration and Asylum Policies. Slovak Republic 2010; National Study for the European Migration Network. February, Bratislava 2011.

¹⁴⁸ Ibidem

¹⁴⁹ For more details on training activities under FRONTEX refer to Chapter 3.4.

For the purpose of preparing qualified experts and using EU mechanisms, the Slovak Republic cooperates in the activities of the European Police Academy CEPOL. The joint courses organised by CEPOL contribute to increase the awareness and qualification of experts in various areas related to the different aspects of the fight against illegal migration, and represent a forum to establish closer cooperation with experts specialised in these issues from other EU Member States. Moreover, the SR is involved in the activities of the Central European Police College (MEPA).

In providing data and data analysis in line with the Council Regulation 862/2007 on Community statistics on migration and international protection, the SR collaborates with EUROSTAT.

SR as a Schengen country fully cooperates with and uses information systems established within the Schengen Area with the objective of preventing the misuse of free movement of persons for the purposes of illegal migration and cross-border crime,¹⁵⁰ especially the Schengen Information System, EURODAC, VISION, VIS and FADO.

Under intensive cooperation between the police units of EU Member States, regular meetings and mutual exchange of operative information on commonly solved cases of organised illegal migration and smuggling are ensured. This type of cooperation runs at bilateral and multilateral levels in the form of membership in the analytical units of EUROPOL and AWF Checkpoint, and focuses on illegal migration through membership in INTERPOL, active participation in COSPOL activities and in the Danube Region group dealing with illegal migration issues and related smuggling.¹⁵¹

The most important international organisations engaged in combating illegal migration, with active involvement of the Slovak Republic, are the International Centre for Migration Policies Development (ICMPD) and IOM. ICMPD is active in many areas of migration, including fight against illegal migration. It also acts as the secretariat of two inter-governmental forums – the Budapest Process and Dialogue on Transit Migration in the Mediterranean. These forums focus on prevention and fight against illegal migration and on the promotion of new innovated systems for migration management in a wider European region by enhancing operative and practical cooperation.¹⁵² The SR puts emphasis on the Budapest Process which, from non-members of the EU, focuses on the countries of the former Soviet Union and Western Balkans which are relevant from the point of view of migration flows to the SR. ICMPD also works as a service organisation under several projects together with other EU Member States aimed at capacity building, creation of migration strategies and profiles in the countries of the Western Balkan and former Soviet Union.¹⁵³

¹⁵⁰ Červenka, B.; Informačné systémy schengenského priestoru, IN: Integrovaná hraničná bezpečnosť v štátoch strednej Európy, Zborník z medzinárodného odborného seminára, Bratislava 2007

¹⁵¹ Potočková, I.: Annual Report on Migration and Asylum Policies. Slovak Republic 2010; National Study for the European Migration Network. Bratislava, February 2011.; National Border Control Management Management of the SR for the Years 2011 – 2014

¹⁵² National State Border Protection Management Plan of the Slovak Republic, Bratislava 2007, available at http://www.minv.sk/swift_data/source/mvsr/ochrana_hranice/ochrana_hranic.rtf (consulted on 16/06/2011); National Border Control Management Plan of the SR for the Years 2011–2014

¹⁵³ National Border Control Management Plan of the Slovak Republic for the Years 2011–2014, available at <https://lt.justice.gov.sk/Attachment/vlastnymat.rtf?instEID=-1&attEID=36223&docEID=185596&matEID=4117&langEID=1&Stamp=20110617142046080> (consulted on 27/06/2011)

The cooperation between the SR and IOM is developed especially through concrete projects, such as participation in the activities of the Migration Information Centre¹⁵⁴ or researches conducted within the European Migration Network. An important area of cooperation is the execution of assisted voluntary returns and reintegration in third countries of unsuccessful asylum seekers and foreign nationals who do not meet the conditions of legal residence in the SR anymore.¹⁵⁵

At the regional level, cooperation is developed under the Visegrad partnership of V4 countries or within the Salzburg Forum on asylum and migration. This cooperation covers a broad spectrum of areas, including development of common concepts of combating illegal migration, or harmonisation of approaches, and runs in the form of exchange of information and improvement of cooperation between the competent state authorities. The International Border Police Conference (IBPC) is important in this regard, too.

154 For more details on IOM activities refer to Chapters 2.2 and 3.1.

155 For more details on returns refer to Chapter 3.5.

05

Impact of EU Policy and Legislation

The Slovak Republic committed itself already during negotiations for its accession to the EU to completely transpose and apply the Schengen acquis as a part of the European Communities law which introduced important changes also in the field of combating illegal migration and border protection, as declared in the Accession Treaty of 2003 under which the SR became a member of the European Union on 01 May 2004. The SR and the other Member States took over the obligation to harmonise their national legislation with the law of the European Communities as of the date of accession to the EU.

Since the SR was expected to fully apply a part of the Schengen acquis¹⁵⁶ already from the day of its accession to the EU, the government approved in 2001 the Schengen Action Plan of the SR¹⁵⁷ in order to prepare the adoption and application of the acquis, and the National State Borders Protection Management Plan of the SR was in 2007, prior to Slovakia's entry to the Schengen Area, to ensure fulfilment of the pre-accession Schengen criteria.¹⁵⁸

On the basis of the results of the Schengen evaluation which focused on Slovakia's preparedness for full implementation of the Schengen acquis, the EU Council adopted a decision on 06 December 2007 on the full application of the provisions of the Schengen acquis in the Czech Republic, the Republic of Estonia, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic. On the basis of this decision, the SR became a full member of the Schengen Area on 21 December 2007, and controls of persons on its internal land borders were cancelled.¹⁵⁹

156 This refers to the 1st category of the Schengen *acquis* under Annex 1 to the Act on Accession of the Slovak Republic to the European Union, enclosed to the Accession Treaty. Even though the SR adopted the 2nd category of the Schengen *acquis* already as of the date of its accession to the EU, it started to be fully applied on 21 December 2007.

157 The Schengen Action Plan of the SR was approved by Government Resolution No. 836 of 05 September 2001

158 For more details on the national policy and legislation refer to Chapter 2.1

159 Internal border controls at airports were cancelled as of 30 March 2008.

In connection with Slovakia's accession to the EU in 2004, there was a breakthrough in the development of the situation concerning illegal migration resulting in a radical reduction of the number of irregular migrants to the SR in the years 2004 and 2007¹⁶⁰. Similarly, the entry of the SR to the EU and the Schengen Area brought along a significant decline in illegal crossing of the Slovak-Ukrainian border and later of the external border of the EU as a result of reforms – stricter measures under the process of preparation for accession to the Schengen Area, more effective actions of the Border and Aliens Police Departments, more intensive fight against organised smuggling groups, and start of application of some key EC regulations.

