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# THE DIFFERENT NATIONAL PRACTICES CONCERNING GRANTING OF NON-EU HARMONISED PROTECTION STATUSES IN THE SLOVAK REPUBLIC



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The opinions presented in this study do not necessarily reflect the views of the Government of the Slovak Republic, the European Commission or the 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 (NCP) of the Slovak Republic in the European Migration Network (EMN). This national report follows the common outline and methodology prepared by the European Migration Network. The report was compiled by external experts contracted by IOM in 2009.

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## Executive Summary

The aim of this study is to present to the general public and describe the existing legislation and practices in the Slovak Republic related to the granting of such types of protection to foreign nationals that the European Union has not incorporated in its secondary legislation on migration so far, and where the countries still apply their own procedures – so-called non-harmonised protection statuses.

The study consists of six chapters, which comply with the specification set by the European Commission: 1. Introduction; 2. Protection Statuses Granted in Slovakia; 3. Procedures and Rights Granted under Non-Harmonised Protection Statuses; 4. Statistical Data on the number of Protections Granted; 5. National Positions on the Granting of Non-Harmonised Protections; and 6. Conclusion.

The introductory chapter describes the purpose of the study and the methodology used in compiling this work. The authors aimed, above all, at collecting all available information and background documents on the legal regulation of those types of protection which the Slovak Republic grants to foreign nationals in its territory and which do not constitute international protection harmonised within the European Union. The data in this report is mainly based on the legal regulations of the Slovak Republic; on the secondary legislation of the European Union; on the international treaties which the Slovak Republic is the party to; as well as on direct information provided by the relevant state, international and non-governmental organisations working in the field of migration.

The second chapter provides an overview of all protection statuses granted to foreigners in Slovakia, i. e. both the harmonised and the non-harmonised statuses within the EU. The structure follows the given specification, and the chapter is divided into two subchapters. The

first subchapter outlines the protection mechanisms granted to foreign nationals under the European directives. The second subchapter is more extensive, and describes those types of protection which the Slovak Republic grants to foreign nationals and which have not been harmonised within the European Union so far. Each type of protection is presented with a definition describing its substance, legal framework, the conditions for its granting, and the application and implementation of the respective types of protection in Slovakia.

The third chapter introduces the procedures associated with the different types of non-harmonised protections granted to foreign nationals in the Slovak Republic, decisions issued under these procedures and remedies that can be used in claiming one's rights and against the violation of laws. It also provides an overview of the rights of foreigners who were granted protection, especially the right to residence, the duration and the extension of the period of stay, healthcare and social security, education, access to the labour market, travel, family reunification and naturalisation.

The fourth chapter presents statistical data on the number of non-harmonised protections granted in the period 2004-2008.

The fifth chapter outlines the available and generally known positions and opinions on the granting of non-harmonised protections in the Slovak Republic.

The sixth chapter contains a conclusion and a summary of the main findings resulting from the compilation of the study.

## List of Abbreviations

**APD** – Aliens Police Department

**BBAP** – Bureau of the Border and Aliens Police of the Ministry of Interior of the SR

**BBAP Methodology** – Order of the Director of the Border and Alien Police of the Ministry of Interior of the SR on Ensuring the Procedures in Matters Concerning the Stay of Foreign Nationals in the Territory of the Slovak Republic

**Coll.** – Collection of Laws of the SR

**Concept** – Concept of Foreigners' Integration in the SR

**DBAP** – Directorate of the Border and Aliens Police

**EMS** – European Migration Network

**EU** – European Union

**European Convention** – European Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 (Council of Europe, Rome 1950)

**Geneva Convention** – Convention relating to the Status of Refugees of 1951 (as amended by Protocol of 1967)

**IOM** – International Organization for Migration

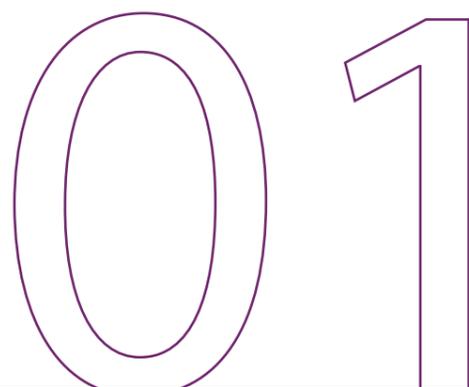
**Migration Office** – Migration Office of the Ministry of Interior of the Slovak Republic

**MoI SR** – Ministry of Interior of the SR

**PF** – Police Force

**SR** – Slovak Republic

**UNHCR** – United Nations High Commissioner for Refugees



## Introduction

### 1.1 Purpose of Study

The present study entitled *The Different National Practices Concerning Granting of Non-EU Harmonised Protection Statuses in the Slovak Republic* was compiled in the framework of the activities of the European Migration Network (EMN), and will form a part of a synthesis study with the same focus at the EU level, summarising the results of the national studies compiled by the EU Member States. One of the main objectives of the national studies and the synthesis study is to analyse the different national approaches to the granting of non-EU harmonised protection statuses.

The need of such an analysis at the EU level and in the Member States relates, among others, to the trend identified in the Communication from the European Commission *Policy Plan on Asylum* [COM (2008) 360], according to which an ever-growing percentage of applicants are granted subsidiary protection or other kinds of protection status on the basis of the national law, rather than asylum according to the Convention relating to the Status of Refugees (hereinafter referred to as Geneva Convention). This is probably due to the fact that an increasing share of today's conflicts and persecutions are not covered by the Geneva Convention. These forms of protection granted on the basis of national legislation are more accessible to foreigners compared to the conditions for asylum granted under the Geneva Convention, but are often time-limited, and provide fewer rights compared to the rights of persons granted asylum.

The Slovak Republic transposed into its legislation the secondary legal acts of the European Union, which introduced new legal instruments: temporary protection and subsidiary protection. At the same time, it maintained other kinds of protection statuses which can be granted to foreign nationals. These forms of protection have different names, they are granted to various target groups of foreigners, and are associated with different kinds of rights and obligations provided to these foreigners. This study

analyses those procedures established in the Slovak Republic for the granting of the respective protection statutes, which have not been harmonised at the European Union level so far, and are based exclusively on the national legal regulations of the SR and international treaties that the Slovak Republic is party to.

This study specifically aims, from the point of view of the Slovak Republic, at describing the common practices in the granting of international protection to foreign nationals, focusing on the identification of the kinds of non-harmonised protection statuses, and at determining whether the Slovak Republic reported an identical trend of increase in the number of other kinds of protection compared to the kind of protection granted under the Geneva Convention, as stated in the *Policy Plan on Asylum* as the related document evaluating its impacts (Impact Assessment [SEC (2008) 2029]).

The present study is particularly intended for the national and the European experts working in the field of asylum and migration policy and for those dealing, for example, with the creation of the Common European Asylum System (CEAS), but also for other organisations and institutions (NGOs, academics and researchers) and the general expert public more or less interested in this area.

### 1.2 Methodology

The authors compiled this study on the basis of several legal regulations. As per their legal force, the Act No. 460/1992 Coll. Constitution of the Slovak Republic (hereinafter referred to as the Constitution of the SR) should be mentioned first.

The identification of the different kinds of protection is based on the Act No. 480/2002 Coll. On Asylum and on Changing and Amending Certain Acts as Amended (hereinafter referred to as Act on Asylum) and the Act No. 48/2002 Coll. On Stay of Aliens and on Changing and

Amending Certain Acts as Amended (hereinafter referred to as Act on Stay of Aliens).

Aside from general legal regulations, information from internal documents of the Ministry of Interior of the Slovak Republic (hereinafter referred to as Mol SR) was also used in preparing this study. The Bureau of Border and Alien Police (hereinafter referred to as BBAP) provided the authors with the Order of the Director of the Border and Alien Police of the Ministry of Interior of the SR on Ensuring the Procedures in Matters Concerning the Stay of Foreign Nationals in the Territory of the Slovak Republic (Volume 2008, Bratislava 12 May 2008, No. 31), including the methodology entitled *The procedure of the police departments in granting residence permits to foreign nationals, registration of residence of the European Economic Area nationals, issuance of documents to foreign nationals, preparation of opinions on granting the nationality of the Slovak Republic, conducting controls of the legality of stay, fulfilment of the conditions of stay, compliance with the obligations by other natural persons and legal entities in relation to the residence of foreign nationals in the territory of the Slovak Republic* (hereinafter referred to as the BBAP Methodology). The Ordinance of the Minister of Interior of the Slovak Republic on Implementation of the Programme of Support and Protection of the Victims of Trafficking in Human Beings was also taken into consideration.

The Migration Office of the Ministry of Interior of the Slovak Republic (hereinafter referred to as the Migration Office) provided the authors with the Ordinance of the Ministry of Interior of the Slovak Republic No. 4/2003 on the Procedure of the Migration Office and Police Force Departments in the Implementation of the Act No. 480/2002 Coll. On Asylum.

The specific parts concerning the rights of foreigners resulting from non-harmonised protection statuses, which are analysed in this study, were prepared on the basis of related laws governing these issues in the Slovak Republic.

Access of foreign nationals to healthcare was examined from the point of view of the legal provisions established by the Act No. 580/2004 Coll. On Health Insurance and on Changing and Amending the Act No. 59/2002 Coll. On Insurance and on Changes and Amendments to Certain Acts (hereinafter referred to as the Health Insurance Act), Act No. 576/2004 Coll. On Healthcare, Healthcare-Related Services and on Changing and Amending Certain Acts, Act No. 557/2004 Coll. On the Scope of Healthcare Based on Public Health Insurance and on Payments for Services Related to Healthcare Provision (hereinafter referred to as Act on the Scope of Healthcare).

The social security system of the target group is described on the basis of an analysis of the Act No. 599/2003 Coll. On Assistance in Material Deprivation and on Changing and Amending certain Acts (hereinafter referred to as Act on Assistance in Material Deprivation), and Act No. 601/2003 Coll. On Subsistence Minimum and on Changing and Amending Certain Acts (hereinafter referred to as the Subsistence Minimum Act).

