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EN

ORGANISATION OF ASYLUM AND MIGRATION POLICIES IN THE SLOVAK REPUBLIC



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Preface

This study was compiled by the IOM International Organization for Migration Bratislava in its position as the national coordinator of the European Migration Network in the Slovak Republic. This national study follows the common outline and methodology prepared by the European Migration Network. The study was compiled by external experts contracted by the IOM in 2008 and subsequently updated in 2010 and 2012. The study covers the period, from establishment of the independent Slovak Republic on 1 January 1993, through to the end of July 2012 and provides information about changes in the Slovak legislation and practice in the field of migration and asylum.

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List of Abbreviations

Abbr. EN / Abbr. SK

-	ZMOS	Association of Slovak Towns and Municipalities – Združenie miest a obcí Slovenska
BBAP	ÚHCP	Bureau of Border and Aliens Police of the Presidium of Police Force - Úrad hraničnej a cudzineckej polície Prezídia Policajného zboru
-	ČR	Czech Republic – Česká republika
-	ČSFR	Czech and Slovak Federative Republic - Česká a Slovenská federatívna republika
DAP	OCP	Department of Aliens Police – Oddelenie cudzineckej polície
DBAP	RHCP	Directorate of the Border and Aliens Police – Riaditeľstvo hraničnej a cudzineckej polície
-	RCP	Directorate of Aliens Police – Riaditeľstvo cudzineckej polície
-	RHP	Directorate of Border Police – Riaditeľstvo hraničnej polície
DC	ÚPZC	Detention Facilities for Foreigners – Útvar policajného zaistenia cudzincov
ERF	-	European Refugee Fund – Európsky utečenecký fond
EIF	-	European Fund for Integration of Third Country Nationals – Európsky fond pre integráciu štátnych príslušníkov tretích krajín
EEA	EHP	European Economic Area – Európsky hospodársky priestor
EMN	EMS	European Migration Network – Európska migračná sieť
EC	EK	European Commission – Európska komisia
EU	EÚ	European Union – Európska únia
EURES		European Employment Services – Európske služby zamestnanosti
EWG	OPS	Expert Working Group – Odborná pracovná skupina
FRONTEX		European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union - Európska agentúra pre riadenie operačnej spolupráce na vonkajších hraniciach členských štátov EÚ
IOM	IOM	IOM International Organization for Migration – IOM Medzinárodná organizácia pre migráciu
MEKOMIC		Inter-Ministerial Commission for Labour Migration and Integration of Foreigners – Medzirezortná komisia pre oblasť pracovnej migrácie a integrácie cudzincov
MoLSAF	MPSVR SR	Ministry of Labour, Social Affairs and Family of the SR – Ministerstvo práce, sociálnych vecí a rodiny SR
MO	MÚ	Migration Office of the MoI SR – Migračný úrad MV SR
MoI SR	MV SR	Ministry of the Interior of the SR – Ministerstvo vnútra SR
MFaEA SR	MZVaEZ SR	Ministry of Foreign and European Affairs of the SR – Ministerstvo zahraničných vecí a európskych záležitostí SR
NGO		Non-governmental Organization
OLSAF		Office of Labour, Social Affairs and Family – Úrad práce, sociálnych vecí a rodiny
P PF	P PZ	Presidium of Police Force of the SR – Prezídium Policajného zboru SR
PF	PZ	Police Force – Policajný zbor
SR	SR	Slovak Republic – Slovenská republika
SO SR	ŠÚ SR	Statistical Office of the Slovak Republic – Štatistický úrad SR
UNHCR	UNHCR	United Nations High Commissioner for Refugees – Úrad vysokého komisára OSN pre utečencov

Executive Summary

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

After establishing its purpose and methodology, the study offers a short overview of the organisation of the political, legal and institutional context in which migration and asylum policies are developed and implemented in the SR. Chapter 2 offers a description of activities of institutions and organisations responsible for the management of migration in the SR, ranging from ministries and governmental bodies to international and non-governmental organisations which provide counselling and assistance to migrants, as well as research institutions. Subchapter 2.2 contains a concise description of the main laws guiding residence of foreigners in the SR, such as asylum seekers and other groups of migrants. Legislation is more broadly analysed in Chapter 4. The information provided in this part covers the development within the SR until the end of July 2012.

Chapter 3 contains a short overview of the historical development of asylum and migration policies from the independence of the Slovak Republic in 1993 through to July 2012. The chapter is divided into three subchapters: basic information on the general migration situation in Slovakia; changes after the creation of the independent Republic; and the situation after the accession of the SR to the EU. This chap-

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

The largest chapter is the fourth chapter which consists of two subchapters: Subchapter 4.1; Asylum and Migration, which elaborates on entry procedures, conditions for residence of third country nationals, access to the labour market, as well as integration, acquisition of citizenship, and returns from the SR to countries of origin, both for the types of migrants falling under the asylum category and for the types of migrants under the general migration category. This chapter also contains the data on the number of asylum seekers, granted asylums and migration from third countries; Subchapter 4.2 focuses on the link between migration and asylum policies of the SR and other policies—namely foreign, development and labour market policies—and the issue of illegal migration. Although aspects of this chapter relate directly to the field of integration policy, the specifications for this study do not allow for a deeper analysis of this subject.

The concluding chapter, Analysis of Asylum and Migration Systems in the SR, is divided into two subchapters: 5.1 The Realm of Migration Policy; and 5.2 The Realm of Asylum Policy. This chapter concludes that since its accession to the EU, Slovakia has made significant and positive advances in the quality of services it provides to asylum seekers and persons granted asylum, but that the services the country provides to other groups of migrants, despite individual projects, are still inadequate.

01

Purpose and Methodology

The main aim of this study according to the European Commission is to provide National Contact Points of the European Migration Network, as well as the European Commission, with transparent information on the development and current state of the political, institutional and legislative system determining the migration and asylum policies of the Slovak Republic. Similar studies have been compiled by all 27 Member States of the European Union. Based on these national studies, the European Commission has prepared a summary report containing information on the situation in all Member States within the European context and has elaborated separate factsheets containing basic information on the organization of asylum and migration policy in each Member State. At the same time, the European Commission created an “institutional chart” for each Member State. All of these outcomes are available on the EMN website. The first version of the study was elaborated in 2008 and 2009, in line with the EMN Work Programme for these years. Subsequently, the Member States will prepare an updated version of the national reports in accordance with the EMN Work Programme for 2012, if needed.

The specific aim of the study, one that is of particular importance on the national level, is to summarise and systematise information offered in a wide range of publications, many available only in English. The overview of the development, structure and importance of the political, institutional and legislative system determining the migration and asylum policies of the Slovak Republic can serve as a basis for further analysis of different aspects of asylum and migration policies at the national level. The study describes developments in the field of migration and asylum from the establishment of the independent SR on 1 January 1993 through to the end of July 2012.

The study targets policy makers at national and European levels, researchers, representatives of non-governmental organisations, experts, academics, students, as well as the general public. The target groups can use the updated information offered in this study in their work.

The updated version of the national study on the situation in the Slovak Republic has been prepared adhering to the requirements of the European Commission. As for its methodology, the report builds on available literature, articles, research studies, Internet sources, information provided on the websites of key institutions and organisations, from the press and statistical information. As required by the EMN specifications, the report is not the result of independent research by the authors but is rather a synthesis based on secondary sources. Missing and updated information was added by means of qualitative research assembled through a combination of managed interviews and open questionnaires sent electronically to representatives of relevant governmental institutions and non-governmental organisations. The main sources of this additional information were interviews or correspondence with representatives of the Human Rights League, IOM and the Department of Documentation and International Cooperation of the Migration Office of the Ministry of the Interior. Key information on return policy was provided by the Bureau of the Border and Aliens Police of the Presidency of Police Force (hereafter “BBAP”). The Department of Risk Analysis and Statistics of the Analysis and Strategic Management Section of the Bureau of the Border and Aliens Police and the Migration Office of the Ministry of the Interior of the Slovak Republic (hereafter “Migration Office”) provided the necessary statistics.

This study supplements the information on changes made in the field of migration and asylum until the end of July 2012, and directly follows, completes, and updates the study with the same title, published in 2009 being its second updated version. The author drew not only on available literature, but also from their own professional experience and the following studies and reports of the European Migration Network in the Slovak Republic:

Drozd, P., Ulrichová, N. (2012): Zneužívanie práva na zlúčenie rodiny: účelové manželstvá a falošné prehlásenie rodičovstva Slovenská republika

Mrlianová, Ulrichová, Zollerová (2011): Praktické opatrenia v boji proti nelegálnej migrácii v Slovenskej republike

JUDr. Miroslava Mittelmannová (2009): Programmes and Strategies Fostering Assisted Returns in the Slovak Republic and Re-Integration in Third Countries

Bargerová, Številová (2009), Annual Report on Migration and Asylum Policies 2008 Slovak Republic

Mgr. Ivana Potočková, E.MA (2010): Annual Report on Migration and Asylum Policies 2009 Slovak Republic

Mgr. Ivana Potočková, E.MA (2011): Annual Report on Migration and Asylum Policies 2010 Slovak Republic

Mrlianová, Ulrichová, Zollerová (2012): Annual Report on Migration and Asylum Policies 2011 Slovak Republic

A number of important publications were prepared under projects funded by the European Fund for the Integration of Third-Country Nationals (hereafter also “EIF”), such as:

Boris Divinský (2009): Migračné trendy v Slovenskej republike po vstupe krajiny do EÚ (2004-2008).

Siman, M. - Mokrá, M. - Miháliková, S. - Jančo, M.: Uznávanie odborných kvalifikácií migrantov z tretích štátov v Slovenskej republike de lege lata a de lege ferenda. Bratislava: EURO-URIS, 2009.

Fajnorová, K., Številová, Z. (2009): Právne postavenie a možnosti integrácie maloletých cudzincov bez sprievodu v Slovenskej republike. Analýza právneho stavu a praxe, OZ Liga za ľudské práva, Bratislava.

Mittelmannová, Številová (2011): Zaistenie a alternatívy k zaisteniu v Slovenskej republike.

Vašečka, M. (2009): Postoje verejnosti k cudzincom a zahraničnej migrácii v SR. IOM Bratislava.¹

¹ Available on the following webpage: www.iom.sk/sk/o-nas/novinky/27-postoje-k-cudzincim [consulted on 2010-04-03].

Géza Mihály a Boris Divinský (2011): *Nové trendy a prognóza pracovnej migrácie v Slovenskej republike do roku 2020 s výhľadom do roku 2050*, TREFIMA Bratislava 2011

The main literary sources of information for the background national study covering the developments until 2008 were publications, such as: *Migration Trends in Selected EU Applicant Countries; Volume V Slovakia – An Acceleration of Challenges for Society (2004)*² which contains the first general analysis of migration and asylum issues in the SR. The second publication, *Needs of Migrants in Slovakia*³, presents the results of research based on interviews with migrants, employers and representatives of relevant institutions and organisations. This research considers various aspects of migrant integration with society and the labour market within the SR, analyses their needs and listed recommendations for improving the situation within the country. The authors also consulted the publication, *Integration of Migrants in the Slovak Republic (2008)*, which contains an institutional and legal analysis of migrant integration into the society and culminates not only in general recommendations for integration policy within the SR, but also for adopting concrete measures into the most important areas of immigrant integration – residence, employment, health care, granting of citizenship, as well as for the integration policy within the SR in general⁴. The information here also draws on the complex work by Divinský (2009): *Migration Trends in the Slovak Republic after Its Accession to the EU (2004-2008)*, IOM, Bratislava; (2005) *Foreign Migration in the Slovak Republic: State, Trends, Social Relations and from other publications and articles by this author*. Exceptionally important were the Internet resources of relevant state authorities, international organisations and NGOs along with materials published

² Initiated and published by IOM; the author is RNDr. Boris Divinský. The publication is only available in English language.

³ Popper, M., Lukšík, I., Bianchi, G., Szeghy, P. *Potreby migrantov na Slovensku*. Bratislava: Veda et IOM Medzinárodná organizácia pre migráciu, 2006.

⁴ Bargerová, Z., Divinský, B. *Integrácia migrantov v Slovenskej republike. Výzvy a odporúčania pre tvorcov politik*. Bratislava: IOM Medzinárodná organizácia pre migráciu, 2008. The summary and recommendations are available in English at the IOM Office in Bratislava.

by them, such as the brochure *Migration and Asylum in the Conditions of the Slovak Republic*⁵.