The most important legal acts of the EC which influenced illegal migration and were transposed or directly reflected in the Slovak legislation are the following:

Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals

Regarding illegal migration in connection with cooperation of the EU Member States in expulsions, the Slovak Republic, since its entry to the Schengen Area, has applied the Directive 2001/40/EC, which was transposed to the Act on Stay of Aliens by Act No. 342/2007 Coll. This Act introduced new provisions on the enforcement of the decision on expulsion by the issuing state. The new provisions enable the police department to enforce the decision on expulsion also in case such decision has been issued by another EU Member State. Prior to the enforcement of the decision, the police department must request the opinion of the issuing state and the EU state in which the alien has permitted residence, and it must examine whether the enforcement of the decision complies with international treaties and with the Act on Stay of Aliens. Since the transposition of this Directive, only a few cases of enforcement by the SR of a decision on expulsion issued by another Member State have been reported. These cases related to aliens with positive records in the Schengen Information System, in connection to which the decision on return issued by the given country could be enforced through the National Bureau of SIRENE or other authorities.¹⁶¹

Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence

Directive 2002/90/EC which was expected to be implemented by the SR with its entry to the EU, was transposed to the already invalid Criminal Code. With effect from 01 August 2004, Act No. 403/2004 introduced in the Criminal Code the term „smuggling“, new provisions concerning false documents and facilitation of illegal employment and residence in the SR, as well as stricter sanctions for such crimes.¹⁶² These provisions were later incorporated in modified form into the current Criminal Code.¹⁶³

Council Directive 2003/110/EC of 25 November 2003 on assistance in cases of transit for the purposes of removal by air

With regard to cooperation between the SR and other EU Member States upon termination of unauthorised residence of third-country nationals, it is necessary to mention Directive 2003/110/EC,

¹⁶⁰ For more details on statistics refer to Chapter 6.

¹⁶¹ Potočková, I.: Annual Report on Migration and Asylum Policies. Slovak Republic 2010; National Study for the European Migration Network. IOM International Organization for Migration. Bratislava 2011.

¹⁶² Act No. 140/1961 Coll. Criminal Act of 29 November 1961

¹⁶³ For more details on the national legislation refer to Chapter 2.1.

transposed to the Act on Stay of Aliens by Act No. 558/2005 Coll. which, for the first time, introduces provisions on air transit in cases of expulsion with effect since 15 December 2005. This provision enabled the SR to receive and decide on requests for transit from other EU Member States, and to request the same from other EU Member States in case of impossibility to use or ensure a direct flight from the territory of the SR. This Act also regulates the coverage of costs related to the transit, execution of the air transit, and the procedure in case of refusal or cancellation of the air transit.

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

With its entry to the Schengen Area, the SR became bound by Decision 2004/573/EC, under which the SR participated in several joint air return operations.¹⁶⁴ Before this provision came into effect, the SR did not dispose of any bilateral agreements regulating joint removals by air, and did not perform such operations.

Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities

Directive 2004/81/EC was transposed to the Act on Stay of Aliens by Act No. 693/2006 Coll. With effect from 01 January 2007, the possibility to obtain a specific residence permit – tolerated stay – was introduced, which can be considered as a certain regularisation element in relation to illegal migration and victims of trafficking in human beings if over 18 years of age. Thus, the residence of this category of persons in the territory of the SR can be regularised by free granting of tolerated stay for a maximum period of 40 days¹⁶⁵ with the possibility to extend this period by a minimum of 180 days if the reason for granting the tolerated stay persists and the presence of that person in the territory of the SR is inevitable for the purposes of criminal proceedings. At the same time, this act establishes the obligation to ensure proper accommodation to the victims of trafficking in case they are not able to ensure it on their own, and specifies the reasons for cancellation of the tolerated stay.

The new Act on Stay of Aliens introduces a 90-day protection period considered as tolerated stay, during which a third-country national who became a victim of human trafficking can decide whether he/she would cooperate with the law enforcement authorities in clarifying the crime related to human trafficking. During this period, such person may not be administratively expelled. This period can be extended by another 30 days. The duration of tolerated stay granted to victims of trafficking in human beings can be repeatedly extended from 90 days to a minimum 180 days. The application for tolerated stay is filed by the law enforcement authority on behalf of the third-country national.

Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data

Directive 2004/82 was transposed to the national legislation by Act No. 558/2005 Coll. changing and amending the Act on Stay of Aliens, with effect since 15 December 2005. This Act introduces the

¹⁶⁴ For more details on air operations refer to Chapter 4.

¹⁶⁵ The 40-day period was extended to 90 days by Act No. 594/2009 Coll. on amending the Act on Stay of Aliens.

obligation on air carriers to communicate, upon request by the police department on the border crossing point, data on passengers transported to the territory of the SR through the external state border, and defines the scope of such data. The data must be provided in electronic form at the latest by termination of the check-in of passengers prior to departure; the passengers must be informed thereof and the provided data must be destroyed within 24 hours following arrival.

Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network

Regulation No 377/2004 fulfils a preventative role against illegal migration by enhancing cooperation in combating human smuggling or return of irregular migrants through the deployment of liaison officers in third countries. The fulfilment of the duties of immigration liaison officers, with the exception of advisors on documents, is ensured through police liaison officers with a general scope of powers at the foreign missions of the SR abroad, especially in countries where it is required by security interests, and in line with the priorities of the foreign policy of the SR.¹⁶⁶

Council Regulation (ES) No 2007/2004 of 26 October 2004 on establishing a European Agency for the Management of Operational Cooperation at the External Borders

Regulation No 2007/2004 involving the status and scope of action of the FRONTEX agency also became directly applicable in the SR from the date of its effect on 26 November 2004. Regulation (EC) No 863/2007 of the European Parliament and Council of 11 July 2007 established a mechanism for the creation of Rapid Border Intervention Teams (RABIT), regulating the tasks and powers of guest border officers. In line with Regulation 863/2007, the tasks of the national contact point of the FRONTEX agency within the SR which, among other things, coordinates the involvement of the SR in its activities, are fulfilled by the Department for Cooperation with FRONTEX agency, created on 01 February 2008. On 01 April 2011, this department became part of the Border Police Section of BBAP PFP as a Department for Border Police and FRONTEX. Through involvement in the activities of the FRONTEX agency, the SR assist the countries burdened with excessive influx of migrants for the purpose of protecting the external borders.¹⁶⁷

Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code)

The codification of the Schengen acquis concerning border controls and border surveillance within one document was completed by adopting the Schengen Borders Code which became directly applicable in the SR, with the exception of the provisions on internal borders, by entering into effect on 13 October 2006. This Code represents an important shift for the SR from the point of view of building borders in accordance with the Schengen standards and related fight against illegal migration and the elimination of its accompanying effects. The list of measures required to comply with the Schengen Borders Code provisions was contained in the Action Plan to Ensure the Entry of the

¹⁶⁶ As of 01 January 2008, 13 police liaison officers were deployed at the following foreign missions abroad: Russia, Serbia (acting also for Montenegro, the former Yugoslav Republic of Macedonia and Albania), Croatia, Ukraine, Romania (acting also for Moldova), Hungary, the Czech Republic, Italy, Poland, Austria (acting also for Slovenia). Report on the State of Foreign Missions Network of the SR Abroad in 2008 and the Basis for Its Further Development, discussed and approved on 09 July 2008 by Government Resolution 471/2008, available at <http://www.rokovanie.sk/Rokovanie.aspx/BodRokovaniaDetail?idMaterial=7805> (consulted on 14/07/2011).

¹⁶⁷ For more details on the FRONTEX agency refer to Chapter 4.3 and the website <http://www.frontex.europa.eu/>.