The issues concerning education of foreigners who were granted non-harmonised form of protection were examined on the basis of the legal provisions of the Act No. 245/2008 on Education and on Changing and Amending Certain Acts (hereinafter referred to as the School Act) and Act No. 175/2008 Coll. On Universities and on Changing and Amending Certain Acts (hereinafter referred to as the Universities Act).

There are several systems applicable to the conclusion of employment contracts with foreign nationals living in the SR, which directly depend on the type of stay granted to a foreign national. Since the kinds of protection, the analysis of which forms the subject of this study, entitle foreign national to different kinds of stays, it was necessary to examine a number of legal regulations in the SR.

The general terms and conditions under which

a foreign national may be employed are governed by the Act No. 311/2001 Coll. The Labour Code.<sup>1</sup> The other important regulations considered in compiling this study were the Act No. 5/2004 Coll. On Employment Services and on Changing and Amending Certain Acts (hereinafter referred to as the Employment Services Act), which regulates the legal relations in the provision of employment services, and the above-mentioned Act on Stay of Aliens.

The acquisition of the nationality of the Slovak Republic was examined on the basis of the legal provisions of the Act No. 40/1993 Coll. On the Nationality of the Slovak Republic (hereinafter referred to as the Nationality Act).

Act No. 647/2007 Coll. On Travel Documents and on Changing and Amending Certain Acts (hereinafter referred to as the Travel Documents Act) formed the basis of an analysis of the travel of foreigners from the Slovak Republic and back.

The legal status of unaccompanied minors was examined on the basis of the Act No. 305/2005 Coll. On Social and Legal Protection of Children and Social Guardianship and on Changing and Amending Certain Acts (hereinafter referred to as the Act on Social and Legal Protection of Children and Social Guardianship).

The Slovak Republic transposed into its national legislation all the directives governing asylum and migration. The following directives in particular have been considered in the course of preparation of this study:

- Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof (hereinafter referred to as the Temporary Protection Directive);
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification

<sup>1</sup> Primary provisions. Article 6 of the Labour Code.

and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection (hereinafter referred to as the Qualification Directive);

- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (hereinafter referred to as the Long-Term Residents Directive);
- 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.

In order to obtain relevant information on the practices in granting non-harmonised forms of protection to foreign nationals, we contacted and visited the competent state institutions (Bureau of Border and Alien Police of the Ministry of Interior of the Slovak Republic; Legislation and External Affairs Section of the Ministry of Interior of the Slovak Republic; Department of Migration and Integration of Foreigners of the Ministry of Labour, Social Affairs and the Family of the Slovak Republic; Ministry of Health of the Slovak Republic; Ministry of Education of the Slovak Republic; and Social Statistics and Demography Section, Department of Population Statistics of the Statistical Office of the Slovak Republic); IOM International Organization for Migration; and non-governmental organisations (Slovak crises centre DOTYK, civil society organisation NÁRUČ, civil society organisation The Human Rights League HRL).

No major problems occurred in the compilation of this study that would have a negative impact on the quality of preparation or work on this study.



## Protection Statuses Granted in Slovakia

The Slovak Republic grants international protection either in the form of asylum (until 31 December 2002 it was granting the status of a refugee), or subsidiary protection. Both kinds of international protection constitute the highest protection statuses possible which foreign nationals can obtain in the Slovak Republic. Asylum and subsidiary protection are harmonised at the EU level by the Qualification Directive, and were transposed into the Slovak national legislation by means of the Act on Asylum. The conditions for granting international protection (aside from the asylum on humanitarian grounds) are therefore explicitly set either by the Qualification Directive or by the Act on Asylum, which had been based exclusively on the Convention Relating to the Status of Refugees (hereinafter referred to as Geneva Convention) prior to the transposition of the Qualification Directive.

Slovak Republic is also granting temporary protection (so-called temporary shelter), which is a European Union instrument that became a part of the Slovak national legislation by transposition of the Temporary Protection Directive into the Act on Asylum.

At present, there are also other kinds of protection statuses granted to foreign nationals, which are specially adapted to the conditions of the Slovak Republic, and are not harmonised within the European Union, such as tolerated stay governed by the Act on Stay of Aliens, or asylum granted on humanitarian grounds, as set forth by the Act on Asylum.

### 2.1 Protection Status of the European Union Introduced by the Temporary Protection Directive

The Temporary Protection Directive was transposed into the national legislation of the Slovak Republic under the process of passing the Act on Asylum in 2002, which abolished the Act No. 283/1995 Coll. On Refugees. The term

*temporary protection* was not transposed word by word, but the term *temporary shelter* was accepted instead, which will be used also in this study. Temporary shelter is granted to foreigners for the purpose of protection against war conflicts, endemic violence, consequences of humanitarian catastrophes or continuous or massive violation of human rights in their country of origin. The start, the conditions and the end of temporary shelter are determined by the Government of the Slovak Republic in accordance with the decision of the Council of the European Union. The Government allocates funds to pay the costs associated with the provision of temporary shelter.

The legal provisions concerning the reasons for granting temporary shelter are based on the Temporary Protection Directive, and do not allow providing temporary shelter in the Slovak Republic for any reasons other than those set forth in that Directive.

### 2.2. Protection Status of the European Union Introduced by the Qualification Directive

The Qualification Directive was transposed into the legislation of the SR via amending the Act on Asylum by the Act No. 692/2006 Coll. with the effect from 1 January 2007. The revised act introduced the terms *subsidiary protection* and *serious injury*, stipulated the conditions and the procedures for granting subsidiary protection to third-country nationals who do not satisfy the conditions for being granted the refugee status but need international protection, and specified the reasons for refusing to grant such protection, its expiry or cancellation.

The definition of subsidiary protection was transposed word by word in accordance with Article 15 of the Qualification Directive.

The subsidiary protection granting procedure forms a part of the procedure of granting asylum

in the SR, and is conducted under a so-called *single procedure*<sup>2</sup>, which means that in case the Migration Office refuses to grant asylum under the asylum procedure or withdraws asylum, it shall also assess whether subsidiary protection should be granted.<sup>3</sup> An asylum procedure also means a procedure related to the extension or cancellation of subsidiary protection. The conditions applying to the subsidiary protection granting procedure are therefore identical with the conditions applying to asylum seekers in the SR.

The legal provisions concerning the reasons for granting subsidiary protection are based exclusively on the Qualification Directive, and do not allow for granting of subsidiary protection in the Slovak Republic for other reasons than those stipulated in the Directive.

### 2.3 Non-Harmonised EU Protection Statuses in the SR

The non-harmonised kinds of protection that can be granted to foreigners in the Slovak Republic include:

- asylum granted on humanitarian grounds;
- tolerated stay.

Asylum on humanitarian grounds is governed by the Act on Asylum. Asylum for humanitarian reasons may be granted to a foreign national in the Slovak Republic in the asylum procedure, if the Migration Office does not find any reasons proving the justification of fears of persecution on the grounds of race, religion, ethnicity, po-

<sup>2</sup> Explanatory Report to the Act No. 692/2006 Coll. on Coll. On Changing and Amending the Act No. 480/2002 Coll. on Coll. On Asylum and on Changes and Amendments to Certain Acts as Amended. (Source: <http://www.epi.sk/Main/Default.aspx?Template=~/Main/TArticles.ascx&MI-D=225&edInkid=4616559&ArtType=4&phContent=~/EDL/ShowArticle.ascx&ArticleId=16842>).

<sup>3</sup> According to Article 20, paragraph 4 of the Act on Asylum, "If the Ministry decides not to grant asylum or to withdraw asylum, it shall also decide whether it shall provide the foreign national with subsidiary protection." The statement on granting or not granting subsidiary protection forms a part of the decision on not granting asylum in the SR.

litical conviction or belonging to a certain social group, or if does not find out that the foreign national was persecuted in his/her country of origin for claiming his/her rights and freedoms; and if there are certain reasons that the Migration Office considers worth protecting.

The granting of tolerated stay in Slovakia falls under the authority of the Bureau of Border and Alien Police, and the legal provisions regulating tolerated stay constitute a part of the Act on Stay of Aliens. The provisions concerning the tolerated stay granting procedure in the SR are applied generally in spite of the fact that the reasons for granting tolerated stay are different. Depending on the reasons for granting the tolerated stay permit, the rights and obligations of foreigners vary, too.

According to the current wording of the Act on Stay of Aliens, tolerated stay may be granted to a foreign national:

- when an impediment to his/her administrative expulsion under Article 58 exists;
- who was provided with temporary shelter,<sup>4</sup>
- when his/her departure is not possible and his/her detention is not purposeful,
- who is a minor found in the Slovak Republic,
- who is a victim of a criminal offence related to trafficking in human beings, provided that he/she is at least 18 years old;
- provided that it is required in order to respect his/her private and family life

Tolerated stay and the regulation of such stay are specific in that sense that with tolerated stay the Slovak Republic covers various types of temporary residence of foreign nationals, which predominantly have a humanitarian character and the foreign nationals fail to satisfy the conditions applying to the granting of permanent or temporary residence.

The legislators approved the different reasons

<sup>4</sup> Temporary shelter is harmonised within the European Union by means of the Temporary Protection Directive, and is introduced in this study for the purpose of providing a complex picture of the legal provisions governing tolerated stay.

for granting tolerated stay in different time intervals and for various reasons which are described in the following parts of this study more in detail.

From the analysed non-harmonised kinds of protection under the asylum procedure in the SR, as described further, protection in the form of asylum on humanitarian grounds is granted only. Other non-harmonised forms of protection are granted under administrative proceedings in the scope of the Act on Stay of Aliens, where the BBAP is the competent state authority.

### 2.3.1 Asylum Granted on Humanitarian Grounds

#### Definition

In general, the Slovak Republic grants asylum via the Migration Office and under the Act on Asylum to a foreign national who has well-founded fears of being persecuted on the grounds of race, ethnicity or religion, or for holding certain political views or membership in a certain social group, and due to these fears he/she cannot or does not want to return to that country, or if he/she is persecuted in his/her country of origin for claiming his/her political rights and freedoms. The Migration Office may grant asylum on humanitarian grounds also in case no such reasons are found within the procedure.

