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PROGRAMMES AND STRATEGIES
FOSTERING ASSISTED RETURNS IN THE
SLOVAK REPUBLIC AND RE-INTEGRATION
IN THIRD COUNTRIES

Programmes and Strategies Fostering Assisted Returns in the Slovak Republic and Re-Integration in Third Countries

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National Study for the European Migration Network

Bratislava
December 2009 – January 2010



The EMN has been established via Council Decision 2008/381/EC and is financially supported by the European Union.

Financed by the European Union and the Ministry of Interior of the SR.

The opinions presented in this study are opinions of the author and do not necessarily reflect the views of the Government of the Slovak Republic, the European Commission or the IOM International Organisation for Migration.

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ISBN 978-80-970307-2-8



Preface

This report was compiled by the IOM International Organization for Migration Bratislava in its function as the National Contact Point (NCP) of the Slovak Republic in the European Migration Network (EMN). This national report follows the common specifications and methodology prepared by the European Migration Network. The report was compiled by external expert contracted by IOM in 2009.

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Summary

The right of each individual to return to his/her country is laid down in several human rights documents. According to the Universal Declaration of Human Rights, “everyone has the right to leave any country, including his own, and to return to his country.”¹ This right is also enshrined in the first binding international human rights document – the International Covenant on Civil and Political Rights of 1966, which stipulates that “no one shall be arbitrarily deprived of the right to enter his own country.”²

The Slovak Republic (hereinafter referred to as the SR), in line with its international commitments, respects the right of each individual to return to his/her country of origin. According to the current legislation, aliens can apply for voluntary return³ from the SR to their country of origin for any reason.

Voluntary return represents a humane form of return.⁴ The state provides for the Voluntary Return Programme in the SR through the Bureau of the Border and Aliens Police of the Ministry of Interior of the SR (hereinafter referred to as the BBAP MoI SR), while its implementation is carried out by IOM International Organisation for Migration (hereinafter referred to as the IOM).

This study analyses the legislation concerning voluntary returns in the SR, and describes the implementation and the overall mechanism of organising the return of a foreigner who decides to return to his/her country of origin.

The study consists of the following chapters:

- **Chapter 1** outlines the aim and the purpose of the study, and identifies the main contributions of this document in the context of the European Union (hereinafter referred to as the EU) and the final beneficiaries. The methodology includes all the relevant sources which were required for obtaining information and which formed the basis for analysing the voluntary return instrument and related mechanisms.
- **Chapter 2** contains definitions of the terms associated with voluntary returns. The analysis of the legislation showed that instead of *assisted return* the term *voluntary return* is used in Slovakia; however, its meaning is identical. This chapter further divides third-country nationals into several categories, according to their legal status at the time of filing their application for voluntary return. A conclusion may be drawn that the term *returnees* has not yet become common in the terminology used, and therefore it was necessary to describe it in more detail for the purposes of this study. The final part of this chapter lists the available statistical information. It was not possible to provide all the data according to the specification, as some of this data⁵ was not available.
- **Chapter 3** deals with the voluntary return instrument from the general point of view as a social and political topic, which has rather been in the focus of experts than politicians so far. Both types of possible aliens’ returns are primarily regulated by the Act No. 48/2002 Coll. on the Stay of Aliens and on Changing and Amending Certain Acts as Amended (hereinafter referred to as the Act on the Stay of Aliens) and by the Act No. 480/2002 Coll. on Asylum and on Changing and Amending

Certain Acts as Amended (hereinafter referred to as the Asylum Act), as well as by the implementation regulations of the BBAP MoI SR. The voluntary return practice is also based on the long-run cooperation between the BBAP MoI SR and the IOM. This chapter contains information on the legislative changes and on the co-financing of voluntary returns from the EU funds and the state budget of the SR.

- **Chapter 4** describes in more detail the process of voluntary return of a third-country national back to his/her country of origin by means of the IOM Voluntary Return Programme, which is in the Slovak Republic carried out exclusively by the IOM in cooperation with the BBAP MoI SR. This chapter provides information about the conditions for participation in the Voluntary Return Programme; about the process of voluntary return as such; the costs of voluntary and forced returns; about the foreigners’ incentives for the return back to their country of origin; and about possible obstacles.
- **Chapter 5** deals with the re-integration and sustainability of the return, and describes the measures taken in relation to the re-integration of third-country nationals and their rights. Until February 2011, re-integration assistance is being funded in the framework of the projects co-financed by the European Return Fund and the state budget of the SR, for a limited number of persons only.
- **Conclusion** describes the findings learned in the course of preparation of this study.

List of Abbreviations

Act on the Stay of Aliens – Act No. 48/2002 Coll. on the Stay of Aliens and on Changes and Amendments to Certain Acts.

Agreement – Agreement on Cooperation between the International Organisation for Migration and the Ministry of Interior of the Slovak Republic on assistance in returns of unsuccessful asylum seekers and illegal migrants to their countries of origin;

APD PC – Aliens Police Department of the Police Corps

Asylum Act – Act No. 480/2002 Coll. on Asylum and on Changes and Amendments to Some Acts as Amended

BBAP MoI SR – Bureau of the Border and Aliens Office of the Ministry of Interior of the Slovak Republic

BCD PF – Borders Control Department of the Police Corps

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

Directive 2003/110/EC – Council Directive 2003/110/EC of 25 November 2001 on assistance in cases of transit for the purposes of removal by air

ERF – European Refugee Fund

EU – European Union

IOM – International Organisation for Migration

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

MoI SR – Ministry of Interior of the Slovak Republic

Return Directive – 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

SR – Slovak Republic

1 Article 13, paragraph 2.

2 Article 12, paragraph 4.

3 Voluntary return is assistance granted to a third-country national in their voluntary return to the country of origin.

4 <http://avr.iom.sk/navraty/o-programe.html> (downloaded – December 2009).

5 For example, about the legal status of aliens at the time of their voluntary return to their country of origin



Introduction: Purpose and Methodology

1.1 Purpose

The selection and preparation of the study entitled *Programmes and Strategies Fostering Assisted Returns in the SR and Re-integration in Third Countries* was approved by the Steering Board of the European Migration Network under the Work Programme 2009. The aim of this study is to provide all available information on voluntary returns in the SR; this information will subsequently be incorporated into a synthesis report on assisted returns, prepared by the European Commission on the basis of national reports of the EU Member States. The studies prepared by all the EU Member States aim at providing a general overview of assisted return programmes of the individual EU Member States, and can contribute to improving the cooperation among the Member States and promote good practice in the field of assisted returns and development of return policy and programmes facilitating the implementation of such policy.

This study consists of the following parts:

- complex overview of voluntary return programmes and strategies in the SR;
- analysis of voluntary return strategies from the point of view of implementation support and possible obstacles in the implementation of such strategies;
- analysis of the reasons and the motivation for participating in the Voluntary Return Programme and the subsequent re-integration;
- overview of assessments of the voluntary return programmes and of their effectiveness and sustainability in Slovak conditions.

This study is primarily designed for institutions working in the field of return policy, in particular for:

- ministers, legislators, civil servants dealing with asylum and migration policy in Slovakia and at the EU level;
- non-governmental organisations working in the field of asylum and migration;
- the general public interested in the return policy.

This study will be made publicly available, and will form a part of the synthesis report comprising all the reports prepared by the other EU Member States.

In 2006, the European Migration Network published a study entitled *Return Migration*, which will be extended by the present study and complemented by information from those EU Member States which were not originally involved in its preparation, including the SR.

Up until the present time, no study had been prepared in the SR that would provide a complex analysis of voluntary returns. This document will therefore serve also as background for basic information about the voluntary return instrument, as well as about the general legislation regulating this instrument in the SR, and about the execution of voluntary returns of a third-country national from the territory of the SR back to the country of origin.