We faced certain problems when writing the original report (information up to 2008). The main problem at that time was the fact that literature on asylum and migration in the SR was scarce. The authors therefore drew not only on available literature, but also on their own professional knowledge and their experience in counselling migrants along with new information from interviews or Internet sources. We also confronted statistical challenges when determining the numbers of third country nationals with residence permits granted in the SR. The unavailability or insufficient nature of this information is primarily the result of the fact that, firstly, the information system of the Bureau of the Border and Alien Police and the related legislation underwent significant changes during the relevant period. Secondly, the SR had itself been a third country during the period prior to its accession to the EU. Due to these factors, the statistics offered in this report can only illustrate the number of third country nationals from the year 2004.

While writing the updated version of the study, several more publications on migration and asylum in the SR have become available, funded by the EU within various projects and EMN, compared to the previous period. Certain statistical data was not available at the date of finalisation of the updated version (July 2012), therefore certain data is provided that was current on 31st December 2011.

For the purposes of this study, we will distinguish between a national of the EU, EEA and the Swiss Confederation (hereafter jointly referred to as an “EEA national”) and a third-country national outside of the European Union, the European Economic Area and the Swiss Confed-

⁵ Furthermore mentioned in; *Migration and Asylum*. Available online at <http://www.ludiaakomy.sk/download/posledna%20S.zip> [consulted on 11/11/2008]. Compiled by the Director of the Migration Office of the Mol of the SR, Ing. Bernard Prielcel, and the Director of its Department of Migration and Integration, Ing. Vladimír Belo-Caban.

eration (hereafter referred to as a “third-country national”). The first category of migrants has basically the same legal status as SR nationals, although their residence in the SR is governed by the Act No. 404/2011 Coll. on Stay of Aliens and on Changes and Amendments of Some Acts, As Amended (The Act on Stay of Aliens). The Act on Stay of Aliens does not exclude this group of foreigners from the definition of the term “foreigner”. This term also applies, for the purposes of this act, to EEA and the Swiss Confederation nationals. This study will primarily focus on the residence of third-country nationals.

02

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

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

2.1 Political System and Institutional Context

The Slovak Republic is a parliamentary democracy. The supreme bodies of power and the representatives of the political system in the SR are: the National Council of the SR; the Government of the SR and the President of the SR. Laws relevant to migration and asylum are passed by the National Council – the Parliament – which is the constitutional and legislative body of the state. Laws come into force after being signed by the President and published in the Collection of Acts. The entry into force of an Act means that it becomes part of the legal order of the SR. It is necessary to distinguish between the entry into force of an Act and the effectiveness of an Act. The legal relations governed by the legal norms shall be applicable from the effectiveness of the Act. Each Act establishes in its last provisions the date of its effectiveness that is crucial for the applicability of an Act. If there is not stipulated any date of effectiveness in the Act, the Act is applicable after 15 days from the publication in the Collection of Laws of the Slovak Republic. The period between the force and effect of an Act is called *vacantia legis* and it serves the purpose of getting acquainted with the Act (especially with regards to the rights and duties stemming out of it).

The Government of the SR, as the highest executive body, has 13 ministries. Although nearly all of them have at least a marginal relation to some aspect of migration or asylum, institutionally migration falls under the auspices of three ministries – the Ministry of the Interior of the SR; the Ministry of Foreign and European Affairs of the SR; and the Ministry of Labour, Social Affairs and Family of the SR.

2.1.1 Relevant State Institutions and Ministries

The Ministry of the Interior of the SR

The Ministry of the Interior of the Slovak Republic (hereafter also “Ministry of the Interior” or “Mol”) implements its agenda in the field of migration and asylum mainly through two bodies – the Migration Office, and the Bureau of the Border and Aliens Police. Mol acts as the responsible certifying body for the Solidarity and Management of Migration Flows Programme for the period 2007–13⁶. The Department of Foreign Aid of the Mol is organisationally responsible for the programme⁷. The tasks of the Certifying Authority are carried out by civil servants organisationally placed under the unit of economic and financial control of the department of control within the section of control and inspection of the Mol SR. The Mol SR also prepares, negotiates and concludes the bilateral readmission agreements.

The Migration Office of the Ministry of Interior of the SR

The Migration Office of the Ministry of the In-

⁶ This programme established funds aimed at building an integrated model of managing the protection of external borders and migration flows. A common management and control system for all the four programme funds was created – the European Fund for the Integration of Third-Country Nationals; the External Borders Fund; the European Refugee Fund, and the European Return Fund. Website of the Ministry of the Interior of SR, MO SR and EUR, Solidarity and Management of Migration Flows. http://www.minv.sk/?solidarita_a_riadenie_migracnych_tokov [consulted on 2010-06-28].

⁷ Together with the Payment Unit of the responsible body (Department of EU Project Funding of the Budget and Finance Section, and Accounting Department and Treasury of the Accounting Unit of the Economy Section of the Ministry of the Interior SR, Mol SR. <http://www.minv.sk/?system-riadenia-a-kontroly-fondov-programu-solidarita-a-riadenie-migracnych-tokov> [consulted on 2010-06-28].

terior of the Slovak Republic (MO) is the first instance body, which decides on the granting of asylum and subsidiary protection of foreigners in accordance with the provisions of the Act on Asylum No. 480/2002 Coll., which also reflects the Geneva Convention relating to the status of refugees from 1951, the New York Protocol relating to the status of refugees from 1967, as well as relevant EU directives or regulations governing the area of international protection of foreigners.⁸ The MO provides basic care for asylum seekers, cooperates with the NGOs regarding the integration of refugees and persons with granted subsidiary protection into the society. It provides assistance regarding accommodation, employment, language preparation, education, health and social security. The MO is the guarantor of the projects financed by the European Refugee Fund and to the recipients of assistance (NGOs), provides the methodological guidance and consultation in this area. The MO cooperates with the Office of the UN High Commissioner for Refugees (UNHCR) and with the IOM International Organization for Migration and participates in the formulation of migration policy for the state. Furthermore, the Migration Office regularly publishes statistical information on asylum in Slovakia. The following departments fulfil the duties of the MO: Organisational and Legal Department; Procedural Department; Department of Migration and Integration; Department of Documentation and Foreign Cooperation; Department of Economic Management and Operation; Department of Foreign Help and Projects; the Dublin Centre; the Integration Centre in Zvolen; reception centres; and accommodation centres⁹.

The Bureau of the Border and Aliens Police of the Presidium of Police Force The Bureau of the Border and Aliens Police is a body of the Presidium of Police Force which directly manages tasks within the field of border protection, fighting illegal migration and the smuggling of migrants; border control; risk analyses; coopera-

⁸ Information available at <http://www.minv.sk/?migracny-urad-mv-sr> [consulted on 2012-11-21]

⁹ Source: Migration Office

tion with the Frontex Agency; analysis of travel documents; granting residence to foreigners and controlling it; expulsion; visa issues; and, to a limited extent, in asylum procedures and the implementation of the Dublin Directive. The Bureau of the Border and Aliens Police professionally manages and controls the functioning of its organizational parts and provides the methodical guidelines¹⁰.

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

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

Social care is provided by the Offices of Labour, Social Affairs and Family. Persons finding themselves in a difficult social situation or unemployed can apply for social allowances at the Social Affairs Department of the relevant Office of Labour, Social Affairs and Family. Such allowances are granted to them in the same way as to Slovak nationals under the current legal regulations. Moreover, the Offices of Labour, Social Affairs and Family assist eligible categories of migrants in mediating employment within the SR. They provide care for unaccompanied migrant minors (children) detained within the Slovak territories. The Department of Social Inclusion of the Ministry of Labour is responsible for the implementation of the National Action Plan on Social Inclusion, and the Section of Labour and Public Employment Services (COLSAaF and Offices of Labour, Social Affairs and Family) for the implementation of the National Employment Action Plan, which identifies a target

¹⁰ The webpage of the BBAP is available at: www.minv.sk/?uhcp [consulted 2012-08-11].

group of migrants (immigrants, asylum seekers, unaccompanied children) most vulnerable in the areas of employment and social needs, and who require specific protection and measures¹¹.

Department of Foreign Affairs and Protocol and Centre for Coordination of Foreigners` Integration

The Department of Foreign Affairs and Protocol of the Ministry of Labour, Social Affairs and Family of the SR currently covers migration and the Centre for Coordination of Foreigners` Integration (CKIC), which is a coordination centre for integration of foreigners and migration¹².

As of 1 August 2012, the CKIC was organisationally placed under the Second Deputy of the Minister of Labour, Social Affairs and Family of the SR and the Department of Foreign Affairs and Protocol is the direct responsibility of the Minister of Labour, Social Affairs and Family of the SR.

The Central Office of Labour, Social Affairs and Family

The Central Office of Labour, Social Affairs and Family (hereafter also the “Central Office of Labour” or “COLSAF”) directs, controls and coordinates the work of state administration in the field of social affairs and employment services; it manages, controls and directs the work of 46 local offices of labour, the social affairs and families within the regions of Slovakia; maintains a central database of employed foreigners; and processes relevant statistics on the employment of foreigners. COLSAF participates in combating the illegal employment of foreigners¹³. The review of applications for work permit and the granting/non-granting of work permits fall within the competence of the Offices of Labour, Social Affairs and Family.

¹¹ Website of the Migration Information Centre of IOM International Organisation for Migration. <http://mic.iom.sk/sk/sluzby-pre-klientov/spolupraca-mic.html> (consulted on 2008-11-09).

¹² Mrlíánová, Ulrichová, Zollerová (2012): Annual Report on Migration and Asylum 2011 Slovak Republic, page 13.

¹³ Website of the Migration Information Centre of IOM International Organisation for Migration. <http://mic.iom.sk/sk/sluzby-pre-klientov/spolupraca-mic.html> [consulted on 2008-11-09].

The Ministry of Foreign and European Affairs of the SR

The Ministry of Foreign and European Affairs (MFAEA) is the central body of state administration in the field of foreign policy and relations of the SR with other states and international organisations.¹⁴ It participates in the development of a unified foreign policy and implements it. Within the framework of its consular agenda, the Ministry of Foreign and European Affairs fulfils and, to a certain extent, performs tasks related to issuing visas and granting residence to foreigners via its consulates and embassies abroad. From the point of view of migration, the granting of long-term visas linked to residence permits is important. The Ministry of Foreign and European Affairs also assists with the voluntary return of migrants, deportations or the preparation of readmission agreements.

The Centre for Legal Assistance of the Ministry of Justice of the SR

The Centre for Legal Assistance is an organisation of the Ministry of Justice, which on the basis of the amendment to the Act on Asylum in force since 1 December 2008,¹⁵ provides free legal assistance to asylum seekers appealing unfavourable decisions against the granting of asylum. Since 1 December 2008, a right to free legal assistance has been guaranteed for asylum seekers only if:

1. they applied for legal assistance related to an asylum issue;
2. they have no representative for the proceedings concerning application of legal assistance under the Act on Legal Assistance, and;
3. the Migration Office issued any of the following decisions under the asylum granting procedure: decision on denying asylum; decision on asylum revocation; decision on

¹⁴ Art.14 Par. 1 of the Act No. 575/2001 Coll. on Organisation of Government Activities and Organisation of the Central State Administration.

¹⁵ Act No. 451/2008 Coll. on Changes and Amendments to the Act on Asylum.

non-prolongation of subsidiary protection; decision on cancellation of subsidiary protection by which the application for asylum is denied as manifestly unfounded or inadmissible; or by which the decision on granting asylum is aborted due to the fact that a decision on the application had already been taken and the matters of fact have not changed substantially. That means that the Centre provides free legal assistance only after the Migration Office has issued its decision. The applicant for legal assistance must submit his/her application for legal assistance, in an asylum matter in the Centre or in the Migration Office, during the interview held under the asylum granting procedure¹⁶.

As of 1 January 2012¹⁷, the powers of the Centre for Legal Assistance are applicable also in second instance proceedings in cases of administrative expulsion of foreigners with regard to transposition of the Return Directive¹⁸. An individual has a right to seek legal assistance in the administrative expulsion proceeding if:

1. he or she is a third-country national according to the Act on Stay of Aliens;
2. he or she requests provision of legal assistance;
3. he or she does not have their chosen representative in the proceeding, in which they request the provision of legal assistance;
4. he or she is without material means of subsistence, and;
5. the Police Unit of the BBAP has issued a decision on administrative expulsion.

¹⁶ Centre for Legal Assistance: <http://www.legalaid.sk/#azyl> [consulted on 2010-04-03].

¹⁷ Act No. 332/2011 Coll. amending Act No. 327/2005 Coll. on Providing Legal Aid to Persons in Material Need and on the Changes and Amendments of Act No. 586/2003 Coll. on the Legal Profession and on Changes and Amendments of Act No. 455/1991 Coll. on the Business and Self-Employment Services (Business Licensing Act) as Amended by Act No. 8/2005 Coll.; as amended.

¹⁸ Directive 2008/115/EC of The European Parliament And of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals of 16 December 2008.