#### Legal framework

Asylum granted on humanitarian grounds is regulated by Article 9 of the Act on Asylum, which stipulates that the Ministry<sup>5</sup> may grant asylum on humanitarian grounds even where no reasons under Article 8 are established in the procedure.<sup>6</sup>

<sup>5</sup> Migration Office.

<sup>6</sup> Article 8 of the Act on Asylum: Unless otherwise stipulated by the Act on Asylum, the Ministry of Interior shall grant asylum to a foreign national who has well-founded fear of being persecuted in his/her country of origin for reasons of race, ethnic origin or religion, holding of a particular political opinion or membership of a particular social group, and is unable or, owing to such fear, is unwilling to return to such country, or is persecuted in his/her country of origin for exercise of political rights and freedoms.

The Ordinance of the Ministry of Interior<sup>7</sup> stipulates in Article 7 that asylum on humanitarian grounds may be granted to a foreign national who has failed in the asylum procedure and belongs to the group of elderly persons, traumatised persons or persons with serious diseases, whose return to the country of origin could cause major physical or psychological suffering or even death.

#### Application at the national level

There were 21,345 applications for asylum in total submitted in Slovakia in 2004-2008. During this period, 84 asylums were granted, 23 of them on humanitarian grounds.

#### The conditions for granting asylum on humanitarian grounds

The Act on Asylum does not stipulate exact conditions for granting asylum on humanitarian grounds. The specific conditions are formulated in the Ordinance of the Ministry of Interior, under which the granting of asylum to a foreign national on humanitarian grounds requires presence of certain circumstances, such as advanced age, trauma or serious health condition of that person (person suffering from a serious disease) whose return to the country of origin could be considered as physically or psychologically demanding. In principle, that is, a person who fails to comply with the conditions for being granted asylum, but in relation to whom any of these circumstances is present.

#### About asylum granted on humanitarian grounds in general

In case a third-country national is not granted asylum on humanitarian grounds, the Migration Office shall review whether the conditions for granting subsidiary protection are complied with.

The foreign national who was granted asylum on humanitarian grounds has permanent residence in the Slovak Republic.

The granting of asylum for humanitarian rea-

<sup>7</sup> Ordinance of the Ministry of Interior No. 4/2003.

sons is linked to asylum policy, and does not form a part of managed migration.

The proofs presented in the asylum procedure should demonstrate the justification of the foreigner's right to apply for asylum on humanitarian grounds.

The decision of the Migration Office not to grant asylum may be examined by courts – Regional Courts in Bratislava or in Košice, and the Supreme Court of the SR (for more details refer to subchapter 3.1).

The refusal to grant asylum largely depends on security. Asylum shall not be granted to a third-country national, if there is reasonable suspicion that he/she committed a crime against peace, a war crime or a crime against humanity according to international documents; or committed a serious non-political crime outside of the Slovak Republic prior to applying for asylum or subsidiary protection; or is guilty of acts that contradict the objectives and the principles of the United Nations. The fact that the *non-refoulement* principle is not absolute results from Article 33 paragraph 2 of the Geneva Convention, and since the Slovak Republic had no reservation to this article, the benefits of non-expulsion or non-return may not be exercised by a person who can justly be considered as dangerous for the security of the state.

The granting of asylum on humanitarian grounds is examined on an individual basis.

### 2.3.2 Tolerated Stay – Impediment to Administrative Expulsion

#### Definition

An impediment to administrative expulsion specifies the circumstances under which it is not possible to expel a foreigner from the Slovak Republic, i. e. when the *non-refoulement* principle is applied in the Slovak Republic.

The following cases constitute an impediment to administrative expulsion:

- a) threat to the life of a foreign national on the grounds of his/her race, nationality, religion, membership in a certain social group, or political conviction; or
- b) threat of torture, cruel, inhuman or humiliating treatment, or punishment; or
- c) death penalty, or threat of death penalty under pending criminal proceedings;
- d) threat to the freedom of a foreign national on the grounds of his/her race, ethnicity, religion, belonging to a certain social group or political conviction, with the exception of a foreigner who by means of his/her conduct endangers the security of the state, or if he/she was convicted for a particularly serious crime and constitutes a danger to the SR.<sup>8</sup>

#### Legal framework

The legal framework for granting the tolerated stay permit on the grounds of an impediment to administrative expulsion is particularly established by Article 43, paragraph 1, letter a) of the Act on Stay of Aliens with reference to Article 58 of that Act, which defines the impediments to administrative expulsion.

Pursuant to Article 58 of the Act on Stay of Aliens:

1) A foreign national may not be administratively expelled to a country, in which his/her life would be endangered due to his/her race, nationality, religion, belonging to a certain social group, or due to his/her political conviction, or in which he/she would be in danger of torture, cruel, inhuman or humiliating treatment or punishment. It is not possible either to administratively expel a foreign national to a country in which a death penalty was imposed on him/her, or if it is expected that such penalty could be imposed on him/her in the pending proceedings.

2) A foreign national may not be administra-

<sup>8</sup> BBAP Methodology Article 205.

tively expelled to a country, in which his/her freedom would be endangered due to his/her race, nationality, religion, belonging to a certain social group, or due to his/her political conviction; this shall not apply if by his/her conduct the foreign national endangers security of the State or if he/she was sentenced for a particularly serious crime and constitutes a danger for the Slovak Republic.

3) A stateless person who was granted a permanent residence permit may be administratively expelled only when he/she endangers security of the State or the public policy by his/her conduct and the impediments to the administrative expulsion under Paragraph 1 and 2 do not apply to him/her.<sup>9</sup>

In relation to a foreign national applying for the tolerated stay permit on the grounds of threats to his/her life or freedom in case he/she returns to his/her country of origin, excluding reasons may be applied in case the Aliens Police Department of the Police Force (APD) refuses to grant tolerated stay, if the foreign national endangers the security of the State by his/her conduct, or if he/she was sentenced for a particularly serious crime<sup>10</sup> and constitutes a danger for the Slovak Republic.

#### Application at the national level

According to Slovak legislation (in effect until 1 December 2008), impediments to administrative expulsion were decided, aside from BBAP, also by the Migration Office. If currently the tolerated stay permit is requested by a foreign national, in the case of whom the Migration Office stated an impediment to administrative expulsion during the asylum procedure in the past (before 1 December 2008), the BBAP shall not examine the existence of an impediment to administrative expulsion, and shall follow the final decision of the Migration Office. Yet, it shall be examining persistence of such impediment throughout the existence of the tolerated stay.

<sup>9</sup> Article 58, paragraph 3 of the Act on Stay of Aliens.

<sup>10</sup> The legislators refers to the Act No. 139/1998 Coll. On Narcotic Substances, Psychotropic Substances and Preparations as Amended.

If the foreign national is an asylum seeker, and the final decision of the Migration Office states that no impediment to his/her expulsion exists, the APD may consider the decision of the Migration Office as a relevant basis for its decision. Yet, it also has to examine any new facts that the foreign national may have stated in his/her application for tolerated stay, as well as the facts with which the Migration Office did not deal (for example, because it had no knowledge thereof at the time of taking the decision), or whether the foreign national is under the threat of being sentenced to death under a pending criminal proceedings in his/her country of origin; in its decision, the APD may not rely only on the decision of the Migration Office.<sup>11</sup>

With the adoption of the Act No. 451/2008 Coll. Amending the Act on Asylum, which entered into effect on 1 December 2008, the competences of state authorities to decide on existence of an impediment to administrative expulsion were conferred solely to the BBAP. Hence, it is exclusively the BBAP that decides on impediments to administrative expulsion, without the Migration Office.

#### Conditions for tolerated stay granting on the grounds of an impediment to administrative expulsion

The condition for granting the tolerated stay permit due to existence of an impediment to administrative expulsion is the submission of an application and the demonstration of the fact establishing the impediment to administrative expulsion to the country of origin.

### 2.3.3 Tolerated Stay – If Departure is not Possible and Detention is not Purposeful

#### Definition

The term *departure of a foreign national is not possible and his/her detention is not purposeful* means a certain obstacle to departure independent of the will of the foreign national (for

<sup>11</sup> Article 206, paragraph 3 of the BBAP Methodology.

example, the foreigner has been hospitalised for a longer period of time; he/she lost or was robbed of his/her travel document and is waiting to obtain a new document; the foreigner's planned flight has been delayed and his/her visa expires; or any other serious circumstances), and his/her detention is not purposeful.<sup>12</sup>

#### Legal framework

The legal provision for this kind of tolerated stay is established in Article 43, paragraph 1, letter c) of the Act on Stay of Aliens, which stipulates that the APD shall grant a tolerated stay permit to a foreign national, when his/her departure is not possible and his/her detention is not purposeful.

#### Application at the national level

According to the BBAP's statistical data, this kind of tolerated stay in the Slovak Republic is granted most frequently; in 2008, 90 such stays were granted. The second most frequent reason for granting tolerated stay was the 'respect for family and private life'. In 2008, it was granted in 31 cases, which is less by almost two thirds.

The BBAP Methodology suggests that this kind of tolerated stay has a temporary nature and enables foreign nationals to legalise their stay in the Slovak Republic until the obstacle to their departure is removed.

For example, if a hospital announces that a heavily injured foreigner has been hospitalised, the APD will grant tolerated stay even without the foreigner having to file an application, provided that the APD finds out that there are reasons for granting such stay.<sup>13</sup>

#### Conditions for granting tolerated stay due to the fact that 'departure is not possible and detention is not purposeful'

The applicant must file an application for tolerated stay on his/her own or by his/her legal representative on an official form, including written justification of the reasons preventing him/her

<sup>12</sup> Article 217, par. 1 of the BBAP Methodology.

<sup>13</sup> Article 217 of the BBAP Methodology.

from departing from the Slovak Republic, and present a proof thereof, if possible.