1.2 Methodology

This study is based on available source materials and documents, as well as expert consultations with the stakeholders held in November and December 2009 and in January 2010, the main sources being in particular:

- Slovak legal regulations:
 - ♦ Act No. 480/2002 Coll. on Asylum and on Changing and Amending Certain Acts as Amended;
 - ♦ Act No. 48/2002 Coll. on the Stay of Aliens and on Changing and Amending Certain Acts as Amended;
 - ♦ Order of the Director of the Bureau of the Border and Aliens Police of the Ministry of Interior of the Slovak Republic No. 4/2010 of 11 January 2010 to ensure the procedures in matters concerning the administrative expulsion, detention and voluntary returns of foreigners from the territory of the Slovak Republic;
 - ♦ Order of the Director of the Bureau of the Border and Aliens Police of the Ministry of

Interior of the Slovak Republic No. 3/2010 of 12 January 2010 to ensure the procedures in matters concerning the stay of aliens in the territory of the Slovak Republic;

- ♦ Multi-Annual Programme of the European Return Fund for the Years 2008-2013;
- International documents on human rights and freedoms:
 - ♦ Universal Declaration of Human Rights;
 - ♦ International Covenant on Civil and Political Rights;
- Legal acts of the EU:
 - ♦ European Pact on Immigration and Asylum;
 - ♦ 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 (hereinafter referred to as the Return Directive);
 - ♦ Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals (hereinafter referred to as the Directive 2001/40/EC);
 - ♦ Council Directive 2003/110/EC of 25 November 2001 on assistance in cases of transit for the purposes of removal by air (hereinafter referred to as the Directive 2003/110/EC);
 - ♦ Council Directive 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of the Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals;
 - ♦ Council Decision 2004/573/EC of 29 April 2004 on the organisation of joint flights for removal from the territory of two or more Member States of third-country nationals who are subjects of individual removal orders;
 - ♦ Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part

of the General Programme Solidarity and Management of Migration Flows

- IOM website focused on voluntary returns: www.avr.iom.sk;
- information obtained during interviews with the experts possessing the knowledge and the experience of the voluntary returns practice in the SR, working for the BBAP Mol SR and the IOM;
- statistics provided by the IOM and by the website www.avr.iom.sk;
- the author's practical experience from the work for the civil society association Human Rights League.

No complications occurred during the preparation of this study. All the experts approached provided the information for the purpose of its analysis and subsequent evaluation in this study.

2.1 Definitions of Voluntary Return

The purpose of this part is to describe and define the basic terms related to the Voluntary Return Programme in the SR.

At the time of preparation of this study, the National Council of the SR passed, on 1 December 2009 the Act No. 594/2009 Coll. on Changing and Amending the Act on the Stay of Aliens. This amendment, which entered into force on 15 January 2010, transposed the Return Directive into the Act on the Stay of Aliens.

For the purposes of this study, the terminology used is that applied by the legislation of the SR:

- **Return** – there are two types of returns of third-country nationals in the SR, namely forced return (i. e. a decision on administrative expulsion and an expulsion imposed by court) and voluntary return;
- **Voluntary return** – return to the country of origin or former place of residence of an alien, or to any third country to which the alien decides to return and which accepts the alien⁶; voluntary return in the SR has the same meaning as assisted return;
- **Administrative expulsion** – a decision of the police department on the termination of the alien's stay, setting the deadline for the departure to the country of origin, a transit country, or any third country that would accept the alien, and a ban on entry.
- **Execution of administrative expulsion** – a police department must ensure the enforcement of the decision on administrative expulsion when
 - ♦ the alien did not depart in the time limit determined in the decision on administrative expulsion;



Definitions, Categories of Returnees and Available Data

⁶ Article 2, letter j) of the Act on the Stay of Aliens

- ♦ it can be assumed that the alien would escape, frustrate enforcement of the decision on administrative expulsion, or make it more difficult, especially when it is not possible to find out the alien's identity;
 - ♦ the alien is to be returned to the territory of a Contracting State according to an international treaty, or
 - ♦ the alien cannot depart because he/she does not have a valid travel document or financial means for departure.⁷
- **Judicial expulsion** – a punishment of expulsion imposed by a court pursuant to the Article 65 of the Act No. 300/2005 the Penal Code. As per this provision, if it is in the interest of security of persons or property or in other public interest, the court may impose the punishment of expulsion from the territory of the SR on an offender who is not a national of the SR or of any other EU Member State, nor a national of a Contracting State of the Agreement on the European Economic Area, nor a person who was granted the asylum status. The court can impose the punishment of expulsion for a period from one year up to fifteen years.
 - **Detention** – in general, it can be defined as a decision of an administrative authority (police department) restricting the right of the freedom of movement of an alien; the police is entitled to detain an alien for the purpose of the execution of administrative expulsion or the enforcement of the punishment of expulsion; or the execution of his/her transportation pursuant to the Dublin Regulation; or for the purpose of return of an alien pursuant to a re-admission agreement, provided that he/she entered the territory of the SR without authorisation, or stays in the territory of the SR without authorisation.
 - **Asylum seeker** – an alien declaring to the Police Corps Unit that they seek asylum or subsidiary protection in the territory of the Slovak Republic⁸;

⁷ Article 59, paragraph 1 of the Act on the Stay of Aliens

⁸ Article 2, letter h) of the Asylum Act

- **Unsuccessful asylum seeker** – an alien whom the Slovak Republic refused to grant international protection in the form of asylum or subsidiary protection;
- **Alien staying in the territory without authorisation** – an alien whose stay in the territory of the SR is illegal, as it does not comply with the conditions for the stay in the territory of the Slovak Republic;
- **Alien** – anyone who is not a national of the Slovak Republic⁹;
- **Third-country national** – an alien who is not a national of the SR or of any other EU Member State;

For the purposes of this study, the terms *alien* and *third-country national* are used interchangeably.

2.2 Categorisation of Returning Migrants

An alien staying in the SR illegally can use the voluntary return instrument and return back to his/her country of origin. This instrument can also be used by an alien illegally staying in the SR, who has already been issued a decision on administrative expulsion and who has been detained and placed by the police department in a police detention facility for the purpose of the execution of the decision. Such an alien can avoid a forced return and choose a more humane, voluntary way of return.

Third-country nationals participating in the Voluntary Return Programme through the IOM, this being the only possibility of voluntary return in the SR, can fall into various categories according to the date of filing the application for voluntary return, i. e. the date of being registered by the IOM.

⁹ Article 1, paragraph 2 of the Act on the Stay of Aliens

The following categories of third-country nationals can be registered for the Voluntary Return Programme:

1. **A third-country national who stays in the SR illegally, since he/she does not possess a valid permanent or temporary residence permit, nor a tolerated stay permit, nor has been granted a visa, and no decision on administrative expulsion has been issued against such person**

This category refers to an alien whose illegal stay in the SR was not known to the police department and the person voluntarily applies to the Voluntary Return Programme directly at the IOM, or demonstrates his/her wish to return voluntarily at the police department where he/she appears of his/her own will; in case such alien demonstrates at the police department his/her will to return voluntarily, the alien is instructed to visit the IOM where he/she can apply for the voluntary return. From the moment of filing a written application for voluntary return, the stay of such a third-country national is deemed as tolerated for 90 days. In such a case, the alien will not be issued a decision on administrative expulsion from the SR.