SR to the Schengen Area of 2007, and in the Schengen Action Plan of the SR for the Years 2008 – 2009 of 2008¹⁶⁸. To ensure its full implementation, changes and amendments in the Act on Stay of Aliens were adopted, and the duplicate provisions or provisions contradicting the Schengen Border Code provisions were deleted. The provisions of the Act on Stay of Aliens which are subsidiary to the Schengen Borders Code provisions remained in the Act, such as sanctions for unauthorised crossing of the external borders, etc. In spite of its importance, the Act on State Border Protection did not comply with the Schengen Borders Code with regard to the terminology, and does not reflect Slovakia's entry to the Schengen Area; this was one of the reasons for preparation of the new Act on Stay of Aliens which should fully comply with the EU legislation both in terms of terminology and contents.¹⁶⁹ The new act will merge and cancel the current Act on Stay of Aliens and the Act on State Borders Protection, and is expected to enter into effect on 01 January 2012.¹⁷⁰

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (Return Directive)

The Return Directive was transposed to the Act on Stay of Aliens by Act No. 594/2009 Coll, which entered into effect on 15 January 2010. This amendment act introduced the obligation to specify in the decision on administrative expulsion the place to which an alien is expelled, whether it is the country of origin, transit country or any other receiving country. This act enables an alien to request the police department to provide a written translation of the reasons for administrative expulsion, period of the prohibition of entry, and instructions on the possibilities of appeal in a language that the alien understands. This act specifies the shortest period possible for an alien's departure, which is a minimum of seven days, as well as the reasons allowing reduction of this period and the conditions under which the police department is not obliged to specify such period. The health condition of an alien and the status of a vulnerable person are new facts that the police department must take into consideration when deciding on administrative expulsion and prohibition of entry. The act re-introduces the derogatory effect of an appeal against the decision on administrative expulsion, and specifies the reasons under which the police department can temporarily suspend the enforcement of the decision on administrative expulsion, while being obliged to provide an alien with a written statement of such reasons and state the period for which the enforcement of the decision is suspended. The act establishes the obligation on the MoI SR to monitor the enforcement of the decision on administrative expulsion and of the punishment in the form of expulsion in cooperation with non-governmental organisations. The prohibition of entry imposed on an alien who was administratively expelled can be cancelled if it's proven that the alien departed within the deadline stated in the decisions or if the departure has been carried out under voluntary returns. In addition, this act allows for the extension of the period of detainment of an alien by another 12 months at a maximum, with the exception of families with children and vulnerable persons, and enables the representatives of IOM and non-governmental organisations to enter the police detention facilities for aliens upon previous consent by the facility director. The police department is obliged to regularly instruct the detained alien about his/her rights and obligations. Just like in the case of expulsion, special atten-

¹⁶⁸ The Action Plan to Ensure the Entry of the SR to the Schengen Area was adopted by Government Resolution No. 264 of 14 March 2007; for more details on the national policy refer to Chapter 2.1.

¹⁶⁹ The new Act on Stay of Aliens was approved by the Resolution of the National Council of the SR Nb. 685 of 21 October 2011 and it is expected that it will enter into force on 1 January 2012 and is available at <http://www.nrsr.sk/web/Default.aspx?sid=zakony%2Fzakon&MasterID=3814> (consulted on 3/11/2011)

¹⁷⁰ For more details on the new Act on Stay of Aliens refer to Chapter 2.1.

tion must be paid to vulnerable individuals in the case of detention; aliens under 15 years of age have access to education in case their stay in the police detention facility exceeds three months.

Other modifications in this area for the purpose of a more thorough harmonisation of the national legislation with the Directive are contained in the new Act on Stay of Aliens. This act comprises provisions on administrative expulsion, including its definitions, reasons for administrative expulsion, as well as enforcement and suspension of the decision on administrative expulsion. Administrative expulsion of an EU national and members of his/her family is regulated in a separate section, since administrative expulsion and the prohibition of entry applies to this special category in exceptional cases only, as laid down in Directive No 2004/38/EC. With regard to the process guarantees granted by Directive No 2008/115/EC, it is proposed to extend legal aid provided to third-country nationals not only by lawyer's representation, but also by any other representative a third-country national may choose. The act also introduces the right to bring an alien to the police department for the purpose of helping with issues concerning administrative expulsion. The imposition of a prohibition of entry is not an automatic constituent of the decision on administrative expulsion anymore, and is only an option for the police department, while the duration of the prohibition of entry changes is dependent on the different reasons for administrative expulsion. The previous decisions on administrative expulsion or entry to the territory of the SR while the prohibition of entry is at place are considered separately and represent a reason for imposing the prohibition of entry to the entire territory of the EU. In case an asylum application is filed after the decision on administrative expulsion or after the prohibition of entry becomes enforceable, the police department shall not enforce the decision until the asylum application has been decided. In addition, the police department shall not set the period for departure in the decision on administrative expulsion in case a third-country national can be detained. A third-country national with a permanent residence permit for an indefinite period of time, or with a long-term permit or tolerated stay by reason of becoming a victim of human trafficking, or a third-country national whose tolerated stay has been extended in connection with illegal employment may be expelled only in case he/she seriously threatens the security of the state or public order. The act introduces a separate section regulating the administrative expulsion of EU nationals and family members of EU nationals, while defining the relevant procedures and conditions without making major changes compared to the current legislation. Under Directive 2008/115/EC, the reasons for apprehension are extended to cases of third-country nationals in administrative expulsion proceedings for the purpose of ensuring his/her departure, if there is a risk of escape or if the third-country national avoids or obstructs the process of preparation of enforcing his/her administrative expulsion. Unless the police department issues a decision on administrative expulsion within 48 hours from the detention, it is obliged to immediately release the alien. One of the novelties is the introduction of an alternative to detention – imposition of an obligation on a third-country national to regularly report his/her residence in person or to give bail, which, however, is possible only in case of such third-country national proves that he/she disposes of accommodation and financial coverage for his/her stay. However, the use of these alternatives to detention is excluded in the case of administrative expulsion proceedings when a third-country national represents a serious threat to the security of the state or to public order, or threatens the security of the state, public order or public health. Besides a third-country national, the bail may also be given by his/her close person, and the Police Force shall return the bail immediately after enforcing the administrative expulsion of a third-country national, after his/her departure under the voluntary returns programme, or if he/she has been granted a tolerated stay, asylum or subsidiary protection.

In spite of the fact that the SR committed itself to prefer voluntary returns to forced returns, 643¹⁷¹ administrative and judicial expulsions and only 130 voluntary returns were carried out in 2010¹⁷².

Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

On 20 July 2011, Act No. 223/2011 Coll. changing and amending the Act No. 82/2005 Coll. on Illegal Work and Illegal Employment and transposing the Directive No 2009/52/EC entered into force. This amendment act also influenced some other laws, for example, the Act on Stay of Aliens, Act on Employment Services, and Act on Labour Inspection. The relevant provisions of the Directive will be also transposed to the new Act on Stay of Aliens. The amendment law extends the previous general prohibition of illegal employment to third-country nationals who illegally stay in the territory of the SR, and the category of entities subject to the obligation to respect this prohibition is extended by natural persons who are not entrepreneurs. In the event of breach of this prohibition, apart from penalties, sanctions in the form of exclusion from the possibility to take part in public procurement and other enumerated payments are applicable, such as payment of due amounts; payments in the amount corresponding to the income tax or to social insurance and health insurance premiums; payment of the costs of delivery of a due salary and costs related to administrative expulsion. In spite of the fact that the responsibility for sanctions is mainly born by the illegally employing employer, the amendment act introduces the possibility of a shift of responsibility to other defined persons involved in the supply of work, goods and services. The responsibility for illegal employment shall not apply in case the employer met its obligation to request a document authorising the third-country national to reside in the SR prior to taking him/her up to job and reported the start of employment to the office of labour, social affairs and family within the set deadline, without having knowledge of the document being falsified. The financial sanction that can be imposed upon an employer in the event of breach of the prohibition of illegal employment amounts to EUR 2,000 to EUR 200,000. The penalty for illegal work can reach EUR 331. A new criterion for determining the amount of penalty for breaching the prohibition of illegal employment is the number of illegally employed natural persons. The control authorities are obliged to regularly identify the sectors in which the risk of illegal employment is the highest, and perform controls in these risk sectors in particular. The amendment act introduced the obligation on the National Labour Inspectorate to provide annual information on performed controls and their outcomes to the European Commission. It also contains a precise definition of the obligation of employers in connection with the employment of third-country nationals. Failing to comply with any of the obligations stipulated in the Act on Employment Services may result in imposing a fine of up to EUR 33,193.91. The amendment act introduced in the Act on Stay of Aliens a new reason for granting tolerated stay in cases of illegal employment to a third-country national who was illegally employed under particularly exploitative working conditions or to an illegally employed minor, provided that their presence in the territory of the SR is inevitable for the purposes of criminal proceedings. The request can be submitted by the competent law enforcement authority, and the tolerated stay shall be granted for a period of 180 days with the possibility of repe-