The application for provision of legal assistance shall be submitted by the applicant in the Centre or at the Police Unit, where the third-country national is presented. The Centre for Legal Assistance carries out the urgent acts of legal assistance, especially, when filing an application for remedial measures, even if the application is not complete. The Centre for Legal Assistance examines the condition of being destitute of resources only if the applicant had a residence permit in the SR forthwith, before the rendition of the decision on administrative expulsion. The provision of legal assistance in the proceedings on administrative expulsion continues even after a decision on administrative expulsion is revoked¹⁹.

The Statistical Office of the Slovak Republic

Within the asylum and migration policy organisation in the SR, the Statistical Office of the SR deals with a number of areas, such as administration and publishing of official code lists and classifications (countries code list, classification of statistical territorial units of the SR, statistical sectoral classification of economic activities, job classification, and classification of education fields), harmonisation of the content and scope of information on foreigners within the standards of the European Union, the United Nations (UN) and within fundamental documents approved by the Government of the SR. The Statistical Office makes the information on foreigners and their integration publicly available. The Statistical Office also publishes publications presenting the phenomenon of foreign migration and international protection, as well as basic information on foreigners' within the SR. The Statistical Office uses the information on foreign migration (international migration) in making prognoses of population developments in line with Eurostat requirements. The SO SR has launched a website with basic infor-

¹⁹ Act No. 327/2005 Coll. on Providing Legal Aid to Persons in Material Need and on Changes and Amendments of Act No. 586/2003 Coll. on the Legal Profession and on the Changes and Amendments of Act No. 455/1991 Coll. on the Business and Self-Employment Services (Business Licensing Act) as Amended by Act No. 8/2005 Coll.; as amended.

mation on foreign migration and on foreigners in the SR (www.statistics.sk). At the same time, the Statistical Office publishes data on foreigners with legal residence within the SR, compiled in cooperation with institutions that collect foreign migration data for Eurostat by means of the International Migration Data Collection.

The Statistical Office of the SR gained large quantities of important data through the Census in 2011 that can form a base for the elaboration of indicators for integration of foreigners; for instance, the data that shows the structure of the type of foreigners as required by the EU in the period between the censuses of population (age, sex, nationality, country of birth, date of immigration to the SR) and the data of economic, educational, cultural, and linguistic nature (employment, function, acquired education, computer skills, ethnicity, religion, mother tongue, most used language).

2.1.1.1 Regional and Local Level of State Administration

Offices of Labour, Social Affairs and Family

46 Offices for Labour, Social Affairs and Family are directly subordinated to COLSAF. Within the field of migration and integration of foreigners, duties related to the granting of work permits to foreigners and third-country nationals, and keeping of registers of employed foreigners fall under their authority under the Act on Employment Services. Besides granting work permits to foreigners, these offices are also responsible for the agenda relating to the granting and payment of allowances in material need. The Offices of Labour, Social Affairs and Family are also responsible for the foreigners employment, for providing information to and advising foreigners on employment opportunities in the given areas, registration of information cards on employment of EU nationals and foreigners who do not need a work permit within their respective territory, and granting work permits, keeping records and information about the numbers of work permits issued²⁰.

²⁰ COLSAF. <http://www.upsvar.sk> [consulted on 2008-11-13].

Aliens Police Departments

There are 12 Aliens Police Departments of the Police Corps of the SR (hereafter also "APD" or "Aliens Police Department") within the Slovak Republic. In accordance with the Act on Stay of Aliens, Aliens Police Departments are primarily entitled to make decisions on granting residence permits and on their prolongation, revocation or cancellation. Aliens Police Departments are important institutions, which through their decision-making activities, represent the basic first-contact institution for every foreigner living in the territory of the SR. They are also entitled, among other things, to investigate the legality of a foreigner's residence, his/her fulfilment of the conditions required for residence, and his/her adherence to the requirements for foreigners according to the relevant laws. These departments are also entitled to question other natural persons or legal entities in relation to their investigations concerning the residence of foreigners in the territory of the SR. In accordance with the provision noted above, when executing the requirements of its office, the police officers of the Aliens Police Departments of the Police Force, can freely enter the premises of employers, entrepreneurial or educational facilities, and also accommodation facilities and they can also request proof of identity and require a viable explanation regarding the issues subject to the control.

Directorates of the Border and Aliens Police, Aliens Police Directorates and Border Police Directorate

The BBAP organisational structure also includes superior bodies of the Aliens Police Departments²¹ – the Directorates directly subordinated to the BBAP. The internal regulation of the MoI SR determines the tasks of the Directorates in their territorial competence. There are the Directorates of the Border and Aliens Police (DBAP) Bratislava and Prešov, and the Aliens Police Directorates (APD) in Banská Bystrica. The organisational structure also includes the Border Police Directorate (BPD) in Sobrance and the Police Detention Facilities for Foreigners in Medvedov and Sečovce.

²¹ Border Control Departments are also a part of the Border and Aliens Police Directorate and of the Border Police Directorate.

Departments of General Internal Administration

The Departments of General Internal Administration and the subordinate Sub-Departments of Citizenship and Registry, both of which are incorporated into the structure of the Regional County Offices, receive applications for citizenship from foreigners at their places of residence within the SR. For the purposes of implementing the Act on State Citizenship, examination boards are created within these departments to check the knowledge of applicants for Slovak citizenship within the scope laid down in law. After examination of applicants, these departments and offices forward the applications to the Ministry of the Interior for making a decision²².

Although the management of all aspects of migration and asylum policy in Slovakia is a top-down process, so far migration and asylum issues have not been significantly addressed on the regional level. That said, it has been the long-term intention of the state bodies to transfer new responsibilities within the area of migration policy to towns and municipalities. Migration-related issues have so far been a matter of concern for only a very small number of residential areas. Only those towns and villages where asylum centres are located were involved in offering services required by migration policy. In the effort to include regions in the process of formulating migration policy, state institutions wish to cooperate more closely with the Association of Slovak Towns and Municipalities (ZMOS), especially in the areas of facilitating institutional, material, technical and financial preconditions for the integration of migrants into the society. The Association is a voluntary organisation uniting over 95 per cent of all towns and municipalities in the SR. It represents their interests to the National Council of the SR, the Government, central bodies of state administration and other bodies and organisations within the country and abroad²³.

²² Bargerová, Divinský, 2008. p. 114.

²³ Between 2006 and 2007, the Migration Office carried out a series of information and educational lectures on the major aspects of migration and asylum for managing structures of the ZMOS, and the heads

The Strategy of Foreigner Integration assumes a significant transfer of competencies to self-government bodies, which should play a key role mainly in the field of foreigners' integration. The Migration Policy of the Slovak Republic, with the perspective valid until the year 2020, states that the implementation of this policy is based on the coordinated approach of the state organisations, organisations of local state administration and local self-administration and it anticipates the involvement of the non-governmental organisations and other organisations active in this area.

2.1.2 Other Institutions Addressing the Issue of Asylum and Migration

2.1.2.1 International Organisations

UN High Commissioner for Refugees (UNHCR)

The UN High Commissioner for Refugees provides assistance to asylum seekers and recognised refugees within the SR, and it also exerts control and monitoring duties. Projects undertaken on the basis of UNHCR grants, in collaboration with partner NGOs throughout the country of Slovakia, focusing on the provision of legal, social and psychological counselling and assistance, as well as on the implementation of educational, cultural, retraining, leisure and support programmes. The commission also offers material aid and financial assistance to asylum seekers during asylum proceedings in refugee centres and to recognised refugees during their integration process.²⁴ The activities of the office of the UNHCR in Bratislava will cease due to the organisational changes on 31 December 2012.

of self-governments in towns and villages. They were organised thanks to the project *Positívne ovplyvňovanie verejnej mienky majoritnej spoločnosti v záujme uľahčenia integrácie azylantov a migrantov do spoločnosti*, carried out under the leadership of the Goodwill Society, in cooperation with the Slovak Humanitarian Council and Association for Education of Self-Governments (*Asociácia vzdelávania samosprávy*). For more information see: http://www.ludiaakomy.sk/sr_a_ute-cenci6.php and *Migration and Asylum*: p. 51.
24 www.unhcr.sk.

IOM International Organization for Migration

The IOM in Slovakia has consistently worked on return programmes for asylum seekers, unsuccessful asylum seekers, migrants and irregular migrants. In the general area of migration, IOM has for a long time been addressing the issue of trafficking in human beings, focusing primarily on educational activities. The IOM has also initiated research projects on migration within the country. Since December 2008, it has been the coordinator of the National Contact Point of the European Migration Network within the SR²⁵. The national office also deals with the area of migrants' integration. From 2006 it has run the Migration Information Centre (MIC) that provides legal and social counselling to foreigners planning to live or already living in Slovakia with the aim to facilitate their integration into both the labour market and society at large. The Centre has its seat in Bratislava and a branch office in Košice. Complex information is provided via personal consultations, a help line and via e-mail. All important information for foreigners is published on the website www.mic.iom.sk. Within the support of migrants' integration into the labour market, MIC IOM provides financial contributions to training/retraining courses. Individual counselling includes CV preparation, orientation on the labour market and assistance in seeking a job. MIC IOM has long cooperated with migrants' communities in Slovakia, thanks to its cooperation with cultural mediators in

25 The National Contact Point (NCP) of the European Migration Network (EMN) in the SR is formed by a group of institutions defined by the Agreement between the Government of the Slovak Republic and IOM International Organization for Migration on the Coordination of the Activities of the European Migration Network of 20 July 2009. NCP fulfils duties related to the implementation of EMN activities on the basis of the EMN Work Programme of the given calendar year: it collects, completes and documents information on asylum and migration in the SR, provides information via special reports, studies and replies to ad-hoc requests for information (so-called ad-hoc questions); NCP does not conduct primary research, but it collects, analyses and publishes available data and information describing the most important developments in the field of migration policies and legislation, as well as public debates on migration and asylum within the EU Member States (on the EU level). NCP in Slovakia consists of the following institutions: IOM International Organization for Migration, - Office in the Slovak Republic (National Coordinator), Ministry of the Interior of the SR - Bureau of the Border and Aliens Police of the MoI SR, Migration Office of the MoI SR, Legislation and External Relations Section of the MoI SR, Ministry of Labour, Social Affairs and Family of the SR - International Relations Section, and the Statistical Office of the SR - Social Statistics and Demography Section. More information available at: www.emn.sk [consulted on 2010-05-03].

organising information meetings for communities and the general public in different Slovak towns²⁶.

2.1.2.2 Non-Governmental Organisations

The most active organisations working in the field of migration and asylum are the following: The Human Rights League, the Slovak Humanitarian Council, the Goodwill Society and the Milan Šimečka Foundation. The list of organisations collaborating with UNHCR also includes the Association of Recognised Refugees in Slovakia. It is however, a very positive fact that more organisations and institutions have become active in the field of migration and asylum, and more projects have been financed from EU funds – the European Fund for the Integration of Third-Country Nationals under the Solidarity and Management of Migration Flows Programme. The non-governmental organisations active in the area of migration and asylum participated vehemently in the consultation procedure for the preparation of a new Act on Stay of Aliens that was approved by the National Council (parliament) of the SR on 27 September 2011 and which entered into force on 1 January 2012.

The Human Rights League

The Human Rights League provides free and comprehensive legal counselling for asylum seekers, recognised refugees and persons with other forms of protection. The League implements several projects concerning, for example, monitoring the entry of foreigners into the territory of the SR and into the asylum procedure, or the situation of unaccompanied minors in the SR. The League also provides legal counselling for asylum seekers from the European Refugee Fund (ERF) and to foreigners from the European Fund for the Integration of Third-Country Nationals. Also, the organisation participates in

26 Between 2006–2008, the project was financed by the European Social Fund under the EQUAL Community Initiative. The project has continued since 2009 thanks to financing from EU funds – the European Fund for the Integration of Third-Country Nationals under the Solidarity and Management of Migration Flows Programme.

international projects²⁷.

The Goodwill Society

The Goodwill Society has been working with asylum seekers and recognised refugees since the 1990s. It has its seat in the City of Košice, but operates throughout the country²⁸. It has continuously provided social and psychological counselling, legal representation of refugees in administrative procedures, and assistance for individuals and families with accommodation and employment. The organisation also provides settlement grants and grants for accommodation as well as organising retraining courses, and social events, etc.²⁹.

The Slovak Humanitarian Council (SHR)

The Slovak Humanitarian Council is a national volunteer centre, coordinating 175 humanitarian and charity organisations, civil society organisations and foundations working in a broadly defined area of social affairs throughout Slovakia. It provides its members with direct financial assistance for administration and humanitarian projects. Since 1999, the Council has been the implementation partner of the UNHCR in a project of material assistance and social counselling for asylum seekers in refugee centres. The organisation has implemented several projects in the field of asylum, such as monitoring and crisis assistance before the entry into the asylum procedure, facilitating integration of recognised refugees, social assistance to unaccompanied minor migrants, and general social and legal counselling³⁰.