2. **A third-country national who stayed in the SR illegally, since he/she did not possess a valid permanent or temporary residence permit, nor tolerated stay permit, nor has been granted a visa, and where a decision on administrative expulsion was issued**

This category refers to a third-country national, about the illegal stay of which the police department learned while performing its tasks and issued a decision on administrative expulsion, including a deadline for the departure and a period of the ban on entry. The deadline for the departure is a minimum of 7 days and a maximum of 30 days following the entry into force of the decision, whereas this period can be extended in consideration of the previous stay of an alien, his/her private and family life or health

condition. During this period, a third-country national can file an application for voluntary return; although the decision on administrative expulsion remains valid; in such case, instead of a forced return, his/her return is considered voluntary. Again, from the moment of filing the application for voluntary return, a 90-day period commences during which the voluntary return must be executed and the third-country national's stay in the territory of the SR is tolerated; the alien's tolerated stay can be extended in justified cases. This category also includes unsuccessful applicants for asylum or subsidiary protection who stay in the SR illegally and who were issued a decision on administrative expulsion.

3. **A third-country national who was detained by the police department for the purpose of executing administrative expulsion and placed in the police detention facility for aliens**

This situation occurs when a third-country national stays in the SR illegally. He/she does not possess a valid residence permit or a visa, and the police department learns about this fact while performing its tasks, issues a decision on administrative expulsion from the SR, detains the alien and places him/her in the police detention facility for aliens.¹⁰ The third-country national can file a written application for voluntary return even after he/she has been placed in such a facility.

4. **A third-country national who is party to the international protection granting procedure, and who applies for voluntary return to the country of origin during this procedure**

This category refers to a third-country national who is party to the international protection granting procedure at the Migration Office of the Ministry of Interior of the Slovak Republic (hereinafter referred to as the MO Mol SR) and decides to apply for voluntary return before a legal decision on granting asylum or subsidi-

¹⁰ There are two police detention facilities for aliens in the SR – in Sečovce and Medvedov.

ary protection has been made.

2.3 Statistical Data on Voluntary Returns

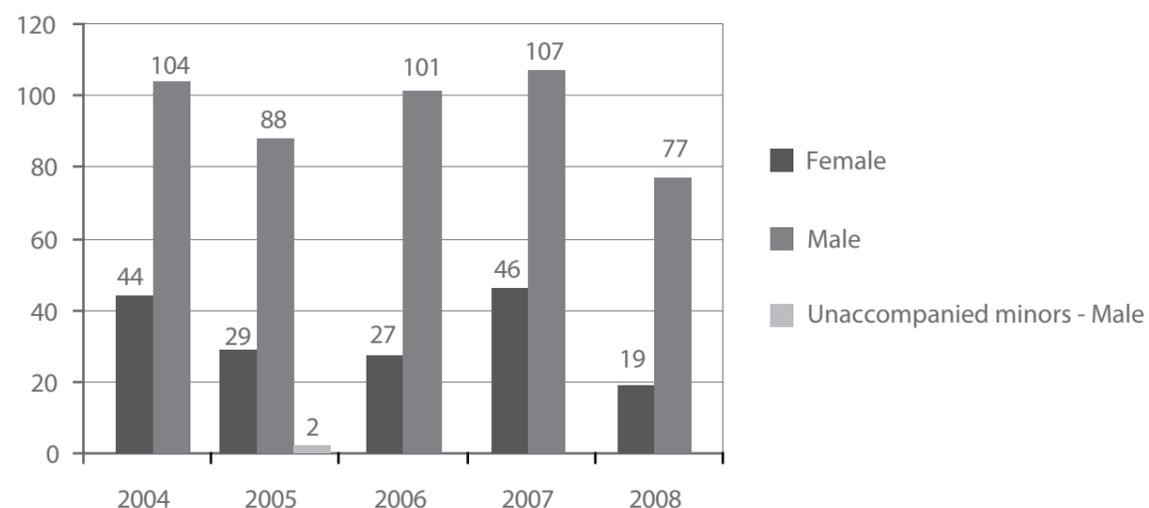
This sub-chapter provides statistical data about third-country nationals who were returned from the SR to their country of origin or their former place of residence, by demographic categories and by countries of origin.

During the years 2004 – 2008, 644 third-country nationals returned voluntarily from the SR to their country of origin; the highest number of returns was realised in 2007, when there were 153 cases of voluntary returns.¹¹

As shown in Table 1, in every year, the voluntary return instrument was used primarily by men. In 2005, two cases of voluntary return of unaccompanied minors were reported, i. e. third-country nationals under the age of eighteen, who stayed in the SR without their legal representatives (parents) or other persons responsible for them by law. In the case of unaccompanied minors,

¹¹ OM source, December 2009

Table 1. Age Structure of the Third-Country Nationals Who Voluntarily Returned to Their Countries of Origin or Former Places of Residence



Source: IOM, December 2009

consent to the return of such person to his/her country of origin or former place of residence is granted by the guardian or the custodian appointed by a court, who is the minor's legal representative and without whose consent it is not possible to carry out the return.

Table 2 shows the age structure of the third-country nationals whose voluntary return was carried out during the period 2004 – 2008. The most numerous category is constituted by adult persons aged 18 – 59 years. There have also been minors of less than 18 years of age who returned to their country of origin. Apart from the above-mentioned two unaccompanied minors who stayed in the SR without their parents or other legal representatives, the others used the possibility of voluntary return together with their families, i. e. with their legal representatives – parents. Third-country nationals of over 60 years of age participated in the voluntary returns programme and returned to their country of origin in two cases.

Table 3 provides an overview of the countries of origin or the places of last residence into which

the third-country nationals voluntarily returned. During the years 2004 – 2008, there were 644 voluntary returns to 34 countries of the world. Moldova with 158 persons and China with 141 persons returning voluntarily represent the countries with the highest number of voluntary returns from the SR. Countries such as Turkey, Russia, Georgia, Iraq and Armenia are also highly represented in this group. Third-country nationals have only been returning voluntarily to their country of origin or their last place of residence, and in no cases did they return to a third country.

Table 4 outlines the number of the voluntary returns of aliens from the SR back to their country of origin during the years 2004 – 2008, and compares it to the numbers of forced return cases in 2008 (enforcement of the decision on administrative expulsion).

*This statistics includes the cases of aliens' expulsions – aliens physically expelled by the police exclusively due to their illegal entry to the SR or illegal stay in the SR, including re-admission.

The data on forced returns in the reference years 2004 – 2007 are not comprehensive (it was only collected in a partial fashion and according to other definitions). For this reason, the data comparison in this table could lead to incorrect conclusions.

In 2009, the police expelled 886 aliens¹² under

¹² BBAP Mol SR source – Illegal Migration Database (this statistics includes the cases of aliens' expulsions – aliens physically expelled by the police exclusively due to their illegal entry to the SR or illegal stay the SR, including re-admission.

the category of forced returns, and the number of voluntary returns in the same year was 139.¹³

In the case of voluntary returns in 2008, the country of return of the third country nationals was the same as their country of origin (see Table 3).

It is not possible to provide an overview of the alien's legal status at the time of return.

¹³ Source – IOM Bratislava

Table 2. Age of the Third-Country Nationals Who Voluntarily Returned to Their Country of Origin or Former Places of Residence

Age / Year	2004	2005	2006	2007	2008
0 – 17	13	10	12	1	8
18 – 59	134	109	116	152	87
60+	1	0	0	0	1

Source: IOM, December 2009

Table 3. Countries of Origin to Which the Third-Country Nationals Returned Voluntarily