¹⁷¹ This figure refers to aliens who were issued the decision on administrative or judicial expulsion concerning illegal migration in the period from 01 January to 31 December 2010, including aliens detained by an authority of a neighbouring country, or by air by any other state and handed over to the territory of the SR on the basis of a readmission agreement. This category does not include aliens who were issued a decision on imposing prohibition of entry to the territory of the SR under Art. 57, par. 14 of the Act on Stay of Aliens.

¹⁷² Statistical Overview of Legal and Illegal Migration in the SR in 2010, BBAP, available at http://www.minv.sk/swift_data/source/policia/uhcp/rocnky/rok_2010/2010-rocnka-UHCP-SK.pdf (consulted on 22/07/2011)

ated extension until termination of the criminal proceedings or until the date the due amount of the remuneration for work is paid to such person.

Readmission Agreements

The SR currently reports 20 valid readmission agreements concluded at the bilateral level, and is a contracting party to 13 readmission agreements concluded with third countries at the EU level.¹⁷³ In 2010, a total of 317 persons were handed over to other countries and 28 aliens were received under readmission agreements. The major group of aliens was handed over by the SR to the Ukraine (308), while eleven were received from the Czech Republic and six from Hungary. Since Slovakia's entry to the Schengen Area, these figures represent a radical decline (1,236 persons were handed over and 575 persons were received in 2007, compared to 695 handed-over persons and 42 received persons in 2008, and 435 handed over persons and 43 received persons in 2009).¹⁷⁴ The cooperation with Ukraine in this field is a practical example of the importance of readmission agreements. In 2000, the Ukrainian government unilaterally terminated the Agreement between the Governments of the SR and Ukraine on the Issue and Receipt of Persons through the Joint State Borders of 1993. Given the position of Ukraine as a country accumulating irregular migrants heading to the EU and the important illegal migration route running through Ukraine, the Slovak authorities reported increased numbers of persons who crossed the common state border without authorisation and whom the Ukrainian authorities refused to take back to Ukraine. In 2002, from a total of 1,195 persons refused by the authorities of the contracting parties to the then valid readmission, the Ukrainian authorities rejected 1,130 persons, and in 2003, out of a total of 1,044 the Ukrainian side rejected 1,041 persons. This trend continued in 2004, when all 802 cases of refusals by contracting parties concerned Ukraine. There was a change in 2005 when the number of persons refused by the Ukrainian authorities declined to 192 (out of total of 292 persons) as a result of the renewed application of the readmission agreement between the SR and Ukraine.¹⁷⁵

Taking into consideration the important role of readmission agreements in the EU policies in the field of illegal migration, an overview of recommendations for Member States was presented in the Evaluation of EU Readmission Agreements, including, among other things, the need to develop incentives for third countries in the form of visa related policy tools or financial assistance, focus of readmission policy on important countries of origin, improvement of the monitoring of readmission agreements implementation, and enhancement of human rights guarantees.

Mobility Partnerships

In spite of the importance of supporting mobility through the facilitation of legal migration, the suppression of illegal migration and the positive impacts of migration on solving the problem of lack of labour force on the labour market and the economic development of EU partners, the SR has only participated in one EU mobility partnership project with Moldova which occupied the second place from the point of view of overall illegal migration in 2009 and 2010. In the future, the SR plans to concentrate on creating the conditions for active involvement in mobility partnerships mainly in

¹⁷³ For more details on readmission agreements refer to Chapter 4.1.

¹⁷⁴ Statistical Overview of Legal and Illegal Migration in the SR in 2010, BBAP, available at <http://www.minv.sk/?rocenky> (consulted on 22/07/2011)

¹⁷⁵ Statistical Overview of Legal and Illegal Migration in the SR in 2010, BBAP, available at <http://www.minv.sk/?rocenky> (consulted on 22/07/2011)

relation to the Ukraine.¹⁷⁶

European External Borders Fund (EBF)

By financing activities aimed to improve the protection of the external borders, EBF effectively contributes to the suppression of illegal migration, since effective monitoring of border crossing points is an important tool to prevent unauthorised crossing of the external border and entry to the territory of the EU and SR. In connection with the use of EBF funds under the multi-annual EBF programme for the years 2007 – 2013, the SR defined protection of the EU external borders in the SR through enhancement of the capacities of all relevant Slovak authorities as its main objective. Since the establishment of EBF, the SR uses its funds to cover the costs incurred by its entry to the Schengen Area, as well as current projects. EBF financed implementation of the information system of the SIRENE National Bureau as the only contact office for the Schengen Information System SR, implementation of the Information System for Migration and International Protection (MIGRA), as well as ensuring user, legislative and technology support for the National Visa Information System. In 2010, EBF enabled the purchase of technical facilities for the authorities responsible for border control and border surveillance. BBAP PFP currently implements the projects *Measures to promote security and speed up interventions in the performance of surveillance on the external land border with Ukraine* and *Measure to improve communication and the performance of external border protection at international airports in the SR* under the Annual Programme for 2010, and the Customs Directorate implements the project *Implementation of the camera monitoring system at the border crossing point in Čierna nad Tisou* aimed at improving the quality of customs supervision. Moreover, since 2009, the EBF has continuously financed already the third stage of the English training project for Border and Aliens Police staff at the Border Control Departments under BPD Sobrance and at international airports with the aim to improve the quality of their work upon border control.¹⁷⁷

European Return Fund (RF)

On 01 January 2011, BBAP PFP started implementing the national project *Enhancement of the organisation and performance of forced returns and improvement of the conditions to carry out returns of migrants to countries of return III*, which has been continuously implemented since 2009 and the activities of which follow the previous project stages. The main objective of this project is to improve the system of preparation and performance of forced returns, as well as to implement measures to satisfy the special needs of third-country nationals before and during the performance of their return with an emphasis on vulnerable groups. In the framework of this project, migrants were informed about the legal conditions and procedures related to administrative expulsion, apprehension and residence agenda, the obtaining of emergency travel documents and visa, migrants' transfer and escort, provision of health-care, and of interpreting and translation services. IOM has been continuously implementing stage 3 of the project running since 2009, the objective of which is to provide irregular migrants and unsuccessful asylum applicants with an opportunity for a humane, organised and cost-effective return and reintegration in their country of origin through the programme of assisted voluntary returns. Apart from returns and return assistance as such, the project has also ensured individual pre-return counselling, financial contribution for return, and post-return reinte-

¹⁷⁶ For more details on mobility partnerships refer to Chapter 4.