The Association of Recognised Refugees in Slovakia

The Association of Recognised Refugees is a civil society organisation founded in 2006

27 The Human Rights League was established in April 2005 as a new organisation after termination of the activities of the Slovak Helsinki Committee: Website of the Human Rights League. <http://www.hrl.sk/?a=about> [consulted on 2008-11-15] and *Projekt monitoringu vstupu na územie SR a do azylového konania (AMAS)* <http://www.hrl.sk/projects/view/4> [consulted on 2008-11-15].

28 Goodwill Society. <http://www.cassovia.sk/sldv/> [consulted on 2008-11-11].

29 Website of EQUAL project People Like Us. http://www.ludiaakomy.sk/partner_sldv.php [consulted on 2008-11-11].

30 This organisation has been active in Slovakia since 1990. www.shr.sk/utecenci.htm [consulted on 2010-04-05].

with its seat in Zvolen. The members of the Association are people who have been granted asylum and former asylum seekers who are currently citizens of the SR of different nationalities living in Slovakia. The main goal of the Association is to promote active participation of people granted asylum into public life and in the solution of manifold problems that people who are granted asylum face during their integration in Slovakia³¹.

Milan Šimečka Foundation

Milan Šimečka Foundation is also working on migration and implements several projects aimed at integration, in particular. The main focus is on inter-cultural education and inter-ethnic relations. Since 2006, the Foundation has organised the festival *Week of New Minorities*, informing the public about migration and new communities in the SR by means of new movies, presentations and discussions aimed at promoting mutual dialogue³².

More information on particular projects of the different organisations and institutions is available in the Annual Reports of the European Migration Network on Migration and Asylum (2008, 2009, 2010, 2011),³³ and on the website of the body responsible for the implementation of the general programme Solidarity and Management of Migration Flows of the MoI SR³⁴.

2.1.2.3 Research Institutions and Migration Research in the SR

Research on migration, or more precisely foreign migration, is still very limited in the SR, and basically only started in the year 2004. It is usually project-based and its financing has so far come from various framework programmes within the EU. In contrast to other EU Member States, there is no state or non-state institution

31 UNHCR. State authorities dealing with issues of asylum seekers and refugees. <http://www.unhcr-budapest.org/slovakia/index.php/partneri> [consulted on 2010-04-05].

32 Milan Šimečka Foundation. www.nadaciamilanasimecku.sk/index.php?id=116.

33 www.emn.sk [consulted on 2010-05-13].

34 http://www.minv.sk/?solidarita_a_riadenie_migracnych_tokov [consulted on 2010-06-28].

in Slovakia to provide a systematic approach to research on migration and related social phenomena, processes or problems.

Nevertheless, thanks to the financial resources from the different funds of the general programme Solidarity and Migration Flows Management, single-topic innovative research by different non-governmental organisations has been intensified.

IOM continues to play an important role as an initiator of research projects. The IOM implemented the first comprehensive research on migration in the SR, the outcome of which was published in 2004 as Volume V Slovakia – An Acceleration of Challenges for Society, one of a set of publications entitled Migration Trends in Selected EU Applicant Countries³⁵. The second and more important research on migration was carried out by the IOM partner organisation as part of an EQUAL project – the **Department of Social and Biological Communication of the Slovak Academy of Sciences**. The resulting publication, Needs of Migrants in Slovakia, appeared in 2006.³⁶ The publication, Integration of Migrants in the Slovak Republic (2008), summarises the results of the research initiated by IOM in Slovakia.³⁷ In 2009, IOM implemented a research project Migration in the Slovak Republic after Accession to the EU (2004-2008) resulting in two publications – Migration Trends in the Slovak Republic after Its Accession to the EU (2004 – 2008) and Attitudes of the Public to Foreigners and Foreign Migration in the Slovak Republic. Currently, the IOM is working on the research dealing with violence committed towards migrants that will be published at the beginning of 2013. Several researches were conducted by IOM in its position as the coordinator of the National Contact Point of the Euro-

35 By the author RNDr. Boris Divinský. The publication is only available in English.

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

37 Bargerová, Z., Divinský, B. Integrácia migrantov v Slovenskej republike. Výzvy a odporúčania pre tvorcov politik. Bratislava: IOM Medzinárodná organizácia pre migráciu, 2008. The summary and the recommendations are available in English at the IOM Office in Bratislava. The publication was prepared as a part of the EQUAL project.

pean Migration Network³⁸.

Migration is also marginally addressed by the **Institute for Labour and Family Research**³⁹, which is an organisation within MoLSAF SR.

Ethnicity and multiculturalism is the key research area of the **Centre for the Research of Ethnicity and Culture (CVEK)**. CVEK carries out this research individually or in cooperation with other non-governmental and international organisations active in Slovakia.

Institute for Public Affairs (IVO) associates the experts from different areas with the goal to pursue the values of open society and democratic political culture in the social decision making. The research activities focus on the economic aspects of migration and integration of migrants from the third countries, cultural diversity created as a consequence of foreign migration and gender aspects of the migration and integration in the Slovakia.

The **Slovak Governance Institute (SGI)** is a non-partisan, non-profit and civic association, which is by means of its activities trying to improve the quality of public resources allocation in order to secure the high quality, transparent and effective public services for the citizens of the SR. In the area of migrants' integration the SGI implemented a project on the preparation of the indicators of the integration policies.

Local Media Institute addresses and supports the integration of migrants from third countries via a TV transmission called Integruj!

More detailed information is available in the EMN Annual Reports 2010 and 2011.

Throughout the years 2008 - 2012, the number of authors publishing works on migration and asylum has increased. This is mainly due to the active work of the National Contact Point of

38 Available on the webpage: www.emn.sk

39 Until 28 February 2006, this institute operated under the name of Centre for Labour and Family Research. Website: www.sspr.gov.sk/ [consulted on 2008-11-23].

the European Migration Network in Slovakia⁴⁰ which organises and finances studies in this area (e. g. Mittelmannová, Številová, Bargerová, Grethe Guličová, Potočková). Projects financed from the EIF fund have also been very helpful, since the results of certain projects have had a positive impact, and also publications that had been missing in Slovakia until recently were prepared (e. g. Vašečka, Fajnorová, Siman, Mokrá, Miháliková, Jančo). The most prolific author in migration research is the independent researcher, RNDr. Boris Divinský, who has published several publications and articles on cross-border migration in the SR⁴¹.

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

The subject of asylum in the SR is covered by the Act No. 480/2002 Coll. on Asylum and on Changes and Amendments of Some Acts (hereafter "Act on Asylum"). The Act on Asylum establishes the rights and duties of asylum seekers and the conditions for the provision of subsidiary protection and temporary shelter to foreigners. Asylum seekers, persons granted asylum and persons with temporary shelter or subsidiary protection are eligible for residence in the territory of the SR automatically, even without prior decisions on applications for residence permits and fulfilment of legal conditions. The most significant recent change in Slovak legislation, carried out under the directives of EU legislation in the field of asylum, is the transposition of the Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (the so-called Procedural Directive). It was transposed into the Slovak legal system by amendment No. 643/2007 Coll. of the Act on Asylum, in effect from 1 January 2008. Another change was the transposition of Article 15 ("right to legal assistance and representation") from this directive resulting in the newest

40 www.europska-migracna-siet.sk/sk/na-stiahnutie/.

41 Refers to the list of published works in Bibliography.

amendment No. 451/2008 Coll. and the attendant changes it has brought about. In the near future the preparation of amendment to the Act on Asylum is to be expected in connection with the transposition deadline (13 December 2013) of the recast qualification directive⁴².

Act No. 48/2002 Coll. on Stay of Aliens and on Changes and Amendments of Some Acts (old Act on Stay of Aliens) was, until 31 December 2011, the imperative legal norm governing the field of entry and residence of foreigners in the territory of the SR, and the basic rights and obligations of foreigners from the moment of their entry and throughout their residence in the Slovak Republic.

Due to the need to modify the rules for granting visas in accordance with the Community Code on Visas⁴³, adjustments on the conditions for granting temporary residence permit, and in connection with the transposition of the Return Directive⁴⁴, an amendment to the Act on Stay of Aliens (Act No. 594/2009 Coll. on Changing and Amending the Act on Stay of Aliens) was passed, which came into force on 15 January 2010.

The changes introduced by the amendment concerned three areas:

- changes in granting visas;
- changes in granting individual types of residence permits;
- administrative expulsion and detention of foreigners.

The provisions of the EU Blue Card Directive⁴⁵ and the Employers' Sanctions Directive⁴⁶ were

42 Directive of the European Parliament and of the Council 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast).

43 The Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 Establishing a Community Code on Visas (Visa Code) has been in place since 5 April 2010.

44 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on Common Standards and Procedures of Member States for Returning Illegally Staying Third-Country Nationals (hereafter "Return Directive").

45 Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

46 Directive 2009/52/EC of The European Parliament and of the Council providing for minimum standards on sanctions and measures

implemented into the Act on Stay of Aliens by another amendment⁴⁷ which came into force on 20 July 2011. The amendment regulated the obligation to cover the costs of the administrative expulsion of a foreigner, who was illegally employed by his employer in the first place. The third-country nationals who were illegally employed under particularly exploitative working conditions or the minors who are illegally employed can be granted tolerated stay for their inevitable presence in criminal proceeding. A new type of temporary residence – EU Blue Card – for the highly qualified third-country nationals was introduced together with the conditions for its granting, renewal and withdrawal. The EU Blue Card is issued for 3 years.

On 1 January 2012 the new Act No. 404/2011 Coll. on Stay of Aliens and on the Change and Amendment of Certain Acts came into force. At the same time it revoked the previous Act on Stay of Aliens and unified the issues of border controls focused on the border control of individuals with the stay of foreigners into one legal act⁴⁸. Among the goals of the new legislation also is the harmonisation of migration and foreigners' integration management mechanisms, in particular, focusing on harmonisation of procedures and policy in certain areas with the developments and trends within the EU Member States. The new Act on Stay of Aliens introduced several novel definitions, such as illegal border crossing, threat to public order, threat to state security, illegal stay, marriage of convenience, risk of absconding and so on. It also unified certain definitions with the EU legislation (definition of EU citizen, family members of the EU citizen and third-country national) which stems from the application practice or transposition of the EU law. The new Act on Stay of Aliens maintains existing types of residence: tempo-

against employers of illegally staying third-country nationals of 18 June 2009.

47 Act No. 223/2011 Coll. on Changes and Amendments of Act No. 82/2005 Coll. on Illegal Work and Illegal Employment and on Changes and Amendments, as Amended.

48 Act No. 404/2011 Coll. on Stay of Aliens and on Changes and Amendments of Some Acts at the same time repealed Act No. 48/2002 Coll. on Stay of Aliens and on Changes and Amendments of Some Acts and Act No. 477/2003 Coll. on Protection of the State Border.

rary residence, permanent residence and tolerated residence. The Act extended the scope of third-country nationals who could be granted temporary residence for the purpose of a particular activity, as accredited journalists in the SR, after fulfilling all legal requirements. The Act introduced the temporary residence permit for third-country nationals who were granted the status of the Slovaks living abroad. The third-country nationals with temporary residence for the purpose of family reunification can pursue a business immediately after they have been granted a temporary residence; the exceptions are regulated in the Act. The current legislation does not distinguish between first and consequent permit in case of permanent residence; however, it distinguishes the permanent residence granted for 5 years, permanent residence for unlimited period and long-term residence. Novel is the regulation of the third-country nationals who are EU long-term residents within the permanent residence. The category of the family members of the EU citizens comprises also registered partners of the EU citizen who has permanent, duly certified relationship, as well as, the third-country national with the right of residence as a family member of the EU citizens in another EU Member State, whereas the EU citizen is a citizen of the SR who returns back to the SR with the third-country national for the purpose of residence or who joins a citizen of the SR on the way back to the SR for the purpose of residence in the SR provided that the third-country national is a relative of the citizen of the SR. These changes are related to the full transposition of the Free Movement Directive⁴⁹.