Country of Return/Year	2004	2005	2006	2007	2008	Spolu
Afghanistan	0	0	0	0	3	3
Albania	0	0	2	0	1	3
Armenia	16	2	1	0	3	22
Azerbaijan	1	1	0	0	0	2
Belarus	0	1	1	0	0	2
Bosnia and Herzegovina	1	0	0	0	0	1
Bulgaria	0	4	0	0	0	4
Chechnya	6	0	0	0	0	6
China	68	49	9	14	1	141
Croatia	3	0	7	6	0	16
Cuba	0	1	0	0	0	1
Dominican Republic	1	15	12	2	1	31
Ethiopia	1	1	0	0	0	2
Georgia	0	1	0	3	6	10
India	0	0	0	9	17	26
Iraq	0	1	1	0	0	2
Iran	0	0	0	0	1	1
Kosovo	0	0	0	4	7	11
Lebanon	1	0	0	0	0	1
Morocco	1	1	1	0	0	3
Moldova	0	0	0	3	1	4
Mongolia	12	7	31	89	45	184
Peru	0	0	0	0	1	1
Russia	0	0	1	0	0	1
Saudi Arabia	9	21	14	9	5	58
Senegal	0	0	1	0	0	1
Serbia	5	0	0	0	1	6
Sri Lanka	0	0	16	4	1	21
Syria	3	0	0	0	0	3
Tajikistan	0	2	6	0	0	8
Turkey	0	0	0	2	0	2
Uzbekistan	20	11	25	4	0	60
Ukraine	0	0	0	0	1	1
Vietnam	0	0	0	4	0	4
Yemen	0	1	0	0	1	2
Total	148	119	128	153	96	644

Source: IOM, December 2009

Table 4. Comparison of the Number of Voluntary Returns and of Forced Returns

Type of Return/Year	2004	2005	2006	2007	2008
Voluntary Returns	148	119	128	153	96
Forced Returns	-	-	-	-	1 311*

Source: IOM, December 2009, BBAP Mol SR – illegal migration database

* This statistics includes the cases of aliens' expulsions – aliens physically expelled by the police exclusively due to their illegal entry to the SR or illegal stay in the SR, including re-admission.

Table 5. Forced Returns by Nationality in 2008

Nationality	Number
Ukraine	488
Moldova	315
Georgia	136
Pakistan	79
Afghanistan	67
India	65
Russia	48
Bangladesh	36
China	31
Armenia	10
Zimbabwe	5
Vietnam	4
Somalia	3
Turkey	3
Belarus	2
Morocco	2
Nigeria	2
Tunisia	2
Uzbekistan	2
Albania	1
Autonomous Palestinian National Authority	1
Bolivia	1
Croatia	1
Cuba	1
Egypt	1
Iraq	1
Kyrgyzstan	1
Lebanon	1
Oman	1
Serbia	1
Total	1 311

Source: BBAP Mol SR, January 2010

3.1. The Political and Legal Framework of Voluntary Returns in the Slovak Republic

No political discussions on voluntary returns of the third-country nationals from the SR to their country of origin have been reported so far. Rather, it is a topic for a small group of experts on migration and asylum, and at a practical level it is dealt with by the BBAP Mol SR on the part of the state, and by the IOM on the part of the not governmental institutions.

Legal Regulation of Voluntary Returns in the SR

This sub-chapter deals with the legal regulation of voluntary returns and forced returns, which according to the Slovak legislation includes the administrative expulsion and the judicial expulsion. The final part of the sub-chapter describes the legislative changes in the field of return policy in relation to the passing of the amendments to the Act on the Stay of Aliens which entered into effect on 15 January 2010.

The analysis of the legal regulation of returns (both the voluntary and the forced returns) is based on the following legislative rules and other binding documents:

- **Act on the Stay of Aliens** – defines the term *voluntary return*; regulates the legal status of a person who filed a written application for voluntary return to the country of origin; stipulates the terms and procedures for the air transit of an alien through the territory of the SR; sets the conditions for the enforcement of the expulsion decision issued by any state of the European Economic Area; establishes the terms and the procedure of the administrative expulsion from the territory of the SR; and establishes the terms of an alien's arrest and placement in a police detention facility for aliens.

All third-country nationals must comply with the conditions for the entry to or the stay in the SR. The legality of the stay is secured by the granting of the permit for one of the three possible types of stay (permanent residence, temporary residence or tolerated stay) or a visa, or by the fact that the third-country national applied for international protection and is party to the asylum or subsidiary protection granting procedure.

The SR distinguishes between two types of returns:

- forced returns (administrative expulsion, judicial expulsion) and
- voluntary returns

If the conditions for the entry or the stay are not complied with, i. e. the third-country national entered or stays in the SR without permission, this shall constitute a reason for his/her administrative expulsion from the SR.

Administrative expulsion means a decision of a police department on the termination of an alien's stay, setting a deadline for his/her departure to the country of origin or any third country that accepts him/her, and a time period of the ban on his/her entry, unless otherwise stipulated by law. The decision on administrative expulsion also indicates the country into which the alien is expelled. The police department thus sets a time period for the alien during which he/she must depart from the SR. This period is a minimum of 7 days and a maximum of 30 days following the entry into force of the decision on administrative expulsion. Failing to depart within the deadline stipulated in the decision on administrative expulsion results in the enforcement of the decision on administrative expulsion by the police department, which detains the alien for this purpose and places him/her in the police detention facility for aliens. The maximum possible legal period for detaining an alien in the SR is six months, due to which administrative expulsion must be executed within this period. The Act on the Stay of Aliens pro-

vides the possibility for extending this period by 12 months.

In the case where the alien's stay in the SR is illegal, he/she can file an application for voluntary return. As described in sub-chapter 2.2, it primarily refers to a third-country national who stays in the SR illegally without a residence permit or a visa and is not an asylum seeker, and the police department has no knowledge about the illegal stay of the alien. In such a case, the third-country national may file a written application for voluntary return, which means filling in the form at the IOM premises; the alien's stay from the moment of filing the application is considered to be a tolerated stay for a maximum period of 90 days, whereas this period may be extended in justified cases. "The police department shall not issue a decision on administrative expulsion in the case where an alien staying in the SR without authorisation (e. g. the validity of the Slovak visa or of the residence permit in the SR has expired, or the alien entered the SR as an illegal migrant) applies for assisted voluntary return directly at APD or is willing to depart from the SR (and does not apply directly for assisted voluntary return because, for example, possesses no information about this possibility)."¹⁴

In the case of aliens who appeared at the police department voluntarily and applied for voluntary return, which means that their illegal stay was not discovered in the course of carrying out the tasks of the police, the police department shall not issue a decision on administrative expulsion.

In a case where the police department discovers, in the course of carrying out its tasks, that a particular alien has been staying in the SR illegally, it will issue a decision on administrative expulsion and a ban on entry to the SR, and will set a deadline for the alien's departure pursuant to the Act on the Stay of Aliens. The following

¹⁴ Order of the Director of the Bureau of the Border and Aliens Police of the Ministry of Interior of the Slovak Republic No. 4/2010 of 11 January 2010 to ensure the procedures in matters concerning administrative expulsion, detention and voluntary returns of foreigners from the territory of the Slovak Republic

03

The Political and Legal Framework

situations can occur in relation to voluntary returns:

In the case where an alien applies for voluntary return directly at the police department, the police department will inform him/her about the existence of the IOM and provides him/her with the contact information for the IOM staff who may register him/her for the Voluntary Return Programme. From the day of the registration for the Voluntary Return Programme, the alien's stay is deemed as tolerated stay for a period of 90 days. In such a case, the decision on administrative expulsion and on the ban on entry remains valid, but the alien is not detained, nor placed in a police detention facility for aliens.

If an alien is released from the police department under the condition that he/she will leave the SR within the deadline set for departure, he/she can decide to enter the Voluntary Return Programme within this period. In such a case, the decision on administrative expulsion and on the ban on entry remains valid. After the expiry of the period for departure the alien's stay is deemed tolerated for a maximum period of 90 days from the day of registration for the Voluntary Return Programme; this period can be extended in justified cases.

In the case where an alien did not depart within the deadline set in the decision on administrative expulsion and failed to apply for voluntary return, the police department will detain him/her for the purpose of executing the administrative expulsion and place him/her in a police detention facility for aliens. Pursuant to the Act on the Stay of Aliens, a detained alien may apply for voluntary return, whereas *alien's application for a voluntary return does not constitute a reason for releasing a detained alien*.¹⁵ In such case, the voluntary return procedure is not affected by the alien's detention.