¹⁷⁷ For more details on EBF supported projects, visit the website <http://www.minv.sk/?fond-pre-vonkajsie-hranice> (consulted on 22/07/2011).

gration assistance to selected recipients by providing support to implement their approved business plans, assistance in seeking a job, material assistance, legal counselling, educational support, and assistance with accommodation or health-care. In addition to that, IOM has run a hotline and a website and launched a campaign to raise awareness of the target group about the possibility of return. After the launch of the campaign, the number of hotline calls increased three times compared to the previous period. The total number of persons returning under the IOM programme grew from 96 in 2008 to 139 in 2009, of which the number of persons without a residence permit and not staying in any of the facilities of the Mol SR increased from zero in 2008 to 47 in 2009. In 2010, a total of 130 migrants returned to their country of origin under the previous project stages, and 33 migrants were provided with reintegration assistance.¹⁷⁸ In combination with the national legislation which allows to regularise an individual's stay in the territory of the SR up to the date of departure or withdrawal of the request by presenting a request for voluntary return, through the tolerated stay instrument, the programme directly contributes to the countering of illegal migration in the SR and to the sustainability of returns. RF funds were also used to provide legal assistance, psychological counselling, social assistance and coverage of other special needs of persons detained in the police detention facilities for foreigners through non-governmental organisations.

¹⁷⁸ Information provided by IOM.

06

Estimates and Statistics on the Irregular Migration Population

The Slovak Republic does not dispose of data and complex overviews of the total number of irregular migrants residing in the SR. None of the Slovak institutions has made any estimates or worked out any principles for calculating the total number of irregular migrants residing in the SR.¹⁷⁹ On the other hand, the Slovak Republic collects, in line with EU legislation,¹⁸⁰ certain data on the basis of which it is possible to analyse the trends in migration to/in the SR, especially data on apprehensions, refusals of entry, returns, or refused and withdrawn asylum applications.

6.1 National Statistics (Eurostat) related to Irregular Migration

Apprehensions

Based on the data on the numbers of aliens apprehended in the SR, it can be stated that the overall reported illegal migration in the SR has shown a declining trend throughout the recent years, with the most significant decline recorded in 2008 which is the first year of Slovakia's membership in the Schengen Area (Table 7).¹⁸¹

¹⁷⁹ See also aj Divinský B.; Udocumented migration. Counting the uncountable. Data and Trends across Europe, December 2008 (analysis made under CLANDESTINO project).

¹⁸⁰ Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection

¹⁸¹ Strategic Analysis of Illegal Migration in the SR in 2009, BBAP PFP

Table 7 Number of apprehended aliens in the SR in 2005–2010

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|---|--------------|--------------|--------------|--------------|--------------|--------------|
| Total | 7 821 | 7 515 | 6 662 | 2 320 | 1 715 | 1 440 |
| Illegal crossing of the Slovak state border | 4 958 | 4 037 | 3 309 | 1 020 | 570 | 495 |
| Illegal stay in the SR | 2 863 | 3 478 | 3 353 | 1 300 | 1 145 | 945 |

Source: BBAP PFP

The dynamics of this decline was mainly given by the measures gradually implemented by the SR on the basis of commitments arising from the process of accession to the Schengen Area. The SR adopted the Schengen acquis, intensified the fight against the organisation of illegal migration, and largely enhanced external borders protection in terms of technical facilities, security and personnel. With Slovakia's entry to the Schengen Area, the performance of border controls on the internal borders was cancelled.¹⁸² This, besides a decline in reported illegal migration, resulted in changes in the share of two basic categories: illegal crossing of the state border of the SR and unauthorised stay in the territory of the SR. While unauthorised crossing of the state border of the SR prevailed before Slovakia's entry to the Schengen Area, the category of unauthorised stay in the territory of the SR became dominating after accession.¹⁸³

When analysing the nationality of aliens apprehended in the period 2005 – 2010 (Tables 8 and 9), nationals of Ukraine form the majority, followed by nationals of Moldova, India, Russia and Pakistan.¹⁸⁴ Ukrainians in the SR are typical aliens who exceed the period of their permitted stay and remain in the territory of the SR illegally (overstayers). This sub-category most frequently relates to performance of illegal work (e.g. construction work or catering), and have a largely seasonal nature, as this group of irregular migrants decreases in the winter months. On the other hand, the nationals of Moldova are typical transit migrants and are mostly apprehended upon unauthorised crossing of the external land border (their countries of destination are mainly Italy and Austria). In this illegal migration category, we can also observe seasonal trends, seeing a decline during the winter months especially in relation to the crossing of the so-called green border.

In general, the SR has long been a transit country for the majority of irregular migrants. The facts proving this trend mainly include misuse of the asylum institute upon apprehension (filing of an asylum application through which an alien avoids expulsion, and subsequent wilful departure from asylum facilities and continuation in illegal migration to developed EU countries), Dublin transfers from the countries of destination to the SR, migrants' statements, etc.¹⁸⁵

¹⁸² Strategic Analysis of Illegal Migration in the SR in 2009, BBAP PFP

¹⁸³ Annual Statistical Report on Migration and International Protection in the SR in 2008, European Migration Network, October 2010

¹⁸⁴ In 2010, the number of apprehended nationals of Somalia (see Table 9) saw a significant increase. In the previous year, the nationals of Somalia were almost absent in the territory of the SR, but in 2010 they occupied the 4th place in the number of apprehended aliens.

¹⁸⁵ Of the apprehended migrants who stated their country of destination in 2010, only 4 per cent identified Slovakia as their country of destination. Source: Strategic Analysis of Illegal Migration in the territory of the SR in 2009 and 2010, BBAP PFP.

Table 8 Total number of illegally-staying aliens apprehended in the SR in 2005–2010 (Top 10)

| Country of nationality | Number of illegally-staying aliens apprehended in the SR (2005–2010) |
|------------------------|--|
| Ukraine | 5 481 |
| Moldova | 5 403 |
| India | 3 279 |
| Russia | 3 118 |
| Pakistan | 2 141 |
| Georgia | 1 559 |
| China | 1 302 |
| Bangladesh | 904 |
| Afghanistan | 547 |
| Iraq | 497 |

Source: 2005 – 2007 – BBAP PFP SR, 2008-2009 – Eurostat, 2010 – BBAP PFP R – data provided to Eurostat

Table 9 Number of illegally-staying aliens apprehended in the SR, by country of nationality and year (Top 10)

| Year | Order | Country of nationality | Total |
|------|-------|------------------------|-------|
| 2005 | 1. | Russia | 1 654 |
| 2005 | 2. | Moldova | 1 415 |
| 2005 | 3. | Ukraine | 1 045 |
| 2005 | 4. | India | 970 |
| 2005 | 5. | China | 581 |
| 2005 | 6. | Georgia | 495 |
| 2005 | 7. | Pakistan | 322 |
| 2005 | 8. | Bangladesh | 306 |
| 2005 | 9. | Vietnam | 167 |
| 2005 | 10. | Palestine | 159 |
| 2006 | 1. | Moldova | 1 855 |
| 2006 | 2. | Ukraine | 1 326 |
| 2006 | 3. | India | 1 185 |
| 2006 | 4. | Russia | 732 |
| 2006 | 5. | Pakistan | 407 |
| 2006 | 6. | China | 396 |
| 2006 | 7. | Bangladesh | 354 |
| 2006 | 8. | Iraq | 321 |