The issues related to employment of foreigners in Slovakia are governed by the Act No. 5/2004 on Employment Services and on Changes and Amendments of some Acts as Amended (hereafter "Act on Employment Services"). This Act is subject to frequent changes, yet the amend-

49 Directive 2004/58/EC of the European Parliament And of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC of 29 April 2004.

ment in force since 1 May 2008 had a significant impact on the legal regulation of the employment of foreigners. The amendment to the Act on Stay of Aliens (Act No. 594/2009 Coll. on Changes and Amendments of the Act on Stay of Aliens) which came into force on 15 January 2010 brought about changes to the Act on Employment Services. The Act No. 223/2011 Coll. came into force on 20 July 2011 and it amended among others the Act. No. 5/2004 Coll. on Employment Services and on Changes and Amendments of Some Acts as Amended in such a way that it widened the obligations for employers of the citizens of the EU and third-country nationals. These obligations are stipulated in the § 23a and they include the obligation to request a valid residence document or other residence authorisation according to the by-laws by the employer from the third-country national before his/her employment admission and to keep a copy of those documents during the duration of employment. The employer is obliged to inform in writing to the Office of Labour, Social Affairs and Family regarding the date of commencement of employment and the date of termination of employment of third-country nationals, as well as citizens of the EU and their family members no later than seven working days from the commencement of employment and no later than seven working days from the termination of employment. The EU Blue Card holder who is party to legal relations commencing according to the Act on Employment Services has equal legal status as of a citizen of the SR⁵⁰.

The Act No. 82/2005 Coll. on Illegal Work and Illegal Employment and on Changes and Amendment of Certain Acts establishes a general prohibition of illegal work and illegal employment. It regulates the control activity of responsible subjects, as well as sanctions for illegal work⁵¹.

50 Mrliánová, Ulrichová, Zollerová (2012): Výročná správa o politikách v oblasti migrácie a azylu 2011 Slovenská republika, p. 23, 47, 48.

51 The Act No. 223/2011 Coll. transposed to the Act No. 82/2005 Coll. the provisions of the Directive 2009/52/EC of the European Parliament and of the Council providing for the minimum standards on sanctions and measures against employers of illegally staying third-country nationals.

The Act No. 300/2005 Coll. Criminal Code as Amended by Later Laws represents an important restrictive measure in connection to the illegal migration and its negative attendant circumstances. The Criminal Code regulates the criminal offence of smuggling, human trafficking, child trafficking and states the relevant sanctions among which the important position has the punishment in the form of judicial expulsion.

An important area of the migration legislation related to employment of foreigners is the recognition of qualification, governed by the following legal regulations in Slovakia:

- a) Act No. 293/2007 Coll. on Recognition of Professional Qualifications As Amended;
- b) Act No. 131/2002 Coll. on Universities and on Changes and Amendments of Some Acts As Amended;
- c) Act No. 596/2003 Coll. on State Administration in the School System and on School Self-Government and on Changes and Amendments of Some Acts As Amended.

All the manners of acquiring citizenship of the SR are regulated by the Act No. 40/1993 Coll. on the Citizenship of the Slovak Republic as Amended. This Act, among others, regulates the acquisition of Slovak citizenship by granting citizenship upon foreigner's application via naturalisation, which is considered one of the most important ways of acquiring citizenship by foreigners.

In the field of health care, the Act No. 576/2004 Coll. on Health Care Provision as Amended and the Act No. 577/2004 Coll. on the Scope of Health Care Covered by Public Health Insurance and on Reimbursement of Healthcare-Related Services and on Changes and Amendments of Some Acts are important besides the Act on Asylum. The issues related to health insurance are governed by the Act No. 580/2004 Coll. on Health Insurance as Amended.

This chapter offers a chronological overview of the development of asylum and migration policies from the establishment of the independent Slovak Republic from 1993 through to July 2012. It is comprised of four subchapters: Basic description of the situation of migration in the SR, Period after the establishment of the independence of the SR, Development of the non-governmental sector, and situation in the SR after accession to the EU. The chapter describes how the main institutions responsible for migration and asylum were restructured over time, and how their roles have changed under external influences and EU requirements.

3.1 Basic Characteristic of the Migration Situation

Slovakia has been changing gradually from a traditional country of emigration to a country of transit. According to several experts, Slovakia will slowly become a country of destination as well. In spite of the intensive pace of economic development in the SR, factors such as higher wages and better jobs in other countries have continued to compel residents of Slovakia to migrate abroad and engage in all forms of labour (short-term, long-term and also circular migration). This trend is apparent mainly in the regions with a continuously high unemployment rate. Therefore, it can be concluded that the trend of labour emigration to other EU countries has persisted since Slovakia's accession to the EU.

Until 1993, residents of the Czech Republic (hereafter also "CR") comprised the majority of immigrants into the SR (in 1993 80% of all registered new residents came from the CR). In a neat reversal, 99% of all emigrants from the SR went to the CR.⁵² Since the creation of the independent state, migrants from Europe have accounted for 80 – 90% of all registered new residents. In subsequent years, the ratio has been declining. The ratio of immigrants from Asia has been growing. The ratio of immigrants from America remained for a long period near 10%, a figure

⁵² Divinský, 2005. p 46. Podľa Vaňo et al., 2003, Jurčová et al., 2004.

03

Development of Asylum and Migration Systems

that has declined in recent years. The ratio of immigrants from Africa, Australia or Oceania has not been significant so far⁵³.

Since Slovakia's accession to the European Union, migrants from EU countries represented the largest group. At the end of 2006, foreigners accounted for 0.6% (32,130) of the total population of SR, while at the end of 2011 this figure rose to 1.25% of the total population of SR. In 2006, the share of third-country nationals was 0.26% (12,631)⁵⁴ and in 2011 it was 0.39% (21,492). Among third countries, Ukraine, Vietnam, Serbia and Montenegro, China and Korea were the most represented in 2011.

As indicated in various publications, since 1993 the net migration of the SR has until now always been positive. In his 2005 publication, Divinský points out the differences between the statistical data showing low numbers of emigrants from the SR into specific target countries registered by the Statistical Office of the SR, and the high numbers of immigrating Slovaks in these target countries as registered by their statistical offices (e.g. CR, USA, Canada and Germany).

One fundamental problem persists in the field of foreign emigration. The official data on emigrants (Slovak nationals and foreigners) are enormously underestimated compared to the actual situation. These differences resulted (just like in many other countries) from lax registration of migrating persons due to their lack of discipline in deregistration from permanent residence in the SR – just a minimum number of migrating persons complies with this statutory obligation. Divinský concludes that “the officially proclaimed positive net migration in the Slovak Republic is a sheer myth.” By his estimates, 15,000 to 20,000 persons emigrate annually from Slovakia. The author argues that these losses will have substantial demographic and social consequences. Moreover, migration from Slovakia has become easier since the country's acces-

sion to the EU.⁵⁵ Statistically the SR is gaining in terms of immigration (in 2007, net immigration based on permanent residence registration was 6,793 persons; in 2008 it was slightly higher – 7,060), while the volume of cross-border migration between the SR and foreign countries has tripled since the entry of the SR into the EU⁵⁶.

53 Divinský, 2005. p. 47.

54 BBAP (2008). Štatistická správa pre EMN za rok 2006 (in English: Annual Report on Asylum and Migration Statistics in the Slovak Republic, Reference Year 2006, December 2008. p. 15–16.

55 Divinský, 2005. S. 52.

56 Statistical Office of the Slovak Republic. Zahraničné sťahovanie a cudzinci v Slovenskej republike v roku 2007. p. 6.

Table 1: Number of EEA nationals with registered permanent residence⁵⁷ and number of third-country nationals with residence permit⁵⁸ from 2000 to 2011 as of 31 December of the respective year:

Year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
EU- EEA	28 801	29 418	29 505	29 219	22 108	25 635	32 153	41 214	52 706	58 322	39 380	41 593
Third countries	-	-	-	-	-	11 299	12 631	14 912	19 472	21 492	22 932	24 333

Source: BBAP P PF.

Table 2: The most numerous groups of immigrants with residence permits (including EEA nationals) as per country of origin and citizenship from 2000⁵⁹ to 2004 as of 31 December of the respective year:

Year/Country of origin:	2000	2001	2002	2003	2004
Czech Republic	-	4 994	-	4 931	3 583
Ukraine	-	4 631	-	4 913	4 007
Poland	-	2 428	-	2 395	2 468
Romania	-	1 910	-	1 902	-
Yugoslavia/Serbia and Montenegro	-	1 609	-	1 480	-
Hungary	-	1 516	-	1 547	1 519
Vietnam	-	1 477	-	1 716	832
Russian Federation	-	1 371	-	1 362	1 213

Source: Statistics of BBAP P PF and own calculations.

Table 3: The most numerous groups of immigrants with residence permits (including EEA nationals) as per country of origin and nationality from 2005 to 2011 as of 31 December of the respective year and as of 30 June 2012:

Year/Country of origin	2005	2006	2007	2008	2009	2010	2011	1st half of 2012
Czech Republic	-	5 113	5 958	6 943	7 764	-	-	-
Ukraine	3 719	3 927	3 833	4 726	5 413	5 786	6 091	6 370
Poland	-	3 646	4 011	4 380	4 680	-	-	-
Serbia	-	333	1 195	1 674	2 434	2 894	4 311	4 436
Hungary	-	2 106	2 713	3 624	4 396	-	-	-
Vietnam	847	1 063	1 452	2 534	2 204	2 032	1 974	2 118
Russian Federation	1 246	1 311	1 366	1 485	1 738	1 942	1 974	2 118
China	-	896	1 205	1 478	1 609	1 729	1 739	1 857
South Korea	-	837	1 137	1 485	1 525	1 592	1 552	1 654
Bulgaria	-	547	984	1 353	-	-	-	-

Source: Statistics of BBAP P PF and own calculations.

57 Since 1st May 2004, EU nationals need not apply for a residence permit in the SR; they can register voluntarily – only then their residence is recorded in the statistics. The total number of EEA citizens staying in the SR is therefore incomplete.

58 The number of third-country nationals is indicated in the second line of the table.

59 Statistics data from this aspect is not available for the years 2000 and 2002.

Table 4: Development of granted residence in 2008 and 2011 in the SR

Type of residence	2008	2009	2010	2011
Temporary residence	6 615	4 646	3 764	3 865
Third-country nationals	6 615	4 646	3 764	3 865
Permanent residence	9 689	6 871	5 505	5 998
Whereof				
Third-country nationals	1 074	820	923	1 247
EEA nationals	8 615	6 051	4 582	4 751
Tolerated stay	249	273	266	201
Whereof				
Third-country nationals	219	245	218	164
EEA nationals	30	28	48	37
Residences in total	16 553	11 790	9 535	10 064
Whereof				
Third-country nationals	7 908	5 711	4 905	5 276
EEA nationals	8 645	6 079	4 630	4 788

Source: BBAP P PF.

Table 5: Overview of asylum applications in the SR from 1993 until July 2012.

Year	Number of asylum applications	Granted asylums	Not granted asylum	Granted/not granted subsidiary protection	Procedure discontinued	Granted citizenship of the SR
1993	96	41	20	-	25	0
1994	140	58	32	-	65	0
1995	359	80	57	-	190	0
1996	415	72	62	-	193	4
1997	645	69	84	-	539	14
1998	506	53	36	-	224	22
1999	1 320	26	176	-	1 034	2
2000	1 556	11	123	-	1 366	0
2001	8 151	18	130	-	6 154	11
2002	9 743	20	309	-	8 053	59
2003	10 358	11	531	-	10 656	42
2004	11 395	15	1 592	-	11 782	20
2005	3 549	25	827	-	2 930	2
2006	2 849	8	861	-	1 940	5
2007	2 642	14	1 177	82/646	1 693	18
2008	909	22	416	66/273	455	4
2009	822	14	330	98/165	460	1
2010	541	15	180	57/104	361	3
2011	491	12	186	91/48	270	7
7/2012	391	16	144	50/64	155	0
Total	55 576	558	6 809	270	47 861	204

Source: MO.

There has been a decreasing trend in number of asylum applicants since 2008 comparing to the recent past (see Table 5). In 2011, 491 applications for asylum in the SR were filed, the lowest number since 1997. The number of positive decisions on the granting of asylum decreased, as well. There were 14 asylums granted in 2009, 15 in 2010, 12 in 2011, whereas 22 in 2008. 330 persons were not granted asylum, and in 460 cases proceedings were discontinued. In 2009, asylum was granted in most cases to the citizens of Iran (3), Cuba (3)⁶⁰.

A subsidiary protection was granted in more cases by the MO, there were 98 persons granted subsidiary protection in 2009 (an increase by 31 persons compared to 2008), 57 in 2010, 91 in 2011. Until July 2012 there were 50 granted subsidiary protections. Altogether there was subsidiary protection granted to 246 individuals from 2007 to 2009, i. e. 5.6 % of the total number of asylum seekers. In total 198 individuals were granted subsidiary protection from 2010 until July 2012, i.e. 13.9% of the total number of asylum seekers. This shows a clear increase in the number of granted asylum protections.