At the time of preparation of this study, the National Council of the Slovak Republic passed an

¹⁵ Article 62, paragraph 2 of the Act on the Stay of Aliens

amendment¹⁶ to the Act on the Stay of Aliens on 1 December 2009, which changes and amends the Act on the Stay of Aliens due to the transposition of the Return Directive. The information presented in this study reflects this amendment.

According to the above-mentioned amendment to the Act on the Stay of Aliens¹⁷, the decision on administrative expulsion must indicate, among other things, the place of expulsion to which the alien is expelled; the place of expulsion can be the alien's country of origin, but also a transit country or any other third country that accepts the alien. An alien can request from the police department a written translation of the reason for administrative expulsion, of the period of the ban on entry, and of the instruction on the possibility of appeal in a language that the alien is presumed to understand. The presentation of another person's documents or documents false or modified constitutes a reason for expulsion. In the case where an alien presents such a document at the border control before entering the SR, the police department can impose a ban on entry to the Slovak Republic for a period of up to five years.

The amendment to the Act on the Stay of Aliens re-introduced, in compliance with the Return Directive, the suspensory effect of the appeal against the decision on administrative expulsion, and sets a new time period for the alien's departure. Also, new facts to be considered by the police department in deciding on administrative expulsion were added, such as the alien's health condition or the alien's status as a vulnerable person. The police department can extend the period of detention by a maximum of 12 months. During the period of the alien's detention, the representatives of non-governmental organisation have access to the police detention facilities for aliens subject to approval by the facility director. The police department must instruct an alien about his/her rights and

¹⁶ Act No. 594/2009 Coll. on Changing and Amending the Act No. 48/2002 Coll. on Stay of Aliens and on Changes and Amendments, As Amended.

¹⁷ On 15 January 2010

obligations and repeat these instructions in regular intervals. Just as in the case of expulsion, special attention is paid to vulnerable persons; aliens under 15 years of age have access to education in case the stay in the facility is beyond 180 days.¹⁸

- **Asylum Act** – regulates the legal status of the asylum seeker after filing the application for voluntary return to the country of origin, the possible provision of care for such a person by the MO Mol SR until his/her departure, and the co-operation between the MO Mol SR and the IOM.¹⁹

The right to decide to voluntarily return to his/her country of origin or former residence also pertains to a third-country national who applied for international protection in the SR and in whose case the asylum granting procedure has commenced. The asylum seeker can make such a decision at any stage of the asylum granting procedure, either at the MO Mol SR or in the course of a court proceedings in which the legality of the decision issued by the MO Mol SR is being examined. In such a case, the applicant for voluntary return must withdraw his/her application for asylum.

- **Order of the Director of the BBAP Mol SR No. 3/2010** to ensure the procedures in matters concerning stay of aliens in the territory of the SR
- **Order of the Director of the BBAP Mol SR No. 4/2010** to ensure the procedures in matters concerning administrative expulsion, detention and voluntary returns of foreigners from the territory of the SR.

¹⁸ Act No. 594/2009 Coll. on Changing and Amending the Act No. 48/2002 Coll. on Stay of Aliens and on Changing and Amending Certain Acts as Amended.

¹⁹ Article 47, letter. a) and Article 22, paragraph 5 of the Asylum Act

3.2 The Influence of European Policy, Legislation and Funding

This sub-chapter describes the impacts of the particular legal documents and the acts of the EU on the development of the national policy in the field of migration and specifically on voluntary returns.

European Pact on Immigration and Asylum

The European Pact on Immigration and Asylum accentuates the control of illegal migration in the form of arranging the returns of aliens staying illegally in the territory of EU Member States back to their countries of origin or to transit countries. Every Member State undertook to effectively apply this principle in compliance with the law and with an emphasis on dignity, with voluntary returns being preferred. Each state must accept the decisions issued by other states. By comparing the statistical data²⁰ concerning the returns of aliens from the SR it can be stated that during the period subject to monitoring, the SR carried out more forced returns than voluntary returns, while the government considers voluntary returns as an *important part of an efficient and sustainable management of returns*.

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

This directive was transposed to the Act on the Stay of Aliens No. 342/2007 Coll. in the form of provisions concerning the enforcement of expulsion decisions of the issuing state. According to this legal regulation, the police department must ensure the enforcement of the decision on expulsion even in the case where such a decision was issued by any of the European Economic Area countries. Prior to enforcing such a decision, the police department is obligated to request the statement of the issuing country and of the European Economic Area country where the alien has a permitted stay, and must review

²⁰ Refer to Table 4, page 14

whether the enforcement of the decision complies with the international treaties and with the Act on the Stay of Aliens. Up until today, the SR has executed the enforcement of one decision on expulsion issued by an EU Member State – the Czech Republic.

Council Directive 2003/110/EC of 25 November 2001 on assistance in cases of transit for the purposes of removal by air

The Directive 2003/110/EC was transposed into the national legislation of the SR by means of the Act No. 558/2005 Coll. on Changing and Amending the Act on the Stay of Aliens. The provisions on air transit are included in Articles 75a to 75d of the Act on the Stay of Aliens, and regulate the process of accepting and filing applications for air transit, decisions on such applications, compensation for the costs related to transit, as well as the procedure in the case of air transit cancellation or rejection.

Council Directive 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals

The SR has enforced one Czech decision on administrative expulsion so far, and claimed compensation for that enforcement from the Czech Republic.

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

The SR has so far been involved in four joint air return operations in total. Three cases concerned joint return operation to Nigeria, the first return having been executed by Austria, the second return by the Netherlands, and the third one by

the UK. The fourth case concerned a joint return operation to Kosovo, executed by Austria.

Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme Solidarity and Management of Migration Flows

In January 2009, the Ministry of Interior of the Slovak Republic, as the authority responsible for managing the general Solidarity programme and migration flows, published the first call for submitting grant applications under the European Return Fund, one of the eligible activities being the facilitation of voluntary returns of third-country nationals mainly by means of assisted voluntary return programmes.

Re-admission Agreements

Twenty re-admission agreements concluded by the SR at the bilateral level are currently in place. The EU Member State with which the SR concluded re-admission agreements include: Belgium, Bulgaria, the Czech Republic, France, the Netherlands, Luxembourg, Germany, Hungary, Poland, Austria, Romania, Slovenia, Spain, Sweden and Italy. As for the third countries, the SR concluded re-admission agreements with Croatia, Norway, Switzerland and Vietnam. The SR is also party to those re-admission agreements which were concluded at the European Community level on behalf of the Member States with the third countries. These countries include: Albania, Bosnia and Herzegovina, Montenegro, Hong Kong, Macao, the former Yugoslav Republic of Macedonia, Moldova, Russia, Serbia, Sri Lanka and Ukraine. At the bilateral level, re-admission agreements with Greece and Lebanon are at the stage of preparation at present.

Financing from EU Funds

European Refugee Fund

In 2004 and 2005, the European Refugee Fund financially supported an IOM project which focused on voluntary returns and was entitled *Capacity Building and Implementation of the Assisted Voluntary Return Programme*. The target group of the project were asylum seekers in the asylum procedure at the MO Mol SR. The project activities included awareness-raising about the Voluntary Return Programme by means of targeted information campaigns; provision of individual counselling to the target group; accompanying the aliens to the airport; assistance with the departure and transportation through the transit country; the creation of a system for the collection of information about selected countries of origin; capacity building; and the promotion of cooperation with state institutions.

In 2006, the IOM continued in the project *Capacity Building and Implementation of the Assisted Voluntary Return Programme*. The implementation of the Voluntary Return Programme through the European Refugee Fund continued in 2008 with the project *Creation of a Complex Information System on the Assisted Voluntary Return Programme and Its Implementation in View of the Migrant's Needs*.