### 2.3.4 Tolerated Stay – Minor Found in the Territory of the Slovak Republic ('Unaccompanied Minor')

#### Definition

An unaccompanied child found in the Slovak Republic means a foreign national not older than 18 years of age, who is in the Slovak Republic without the company of his/her parent or other adult person, to the personal care of which he/she could be confided.<sup>14</sup>

An unaccompanied minor means a person who states that he/she has not yet reached the adult age until the opposite is proven.

#### Legal framework

Pursuant to Article 43, paragraph 1, letter d) of the Act on Stay of Aliens, an APD shall grant a tolerated stay permit to a foreign national who is a minor found in the Slovak Republic. When an unaccompanied minor is found, the police are obligated to hand over such a person to the nearest authority providing social and legal protection of children and social guardianship (an appropriate Office of Labour, Social Affairs and Family according to the place of finding of the unaccompanied minor).

#### Application at the national level

As a result of various events, more and more unaccompanied minors enter the Slovak Republic. In case an unaccompanied minor is found in the Slovak Republic, the police department hands over such minor to the competent Office of Labour, Social Affairs and Family. This Office is obligated to present to the competent court a proposal for issuing an interlocutory judgement. The proposal should suggest a placement of the unaccompanied minor to a specialised children's home for unaccompanied minors in Horné Orechové near the town of Trenčín.

The procedure for determining the age of the

<sup>14</sup> Article 224, par. 1 of the BBAP Methodology.

unaccompanied minor is regulated by the Act on Stay of Aliens<sup>15</sup> and by the BBAP Methodology in such way that a foreign national is regarded as a minor until it is proven that he/she is not a minor, when he/she must undergo a medical examination to determine his/her age. This shall not apply if it is absolutely obvious that it is a minor foreigner. If the foreign national refuses to undergo the medical examination, he/she shall be regarded as an adult person in the subsequent procedure.

The application of the procedure in Slovakia shows that unaccompanied minors staying in the Slovak Republic without a legal representative are not detained or administratively expelled, and are handed over to the closest authority providing social and legal protection of children and social guardianship.

#### Conditions for granting tolerated stay to an unaccompanied minor

The basic prerequisite for granting the tolerated stay permit is that the foreign national must not be older than 18 years, and that the foreign national stays in the Slovak Republic without the company of his/her parents or other adult person responsible for him/her under the law.

The application must be submitted on official form by the guardian appointed by court, stating the reason for applying for the tolerated stay permit.

Other information on the policies of the SR concerning unaccompanied minors can be found in the study of the European Migration Network – Unaccompanied Minors in the Slovak Republic – Policies Governing Their Admissions, Returns and Integration Measures.<sup>16</sup>

<sup>15</sup> Article 49, paragraph 5 of the Act on Stay of Aliens.

<sup>16</sup> Grethe Guličová, M. Maloletí bez sprievodu v Slovenskej republike – politiky riadiace ich príjem, návraty a integračné opatrenia. EMS Study, June 2009. Available at IOM in the Slovak Republic.

### 2.3.5 Tolerated Stay – Victims of a Criminal Offence Related to Trafficking in Human Beings

#### Definition

A victim of a criminal offence related to trafficking in human beings is a foreign national who states that he/she became the victim of trafficking in human beings in the SR, or was carried to the SR for that purpose.<sup>17</sup>

#### Legal framework

This kind of protection in the form of a tolerated stay permit in the Slovak Republic falls under the provision of Article 43, paragraph 1, letter e) et seq. of the Act on Stay of Aliens, which defines the conditions for granting the tolerated stay permit to foreign nationals who became the victims of trafficking in human beings, as well as the conditions for cancelling the tolerated stay permit, and the reasons for expulsion of such persons.

This protection status provided to third-country nationals was incorporated into the Slovak legislation by transposing the 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 via the Act No. 693/2006 Coll. of 06 December 2006 amending the Act on Stay of Aliens, which entered into effect on 1 January 2007. In spite of the harmonisation of the protection provided to victims of trafficking in human beings at the European Union level, this type of protection is granted by the SR primarily with regard to its international commitments resulting from Slovakia's accession to the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children<sup>18</sup> to the UN Convention against

<sup>17</sup> Article 231 of the BBAP Methodology.

<sup>18</sup> The Protocol entered into force in the Slovak Republic on 21 October 2004 (Notice of the Ministry of Foreign Affairs of the Slovak Republic No. 34/2005 Coll.).

Transnational Organised Crime by Resolution No. 571 of 20 June 2001 and Council of Europe Convention on Action against Trafficking in Human Beings, which was ratified by the President of the Slovak Republic on 27 March 2007 and entered into effect on 1 February 2008.

#### Application at the national level

Considering the commitments of the SR, the Mol issued an internal regulation on ensuring the Programme of Support and Protection of the Victims of Trafficking in Human Beings in December 2006. At present, the Ordinance of the Ministry of Interior of the SR No. 37 of 30 June 2008<sup>19</sup> is in place. This Ordinance provides for a common procedure of the Mol SR and the Police Force Department under the Programme of Support and Protection of the Victims of Trafficking in Human Beings in the Slovak Republic<sup>20</sup>, and establishes the conditions for support and assistance to the victims of human trafficking and for the protection of their fundamental human rights, freedoms and dignity.

This Programme aims at motivating the victims to give testimony that would help the law enforcement agencies to reveal, prosecute and convict traffickers in human beings. The Programme introduces the so-called individual assistance plan, which is a set of measures provided by a non-governmental organisation to the victim during the period of crisis care or the recovery period, as well as a plan of reintegration of the victim into the society aiming at reintegrating the victim into active social life.

#### Conditions for tolerated stay granted to victims of a criminal offence related to trafficking in human beings

The APD shall grant a tolerated stay permit to a victim of a criminal offence related to trafficking in human beings, provided that he/she is at least 18 years old. A law enforcement agency or a person authorised by the Mol shall inform the

<sup>19</sup> Bulletin of the Ministry of Interior of the SR (Volume 2008, Bratislava 30 June 2008, Part 47).

<sup>20</sup> National Action Programme against Trafficking in Human Beings 2008-2021, approved by Government Resolution No. 251/2008.

foreign national about the possibility and conditions for granting the tolerated stay for this reason and about the rights and obligations resulting from it.

### 2.3.6 Tolerated Stay – If Required for Respect for Family and Private Life

#### Definition

A private and family life of a foreign national means the relationships between close relatives (e. g. parent and child) between whom there are strong emotional ties and who maintain contact.<sup>21</sup>

#### Legal framework

The legal provision for granting the tolerated stay permit is set forth in Article 43, paragraph 1, letter f) of the Act on Stay of Aliens. This provision of the Act on Stay of Aliens directly refers to Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as European Convention).

Pursuant to Article 8 of the European Convention:

- 1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- 2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

#### Application at the national level

This type of tolerated stay was incorporated in the Act on Stay of Aliens due to the need to regulate the stay of those foreign nationals who fail

<sup>21</sup> Article 237, paragraph 2 of the BBAP Methodology.

to satisfy the conditions for being granted permanent residence permit in Slovakia (for example, they did not get married with the mother of their child, but had a developed family and private life).

According to the BBAP, married foreign nationals with the nationality of the SR must ensure their stay by means of the permanent residence instrument.

#### Conditions for granting tolerated stay – if required for respect for family and private life

In the case of submitting an application for a tolerated stay permit, the Act does not require any other demonstration of the conditions than the condition of proving the purpose of the stay, which is the existence of family ties demonstrated by the birth certificate of a foreigner's child, or by another document proving the purpose of stay.

#### The following rules apply to the tolerated stay instrument:

The procedure for granting the tolerated stay permit is conducted independent from the asylum granting procedure in the SR.

The tolerated stay instrument is rather a part of managed migration than asylum policy.

A foreign national must state in the application for tolerated stay the specific reason for which he/she applies for the permit. The foreigner must present his/her travel document in case he/she possesses one, as well as any proofs demonstrating any of the reasons for granting the tolerated stay permit (e. g. birth certificate of his/her child in case the tolerated stay permit is requested on the grounds of respect for family and private life, or a document demonstrating the existence of an impediment to administrative expulsion etc.). These proofs should demonstrate the justification of the entitlement to apply for the tolerated stay permit.

In spite of the fact that the Act on Stay of Aliens does not stipulate it explicitly as a condition for

submitting the application for tolerated stay permit, the police department requires a foreign national to attach a document on integrity together to the application for tolerated stay permit. A foreign national must prove his/her integrity with a criminal records extract from the SR<sup>22</sup>, criminal records extract from the state of which he/she is the national, and a criminal records extract from the state where he/she resided during the past three years. In case that it is uncommon for any country to issue such extracts, it can be replaced with an equivalent document issued by the competent court authority or administrative authority of the country of origin, or with a statutory declaration made by the foreign national at the competent court authority or an administrative authority; or at the notary of the country of origin; or the last place of residence. In case the APD suspects the foreigner of having committed an act which is criminal under the laws of the SR and this fact is not stated in the extract from the penal register, the police shall ask for a record from the Penal Register of the SR<sup>23</sup>.

A foreign national has the right to appeal against the decision on not granting a tolerated stay or on its cancellation or non-extension at

<sup>22</sup> This lists all the current punishments, which are in place and persist, i. e. sentences that have not yet been annulled by courts of the Slovak Republic or by a court of a European Union Member State under criminal proceedings, or by a court of another state the decision of which was recognised by a court of the Slovak Republic, including data on the progress of the execution of imposed punishments, protective measures and reasonable restrictions, if the offender is not viewed as if he/she was not sentenced on the basis of a court decision or under the law. Together with the request for extract from the Penal Register of the SR, a foreign national must present a valid original copy of his/her travel document – passport (not an authenticated copy), and the birth certificate translated into the Slovak language by an officially appointed expert translator.