3.2 Period after the Establishment of the Independent SR

The Geneva Convention on Refugees and the New York Protocol on the Status of Refugees became binding for the Czech and Slovak Federal Republic (CSFR) on 24 February 1992. On 1 January 1993 the independent Slovak Re-

60 MO Mol SR, Yearbook on Statistics 2009. Available at: www.minv.sk/?statistiky-20. The highest number of asylum applications was filed by the Panjabis (155), Georgians (68), Moldovans (66) and Vietnamese (53). According to the nationality, in 2009 the biggest number of asylum seekers were from Pakistan (168), Georgia (98), Moldova (73), Russian Federation including Tchechenia (72), India (57), Vietnam (56) and Afghanistan (51). Potočková, 2010: 28.

public was created. After the split between the CSFR, the Slovak Republic honoured all of its international commitments. The asylum issues in particular represented a new social phenomenon. The SR found it necessary to establish the bases for a functional asylum system and an institutional basis to address issues related to refugees, as well as relevant legislation and government measures.

The Migration Office was established as a successor to the Secretariat of the Deputy of the Government of the SR on Refugee Issues by Government Resolution No. 501 of 13 July 1993. It was entrusted with the responsibility for creating and implementing the migration policies of the SR in the area of asylum. Facilities such as reception centres, accommodation centres, and an integration centre were established under its aegis. Concurrently, the office addressed personnel, material and technical needs⁶¹.

The first **Principles of the Migration Policy of the Slovak Republic** were agreed upon by Government Resolution No. 846 of 16 November 1993. The document outlined both the duties of the state regarding foreigners as well as the duties of foreigners regarding the SR upon entering Slovakia⁶².

After the establishment of the independent SR, the Police Corps were entrusted with competencies linked to the provision of foreigner's regime and passport service. On 1 January 1993,

61 Human Rights League. Partneri www.hrl.sk/pages/partners [consulted on 2008-11-11].

62 Azylová problematika. Retrospektíva a základné právne predpisy. Available online at www.ludiaakomy.sk/sr_a_uteccenci4.php or as a pdf publication Migrácia a azyl v podmienkach Slovenskej republiky (hereafter „Migration and Asylum“). Available online at www.ludiaakomy.sk/download/posledna%20S.zip [consulted on 2008-11-11]. Compiled by the Director of the Migration Office of the Mol of the SR, Ing. Bernard Prieceľ, and the Director of its Department of Migration and Integration, Ing. Vladimír Belo-Caban.

Table 6: Granted subsidiary protection from 2007 until 2011

Year	2007	2008	2009	2010	2011	7/2012
The number of granted subsidiary protections	82	66	98	57	50	50

Source: MO.

a separate Department of Aliens Police and Passport was created and incorporated into the structure of the Directorate of the Police Corps. Before the creation of this new department, it had been the responsibility of the Directorate to grant entry and residence to foreigners, as well as to issue passports, and manage the alien police at border crossings⁶³.

In January 1994, the UNHCR began its work in Slovakia, exerting a controlling and monitoring function. Its work will cease due to the structural changes on 31 December 2012.

From 1994 until 2004, the number of applications for asylum in the SR increased by 81%, creating a need for an institutional oversight of this situation⁶⁴. Between 2001 and 2004, the numbers of asylum applications reached a climax (see Table 5). Despite limited financial resources, state institutions established and administered refugee centres, and prepared and passed new legal norms regarding asylum. Increasingly there was a focus on the issue of integrating recognised refugees into society, an area in which the UNHCR and NGOs took a strong interest⁶⁵.

In November 1996, the IOM opened an office in Bratislava after the signing of the Agreement on the cooperation between the Government of the SR and the International Organisation for Migration (in May 1996). In 2000, a branch office opened in the City of Košice in the Eastern part of Slovakia.

With the goal of improving the operation of the Border and Aliens Police forces, on 1 May 2000 an independent Bureau of the Border and Aliens Police of the Presidium of Police Force was created as a department of the Ministry of the Interior under the Presidium of Police Force. The National Unit to Combat Illegal Migration was established in 2002⁶⁶.

63 Divinský, Migration and Asylum, 2005.

64 Divinský, 2005, p. 147.

65 Divinský, 2005.

66 Divinský, 2005, p. 143 – 144.

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

The non-governmental sector active in the field of asylum and migration has gone through many changes since the establishment of the independent Slovak Republic. It began to constitute itself and gain experience during the 1990s as the number of asylum seekers arriving in Slovakia grew. Until 2005, the following NGOs were most active in providing assistance to asylum seekers and recognised refugees – Slovak Helsinki Committee, People in Peril, Björnson Society, Slovak Humanitarian Council, and the Goodwill Society.

To a certain extent, these organisations covered different regions of the country. The Goodwill Society was active mainly in the Eastern part of Slovakia; the Slovak Humanitarian Council and the Slovak Helsinki Committee in its Western part; and People in Peril together with the Björnson Society were active in the central part of the country. The situation has changed since that time. The Slovak Helsinki Committee, which was set up in 1990, ended its work in 2005. It was replaced by the Human Rights League. The Organisation for Assistance to Refugees which offered social, legal and psychological counselling to asylum seekers and had recognised refugees since 1994 has not been active in the SR since 2002. After a long period of inadequate counselling services to asylum seekers, recognised refugees and other groups of migrants, additional organisations and institutions embarked on the task of improving services. Their activities are briefly described in section 2.1.2.2.

3.4 Situation in the SR after Accession to the EU

Until 2004, the majority of immigrants to the SR were (former) citizens of the Czech-Slovak Federated Republic returning to Slovakia. Since its accession to the EU, Slovakia's main category of immigrants has been citizens of EU Member States⁶⁷.

On 1 May 2004, Slovakia acceded to the EU. This political act was accompanied by many organisational changes in the institutions responsible for migration management. For instance, the Police Corps underwent several changes. The Aliens Police Departments were strengthened; the number of managing units was lowered to four directorates of the Border and Aliens Police in Bratislava, Nitra, Banská Bystrica and Prešov. In line with the schedule of gradual adaptation of the BBAP organisational structure to the requirements and contents of the Schengen acquis, organisational changes were also made in the Bureau's executive departments.⁶⁸ At the beginning of May 2004, the Dublin Centre as a new organisational unit for the Migration Office began its operations. Its mission was to accomplish tasks determined by the Member State responsible for the assessment of an application for asylum filed in a Member State in accordance with the Dublin Regulation⁶⁹.

In 2005, the **Strategy of Migration Policy of the SR** was approved by Government Resolution No. 11/2005 as the fundamental statement in the field of migration management.

In 2006, a new refugee reception centre opened in the town of Humenné in Eastern Slovakia. The establishment of this centre by the Ministry of Interior was a response to criticism that refugee centres were until then only established near the Western borders of Slovakia where migrants

67 Divinský, 2007, p. 77. Most of the migrants moved to the Region of Bratislava, followed by the Region of Košice. Bratislava and Košice are not the only good places for finding a job, but also university cities where foreign students study.

68 Migration and Asylum, p. 21.

69 Divinský, 2005, p. 147.

could easily travel further West to the Czech Republic or Austria.

On 5 September 2007, a new agreement on the monitoring of borders and airports between the UNHCR, the Bureau of the Border and Aliens Police and the Human Rights League was signed (under AMAS project). The main aim of the monitoring agreement was to ascertain whether asylum seekers were granted entry to the territory of the EU and to the asylum procedure. The agreement formalised cooperation, tasks, duties and working procedures of all parties involved⁷⁰.

The Ministry of Labour, Social Affairs and Family created the critically important Department of Migration and Integration of Foreigners⁷¹ on 1 October 2007. It was the main department focusing on labour migration, preparation of the strategy of foreigner integration and social integration of third-country nationals, yet many administrative, legal and financial competencies remained under the authority of the Ministry of the Interior⁷².

On 30th November 2007, the Inter-Departmental Commission on Labour Migration and Integration of Migrants (MEKOMIC) was established by the Ministry of Labour, Social Affairs and Family of SR. Its aim was to provide a platform so that the representatives of relevant state and non-state institutions, departments, organisations as well as independent experts could engage in a mutual exchange of information about their work, experience and needs in the field of migration and integration of migrants living in the SR.⁷³ Parallel with MEKOMIC, a coordination Working Inter-Departmental Commission for Coordinating the Procedures Related to the Fulfilment of Tasks and Activities Resulting from the Migration Policy Strategy of the Slo-

70 UNHCR, Slovensko - nová dohoda o monitorovaní hraníc a letísk. (18. 9. 2007.) Available online at http://www.unhcr.sk/slovakia/index.php?option=com_content&task=view&id=112&Itemid=59 [consulted on 2008-11-13].

71 Currently, this Department does not exist any longer. Details are to be found in Chapter 2.1.

72 Bargerová, Divinský, 2008.

73 Bargerová, Divinský, 2008.

vak Republic was created under the aegis of the Ministry of Interior of the SR.

Slovakia became a part of the Schengen Area on 21 December 2007. The entry into the area has not brought any substantial changes to the SR regarding the provision of international protection to foreigners. The protection of the external Schengen border has become a central focus along with the fight against illegal migration and cross-border crime. The SR's becoming part of the Schengen Area made the innovation of carrying out asylum procedures at international airports in the SR possible. Thus, a foreigner who enters Slovakia by air is able to file an application for asylum directly with the police unit located in the transit areas of the international airports in Bratislava, Košice and Poprad. By becoming part of the Schengen Area, the SR also became a part of the SIS (Schengen Information System)⁷⁴.

In May 2009, the Government of the SR approved the **Strategy of the Integration of Foreigners in the Slovak Republic**⁷⁵. The MOLSaF was responsible for its preparation within the framework of the EIF national project Preparation of Analyses and Recommendations for the Strategy of Foreigner Integration in the SR. The strategy identified the problematic issues and unsolved areas related to the integration of foreigners in the SR as per main thematic fields, set the principles and aims of the policy, and proposed specific legislative, organisational, conceptual and practical measures, as well as determined the responsible actors. The strategy is the result of work of five thematic working sub-groups of the Inter-Departmental Commission for Labour Migration and Integration of Migrants (MEKOMIC) at MoLSAF SR.

⁷⁴ Information from the Migration Office. After undertaking required actions, the agency shall decide whether the asylum seeker will be transported to an asylum facility, remain at the airport, or be returned to the aliens police. However, if no action has been taken on the application within 7 days from the interview or a remedy has not been determined by the court within 30 days following its filing, the asylum seeker must be transferred from the reception centre at the airport to the relevant asylum facility.

⁷⁵ Resolution No. 338 of 6 May 2009.

In 2009, the Managing Committee for Migration and Integration of Foreigners was established. The Committee took over the duties of the Working Inter-Departmental Commission for Coordinating the Procedures Related to the Fulfilment of Tasks and Activities Resulting from the Migration Policy Strategy of the Slovak Republic. This Managing Committee is at the same time, responsible for the implementation of the Strategy of Foreigner Integration and Migration Policy Strategy of the SR (at present Migration policy of the SR with the perspective until the year 2020). It is also responsible for the monitoring of the implementation of tasks arising from these strategies, for the coordination of activities of the individual ministries both at national level and in relation to the EU and other international organisations. "The Managing Committee consists of permanent members (representatives of relevant ministries and public institutions) and ad-hoc members, including non-governmental and international organisations. As for its organisation, the Committee is composed of six expert working groups (OPS) – for legal migration, irregular migration, readmission and returns, visas, asylum, integration of foreigners, and migration and development"⁷⁶.

The Ministry of Interior of the SR elaborated on the basis of the tasks resulting from the Manifesto from the Government of the SR draft **Strategic Intentions of the Migration Policy of the SR for the period 2011 – 2015 (updated Strategy of Migration Policy of the SR)** at the end of 2010. This document was approved by the Government resolution No. 67 as of 2 February 2011. The Government resolution included the task for the Minister of Interior to prepare and submit for the SR Government deliberations draft Migration policy of the SR with the perspective until the year 2020 from 30 June 2011⁷⁷.

Subsequently, the **Migration policy of the SR with the perspective until the year 2020** was approved by the Government Resolution No.

⁷⁶ Potočková, 2010: 13.

⁷⁷ Potočková, 2011: 22.