| | | | |
|------|-----|-------------------------|-------|
| 2006 | 9. | Georgia | 296 |
| 2006 | 10. | Palestine | 158 |
| 2007 | 1. | Ukraine | 1 733 |
| 2007 | 2. | Moldova | 1 163 |
| 2007 | 3. | Pakistan | 990 |
| 2007 | 4. | India | 931 |
| 2007 | 5. | Russia | 441 |
| 2007 | 6. | Georgia | 325 |
| 2007 | 7. | Iraq | 176 |
| 2007 | 8. | Bangladesh | 174 |
| 2007 | 9. | China | 156 |
| 2007 | 10. | Afghanistan | 103 |
| 2008 | 1. | Ukraine | 600 |
| 2008 | 2. | Moldova | 470 |
| 2008 | 3. | Georgia | 230 |
| 2008 | 4. | Pakistan | 190 |
| 2008 | 5. | Russia | 160 |
| 2008 | 6. | Afghanistan | 135 |
| 2008 | 7. | India | 120 |
| 2008 | 8. | Bangladesh | 70 |
| 2008 | 9. | China | 70 |
| 2008 | 10. | Korea | 55 |
| 2009 | 1. | Ukraine | 410 |
| 2009 | 2. | Moldova | 260 |
| 2009 | 3. | Pakistan | 200 |
| 2009 | 4. | Vietnam | 140 |
| 2009 | 5. | Georgia | 130 |
| 2009 | 6. | Afghanistan | 115 |
| 2009 | 7. | Russia | 80 |
| 2009 | 8. | India | 50 |
| 2009 | 9. | China (incl. Hong-Kong) | 40 |
| 2009 | 10. | Serbia | 30 |
| 2010 | 1. | Ukraine | 367 |
| 2010 | 2. | Moldova | 240 |
| 2010 | 3. | Afghanistan | 194 |
| 2010 | 4. | Somalia | 151 |
| 2010 | 5. | Georgia | 83 |
| 2010 | 6. | Russia | 51 |
| 2010 | 7. | China | 59 |
| 2010 | 8. | Vietnam | 47 |

| | | | |
|------|-----|----------|----|
| 2010 | 9. | Pakistan | 32 |
| 2010 | 10. | India | 23 |

Source: 2005 – 2007 – BBAP PFP SR, 2008-2009 – Eurostat, 2010 – BBAP PFP SR – data provided to Eurostat

As for age and sex, the most frequent category of apprehended irregular migrants were persons in productive age between 18 and 34 years, and 80 per cent of the total number of irregular migrants apprehended in the period 2005 – 2010 were males. Somalia nationals represent an exception (their numbers increased at the end of 2009 and continued growing in 2010), since this group comprises mainly unaccompanied minors (up to 73 per cent in the years 2009–2010). It should be mentioned, however, that none of the Somalia nationals apprehended in 2010 held a travel document, and the fact that the apprehended Somalis were mainly minors resulted from their verbal statements.¹⁸⁶

Refusal of Entry

The developments in illegal migration can also be observed in the statistics on refusals of entry. Refusals of entry to the SR show a declining tendency. Table 10 provides an overview of the overall development and the reasons for refusal of entry.

Table 10 Refusal of entry on the external border, by reason and year

| Reason | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | Total |
|---|-------|-------|-------|-------|------|------|--------|
| Refusal of entry (Total) | 7 793 | 2 911 | 1 832 | 1 540 | 855 | 841 | 15 772 |
| A – No valid travel document(s) | - | 104 | 65 | 5 | 5 | 5 | 184 |
| B – False/counterfeit/forged travel document | - | 2 | 3 | 5 | 10 | 11 | 31 |
| C – No valid visa or residence permit | - | 1 995 | 766 | 965 | 305 | 201 | 4 232 |
| D – False/counterfeit/forged visa or residence permit | - | 10 | 22 | 15 | 10 | 2 | 59 |
| E – Purpose and conditions of stay not justified | - | 291 | 475 | 275 | 315 | 467 | 1 823 |
| F – Person already stayed 3 month in a 6 month period | - | 14 | 25 | 5 | 10 | 42 | 96 |
| G – No sufficient means for subsistence for the given period and form of stay, or for returning to the country of origin or transit | - | 351 | 341 | 20 | 30 | 27 | 769 |
| H1 and H2 – An alert has been issued | - | 34 | 107 | 255 | 165 | 86 | 647 |
| I – Person considered to be a public threat | - | 110 | 28 | 0 | 5 | 0 | 143 |

Source: 2005-2007 – BBAP PFP, 2008–2009 – Eurostat, 2010 – BBAP PFP – data provided to Eurostat

Note: In the period 2005–2007, the SR did not have external and internal borders; hence, the data of these years refers to all borders. Since 2008 (after accession to the Schengen Area), the data presented herein only refer to the external borders. The disaggregation of data by reasons is not available for the year 2005.

As can be observed in Table 10, the most frequent reason for refusal of entry in the period 2005–2010 is reason C – no valid visa or residence permit, followed by reason E – inability to present a document justifying the purpose and conditions of stay. When looking at the individual years, we can see that reason E has started to prevail in the recent years. This tendency and the reasons for refusal of entry, as well as apprehensions have been mainly influenced by Slovakia's entry to the Schengen Area, reinforcement of border controls, as well as other international political factors, such as the signing of international treaties with third countries or with the countries of origin of migrants. Since entry was most frequently refused to the nationals of Ukraine, this influence can be clearly demonstrated through the example of relations with Ukraine. Especially since 2009, nationals of Ukraine do not try anymore to enter the territory of Slovakia or of the Schengen Area without a valid visa or residence permit; however, upon border control they do not dispose of the documents justifying the purpose and conditions of stay that they are expected to present together with the visa application. The reasons can be the following:

- Introduction of small cross-border traffic with Ukraine (in place since October 2008, but its effect was manifested to a greater extent in 2009);
- Since 2009, the nationals of Ukraine have stopped using the *modus operandi* of entering the EU without a visa in their travel document or with an invalid visa to a lesser extent, and have switched to other methods of entry (e.g. acquisition of visa on a false basis, which can result in refusal of entry for reason E);
- Simpler visa granting procedures in the case of Ukraine nationals (the agreement entered into force on 01 January 2008). Under this agreement, those categories of Ukraine nationals which are not listed in the agreement are granted visa in a simplified manner and at a lower fee of EUR 35 for all types of short-term visas. Members of official delegations, sportsmen, pensioners, journalists, students, family members of Ukraine nationals residing legally in an EU Member State, etc. can obtain visas free of charge.¹⁸⁷

The geographical position of the SR and the fact that Slovakia does not have a major international airport imply that up to 95 per cent of refused entries in the period 2005–2010 occurred on the land border, and only 5 per cent on the air border.

Table 11 Total number of refused entries of third-country nationals, by nationality in 2005–2010 (Top 10)

| Country of nationality | Number of entries refused on the borders (2005–2010) |
|------------------------|--|
| Ukraine | 9 942 |
| Romania | 784 |
| Serbia and Montenegro | 594 |
| Moldova | 565 |
| Turkey | 545 |

¹⁸⁷ Annual Statistical Report on Migration and International Protection in the SR in 2009, European Migration Network, September 2011

| | |
|--------------|-----|
| Bulgaria | 466 |
| Russia | 411 |
| China | 293 |
| South Africa | 230 |
| India | 162 |

Source: 2005–2007 – BBAP PFP SR, 2008–2009 – Eurostat, 2010 – BBAP PFP SR – data provided to Eurostat

The statistics on refused entries in the period 2005–2010 are also clearly dominated by nationals of Ukraine, followed by a wide margin by nationals of Serbia and Montenegro, and by nationals of Moldova (Table 11). Here, too, we can observe the clear influence of Slovakia's geographical position.

Returns

Under the current Slovak legislation, foreign nationals who cross the state border without authorisation or violate the conditions of entry and are therefore considered as irregular migrants are imposed measures to prevent their further illegal conduct and action aimed at their return. Except for cases where an alien requests asylum or voluntary return or a respective decision has been issued by another Member State, an alien is issued a decision on administrative expulsion or judicial expulsion. This implies that the trends in illegal migration can also be observed on the basis of data on issued decisions on expulsion and on enforced expulsions.