<sup>23</sup> This lists all the data recorded in the Penal Register during 100 years from the birth of the citizen, i. e. the data cannot be annulled. This Record contains data on every final sentence of the person whom the Record concerns, on the progress of the execution of imposed punishments and protective measures and sentences, even though they were annulled on the basis of a court decision or by the law. Together with the request for a record from the Penal Register of the SR, a foreign national must present a valid original copy of his/her travel document – passport (not an authenticated copy), and the birth certificate translated into the Slovak language by an officially appointed expert translator.

the respective APD within the statutory period of 15 days. In case the APD that has issued the decision concurs with this appeal it shall cancel that decision in full (auto-remedy). In case it does not concur with the appeal, the APD shall present the appeal to a superior authority within 30 days to make a decision. The filing of the appeal has a delaying effect. After the superior authority confirms the decision on not granting tolerated stay in the SR, the foreign national has the right to appeal to an independent court of the SR and demand an examination of the legality of the decision. The submission of the action does not have a delaying effect.

In relation to a foreign national applying for tolerated stay permit, excluding reasons can be applied when the APD refuses to grant the tolerated stay permit if the foreign national's conduct represents a threat to the security of the state, or if he/she was sentenced for a particularly serious crime<sup>24</sup> and constitutes a threat to the Slovak Republic.

The reasons for granting the tolerated stay permit are stipulated by law, and the permit may not be granted upon general discretion.

<sup>24</sup> The legislator refers to the Act No. 139/1998 Coll. On Narcotic Substances, Psychotropic Substances and Preparations as Amended.

# 03

## Procedures and Rights Granted under Non-Harmonised Protection Statuses

### 3.1 Asylum Granted on Humanitarian Grounds

#### Procedure

Asylum on humanitarian grounds may be granted to a foreign national in the asylum procedure within the authority of the Migration Office. The procedure does not begin at the Migration Office, but at the police department (Asylum Unit of the Police Force) by submitting a statement either at the border checkpoint (upon the entry to the SR), or at the Asylum Unit of the Police Force (after the entry to the SR), or in the transit zone of an international airport (air transport). Aside from these places, the statement may also be submitted at specialised facilities (police detention department for foreign nationals; healthcare facility; prison; remand prison or facility providing social and legal protection of children and social guardianship), into which foreign nationals are placed for various reasons. After the statement has been submitted, a foreign national is obligated to appear in the reception centre of the Migration Office in Humenné within 24 hours, where the competent employee of the Migration Office shall conduct the initial interview with the foreigner.

There is no entitlement to grant asylum on humanitarian grounds. Hence, the Migration Office has the power to decide to whom to grant this type of protection.

A legal remedy against the decision of the Migration Office on not granting asylum may be filed within 30 days at the latest, following the date of delivery of the decision, at the Regional Courts in Bratislava or Košice, which are competent to decide in asylum matters. The party to the procedure may appeal against the decision of the regional courts within 15 days following its delivery to the Supreme Court of the Slovak Republic, which should decide within a period of 60 days following the delivery of the appeal. If the courts cancel the decision of the Migration Office, the file returns back to the Migration Office for further proceedings, in which the Migra-

tion Office is bound by the legal opinion of the court. The filing of a legal remedy and of an appeal has a delaying effect. The decision on not granting asylum shall enter into force after this decision has been confirmed by the Supreme Court of the SR.

#### Duration of residence permit

A foreign national who was granted asylum in the Slovak Republic on humanitarian grounds is considered to be a foreign national with a permanent residence permit. On the basis of the decision of the Migration Office on granting asylum, this person is entitled to permanent residence in the SR for an indefinite period of time. The competent APD shall issue the permanent residence permit, on the basis of the application submitted by this person, for a period of five years for the first time, and subsequently for an indefinite period of time.

#### Extension of the period of residence

After the five years have elapsed, permanent residence shall be extended for an indefinite period of time on the basis of the application.

#### The right to stay pursuant to the Council Directive no. 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

This Directive regulates the status and rights of persons who are long-term residents of the European Union Member States. Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within its territory for five years immediately prior to the submission of the relevant application.<sup>25</sup> According to Article 3, paragraph 2, letter d) thereof, this Directive does not apply to persons who were granted asylum.

#### Healthcare and social security

According to the Health Insurance Act<sup>26</sup>, a person granted asylum (including a person granted asylum in the Slovak Republic on humanitarian

grounds) means a natural person with compulsory public health insurance.<sup>27</sup> Since persons granted asylum must possess health insurance pursuant to the Health Insurance Act, they must submit a registration for public health insurance in the health insurance company within eight years following the effective date of the asylum granted. In such a case, insurance is paid by the state.

A person granted asylum has the right to be provided with healthcare<sup>28</sup> in the form of outpatient care or inpatient care, or in the form of medical care. Outpatient care can be general care (for adults and for children and youth), specialised care (gynaecological and dental care), other specialised care or pharmaceutical care.

The Migration Office shall provide a lump-sum contribution to the foreigner after he/she has been granted asylum in the amount corresponding to 1.5 times the minimum subsistence amount<sup>29</sup>. If the income of the person granted asylum does not reach the minimum subsistence amount, he/she can request assistance in material deprivation at the competent Office of Labour, Social Affairs and Family.

#### Education

The School Act<sup>30</sup> names among the principles of education in the Slovak Republic free education in kindergartens prior to compulsory school attendance, free education in elementary public schools and secondary public schools, equal access to education, and prohibition of any forms of discrimination, especially segregation. The School Act allows for the education of persons

<sup>27</sup> Compulsory public health insurance is a type of health insurance under the Health Insurance Act.

<sup>28</sup> Pursuant to Article 2, paragraph 1 of the Health Insurance Act, health care is a set of work activities performed by medical workers, including medication, provision of medical instruments and dietetic foodstuffs with the aim of extending the life of a physical person (hereinafter referred to as the person), increase the quality of life and healthy development of the future generations; healthcare includes prevention, dispensarisation, treatment, biomedical research, nursing and childbirth assistance.

<sup>29</sup> At present, the minimum subsistence amount in the SR is EUR 178.91.

<sup>30</sup> Article 3 of the School Act

<sup>25</sup> Article 4, paragraph 1 of the Council Directive on Long-Term Residents

<sup>26</sup> Article 3, paragraph 3, letter c) of the Health Insurance Act

who were granted asylum on humanitarian grounds under reasonably equal conditions to those applying to the nationals of the Slovak Republic.

In connection with persons granted asylum, the Act explicitly mentions their children who must be provided with education, accommodation and board at schools under the same conditions as the nationals of the Slovak Republic. These children are placed in the respective year-class by the school director after determining the level of the education achieved and their mastery of the official language. In case a child does not master the official language properly, he/she can be conditionally placed into the respective year-class according to his/her age, for a maximum period of one school-year.<sup>31</sup>

Person granted asylum have the right to study at a university in the Slovak Republic, if they are admitted to the university, submit a valid travel document or other identity document, and can demonstrate the education level reached.

#### Access to the labour market

According to the Employment Services Act, a person who was granted asylum on humanitarian grounds has identical legal status to a national of the Slovak Republic. He/she can enter employment relations without a work permit, which means that a person who was granted asylum by the Migration Office on humanitarian grounds may enter employment relations after the decision on granting asylum has entered into force. The Act regards a foreign national who was granted asylum as a disadvantaged job seeker<sup>32</sup> (e. g. due to not mastering the Slovak language).

#### Travel

According to the Travel Documents Act<sup>33</sup>, the competent department of the Police Force shall issue to a foreign national who was granted

<sup>31</sup> Article 146 of the School Act

<sup>32</sup> The Employment Services Act allows, for example, for granting a contribution to the employer in case it employs a disadvantaged job seeker.

<sup>33</sup> Article 13, letter b).

asylum in the Slovak Republic on humanitarian ground a travel document valid for two years.

Since this person is granted permanent residence permit pursuant to the Act on Stay of Aliens<sup>34</sup>, he/she has the right to stay in the Slovak Republic and to travel abroad and back to the Slovak Republic.

#### Family reunification

The Act on Asylum allows for reunification of the person granted asylum with family, but only in case the foreign national was granted asylum under Article 8, i. e. had well-founded fear of being persecuted in his/her country of origin for reasons of race, ethnic origin or religion, holding of a particular political opinion or membership of a particular social group, and was unable or, owing to such fear, is unwilling to return to such country, or is persecuted in his/her country of origin for the exercise of political rights and freedoms. This means that the Act on Asylum does not allow family reunification to a person who was granted asylum on humanitarian grounds in the Slovak Republic.

#### Naturalisation

Pursuant to the Nationality Act,<sup>35</sup> a person granted asylum may be granted the nationality of the Slovak Republic provided that he/she is a person granted asylum for at least four years immediately prior to the submission of the application for the nationality of the Slovak Republic.

## 3.2 Tolerated Stay

#### Procedure

##### General provisions

The procedure for granting the tolerated stay permit in the Slovak Republic is conducted independently from the asylum procedure in the SR, and the competent authority responsible for issuing the decision is the APD.

A foreign national may apply for this kind of tol-

<sup>34</sup> Article 34 of the Act on Stay of Aliens.

<sup>35</sup> Article 7, paragraph 2 of the Act on Nationality.

erated stay in person or by his/her representative on the basis of a letter of attorney.

After the foreign national submitted the request for tolerated stay permit, the APD shall issue to the applicant a confirmation of the application's receipt. If the application for tolerated stay permit does not contain all the required documents, the APD shall interrupt the procedure, and call the foreign national to remedy any flaws in the application within the set deadline. In case the foreign national fails to submit the required documents, the APD shall suspend the procedure for granting the tolerated stay permit. The procedure shall continue at the moment of submitting the last missing document. In case the APD gives a positive opinion on the foreign national's application, it shall issue a decision on granting the tolerated stay permit, whereas the date of issuing the decision is the date of granting the tolerated stay permit.<sup>36</sup>

APD shall not grant the tolerated stay permit if it finds out that:

- the foreign national possesses a permit for a different kind of stay in the SR;
- the foreign national is an asylum seeker, and the asylum procedure has not terminated yet<sup>37</sup>;
- the foreign national fails to meet the conditions for being granted the tolerated stay permit.

When the reason for which a tolerated stay permit was granted ceases to exist, a foreign national shall be obligated to notify the APD of this fact within 15 days from the day of learning about it. The APD shall revoke the tolerated stay permit and simultaneously determine a reasonable time limit for the foreign national's departure of maximum 30 days from the decision's finality, when it determines that the reason for which the tolerated stay permit had been granted ceased to exist.