574 as of 31 August 2011. It represents basic and starting documentation for the development of modern and goal-oriented policy of the SR Government in the area of migration with the main aim to create relevant conditions, in particular, in the area of legal migration taking into account the priorities, needs and ability to accept migrants including their integration into society, enhance the effectiveness of border controls, fight against illegal migration, contribute to the adoption of the Common European Asylum System, participate in the development of global partnership with countries of origin and transit in order to strengthen the synergies between migration and development and thus contribute to the increase of quality of life for the SR citizens. Migration policy of the SR with the perspective until the year 2020 regulates seven areas in which it proposes measures and activities: legal migration; integration; emigration of qualified work force; illegal migration, returns and trafficking in human beings; border protection, international protection; migration and development; institutional support. In order to fulfil the migration policy, the relevant ministries were given the obligation to elaborate the migration policy into the action plans by the Government resolution No. 574 as of 31 August 2012. The Government took into account the first **Action Plan of the Migration Policy of the Slovak Republic with the perspective until the year 2020 (period 2012–2013) in timely, material and financial fulfilment elaborated and approved for the conditions of particular ministries** as an annex to the Synthesis report on the state of play of fulfilment of the tasks, intentions and goals resulting from the Migration Policy for 2011. The timely, material and financial fulfilment of the tasks, intentions and goals will be comprised in the annual synthesis report presented by the Minister of Interiors during the SR Government deliberations. The new migration policy was not adopted due to the change in the pressure on the national asylum and migration system because the trends are rather digressive as mentioned above. Its adoption can be seen in the context of the harmonising EU policy in

the area of migration and asylum and current challenges in these areas.

In 2008–2011, further changes were made in legislation due to the need to transpose EU directives. More information on this topic is available in Chapter 2.2 and in the Annual Reports of the European Migration Network of 2008, 2009, 2010, and 2011.

04

The Organisation of Policies

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

This chapter was originally meant to include a description of the effects, influences and changes brought about by the adoption of the European legislation by the SR, and the influence of European institutions on the SR, however to analyse these areas of great importance effectively a separate comprehensive study of the particular transposed provisions of European legislation would be necessary – in the field of asylum and migration in general, and especially in the area of migrant integration. Given the limited scope of this chapter and the range of this entire study, it is impossible to assess fully how these changes have influenced the migration policy in Slovakia.

Generally we can establish that the fundamental changes made since Slovakia entered the European Union have affected mainly EEA citizens (and their families). The legal position of third-country nationals continues to be dependent on their status and legal residence granted, and is not identical, just comparable with SR/EEA nationals. However, the same rights and obligations govern legal employment of third-country nationals, both in the field of working conditions, including remuneration, and in the field of social security.

The manner in which the migration policy is organised has not changed significantly.

4.1 Asylum and Migration

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

In general, these laws concern two main groups of migrants:

- persons who applied for asylum and whose rights and obligations in Slovakia are therefore governed by the Asylum Act; and
- persons migrating voluntarily for other, personal reasons. The rights and obligations of those in the second category are governed by the Act on Stay of Aliens.

The legal position of migrants in Slovakia, however, is much more diverse than these two laws might suggest. Based on the difference in pre-entry procedures and the means of legalising residence in Slovakia, migrants can be divided into several additional categories. The individual categories are determined by the type of the residence and the reasons for staying in Slovakia:

As for entry procedures, Slovak legislation distinguishes between temporary residence and permanent residence. Beyond this scope, a foreigner may apply for tolerated stay for any of the seven purposes defined by law⁷⁸.

⁷⁸ Tolerated stay is of a temporary nature and serves for overcoming the obstacles for which the illegal migrant cannot depart from the country.

Temporary residence permit is principally granted to third-country nationals only for one purpose (however, it is possible to study parallel alongside any purpose of residence). In case the reasons and purpose of residence persist, it can cover the entire period up to the moment of possible permanent settlement in the territory of the Slovak Republic on the basis of the permanent residence, for example. Current legislation comprises ten different purposes for temporary residence which are described in detail in Chapter 4.1.3.2.

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

The Act on Stay of Aliens (No. 404/2011 Coll.) differentiates:

- Permanent residence for 5 years
- Permanent residence for unlimited period
- Long-term residence – residence of the third-country national with the acknowledged status of a person with the long-term residence in the European Union

Unaccompanied minors form a special group of foreigners. The Ministry of Labour, Social Affairs and Family is responsible for providing care for unaccompanied minors through:

- a guardian, usually the Office of Labour, Social Affairs and Family (irrespective of whether they are minors claiming asylum or other minor foreigners);
- foster care facility (designated as a children’s home) for unaccompanied minors based in Horné Orechové near Trenčín;
- other foster care facility.

4.1.1 Entry Procedures

4.1.1.1 Asylum – Entry procedures

During the time after submitting the declaration of asylum application⁷⁹, a foreigner's application for residence permit is not considered separately anymore under the Act on Stay of Aliens, but together with the application for asylum which is considered by the Migration Office. The entry and residence of the asylum seeker are administered by a different set of rules than the entry and residence of all other migrant groups⁸⁰.

As for entry, there are no special requirements for asylum seekers. Once a foreigner applies for asylum in the territory of the Slovak Republic or at the border, he/she cannot be automatically returned. Slovakia does not have the pre-screening system some other EU Member States have.⁸¹ Neither are there any integration arrangements which have to be met before asylum seekers enter Slovak territory. Currently, it is not possible to apply for asylum abroad, e.g. at the Embassy or the Consulate.

The declaration of an asylum seeker on applying for asylum can also be presented at places other than the state border, e. g. at the Asylum Department of the Police Corps at asylum facilities, at the Police Detention Facilities for Foreigners in Medvedov and Sečovce, etc.

Foreigners who claim asylum in Slovakia remain under the care of the Migration Office (or PDFF in case the application is presented at PDFF) which also provides them with all the necessary social assistance during their stay at the centres for asylum seekers until their asylum applica-

⁷⁹ Pursuant to Art. 3 of the Asylum Act, the asylum granting procedure begins with the "Applicant's Declaration", unless the Act provides otherwise.

⁸⁰ A person who had his/her stay modified according to the Act on Stay of Aliens due to a change in his/her life situation may also apply for asylum.

⁸¹ Under EUREMA project, the SR will relocate 10 African refugees from Malta in 2010, having set the conditions, e. g. refugees pertaining to vulnerable groups or other conditions that can be regarded as a certain pre-screening method.

tion is decided. Social assistance is provided under the provisions of the Asylum Act. The asylum granting procedure begins with presenting a declaration on the asylum application. The first steps related to the filing out of the declaration on the asylum application are performed by the police departments. Interviews with asylum seekers are subsequently conducted by the Migration Office.

4.1.1.2 Migration – Entry Procedures

All activities related to granting and registering residences of foreigners, and detecting and preventing illegal migration, are overseen by the Ministry of Interior which executes them through specialised offices and departments. The Bureau of the Border and Aliens Police actively oversees the above-mentioned cases. As for granting residence to foreigners from third countries, the Bureau of the Border and Aliens Police is responsible for conducting the approval process and for reviewing the applications for a permanent, temporary or tolerated stay through any of its 12⁸² Aliens Police Departments of the Police Force.

Granting Visa and Accepting Residence Permit Applications

Potential migrants can obtain relevant information even before arrival to the SR on the webpage of the responsible ministries in the SR, as well as on the EU Immigration Portal. The IOM Migration Information Centre provides practical information on its webpage, by telephone, e-mail or personal consultations. The SR has not yet opened the migration information centres in third countries.

Granting Schengen and national visas is in the competence of the Foreign and European Affairs Ministry and the Slovak embassies and consulates abroad.

National legislation regarding granting of visas is fully compatible with the Schengen acquis and Visa Code.

⁸² <http://www.minv.sk/?ocp-1> [consulted on 2012-08-18].

National visa is granted for a stay exceeding three months, maximally up to a year. National visa is granted to a third-country national in connection with granting residence in the SR or for performing the obligations resulting from the international treaties or if it is in the interest of the SR. National visa shall also be granted to a family member of a person who was granted asylum or to a family member of a foreigner who was granted a subsidiary protection provided that such a family member does not constitute a threat to state security or public policy. Granting of a visa can be subject to a verification of the invitation. In exceptional circumstances, a visa can also be granted at a border crossing point in accordance with Article 35 of the Visa Code.

The application for temporary residence is submitted at an embassy accredited to the state which issued the travel document to a third-country national or at the embassy accredited to the state, in which the applicant has residence. In these cases, the embassy is obliged to carry out a personal interview with the applicant in order to preliminarily determine the application. The Act on Stay of Aliens permits to submit an application for temporary residence in the SR if the applicant is already legally present in the SR.

The Act on Stay of Aliens defines three types of permanent residence. An application for a permanent residence for five years shall be submitted in person at the embassy of the SR or the Department of Aliens Police (DAP). An application for a permanent residence for an unlimited period shall be submitted by the third-country national at the DAP. While deciding with regard to the application for permanent residence for five years and for permanent residence for an unlimited period, the DAP is obliged to take into account public interest, level of threat to state security and public policy or public health by the third-country national, as well as the opinion of the embassy. In accordance with the Directive on Long-Term Residence (2003/109/EC), the Act on Stay of Aliens introduced a specific type of permanent residence – long-term

residence. Long-term residence is granted to a third-country national who has stayed legally and continuously in the territory of the SR for five years prior to submitting an application for long-term residence. The new category of persons that can be granted long-term residence was introduced by the implementation of the EU Blue Card Directive (2009/50/EC). This category comprises persons who are holders of the EU Blue Card – a temporary residence permit, and who at the same time have had legal and continuous stay for five years in the EU and they are present in the SR as EU Blue Card holders for at least two years prior to lodging an application.

If a third-country national is a family member of an EU citizen⁸³ using the right of stay of a family member of an EU citizen in another EU Member State in which the EU citizen is a citizen of the SR who is returning with the third-country national for the purpose of a stay or is joining him/her for the purpose of stay in the SR, the third-country national is allowed to stay in the SR for three months as of the date of entry and is obliged to report his/her stay in the SR within 10 days from it beginning. The same period is applicable in the case of an EU citizen. The stay of a family member of an EU citizen during the period longer than three months is governed by § 70 of the Act on Stay of Aliens.

The Slovak embassies abroad review tourist visa applications and receive residence permit applications.

The embassy of the Slovak Republic accredited for the applicant's country of origin will receive the residence applications and forward them to the Aliens Police Department of the Police Force for a decision. The Department has jurisdiction over the applicant's intended place of residence in Slovakia.

⁸³ An EU Citizen is every person that is not a citizen of the SR and he or she is a citizen of another EU Member State, including EEA and Swiss Confederation pursuant to Article 2 (3) of Act No. 404/2011 Coll. on Stay of Aliens and on Changes and Amendments.

Irregular Migrants

Irregular migrants who enter Slovakia illegally, illegally stay in Slovakia and do not claim asylum are placed in police detention facilities for foreigners run by the Ministry of the Interior. They are detained and placed in these facilities⁸⁴ pursuant to the Act on the Stay of Aliens. They are detained in these facilities until a decision regarding their administrative expulsion is taken. Currently, there are two detention facilities for foreigners – in the town of Medveďov, in west Slovakia, and in the town of Sečovce, in the east of the country⁸⁵.

Detailed information on the technical security of the external borders of the SR and adopted measures to secure the borders in the fight against illegal migration are to be found in the EMN Annual Reports.

4.1.2 Conditions of Acceptance

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

4.1.2.1 Asylum – Conditions of Acceptance

Asylum applications are reviewed by the MO – the decision-making body granting asylum and subsidiary protection. The Government of the SR decides in accordance with the decision of the Council of the European Union on the beginning, conditions and termination of the temporary protection.

The Entry of Asylum Seekers

Asylum applications are reviewed by decision-makers in the Migration Office. After applying for asylum, the asylum procedure continues in a reception centre (run by the Migration Office). At the centre, an applicant receives primary care, including a health check and temporary

accommodation (generally for up to 30 days). During quarantine, applicants cannot leave the reception centre.

Applicants are registered in a reception centre and issued a photo ID designating them as asylum seekers which serves as a form of identification during their stay in Slovakia. During their residency at the centre, asylum seekers receive free accommodation, food, health care, social and psychological counselling, and pocket money, as well as other necessary material assistance and sanitary supplies. The centre also provides social activities. Applicants can leave the centre only with a valid permit and after meeting certain health requirements determined by a mandatory health check. The permits to leave the centre are issued for 24 hours by the centre manager or another authorised employee⁸⁶. Currently, there is only one reception centre in Slovakia – in the eastern Slovak town of Humenné⁸⁷. Afterwards, applicants are transferred to an accommodation centre.

The third-country nationals who apply for the asylum in the detention centres are not automatically transferred to the reception centre.

The asylum procedure at the land borders is not regulated by legislation in the SR. Only border procedure at the international airport is regulated by the law. A third-country national who arrived in the SR by plane and fails to satisfy requirements for entering the country may submit a statement at the police unit in the transit zone of an international airport.

The accelerated asylum procedure is applied in the SR only if the application for asylum or subsidiary protection is rejected as inadmissible or manifestly unfounded. The application of an unaccompanied minor shall not be rejected as manifestly unfounded and therefore the accelerated procedure is not carried out in this case.

⁸⁶ Migration and Asylum, p. 33 – 36.

⁸⁷ The centre in Liptovské Vlachy no longer accepts asylum seekers and the reception centre in Opatovská Nová Ves was transformed into an accommodation centre.