Return Preparatory Action

From September 2006 until January 2010, projects in the framework of the Return Preparatory Action 2005, 2006, 2007 were implemented under the title *Enhancing Mechanisms and Harmonising Standards in the Field of Voluntary Return of Irregular Migrants in the EU Central European Member States I, II and III*. The target group of these projects were aliens with unauthorised stay in the SR. The projects were implemented by the IOM Offices in Slovakia, the Czech Republic, Hungary and Poland (relevant for the projects I and II) and in Bulgaria and Romania (project III). The projects provided for an information cam-

campaign for the target group; capacity building for the partners participating in the creation of migration policies and partners cooperating in the execution of voluntary returns; pocket money was provided to support an alien's integration after return; and furthermore, aliens could apply for re-integration grants to prepare and implement small business plans for the purpose of stabilising their life in their countries of origin after the return from the EU Member State.

European Return Fund

In the framework of the European Return Fund, a national project was launched in March 2009, and individual projects in April 2009. In 2009 (from 1 March 2009 to 31 December 2009), the BBAP Mol SR implemented the project *Enhancing the Organisation and Execution of Forced Returns and Improvement of the Conditions of Carrying Out Returns to the Countries of Origin*. The aim of the project was to enhance the system of preparation and implementation of forced returns of migrants, with special consideration to the migrant's needs. At present, the BBAP Mol SR is implementing, under the Annual Programme 2009 of the European Return Fund, the project entitled *Enhancing the Organisation and Execution of Forced Returns and Improvement of the Conditions of Carrying Out Returns to the Countries of Origin II*, the activities of which are closely linked to the previous project. The implementation period of the project spans from 1 January 2010 to 31 December 2010. In the period from 22 April 2009 to 30 April 2010, the IOM is implementing the project *Assistance for the Return and Re-integration of Unsuccessful Asylum Seekers and Illegal Migrants from the Slovak Republic to Their Countries of Origin*. Apart from this project, the IOM has implemented another project under the European Return Fund in the period from 8 June 2009 to 30 November 2009, entitled *Strengthening Cooperation with Relevant Third-Country Authorities in the Field of Assisted Voluntary Returns*. The Fund also supported the project RETURN:SK of the civil society association Spoločnosť ľudí dobrej vôle (the Society of the People of Good Will). The aim of the project

was to improve the stay of aliens detained in the police detention facility for aliens in Sečovce by means of satisfying the special needs of aliens placed in this facility: legal counselling, social assistance, psychological counselling, ensuring access to education for foreign minors, organising spare time activities and the improvement of premises designed for the spare-time activities.

04

Overview of Voluntary Returns Measures

The Ministry of Interior of the Slovak Republic as a central state administration authority is responsible for the fulfilment of tasks in the field of return policy. The organisational unit of the MoI SR responsible for return management is the BBAP MoI SR.

In the implementation of the return policy in the field of voluntary returns, the BBAP MoI SR collaborates with the IOM, with which an international agreement was signed in 1998.

Voluntary Return Programme in the Slovak Republic

Only one Voluntary Return Programme exists in the SR, implemented on the basis of the *Agreement on Cooperation between the International Organisation for Migration and the Ministry of Interior of the Slovak Republic on Assistance in the Return of Unsuccessful Asylum Seekers and Illegal Migrants to Their Countries of Origin*²¹ (hereinafter referred to as the Agreement), signed in 1998²² for an indefinite period of time.

This Agreement constitutes the basic legal document that ensures a voluntary return of the third-country nationals from Slovakia back to their countries of origin and determines the basic scope of cooperation between the parties to the Agreement.

Pursuant to this Agreement, assistance for a voluntary return can be requested by the third-country nationals whom the Agreement defines as *unsuccessful asylum seekers*, i. e. persons to whom the SR did not grant international protection in the form of asylum or subsidiary protection, and *illegal migrants*, i. e. aliens whose stay in the SR is illegal. The IOM's task is to inform the target group about the conditions of return to their country of origin, assist them in securing substitute travel documents for aliens, as well as the air-tickets or other travel tickets, and provide any services that might be needed during the transportation from the SR to the country of origin.

²¹ <http://www.minv.sk/?multilateralne-zmluvy>, point 9

²² On 20 August

The expenses associated with the purchase of the air-tickets or other travel tickets and travel documents are reimbursed by the Ministry of Interior of the SR to the IOM.

From 1998 to 2003, the Voluntary Return Programme was implemented exclusively on the basis of the Agreement between the Ministry of Interior of the SR and the IOM. Since 2004, the Programme has been extended, with the help of EU funds, by new assistance instruments for the target group (refer to page 26 – a summary of the information campaign, and page 30 – re-integration assistance).

A new text of the Agreement between Ministry of Interior of the SR and the IOM is under preparation at present, reflecting the current situation and the requirements in the field of carrying out voluntary returns.

Carrying Out Voluntary Returns

From the moment of registering for the Voluntary Return Programme by filling in an IOM registration form and applying for a voluntary return to the country of origin, former residence or any third country into which the alien decides to return and which accepts him/her, the alien has a tolerated stay in the SR. A 90-day period for carrying out the voluntary return commences on that day.

The registration form is available at the facilities of the MO Mol SR, at the police detention facilities for aliens, at the IOM premises and on the IOM website²³ in several language versions²⁴. The form must be filled in either in the Slovak or the English language.

According to the voluntary return rules, an alien can return back to his/her country of origin, to the place of his/her former residence or to any third country to which the alien decides to return and which accepts him/her.

²³ <http://avr.iom.sk/navraty/formulare.html>

²⁴ Slovak, English, Chinese, Russian, Hindu, Persian, Vietnamese, Spanish, Arabic, Moldovan, Georgian, Armenian and French

The participation of an applicant for voluntary return in the Voluntary Return Programme and his/her return is subject to approval by the BBAP Mol SR. It is possible for the BBAP Mol SR to deny approval of the voluntary return due to the fact that the alien fails to comply with the conditions for voluntary return, or does not fall into the target group (for example, he/she possesses a valid residence permit).

In the case where the alien does not possess a valid travel document, the IOM will arrange a substitute travel document by contacting the diplomatic office of the country of which the alien is a national, or of the country in which the alien resided formerly. As for aliens placed in police detention facilities for aliens, their substitute travel documents are arranged by the respective facility.

The next step is the booking of an air-ticket and, after issuing a substitute travel document, the purchase of the air-ticket at a reduced price. In the case of voluntary returns from police detention facilities for aliens and asylum facilities of the MO Mol SR, the BBAP Mol SR provides concurrence in arranging alien's transportation from the place of stay in the SR to the airport. Under the Voluntary Return Programme, the IOM finances the travel expenses of the aliens within the territory of the SR, such as public transport tickets, tickets to the airport etc. In the case where a third-country national possesses a travel document, his/her voluntary return can be carried out within approximately two weeks from the day of registration for the Voluntary Return Programme. In case a third-country national does not possess a travel document, the time of return depends on the embassy procedures and on whether the alien possesses any documents proving his/her identity. An alien receives his/her substitute travel document and the air-ticket at the airport.

A voluntary return from the SR is carried out by air from the international airport of M. R. Štefánik in Bratislava or from the international airport in Kosice. The IOM operational staff provides the

aliens with assistance directly at the airports in Bratislava and Kosice - at the check-in counter, the passport control, the security control and upon entering the gate, or with other problems that might occur on-site, such as a flight delay etc.

The IOM also provides assistance to the returning migrants, through its operational staff, in the transit premises of international airports in the country of arrival in case the IOM has its representation there, and offers the possibility of transport arrangement to the place of residence.

The Voluntary Return Programme concerns exclusively third-country nationals. No nationals of EU Member States or European Economic Area Member States may enter this programme.