<sup>36</sup> By virtue of Article 43, paragraph 1, letter f) of the Act on Stay of Aliens.

<sup>37</sup> This means that the foreign national is legally present in the SR (Article 22, paragraph 1 of the Asylum Act).

The tolerated stay of the foreign national shall cease to exist in the following cases:

- the APD cancelled the tolerated stay – the stay ceases to exist on the day following the day on which the decision on cancellation of the tolerated stay becomes final;
- the term of the tolerated stay permit expired, and the foreign national did not apply for its extension – the stay ceases to exist on the day following the day on which the term of tolerated stay expired.

The granting of the tolerated stay permit is assessed on an individual basis, also on the grounds of granting a temporary shelter.

#### Specific rules for the procedure concerning certain kinds of tolerated stay

An unaccompanied minor must be represented in the procedure for granting the tolerated stay permit by a legal representative appointed by the court as his/her guardian. The APD shall grant the tolerated stay permit to an unaccompanied minor after the guardian appointed by court submits the application for such permit. The decision shall be issued on the day of submitting the application for tolerated stay, which is regarded as the day of granting the tolerated stay permit. The guardian may file an appeal against the decision on granting the tolerated stay at the APD. The APD shall extend the tolerated stay of the unaccompanied minor upon his/her guardian's request in case the unaccompanied minor did not reach the age of eighteen years at the time of submitting the application.

As for victims of a criminal offence related to trafficking in human beings, a foreign national may submit an application for tolerated stay at the APD in person or by his/her representative – on the basis of a letter of attorney, for example, by means of a representative of a non-governmental organisation or law enforcement agency. If the victim of human trafficking is a person not older than 18 years of age, his/her legal representative or appointed guardian shall act in the matters concerning that person's stay. As far as

foreign minors – victims of a criminal offence – are concerned, the APD shall grant to such a foreigner the tolerated stay permit under another provision of Article 43 of the Act on Stay of Aliens, which refers to minors found in the Slovak Republic.<sup>38</sup>

If a foreign national – victim of a criminal offence related to trafficking in human beings – is not able to get adequate accommodation, this shall be provided by the MoI SR. If a foreign national demonstrates his/her wish and breaks his/her contacts with the criminal environment, he/she can be included in the Programme of Support and Protection of the Victims of Trafficking in Human Beings in the Slovak Republic (hereinafter referred to as the Programme). This Programme aims at providing assistance to victims, ensure protection of their fundamental human rights, freedoms and dignity, and motivate the victims to provide witness testimony which would help the law enforcement agencies to discover, prosecute and convict the offenders guilty of trafficking in human beings.<sup>39</sup> Foreign nationals are informed about the possible programmes or projects aiming at integrating foreigners – victims of human trafficking – into the society during the period of validity of the tolerated stay permit by the law enforcement agency or by a person authorised by the MoI SR.

The Programme provides the participating victims with complex care irrespective of their sex, age or ethnicity. Such care is provided under the Programme to those victims only who are included in the Programme by the decision of the national coordinator for action against trafficking in human beings, this being the 2nd State Secretary (i. e. Deputy Minister) of the MoI SR.

Care provided to the victims of a criminal offence related to trafficking in human beings – foreign nationals – includes:

- isolation from the criminal environment;
- the possibility of anonymous accommodation, if requested by the victim;
- complex care during the entire duration of criminal proceedings in case the victim decides to cooperate with the law enforcement agencies, or during the period of preparation of the foreigner for return to his/her country of origin in case he/she wishes to do so;
- financial support;
- social assistance;
- psycho-social counselling;
- psychotherapeutic services;
- legal counselling;
- legalisation of stay;
- interpreting;
- healthcare;
- retraining courses;
- long-term social integration;
- the possibility of participation in the witness protection programme;
- assistance in the voluntary return to the country of origin, or arranging assistance of a non-governmental organisation in the country of origin.

Complex care and provision of assistance to the victims participating in the Programme are ensured by means of an internal regulation of the MoI SR, agreements and contracts on cooperation and coordination of activities in the implementation of the Programme, concluded between the MoI SR and selected non-governmental organisations providing assistance to the victims of human trafficking.

A foreign national – victim is excluded from the Programme:

- upon his/her request;
- by return to his/her country of origin;
- if it is demonstrated that the person is not a victim.

<sup>38</sup> Under Article 49, paragraph 5 of the Act on Stay of Aliens “a foreign national who claims to be an unaccompanied minor, is obligated to undergo medical examination in order to determine his/her age; this shall not apply in cases when he/she is manifestly minor. If a foreign national refuses to undergo medical examination, he/she shall be considered an adult person.”

<sup>39</sup> Article 1 of the Ordinance of the Ministry of Interior of the SR No. 47/2008.

The APD shall cancel the tolerated stay permit in the following cases:

- a foreign national renewed, of his/her own will, contacts with persons suspect of committing the criminal offence of trafficking in human beings;
- when cooperation of a foreign national with law enforcement agencies is only a pretence;
- when a foreign national ceases to co-operate with the law enforcement agencies;
- due to a threat to the security of the state or public order.

#### Duration of the tolerated stay permit in the SR

##### General provisions

The APD shall grant a tolerated stay permit in the SR for the maximum of 180 days, and may extend it repeatedly upon the request of the foreign national and persistence of the reasons for granting such permit.

##### Specific rules for the duration of the tolerated stay permit in the SR concerning certain kinds of tolerated stay

The rules are different in relation to the victims of a criminal offence of trafficking in human beings, who are granted the tolerated stay permit for a maximum period of 40 days. This period is a recovery period, during which a foreign national, provided that he/she is included in the Programme of Support and Protection of the Victims of Trafficking in Human Beings in the Slovak Republic<sup>40</sup>, receives complex care, and also constitutes a so-called reflection period under Article 6 of the Council Directive 2004/81/EC on the residence permit issued to third-country nationals, during which they can make an informed decision on cooperating with the competent law enforcement agencies with the aim of finding and convicting the offenders.

#### Extending the tolerated stay permit

##### General provisions

A foreign national may apply for extending the

<sup>40</sup> The APD must inform the foreign national about the possibility of participation in the Programme of Support and Protection of the Victims of Trafficking in Human Beings.

tolerated stay permit if the reasons for which the permit was granted persist. The APD is obligated to examine the persistence of the reasons throughout the entire duration of the residence of the foreign national. In case a foreign national applies for an extension after his/her tolerated stay expired, he/she may not submit a request for forgiving the delay, but must file a new application for tolerated stay.

##### Specific rules for extension of the tolerated stay permit in the SR concerning certain kinds of tolerated stay

As far as victims of a criminal offence of trafficking in human beings are concerned, the APD shall extend the tolerated stay permit by a maximum period of 180 days upon the foreign national's request, and may repeat such an extension if the reason for which the permit was granted persists and if the presence of the foreign national in the SR is necessary for the purposes of criminal proceedings, which must be certified by a competent authority (e. g. by a law enforcement agency). The APD shall not extend the tolerated stay permit if it is demonstrated that the applicant did not break or renewed his/her contacts with the persons suspect of committing a crime related to trafficking in human beings.

#### Right to residence according to the Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents

##### General provisions

This Directive specifies the status and rights of persons who are long-term residents in the territories of the European Union Member States. Member States shall grant long-term resident status to third-country nationals who have resided legally and continuously within their respective territories for five years immediately prior to the submission of the relevant application.<sup>41</sup> Since persons having the tolerated stay permit in the SR (except for tolerated stay granted to victims of trafficking in human beings) do

<sup>41</sup> Article 4, paragraph 1 of the Council Directive on Long-Term Residence.

not have the possibility to request other kind of residence, they may not obtain the status of long-term residents in the SR.

### Healthcare and social security

#### General provisions

Compulsory public health insurance<sup>42</sup> does not apply to a foreign national who was granted tolerated stay in the Slovak Republic, which means that the state does not have the obligation to pay the health insurance of such a person.

The Healthcare Act provides a foreign national who was granted tolerated stay with the possibility of individual health insurance made at a health insurance company.

#### Specific rules for healthcare and social security concerning certain kinds of tolerated stay

An exception from this general provision applies to an unaccompanied foreign minor, who is placed in a specialised children's home for unaccompanied minors on the basis of a court decision. According to the Health Insurance Act, such an unaccompanied minor is considered a natural person that must have compulsory public health insurance, paid by the state.

The healthcare of foreign nationals who were identified as victims of human trafficking is covered by the Mol SR under the Programme of Support and Protection of the Victims of Trafficking in Human Beings in the Slovak Republic.

A foreign national with a tolerated stay permit granted on the grounds of respect for his/her private and family life has access to the labour market. If such a foreigner takes up employment, he/she shall be considered a person with compulsory public health insurance.<sup>43</sup>

If the monthly income of a foreign national having a tolerated stay permit does not reach the subsistence minimum<sup>44</sup>, which is EUR 185.19 at

42 Article 2, paragraph 1 of the Act on Health Insurance.

43 A person with compulsory public health insurance is a person with permanent residence in the SR, whose health insurance is paid by the state or his/her employer.

44 I. e. minimum income limit of a natural person recognised

present, he/she is considered to be in a state of material deprivation. Hence, he/she is entitled to receive the material deprivation benefit of EUR 60.50, ensuring the basic living conditions<sup>45</sup> of the foreign national. The Act on Assistance in Material Deprivation<sup>46</sup> stipulates that a foreign national has identical status to a national of the SR for the purposes of ensuring the basic living conditions and assistance in material need.

### Education

#### General provisions

The School Act does not contain any explicit provision on the education of foreign nationals who were granted tolerated stay. In consideration of Article 42 of the Constitution of the SR, under which every person has the right to education, and in line with the principles of education formulated in the School Act, it can be concluded that free education at elementary and secondary schools, respecting the ban on any forms of discrimination, also applies to foreign nationals who were granted tolerated stay.