Since the issued decisions on expulsion and enforced expulsions are closely related to the number of apprehensions, these indicators show a declining tendency, too (Table 12). These statistics also imply that 72.5 per cent of aliens who were issued a decision on expulsion probably left the territory of the SR. The majority of them were expelled from the territory of the SR through the Slovak-Ukrainian borders; yet, it is impossible to find out whether such aliens actually returned to their country of origin (with the exception of Ukrainians). The SR does not systematically collect data on countries to which aliens were returned.

Table 12 Comparisons of the numbers of third-country nationals ordered to leave the country and third-country nationals who actually left the SR in 2006–2010

| Third-country nationals ordered to leave the territory of the SR | | Third-country nationals who actually left the territory of the SR | |
|--|-------|---|-------|
| Year | Total | Year | Total |
| 2005 | x | 2005 | x |
| 2006 | 3 499 | 2006 | 2 415 |
| 2007 | 3 296 | 2007 | 2 398 |
| 2008 | 1 655 | 2008 | 1 295 |
| 2009 | 1 180 | 2009 | 900 |
| 2010 | 871 | 2010 | 598 |

Source: 2006–2007 – BBAP PFP, 2008–2009 – Eurostat, 2010 – BBAP PFP SR – data provided to Eurostat; data of 2005 is not available.

Table 13 also implies a relation between apprehensions and expulsions and, just like in other categories, this category is also dominated, by a relatively wide margin, by nationals of Ukraine and Moldova, followed by a wide margin by nationals of Pakistan, Georgia and India.

Table 13 Countries of origin of third-country nationals ordered to leave the country, and countries of origin of third-country nationals who actually left the SR in 2006–2010, Top 10

| Countries of origin of third-country nationals ordered to leave the country | | Countries of origin of third-country nationals who actually left the SR | |
|---|-------|---|-------|
| Country of origin | Total | Country of origin | Total |
| Ukraine | 3 934 | Ukraine | 2764 |
| Moldova | 2049 | Moldova | 1965 |
| Pakistan | 616 | Pakistan | 509 |
| Georgia | 583 | Georgia | 460 |
| India | 559 | India | 451 |
| China | 412 | China | 302 |
| Russia | 355 | Russia | 251 |
| Bangladesh | 253 | Bangladesh | 227 |
| Afghanistan | 227 | Afghanistan | 199 |
| Vietnam | 175 | Palestine | 91 |

Source: 2006-2007 – BBAP PFP SR, 2008-2009 – Eurostat, 2010 – BBAP PFP SR – data provided to Eurostat, the data for 2005 is not included, as it is not available.

International Protection

As mentioned in the sub-chapter concerning apprehensions, apprehended aliens or aliens in relation to which a decision on administrative or judicial expulsion has been issued try to avoid expulsion by, for example, entering the asylum procedure and requesting some form of international protection. During the asylum granting procedure, the enforcement of administrative or judicial expulsion is suspended until a decision is issued on the granting/non-granting of international protection. In this manner aliens try to avoid expulsion (and regularise their stay), they frequently wilfully leave the territory of the SR prior to the termination of the asylum procedure, and continue heading to their country of destination. In a certain sense, the data on refused asylum applications or withdrawn asylum applications can become a background for analysing the nature of illegal migration to the SR.

Table 14 Total numbers of applications and refused applications for international protection in 2008–2010

| | Year | 2008 | 2009 | 2010 |
|------------------------------|--|------|------|------|
| Total number of applications | Total | 910 | 820 | 541 |
| Refused applications | Applications refused in first-instance proceedings | 875 | 145 | 205 |
| | Applications refused in last-instance proceedings | 65 | 20 | 36 |

Source: 2008-2009 Eurostat, 2010 – Migration Office of Mol SR, data provided to Eurostat; the data for the years 2005-2007 is not available.

Table 14 shows that the majority of applications is refused in first-instance proceedings, and that a substantially smaller number of applications is refused in the last-instance proceedings represented by the Supreme Court. In 2008, a total of 875 applications were refused compared to a much smaller number of applications rejected in 2010. This declining trend relates in particular to the overall declining trend in the number of requests for international protection in the SR.

As far as nationality is concerned in connection with asylum applications refused in first-instance proceedings (Table 15), nationals of Pakistan, Moldova, Georgia and Russia prevail; nationals of Ukraine do not appear at top positions in this category as in the case of apprehensions, returns, and refusals of entry. The reason for this development is especially the fact that Ukrainians come to the territory of the SR legally and subsequently exceed the permitted period of stay without being apprehended upon illegal entry, and do not enter the asylum procedure with a hidden purpose that often. In the case of second-instance proceedings, nationals of Pakistan, and also Vietnam, China and Iraq dominate.

Table 15 Applications for international protection refused in first-instance proceedings in 2008 – 2010, by nationality

| Refused applications for international protection in first instance proceedings | | Refused applications for international protection in second instance proceedings | |
|---|-------|--|-------|
| Country of origin | Total | Country of origin | Total |
| Pakistan | 160 | Pakistan | 20 |
| Moldova | 145 | Vietnam | 20 |
| Georgia | 142 | China | 15 |
| Russia | 133 | Iraq | 15 |
| India | 120 | India | 13 |
| Vietnam | 97 | Ukraine | 7 |
| Afghanistan | 64 | Bangladesh | 6 |
| Ukraine | 49 | Moldova | 6 |

| | | | |
|------------|----|---------|---|
| Bangladesh | 35 | Russia | 5 |
| China | 31 | Georgia | 2 |

Source: 2008-2009 Eurostat, 2010 – Migration Office of MoI SR, data provided to Eurostat; data for the period 2005-2007 is not available.

Both categories are clearly dominated by males (93% and 86%) in productive age.

In the period 2008–2010, no case of cancelled international protection was reported.

6.2 Other National Statistics on Irregular Migration

The Slovak Republic does not collect data on the total number of irregular migrants residing in the territory of the SR. There are only gross estimates in this area, and no in-depth research on these issues has been conducted so far. The only analysis made in this connection is the report compiled by Boris Divinský in the framework of the CLANDESTINO project.¹⁸⁸

Based on a questionnaire research and estimates by the representatives of state authorities and non-governmental organisations, as well as research under the project Divinský estimates that as of the end of 2007 the number of irregular migrants residing in the SR reached approx. 15,000–20,000, which represents 0.3–0.4 per cent of the total population. It is assumed that due to the significant decline in the number of apprehended aliens the estimated numbers decreased, as well.

With regard to the fact that no statistics exist on the total number of irregular migrants residing in the SR, it is not possible to provide precise information on their sex and nationality. This data can only be estimated on the basis of statistics on apprehended aliens. Based on this analysis it is assumed that more than three fourths of irregular migrants are males in productive age. As far as ethnic structure is concerned, Divinský states, on the basis of statistics on legal and illegal migration, that irregular migrants come to the SR from three main regions – countries of the former Soviet Union (Ukraine, Moldova, Russia, Georgia), some Asian countries (Vietnam, China, India, Pakistan, Bangladesh), and Western-Balkan countries (Serbia including the province of Kosovo, Albania, the former Yugoslav Republic of Macedonia).

In the SR, data on irregular migrants' flows are analysed systematically and in detail by BBAP PFP within the scope of its tasks and in compliance with the EU Regulation on migration statistics. The illegal migration flows can be analysed on the basis of data on apprehended aliens, described in greater details in Chapter 6.1.