Information Campaign

Since 2004, the *information campaign* about the programme has formed an inseparable part of the Voluntary Return Programme, and currently focuses on anonymous third-country nationals illegally staying in the SR. The campaign carriers include *billboards; city-lights; advertising boards on the railways, in public city transport vehicles and in shopping centres; and posters and information brochures*. The central theme of the campaign is providing information about the existence of the Voluntary Return Programme and related legislation. The printed campaign outputs – information brochures and posters – are distributed in the facilities of the Ministry of Interior of the SR (police detention facilities for aliens, Aliens Police Department of the Police Corps, Border Police Department of the Police Corps, asylum facilities of the MO Mol SR, non-governmental organisations which come into contact with the target group, and diplomatic offices of the countries of origin).

The information campaign is carried out directly by the on-site operational IOM staff mainly at the facilities of the Ministry of Interior of the SR in Western, Central and Eastern Slovakia – at the

police detention facilities for aliens in Sečovce and Medveďov, the reception centre of the MO Mol SR in Humenné, the accommodation centre of the MO Mol SR in Opatovská Nová Ves, and at the accommodation centre of the MO Mol SR in Rohovoce, as well as at other places where the target group is presumed to be staying. The IOM staff organises information meetings with the target group about voluntary returns in all the facilities of the Ministry of Interior SR three times a month on average, or as needed. Migrants are regularly informed at such information meetings about the possibility of returning back to their country of origin and obtaining financial and practical assistance during their integration in the country of origin; and about the specific forms of assistance, such as air-ticket purchase, airport and transit assistance and provision of a financial contribution. At individual requests by the aliens, operational staff provides personal consultations and advice, register such aliens for the return programmes, and arrange all the necessary documents for carrying out the return (identity documents etc.) in cooperation with the target group.

The information campaign and counselling to the target group includes a *reduced-charge phone line* (half-price of local calls), which serves as another support mechanism within the counselling and information campaign about the programme to those foreigners who cannot or do not want to visit the IOM offices in Bratislava and Košice. The IOM provides the interpreting for the calling aliens into Chinese, Russian, Vietnamese and Arabic languages via conference calls. The reduced-charge phone line is available to the target group every working day from 09.00 am to 05.00 pm.

The IOM created a *website* providing information about the Voluntary Return Programme. The website is designed for the state administration employees who come into contact with aliens. The website provides them information on the conditions and procedures for entering the programme and on the specific possibilities of assistance. The information for the target

group is translated into English, Russian, Chinese, Vietnamese and Arabic languages. The website users can contact the IOM employees through the 'Contact Us' field.

The Costs of Third-Country Nationals' Returns

The carrying out of returns is funded from the state budget of the SR, from within the budget category of the BBAP Mol SR. Until 2003, voluntary returns were carried out exclusively on the basis of the Agreement between the Ministry of Interior of the Slovak Republic and the IOM and were financed solely from the state budget (budget of the BBAP Mol SR). The situation changed in 2004 during the implementation of the European Refugee Fund projects – ERF 1 and ERF 2 –, which were co-financed from the EU funds (hence from ERF) and from the state budget (75 % ERF and 25% state budget). Voluntary returns carried out through the Return Preparatory Action were financed from the Return Preparatory Action funds (70 %) and from the state budget (30 %). In 2009, voluntary returns were co-financed from the European Return Fund, the contribution of the SR (from the BBAP Mol SR budget) being 25 %; from Return Preparatory Action (co-funding from the SR being 30%); and from the budget of the BBAP Mol SR based on the Agreement mentioned above.

The costs of administrative expulsion cannot be accurately compared to the costs of voluntary return, since there is no unified methodology for calculating the costs of forced returns and voluntary returns in the SR. Moreover, the set specifications did not define the methodology for calculating the costs of voluntary and forced returns.

4.1 Motives for (and Perceptions of) Voluntary Returns

The Act on the Stay of Aliens stipulates that voluntary return means return to the country of origin or former residence or any third country to which an alien decides to return or which accepts him/her.²⁵ An alien must demonstrate his/her will to apply for voluntary return. The Act on the Stay of Aliens requires a written form pursuant to Article 43, paragraph 2, which refers to the submission of a written application.

The considerations of an alien to return voluntarily from the SR back to his/her country of origin or former residence is based on his/her individual decision. Neither the IOM nor the Ministry of Interior of the SR examines the aliens' motivation for the return to their country of origin, and therefore no relevant statistical information is available. No surveys, nor other similar research methods have been carried out in the SR so far examining and subsequently analysing the reasons of aliens for the decision to voluntarily return.

Since the Voluntary Return Programme is based on the principle of voluntariness, an alien registered in the programme can stop his/her return to the country of origin at any stage. The application for voluntary return remains valid, but the preparation and the implementation of the return is suspended.

The experience of the civil society organisation Human Rights League shows that asylum seekers used the possibility to voluntarily return to their country of origin primarily for family reasons (e. g, the husband returned to his wife and children), but also because the expectations of the aliens leaving their countries differed from the reality (for example, an artist from Iraq could not get accustomed to a new country, language, culture etc., and it was especially unthinkable for him not to work, and therefore he decided to return back to his country of origin in spite of

²⁵ Article 2, letter j) of the Act on the Stay of Aliens.

the threat of serious injustice).

4.2 Obstacles to Voluntary Returns

The major obstacles in carrying out voluntary returns have occurred in securing substitute travel documents. In some cases, the issuance of a substitute travel document takes more than six months. These mainly include the cases when the applicant for voluntary return cannot provide any identity document.

In 2009, the IOM implemented the project *Enhancing Cooperation with Relevant Third-Country Authorities in Carrying Out Assisted Voluntary Returns*, the aim of which was to improve the process of carrying out the voluntary returns of third-country nationals to their country of origin by means of strengthening the cooperation and concurrence between the IOM and other relevant organisations in the SR (Ministry of Interior of the SR, Ministry of Foreign Affairs of the SR etc.) on the one hand, and the ministries, consular and immigration offices of third countries, which provide information and substitute travel documents required for transportation of the migrant to his/her country of origin, on the other hand.

No other serious obstacles in carrying out voluntary returns of third-country nationals from the SR back to their country of origin have been reported.

4.3 Organisation of Voluntary Return Measures

For the purpose of carrying out voluntary returns, the IOM provides aliens who have decided to voluntarily return with counselling through its staff, its website and a reduced-charged telephone helpline. Counselling is provided at the IOM premises in Bratislava and Košice and at the facilities of the Ministry of Interior of the Slovak Republic. The counselling concerns the process

of entering the Voluntary Return Programme, as well as possible assistance in meeting all the requirements related to the alien's departure from the SR and the return back to his/her country of origin. Such assistance is mainly provided in arranging for substitute travel documents and for the purchase of air-tickets to the countries of origin. Upon entering the Voluntary Return Programme, each alien is informed about the exact terms of return and about the estimated course of the process. If needed, the foreigner can contact the responsible IOM staff who will provide him/her with the latest information on the preparation of the return.

The IOM staff helps the foreigners in carrying out their voluntary return at airports, too, in terms of solving common situations and problems that may occur.

05

Re-Integration and Sustainability of Return

Re-integration assistance to aliens is provided in their countries of origin exclusively by the IOM in close cooperation with the IOM missions in the countries of origin.

Applicants for voluntary return are informed about the possibilities of assistance and re-integration after their return to the country of origin by means of joint information meetings with the target group in the Mol SR facilities, individual consultations at the IOM premises, a reduced-charge telephone helpline, and a website. The return consulting is based on activities aimed at determining the client's needs. After the approval of the re-integration plan and the client's return to the country of origin, the preparation and performance of the proposed activities commences. The clients get the resources allocated in the form of direct payments to service providers and contractors. The maximum amount of re-integration assistance is EUR 2,300, while the exact amount of financial assistance depends on the client's specific needs. Depending on these needs, the IOM Bratislava provides the following forms of assistance:

1. Material assistance related to the acquisition of tools or instruments to secure the basic necessities of life after return (agricultural tools, livestock etc.);
2. Legal counselling;
3. Assistance in job seeking;
4. Support in launching small business activities or other income generating activities (implementation, purchase of equipment);
5. Payment of course or study expenses.