Compulsory school attendance of ten years, lasting at most until the school year in which the pupil reaches 16 years of age, also applies to an unaccompanied foreign minor, whose legal representative was granted the tolerated stay permit in the SR and who is allowed such a stay on the basis of the tolerated stay permit of his/her legal representative.<sup>47</sup>

#### Specific rules for education concerning certain kinds of tolerated stay

According to the provisions of the School Act, unaccompanied minors must be provided with education, accommodation and board at schools under the same conditions as the nationals of the Slovak Republic.<sup>48</sup>

Under the Universities Act, a third-country national has the right to study at a university pro-

by society.

45 The living conditions include one hot meal per day, basic clothing and shelter.

46 Article 3 of the Act on Assistance in Material Deprivation.

47 Article 19, paragraphs 1 and 2 of the School Act.

48 Article 146, paragraph 2 of the School Act.

vided that he/she meets the basic conditions for admission, since the rights set forth in the Universities Act are guaranteed to all applicants and students in compliance with the principle of equal treatment in education. The condition for study is the submission of a valid travel document or identification document, and a demonstration of the education level reached.

A public school may request from foreigners who are not the nationals of EU Member State or have no permanent residence in an EU Member State the payment of a tuition fee at a special rate even during the standard duration of study.<sup>49</sup>

### Access to the labour market

#### General provisions

According to the Act on Stay of Aliens<sup>50</sup>, in the course of validity of the tolerated stay permit, a foreign national must not undertake business and enter employment relations or similar labour relations.

#### Specific rules for access to the labour market concerning certain kinds of tolerated stay

A foreign national who was granted tolerated stay on the grounds of respect for his/her private life and family life and who can enter employment relations or similar labour relations, constitutes an exception.

A foreign national, who became the victim of a criminal offence related to trafficking in human beings, may enter employment relations or similar labour relations during the course of validity of the tolerated stay permit.

### Travel

#### General provisions

In case a foreign national who was granted the tolerated stay permit does not possess his/her own travel document and is not able to obtain one through the embassy of the state he/she is the national of, he/she can apply for an

49 Article 92, paragraph 9 of the Act No. 175/2008 Coll. On Universities.

50 Article 43, paragraph 5 of the Act on Stay of Aliens.

aliens passport of the Slovak Republic. According to the Act on Stay of Aliens<sup>51</sup>, an aliens passport constitutes a document which authorises the foreign national for the departure from the Slovak Republic, but not for the return to the Slovak Republic; hence, foreign nationals who were granted the tolerated stay permit may not travel outside of the Slovak Republic.

### Right to family reunification

#### General provisions

The reunification of family members with a foreign national who was granted tolerated stay permit in the territory of the SR is not regulated specifically by any legal regulation.

#### Specific rules for the right to family reunification concerning certain kinds of tolerated stay

The reunification of an unaccompanied minor with his/her family (parents, members of family) is one of the basic activities of an authority dealing with the social and legal protection and social guardianship while resolving the situation of unaccompanied minors. Reunification means reunification outside of the Slovak Republic, e. g. in the country of origin or in the country where the minor commonly resided.

### Naturalisation

#### General provision

According to the Act on the Nationality of the Slovak Republic, the conditions for granting the nationality of the Slovak Republic include continuous permanent residence of the foreign national in the Slovak Republic for at least eight years prior to the submission of the application for the nationality of the Slovak Republic.

#### Specific rules for naturalisation in relation to certain kinds of tolerated stay

The legislative provisions set forth certain exceptions<sup>52</sup> under which a foreign national having a residence permit in the Slovak Republic may be granted the nationality of the SR without the need to comply with the condition of continuous permanent residence for at least

51 Article 47, paragraph 1 of the Act on Stay of Aliens.

52 Article 7, paragraph 2 of the Nationality Act.

eight years, if he/she:

- entered into marriage with a national of the Slovak Republic, this marriage remains valid and they live together in the marriage in a common household in the SR for at least five years immediately preceding the filing of the application for granting of nationality of the SR;
- is a person with substantial credit for the benefit of the Slovak Republic in the area of economics, science, technology, culture, society or sport, or if it is otherwise in the interest of the SR; or
- is without nationality and has uninterrupted residence in the SR for a period of at least three years immediately preceding the filing of the application for nationality of the SR.

If a foreign national who was granted the tolerated stay permit in the SR satisfies the conditions stated above, he/she can apply for the nationality of the SR. However, there is no legal title to the nationality of the SR.

The Act stipulates an exception in granting the nationality of the Slovak Republic also in relation to an unaccompanied minor in such way that if an unaccompanied minor has continuous residence in the Slovak Republic for at least two years immediately preceding the submission of the application for the nationality of the SR and has a legal representative or guardian who is a national of the SR, or a legal entity appointed by a court of the Slovak Republic, the Act does not require compliance with the condition of continuous permanent residence of eight years.

The victims of trafficking in human beings, who were granted the tolerated stay permit in the SR can obtain permanent residence after the final conviction of the offenders, if it is in the interest of the Slovak Republic.<sup>53</sup> After the expiry of the eight years of continuous permanent residence in the SR and complying with the set conditions<sup>54</sup> they can apply for nationality of the SR.

In case foreign nationals are not granted permanent residence in the SR, the conditions for the naturalisation of foreigners are identical to those relating to foreigners who were granted the tolerated stay permit for other reasons.

<sup>53</sup> Article 35, paragraph 1, letter e) of the Act on Stay of Aliens.

<sup>54</sup> Article 7, paragraph 1 of the Nationality Act.

Table 1 contains statistical data on the number of asylums granted in the Slovak Republic in the years 2004-2008. Since 2006, the number of asylums granted in the SR has had a rising tendency, but with respect to the declining number of asylum applications in the SR it is hard to predict whether this tendency will continue also in the years to come.

Table 2 introduces the number of asylums granted on humanitarian grounds in the years 2004-2008. As shown, the number of asylums granted on humanitarian grounds varies each year, which is due to the fact that such asylum can be granted to a foreign national when the competent employee of the Ministry of Interior of the SR comes through appropriate deliberation to the conclusion that though that person fails to satisfy the conditions for being granted asylum under the Act on Asylum, there are certain humanitarian reasons to be considered in the given case.

Table 3 provides an overview of the nationality of foreigners who were granted asylum in the SR in the years 2004-2008. It is evident that the Slovak Republic granted the majority of asylums to Cuban and Ukrainian nationals during the reference years. In 2005, Ukrainian nationals were being granted asylum on humanitarian grounds. In the same year, an increased number of asylums was also granted to the nationals of Serbia and Montenegro. Cuban nationals were granted asylum in all the reference years. The nationals of Iraq have formed a large group of persons granted asylum in the Slovak Republic during the last reference year. The nationals of other countries listed and stateless persons were granted asylum occasionally, upon individual assessment of the asylum application.



## Statistical Data on the Number of Protections Granted

**Table 1. Total Number of Asylums Granted in the Slovak Republic (2004-2008)**  
(in number of persons)

2004	2005	2006	2007	2008
15	25	8	14	22

**Table 2. Asylums Granted in the Slovak Republic on Humanitarian Grounds (2004-2008)**  
(in number of persons)

2004	2005	2006	2007	2008
6	13	1	0	3

**Table 3. Asylums Granted to Foreign Nationals (2004-2008)**  
(in number of persons)

Nationality	Asylums Granted in Total	2004	2005	2006	2007	2008
Afghanistan	3	0	2	0	0	1
Angola	1	1	0	0	0	0
Congo	3	2	0	1	0	0
Cuba	14	0	2	1	3	8
China	1	0	0	1	0	0
Democratic Republic of Congo	1	0	0	0	1	0
Egypt	1	1	0	0	0	0
Iraq	9	0	1	0	0	8
Iran	12	4	0	4	3	1
Ivory Coast	1	0	0	0	1	0
Kuwait	1	1	0	0	0	0
Pakistan	1	0	0	0	0	1
Palestine	3	0	0	0	1	2
Russian Federation	5	5	0	0	0	0
Serbia and Montenegro	8	0	7	1	0	0
Sudan	1	0	0	0	1	0
Syria	2	0	0	0	2	0
Ukraine	13	0	12	0	1	0
Vietnam	1	0	0	0	0	1
Zaire	1	0	1	0	0	0
Stateless persons	2	1	0	0	1	0
<b>Total</b>	<b>84</b>	<b>15</b>	<b>25</b>	<b>8</b>	<b>14</b>	<b>22</b>

Tables 4 and 5 show the numbers of tolerated stay permits in the SR and the numbers of permits by the existing reason for stay in the years 2004-2008. This data reflects the number of persons who were granted the tolerated stay permit irrespective of the reason for granting tolerated stay.

In 2007, the number of tolerated stay permits granted more than doubled, which was partly due to having included a new reason for granting the tolerated stay permit – respect for family and private life. A large group of persons who were granted the tolerated stay permit was formed by persons whose departure was not possible and detention was not purposeful. Per-

sons with tolerated stay where an impediment existed to their administrative expulsion to their country of origin represented a negligible group. From the large group of foreign nationals staying in the SR, only one person was identified as a victim of trafficking in human beings during the reference years.

Table 6 provides an overview of the nationality of foreigners who were granted tolerated stay in the SR throughout the reference years 2004-2008.

**Table 4. Permitted Tolerated Stays throughout the Reference Year (2004-2008)**  
(in number of persons)

2004	2005	2006	2007	2008
219	62	67	195	131

**Table 5. Permitted Tolerated Stays by Existing Reason for Stay throughout the Reference Year (2004-2008)**  
(in number of persons)

Reason for stay	2004	2005	2006	2007	2008	Total
Unaccompanied minors	0	13	20	16	4	53
Impediment to administrative expulsion	22	2	21	9	6	60
Respect for private and family life	0	0	0	43	31	74
Departure is not possible and detention is not purposeful	101	95	152	125	90	563
Victim of trafficking in human beings	0	0	0	1	0	1
Temporary shelter*	0	1	2	13	0	16
<b>Total</b>	<b>123</b>	<b>111</b>	<b>195</b>	<b>207</b>	<b>131</b>	<b>767</b>

\* Harmonised type of international protection.