As regards to other statistics that could contribute to the analysis of illegal migration in the SR, such as numbers of sanctioned carriers¹⁸⁹ or marriages of convenience¹⁹⁰, such statistics have not been

¹⁸⁸ See also Divinský B.; Undocumented migration. Counting the uncountable. Data and Trends across Europe, December 2008 (analysis made in the framework of CLANDESTINO project).

¹⁸⁹ According to the information of BBAP PFP, sanctions were imposed in one case on the airline company SKY Europe in 2006, and in two cases on the airline company AIR Slovakia in 2008.

¹⁹⁰ According to the information of BBAP PFP, ten decisions on administrative expulsions were issued for that reason in 2008, compared to three decisions in 2009 and one decision issued in 2010.

systematically collected or evaluated in the SR. The data that is collected in the SR and can contribute to an overview of illegal migration is the numbers on prohibition of entry (Table 16), which is closely connected to the statistics on returns or expulsions.¹⁹¹ Table 16 provides an overview of the principal nationalities of aliens who were issued a decision on expulsion and prohibition of entry in the period 2005–2010.

Table 16 Total number of issued decisions on administrative and judicial expulsion and on prohibition of entry in 2005–2010, by nationality of third-country nationals

| Issued decisions on administrative expulsion and prohibition of entry | | Issued decisions on judicial expulsion and prohibition of entry | |
|---|--------------------|---|-------|
| Country of origin | Total | Country of origin | Total |
| Ukraine | 5 097 | Ukraine | 721 |
| Moldova | 1 939 | Moldova | 299 |
| Georgia | 366 | India | 36 |
| China | 295 | Pakistan | 28 |
| Croatia | 248 ¹⁹² | Russia | 19 |
| Russia | 238 | Georgia | 18 |
| Afghanistan | 221 | China | 13 |
| India | 204 | Bangladesh | 9 |
| Pakistan | 179 | - | - |
| Vietnam | 126 | - | - |

Source: BBAP PFP

Note: The table above contains data on the total number of prohibitions of entry. However, such prohibitions of entry could have been imposed not only because of illegal entry or illegal stay, but also on the basis of other facts representing a reason for administrative expulsion, such as a valid court sentence for wilful crime without simultaneously imposing punishment in the form of expulsion, or constituting threat to the security of the state, public order or public health.

Similarly as in the other categories described in this chapter, the most significant group by nationality is constituted by nationals of Ukraine and Moldova. This category, too, is dominated by males.¹⁹³

Just as the SR does not dispose of data and does not make estimates on the total number of irregular migrants residing in the SR, it does not dispose either of data on the total number of irregular migrants working in the SR. Certain trends can be derived from the statistics compiled by the National Labour Inspectorate which performs controls of illegal work and illegal employment¹⁹⁴ as a part of its activities together with the Police Force Services¹⁹⁵ and with the offices of labour, social affairs and family.

¹⁹¹ For more details refer to Tables 12 and 13.

¹⁹² Of this total number, 234 cases were reported in 2009. This growth is connected with disturbances of fans of the Croatian football club Hajduk Split in Žilina in July 2009. According to the police, the fans of Hajduk which played a European League match with Žilina football club were destroying restaurants and vehicles on their way to the stadium.

¹⁹³ The statistics are systematically collected and analysed by BBAP PFP.

¹⁹⁴ For a definition of illegal migration and illegal employment refer to Chapter 2.1.

¹⁹⁵ BBAP PFP registers the category of legally staying aliens employed illegally only in case such persons becomes an irregular migrant (his/her legal residence becomes illegal); only then such person is recorded as an illegally staying alien and appears in the illegal residence statistics.

Based on the Reports on Searching and Combating Illegal Work and Illegal Employment in the years 2008 – 2010 published by the National Labour Inspectorates¹⁹⁶, it is possible to get a basic overview of the number of performed controls of illegal work and illegal employment, as well as of cases of illegally employed aliens detected by competent authorities. Table 17 provides an overview of the number of cases of illegally employed aliens detected by competent authorities in the period 2008–2010. However, it is not possible to observe on the basis of these statistics any trends in illegal employment due to the fact that the number of detected cases is also connected with the number of controls performed in the given year.¹⁹⁷

Table 17 Total number of discovered cases of illegally employed aliens in 2008–2010

| Institution/Year | 2008 | 2009 | 2010 |
|---|------|------|------|
| National Labour Inspectorate | 40 | 24 | 7 |
| Central Office of Labour, Social Affairs and Family | 69 | 69 | 43 |
| Police Force Presidium | 25 | 391 | 40 |

Source: National Labour Inspectorate

These detected cases most frequently related to situations where an alien did not have a labour relation with the employer (for example, a labour contract), or where he/she did not dispose of a residence permit, or had a residence permit for other purpose than employment. Further to the statistics of the years 2009–2010, it can be stated that most of the cases of illegal work and illegal employment were detected in restaurant services, wholesale and retail, and in the construction sector. This category of third-country nationals is dominated by the nationals of Vietnam, China and Ukraine working mainly in restaurant services, services in general (Vietnam, China) or construction (Ukraine).

Statistics and data on the costs of practical measures in combating illegal migration, such as costs of expulsion, monitoring, and training of the Border and Aliens Police, is not collected systematically at the central and regional levels.

¹⁹⁶ Available at <http://www.safework.gov.sk/?t=46&s=128&ins=nip> (consulted on 03/08/2011)

¹⁹⁷ In 2008 a total of 28,349 controls of illegal employment were carried out compared to 31,739 controls in 2009 and 20,655 controls in 2010.



Conclusion

The accession of the Slovak Republic to the European Union on 01 May 2004 and to the Schengen Area on 21 December 2007 represented a turning point with an impact on migration management and, hence, on combating illegal migration. Both the quantitative and qualitative development in several areas of migration got more dynamic in the given period – the size of foreign migration increased and the number of legal migrants grew; on the other hand, the number of apprehended irregular migrants and the numbers of returns and refusals of entry on the border declined enormously, and the tasks of state authorities were set and the policy and legislation in this field were regulated accordingly.¹⁹⁸

From the point of view of illegal migration, the Slovak Republic applies rather restrictive policies. As for restrictive measures, examples of good practice in combating illegal migration include, in particular, measures implemented on the external border – especially technical facilities and personnel. The measures taken to protect the external border had a significant impact on the reduction in the number of irregular migrants who were detained or refused entry on the border. Cooperation with the countries of origin can also be considered as important, especially cooperation with Ukraine as the only third country on the external border of the SR and the most important country of origin of migrants. The application of the readmission agreement and the deployment of advisors on documents and operative cooperation among the competent border authorities prove that international cooperation is one of the important aspects of the fight against the illegal migration phenomenon.

The Slovak Republic has not yet paid greater attention to “soft” measures in combating illegal migration, such as campaigns in the countries of origin, counselling centres and hotlines for migrants, targeted development aid, etc. which could form an efficient supplement to the restrictive measures and contribute to a more effective fight against illegal migration and other related negative phenomena.

¹⁹⁸ Written according to Divinský B.; Migration Trends in the Slovak Republic after the Accession of the Country to the EU (2004–2008). IOM International Organisation for Migration, Bratislava 2009.

Also, the SR does not dispose of any estimates on the total numbers of irregular migrants or illegally working migrants within its territory. However, the statistics on the numbers of apprehended and expelled aliens, systematically collected by competent authorities, indicate a declining trend in illegal migration.

With regard to the overall small number of irregular migrants apprehended in the SR and, hence, a small estimated number of irregular migrants, the SR has not implemented yet, nor it considers implementing regularisation programmes for irregular migrants.

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