06

Conclusion

The aim of the study entitled *Programmes and Strategies Fostering Assisted Returns in the Territory of the Slovak Republic and Re-integration in Third Countries* is to describe the legal regulation of voluntary returns in Slovakia and its practical implementation, and summarise the information about the Voluntary Return Programme in the SR, which will subsequently be used in a pan-European comparison study.

The Voluntary Return Programme for Third-Country Nationals has been carried out in the territory of the SR exclusively by the IOM and with the financial support from the Mol SR since 1998, and with the help from the European Funds since 2004. In its Multi-Annual Programme for the European Return Fund, the Ministry expressed *"the need to maintain continuity in carrying out both forced returns and voluntary returns"*, considering forced returns and voluntary returns as *"interconnected and mutually reinforcing"*.

Voluntary returns enable third-country nationals to return to their country of origin irrespective of their legal status. The only case where it is not possible to carry out a voluntary return is when the alien has a legal stay in the SR.

During the implementation of the Voluntary Return Programme in the SR since 1998, the IOM identified the need to provide direct information and counselling to the target group about the possibility of voluntary return. While executing the programme, the IOM introduced a number of efficient mechanisms of counselling and providing practical assistance in the preparation and execution of voluntary returns. The best practice in providing information on the Voluntary Return Programme turned out to be a regular contact with the target group on site, individual and group consultations at the Mol SR facilities, the provision of up-to-date information through a reduced-charge IOM telephone helpline, the IOM website, and regular distribution of information materials to all the Mol SR facilities attended by the target group. Since 2009, when the national information cam-

paign was launched (the campaign also focuses on persons without a residence permit that have not been identified by the state authorities), access to information on the Voluntary Return Programme has been ensured for all the target groups of the Programme.

It can be concluded that the current execution of voluntary returns of aliens from the SR back to their countries of origin is better compared to the year 1998, when the first agreement between the Ministry of Interior of the SR and the IOM on voluntary returns was signed at the highest level. This outcome is due to the standardisation of the mechanism and extension of the assistance and services for those willing to take opportunity for a humane return to their country of origin.

Bibliography and Sources

Universal Declaration of Human Rights

International Covenant on Civil and Political Rights

European Pact on Immigration and Asylum

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

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

Council Directive 2003/110/EC of 25 November 2001 on assistance in cases of transit for the purposes of removal by air

Council Directive 2004/191/EC of 23 February 2004 setting out the criteria and practical arrangements for the compensation of the financial imbalances resulting from the application of Directive 2001/40/EC on the mutual recognition of decisions on the expulsion of third-country nationals

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

Decision No 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme Solidarity and Management of Migration Flows

Act No. 480/2002 Coll. on Asylum and on Changing and Amending Certain Acts as Amended;

Act No. 48/2002 Coll. on the Stay of Aliens and on Changing and Amending Certain Acts as Amended,

Order of the Director of the BBAP MoI SR No. 3/2010 to ensure the procedures in matters concerning stay of aliens in the territory of the Slovak Republic

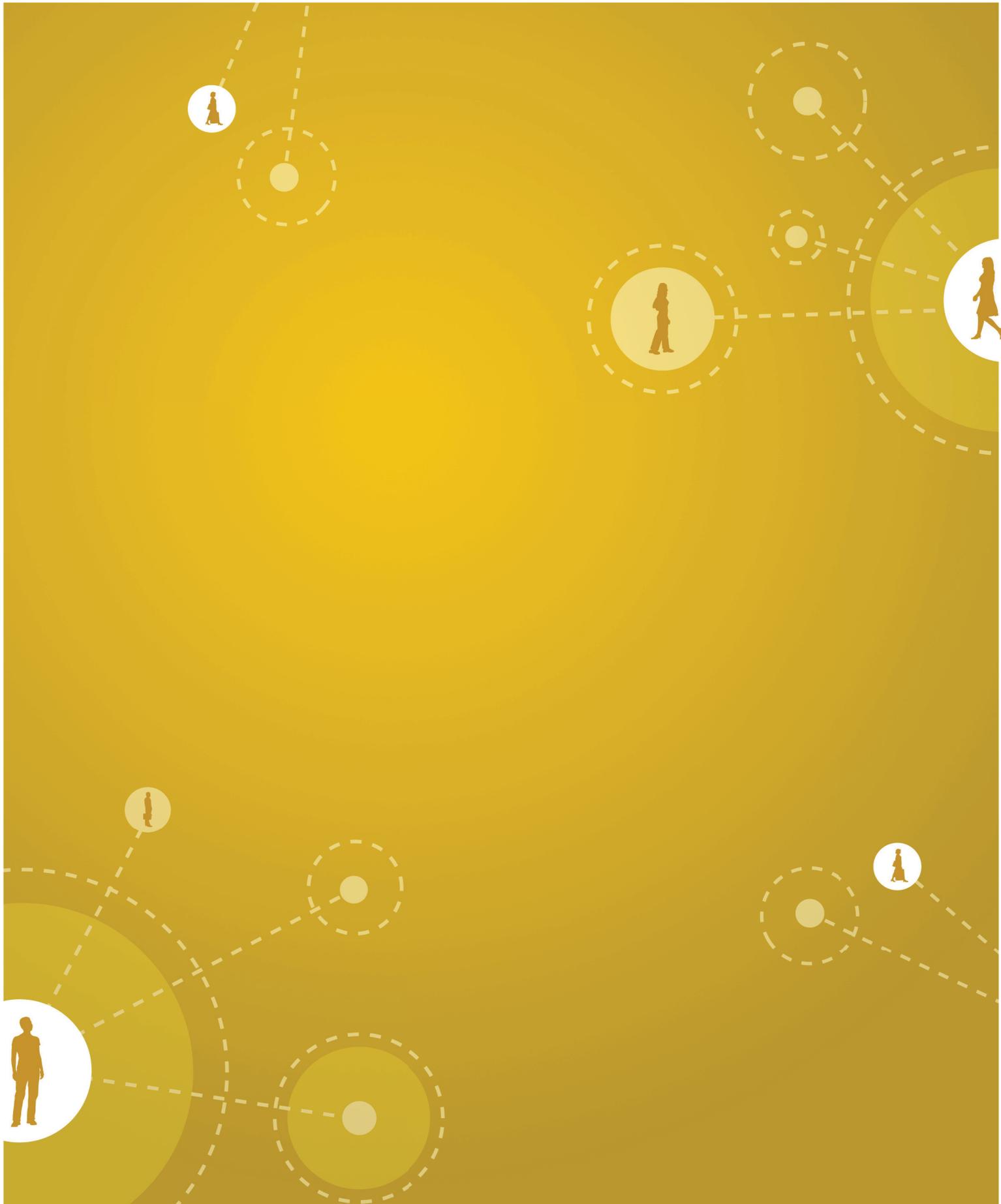
Order of the Director of the BBAP MoI SR No. 4/2010 to ensure the procedures in matters concerning administrative expulsion, detention and voluntary returns of foreigners from the territory of the Slovak Republic

Multi-Annual Programme of the European Return Fund for the Years 2008-2013; Ministry of Interior of the Slovak Republic, Bratislava, 17 December 2008

www.avr.iom.sk

www.minv.sk

Information obtained from interviews with experts possessing the knowledge and the experience from carrying out voluntary returns in the territory of the Slovak Republic, working for the Bureau of the Border and Aliens Police of the Ministry of Interior of the Slovak Republic, or for the International Organisation for Migration.



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ISBN 978-80-970307-2-8