**Table 6. Permitted Stays of Third-Country Nationals (Top 20) throughout the Reference Year (2004-2008)**  
(in number of persons)

Nationality	Tolerated Stays in Total	2004	2005	2006	2007	2008
Ukraine	81	11	11	17	25	17
Vietnam	55	1	8	14	19	13
Serbia	8	0	0	0	3	5
China	42	9	12	5	11	5
Russian Federation	53	3	13	11	16	10
Turkey	11	2	3	2	2	2
Former Yugoslav Republic of Macedonia	29	4	5	8	8	4
India	19	2	2	8	3	4
Libya	59	8	8	9	11	23
Moldova	19	1	5	4	5	4
Israel	2	0	1	0	0	1
Iraq	12	0	4	3	4	1
Nigeria	5	2	0	1	0	2
Afghanistan	18	4	2	8	4	0
Syria	18	2	6	1	5	4
Georgia	11	0	2	2	3	4
Pakistan	13	3	1	3	4	2
Iran	7	3	1	1	2	0
Cuba	4	0	0	2	1	1
Stateless persons	26	3	6	4	7	6
Other	300	66	19	92	95	28
<b>Total</b>	<b>792</b>	<b>124</b>	<b>109</b>	<b>195</b>	<b>228</b>	<b>136</b>

# 05

## National Positions on the Granting of Non-Harmonised Protections

No major public discussion about the tolerated stay instrument has been conducted in the Slovak Republic so far, either at the political, scientific or academic level. The BBAP considers tolerated stay a temporary form of stay granted to foreign nationals, which is reflected in the specific rights associated with this kind of protection.

The Government of the Slovak Republic approved on 6 May 2009 the Concept of Integration of Foreigners in the SR (hereinafter referred to as the Concept), in which it undertook to make the integration measures focus also on foreign nationals who were granted tolerated stay and are unaccompanied minors found in the SR, as well as on foreign nationals who became victims of a criminal offence related to trafficking in human beings. In case the integration measures described in the Concept are implemented in practice, foreign nationals will also be able to participate in the integration programmes financed from public resources.

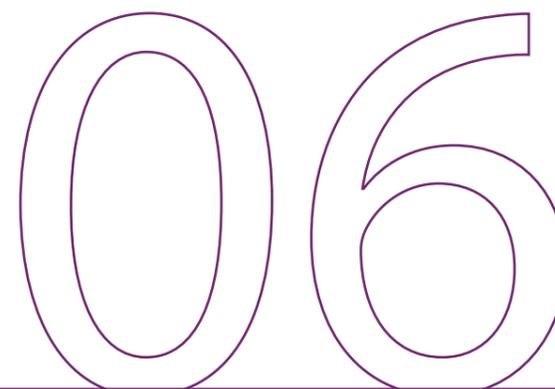
The International Organization for Migration has in the past showed its willingness to resolve the situation of foreign nationals with tolerated stay in the SR. In 2007, it organised a series of round tables dedicated to the issues of residence, employment and healthcare of foreigners in the SR with a specific focus on foreigners who were granted tolerated stay in the SR. The experience of the Migration Information Centre showed<sup>55</sup> that the predominant majority of foreigners complained mainly about the impossibility to take up legal employment or run a business, which resulted in material deprivation and undignified living conditions. All the clients of the Migration Information Centre with tolerated stay considered it a problem that they could not afford expensive private health insurance and that they could not have public health insurance under the Health Insurance Act, because the act regulating public health insurance does not take into consideration any participation of

<sup>55</sup> At the time of holding the round tables, the Migration Information Centre had been open for approximately one year, and it was visited by 30 clients with tolerated stay in the SR.

insured persons in such a type of residence.

The round tables were also attended by the representatives of state organisations and the non-governmental sector with the aim of opening up a wider discussion on the issue.

From the point of view of the Human Rights League, the tolerated stay instrument is more than problematic. Often, the only right conferred to persons with tolerated stay is the right to residence in the SR. The right to work, the access to healthcare and to social security are strictly limited, even in the case where the existence of impediments to administrative expulsion was stated, i. e. in applying the *non-refoulement* principle.



## Conclusion

The objective of the present study was to analyse the legal provisions concerning non-harmonised forms of protection granted to foreign nationals in the Slovak Republic. Since nobody has dealt with this issue in a complex manner up until now, it can be concluded that this study represents one of the first works dealing with this topic in the Slovak Republic.

The rights and obligations of foreign nationals are not governed explicitly by the Act on Asylum or Act on Stay of Aliens, but are partially regulated by a broad spectrum of legal regulations specifically governing the different areas of law.

This study uncovered several different findings, which constitute the contents of its last chapter, the Conclusion.

The comparison of the asylum granted on humanitarian grounds and the tolerated stay suggests that persons who are granted asylum on humanitarian grounds have in principle a better legal position, and have more rights guaranteed than persons with tolerated stay. For example, foreign nationals with asylum granted on humanitarian grounds have the same legal status in regard to employment as the nationals of the Slovak Republic, while foreign nationals with tolerated stay may not enter employment relations, apart from certain exceptions<sup>56</sup>. Foreign nationals with a tolerated stay permit also have a worse legal status in the field of health insurance. If a person granted asylum is not a party to an employment relation as a result of the obligation to have public health insurance, it is the state that pays the insurance. However, the state does not pay public health insurance for foreign nationals possessing a tolerated stay permit, with the exception of unaccompanied minors. This issue is more than complicated due to the fact that the state on the one hand tolerates in its territory foreign nationals for reasons stipulated in the Act on Stay of Aliens, but, on the

<sup>56</sup> Victims of trafficking in human beings and foreign nationals who were granted tolerated stay permit on the grounds of respect for private and family life.

other hand, it does not cover the healthcare for these persons, which is not a systemic solution as for the protection of health of the citizens of the Slovak Republic. Even though such persons have access to individual health insurance by means of private insurance companies, just a few of them are able to have such insurance, as they have no access to legal employment and thus do not have sufficient funds to pay for the insurance.

A substantial problem that we discovered while writing this study was the absence of any public or expert discussions, publications and/or articles on the asylum granted on humanitarian grounds and on the tolerated stay, which in the end shows that this problem has not yet become an important social topic yet, in which the general public would be interested.

What is positive, however, is the fact that the issue of non-harmonised forms of protection meets with an increased interest by experts, in particular by the international and non-governmental organisations working in the field of asylum and migration. During the process of adopting the concept of foreigners' integration, several experts from different areas met at the same table and discussed the possibilities of complex involvement of foreign nationals with tolerated stay into integration activities. However, this effort was only partially successful. In the future, it will be necessary to pay special attention to the group of foreign nationals who were granted tolerated stay and who have a long-term stay in the Slovak Republic, in particular in order to prevent them from becoming outsiders and potential victims of abuse (e. g. for the purposes of illegal work etc.) as a result of restricting their rights. Room for discussion is also provided by the European Migration Network and the events organised, for example, through the means provided by the European Integration Fund. The Migration Information Centre of the International Organization for Migration, or the Legal Assistance Bureau for Foreigners of the Human Rights League are places where information and suggestions from migrants are col-

lected, and their experience will therefore be an important source of information to be used at round tables and expert discussions on migration and asylum issues.

The right to the respect for family and private life from the point of view of legal provisions governing tolerated stay is problematic due to changes in practical application. An APD does not grant tolerated stays on the grounds of the respect for family and private life to a foreign national who is a spouse of a national of the SR, but only to a foreign national who is an unmarried spouse of a Slovak national and has a child in the SR, using as an argument the legalisation of the stay by means of the permanent residence instrument. There are also situations where a foreign national fails to meet the conditions for permanent stay, for example, when he/she has an integrity problem, lacks a valid travel document and is not able to legalise his/her stay by means of permanent residence. Under the international commitments of the SR, in particular Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, his/her request should be assessed in the framework of tolerated stay in order to ensure the fundamental rights of the foreign national. In spite of these facts, the BBAP is of the opinion that if the SR grants tolerated stay to every foreigner who failed to meet the conditions for other kinds of stay (for example, in absence of a travel document or integrity), such foreign nationals would be granted the right to stay in the SR under much more liberal conditions than the foreign national applying for temporary or permanent stay.

Two state authorities were deciding about impediments to administrative expulsion until the legislative changes in the Act on Asylum entered into effect (refer to subchapter 2.3.2): the Migration Office and the Bureau of Border and Alien Police of the MoI SR through its Aliens Police Departments. Since at present it is exclusively the competence of the individual APDs, it would be worth considering an interconnection of the functional and updated database of informa-

tion on the countries of origin of the Migration Office and APDs, which would facilitate the assessment of the impediments to administrative expulsion of foreign nationals from the Slovak Republic. It was found under this study that the APDs do not possess any databases.<sup>57</sup> Round-table discussions on this topic have already been held with the BBAP, debating not only the database interconnection, but also the strengthening of personal capacities. This problem can be currently solved by sending a request for information about the particular situation in the country of origin to the Department of Documents and International Cooperation of the Migration Office of MoI SR. Information about the countries of origin is often the only relevant source that serves for demonstrating the objective situation in the country of origin and the foreigner's statements. In individual cases, the APD uses information provided by the Ministry of Foreign Affairs of the SR and the Migration Office, which, however, is not a systematic approach that could be applied to all applications for tolerated stay due to an impediment to administrative expulsion.

A specific objective of this study is to find out the tendencies and the practice in the Slovak Republic in the field of granting non-harmonised forms of protection compared to the kinds of international protection granted. The statistical data included suggests that the number of non-harmonised forms of protection granted in the Slovak Republic is higher than the number of harmonised kinds of protection, with the exception of asylum granting, where the number of asylums granted for reasons stipulated in the Geneva Convention was higher than the number of asylums granted on humanitarian grounds. The granting of harmonised forms of protection is connected with a larger scope of rights that these recipients can exercise, which has a larger impact on public finances as well.

<sup>57</sup> Information from BBAP, interview held on 24 July 2009.

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