4.1.2.2 Migration – Conditions of Acceptance

Conditions of Entry and Residence Permit

The conditions of entry and residence of foreigners are governed by the Act on Stay of Aliens. One of the important conditions of launching the residence procedure is the place of filing the application. The applications for residence have to be filed in person (with the exception of immobile applicants and when waiving this requirement is in the interest of the Slovak Republic) at the authority designated by law according to the applicant's legal status. Applications are accepted by the Slovak embassies abroad and the responsible police departments, i.e. Aliens Police Department whose jurisdiction includes the applicant's intended place of residence in Slovakia. However, the decision on the residence permit can be made only by the Aliens Police Units subordinated to the Departments under the jurisdiction of the Bureau of the Border and Aliens Police. Each and every application is reviewed individually. This entails vetting the submitted documents that certify the facts stipulated by law (financial security, integrity, accommodation, purpose of stay, as per individual types of stay).

Conditions of Integration

Except for the general legal conditions for the individual types of residence or granting visas, for migrants intending to obtain residency in Slovakia there are no fixed conditions regarding their integration into society. Although in some cases defined by law the extent of a migrant's integration might become a factor in decisions to grant or extend residence permits, but these provisions only relate to already settled migrants disposing of a residence permit. Pursuant to Art 48 (1)(c) of the Act on Stay of Aliens, the Aliens Police Department takes into account the extent of the foreigner's integration when deciding on the permanent residence. The relevant police department is fully authorised to decide on the basis of administrative discretion on the extent of the applicant's integration into society. The aforementioned

provision does not specify in any way the nature of the process.

4.1.3 Residence of Foreigners from Third Countries in Slovakia

As has already been mentioned in the introductory part of this study, according to the Act on Stay of Aliens, a "foreigner" is anyone who is not a Slovak national, i.e. even a national of other EU/EEA Member States or of the Swiss Confederation (for the purposes of this study hereinafter jointly referred as "EEA national"). Third-country nationals are defined for the first time according to the new Act on Stay on Aliens as persons who are not citizens of the SR or EU (as EU citizens are for the purpose of the law considered also EEA citizens and the citizens of the Swiss Confederation) and who need to go through, unlike EEA nationals, the acceptance procedure and meet a set of legal conditions before entering the Slovak Republic and residing in the country. Besides the residence, some require the Schengen Visa to enter the Schengen Area (Art. 14 of the Act on Stay of Aliens). Stateless persons are also considered to be third-country nationals.

4.1.3.1 Asylum – Residence of Foreigners in Slovakia

The Asylum Act stipulates that asylum seekers and everyone who is granted a temporary shelter or subsidiary protection has an automatic right to stay in Slovakia. This right is not subject to the review of their residence permit application or meeting any other legal condition. According to the Asylum Act, a person granted asylum is a foreigner who was granted asylum and a permanent residence permit. The police department will issue a residence document to the person granted asylum.

Residence of Asylum Seekers

After the required period spent in the reception centre, asylum seekers are moved in principle to an accommodation centre (both are facilities

overseen by the MO), where they stay in principle until the asylum granting procedure is terminated; i.e. until granting the decision on asylum or subsidiary protection. It is necessary to prepare them for prospective integration in the SR, maintain and develop work habits within existing possibilities, teach them new skills that can be employed also if asylum is not granted and they voluntarily return to their country of origin. As well as accommodation in the asylum facilities, the MO also provides meals, pocket money, travel and basic sanitary needs. Social workers provide, for instance, basis information on asylum procedures, social counselling and escort to the hospital. The facilities also take care of the basic needs of vulnerable groups, and ensure the compulsory participation of the children at school, and they also communicate with the school. Pre-school age children can attend kindergarten at the centre and older children can go to a public school in the town where the centre is located.⁸⁸ The MO covers the costs of urgent health care. Health care is usually provided to the asylum seekers based on the medical assessment and recommendation, and in special cases also on the basis of the assessment of the auditing medical officer of the General Health Insurance Company. The state covers the dental treatment in the case of painful infections or other urgent acute emergencies. The asylum facility also pays for the use of an emergency ambulance. An authorised employee of the MO informs the employees of the NGO regarding the eventual infectious disease in the facility. NGOs provide legal services to the asylum seekers (legal counselling, assistance, representation), social counselling. They provide direct individual or group social work, special care in case of vulnerable persons, psychological care, supplementary health care and material care. The asylum seekers can also attend re-qualification courses and take part in other activities organised by non-governmental and international organisations. There are currently two accommodation centres in Slovakia, one in Opatovská Nová Ves and the other in

⁸⁸ Migration and Asylum.

Rohovce⁸⁹.

The MO can accommodate the person granted asylum in the centre for the period of time deemed necessary on the basis of the written request; this person shall adequately cover the costs related to the stay in the centre. Another possibility for a recognised refugee is to ask for the assistance provided by the NGOs (for instance in the form of contribution for accommodation). Recognised refugees usually stay in the centre for a short period of time and have a possibility subsequently to move to the Integration Centre in Zvolen.

Movement of Asylum Seekers within the Slovak Republic

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

⁸⁹ The centre in Rohovce became an accommodation centre after the centre in Brezová pod Bradlom was destroyed by fire. Until recently the accommodation centre in the southern town of Gabčíkovo was the largest residence facility for asylum seekers in Slovakia. However, it closed its operation in 2008, and it only housed foreigners under subsidiary protection. Currently the centre is out of operation.

and in justified cases for a longer period of time, for example for three months. An applicant granted such a long-term permit must notify the Aliens Police Department within three days of the address where he/she is staying. A long-term pass can be repeatedly renewed⁹⁰.

Length of Asylum Seekers' Stay in Slovakia

The duration of the asylum process varies for different applicants because all cases are considered individually and the time it takes to arrive at decisions varies accordingly. Based on the law, the Migration Office is obligated to give its decision within three months (90 days) after the declaration on the asylum application is made. If the Migration Office declines to grant asylum, the applicant can appeal to the *Regional Court in Bratislava or Košice* and demand a review of the legality of the decision. In cases where this court confirms the determination of the Migration Office, an applicant may appeal the decision to the *Supreme Court* of the Slovak Republic. It is not uncommon for applicants to wait several months or even over two years) for a final decision on an application for asylum⁹¹. The period for exercising the right of appeal is normally 30 days. The Regional Court is expected to decide on the appeal within 90 days from its delivery. The Supreme Court has 60 days to decide on the appeal.

Various Decisions on Asylum Applications and Appeal Options

1. In the case of a favourable decision, the Migration Office grants asylum in the territory of the Slovak Republic. As well as the reasons stated for granting asylum under Art. 8 of the Act on Asylum – i.e., the reasons stipulated in the Geneva Convention – asylum can be granted also for the purpose of family reunification or for humanitarian reasons. This decision is followed by a process to help the person granted asylum integrate into Slovak society.

⁹⁰ The Legal Clinic of the University in Trnava. FAQ. http://utecenci.alfaomega.sk/index.php?option=com_content&task=view&id=26&Itemid=42 [consulted on 2008-11-24].

⁹¹ The Legal Clinic of the University in Trnava. FAQ. http://utecenci.alfaomega.sk/index.php?option=com_content&task=view&id=26&Itemid=42 [consulted on 2008-11-24].

- 2a) The Migration Office may decide not to grant asylum but to grant the foreigner subsidiary protection for one year. If sufficient reasons for subsidiary protection still exist after a year, this status can be extended for an additional year. During this period of subsidiary protection, the foreigner has the right to a temporary residence permit, pocket money, accommodation and food, and he/she can be employed.
- 2b) The Migration Office may decide not to grant asylum or subsidiary protection⁹². In this case, the Aliens Police Department considers whether there is an obstacle to the administrative expulsion of the foreigner. If such an obstacle to administrative expulsion exists, the foreigner can then apply for a tolerated stay with the Aliens Police Department with jurisdiction over the place where he/she is staying. A tolerated stay permit is granted for up to 180 days. During this period, the foreigner cannot conduct business.
- 2c) The Migration Office denies the asylum application as inadmissible.
- 2d) The Migration Office denies the asylum application as manifestly unfounded.
- 2e) The Migration Office aborts the asylum granting procedure.

Subsidiary Protection with Residence Document

The institution of subsidiary protection was introduced by an amendment to the Asylum Act which came into force on 1 January 2007. Based on this provision, the Slovak Ministry of the Interior will provide subsidiary protection for up to one year to an applicant whose asylum application has been denied if there are substantive reasons to suppose that after returning to the country of origin the applicant may be subject to serious injustice or ill-treatment. For the purpose of family reunification, the Ministry will also provide subsidiary protection to the relatives of such a foreigner. The relatives who may receive protection are specified as follows:

⁹² An appeal against the decision can be filed.

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

Subsidiary protection can also be granted to unsuccessful asylum applicants who fear that they would be subject to serious injustice or ill-treatment in their country of origin. The Migration Office will ex officio consider granting subsidiary protection to an applicant to whom it did not grant asylum (Art. 13a of the Asylum Act). According to the Asylum Act, all recipients of subsidiary protection have the right to a temporary residence permit in Slovakia. A foreigner who is a recipient of subsidiary protection can be employed based on a work permit which is granted without regard to the state of the local job market (in fact, automatically). At the same time, he/she has access to health care. The Ministry of the Interior pays for the health care of the recipient of subsidiary protection who does not have public health insurance in Slovakia to the same extent that a citizen of the SR is covered by public health insurance.

Slovak language courses for recipients of subsidiary protection are currently organised by non-governmental organisations.

Until December 2009, foreigners who were recipients of subsidiary protection could be accommodated in a facility of the Ministry of the Interior of SR designated for this purpose during the subsidiary protection granting procedure. In these facilities, they were provided

food or meal allowances, basic sanitary necessities and pocket money. Since December 2009, the Migration Office has not disposed of such facilities. Recipients of subsidiary protection are accommodated in boarding houses where their stay is paid by the Slovak Humanitarian Council or the Goodwill Society⁹³.

According to the Act on Asylum a foreigner who was granted subsidiary protection is considered to be a foreigner with granted temporary residence (see Chapter 4.1.3.1 subsidiary protection alongside which a temporary residence is granted).

4.1.3.2 Migration – Residence of Foreigners in Slovakia

Types of Residence

Based on the Act on Stay of Aliens, a third-country national may apply for one of the following types of residence in Slovakia depending on his/her individual situation and needs in the SR:

- A. temporary residence,
- B. permanent residence
- C. tolerated stay

A. Temporary Residence

The temporary residence is a short-term residence related to one purpose which can, but does not have to lead to the long-term residence of a foreigner in Slovakia. However; a foreigner can study alongside any purpose of the temporary residence. One of the legal pre-conditions for acquisition of a long-term residence (type of permanent residence), besides the exceptions established by law, is continuous and legal residence for five years in Slovakia. In the case of an EU Blue Card holder (type of temporary residence), required is continuous and legal residence for five years on the territory of the EU and two years on the territory of the SR. Before this temporary residence expires, the third-country national either applies

⁹³ Interview. Miroslava Mittelmannová, Human Rights League. 20 May 2010.

for its renewal or prepares to leave Slovakia when the current residency expires. This permit is granted for a specific purpose and allows the third-country national to stay in Slovakia for the period of time granted by the residency. If the third-country national comes from a country not subject to the visa obligation and wants to carry out one of the activities related to the temporary residence according to the Act on Stay of Aliens he/she should apply for temporary residence in the SR.

A temporary residence:

- a) allows a third-country national to reside in the territory of the Slovak Republic, travel abroad, and return to Slovakia during the period for which it is granted by the police;
- b) is granted for a specific purpose which has to be documented in the temporary residence application;
- c) is granted for a period during which the purpose of the stay exists;
- d) can be granted for the intended length of study (up to five years) to a foreigner applying for temporary residence for the purpose of pursuing a course of study in Slovakia;
- e) is issued in the form of a sticker placed in the valid passport;
- f) is not subject to a legal claim

A temporary residence can be granted for any of the following purposes:

- a) business;
- b) employment (including seasonal employment);
- c) study;
- d) exercise one of the following categories of specific activity:
 - i) lecturing
 - ii) arts
 - iii) sports
 - iv) trainee within the study outside Slovakia
 - v) activity based on the programmes of the Government of the Slovak Republic or the European Economic Area
 - vi) performance of the obligations of

- the SR resulting from the international treaty
- vii) for the purpose of volunteer work
- viii) for the purpose of medical treatment, and if it is necessary also permission for accompanying third-country national under medical treatment
- ix) activity of a journalist accredited in the Slovak Republic

- e) research and development
- f) family reunification
- g) service within the civilian units of the Armed Forces
- h) who has the status of a Slovak living abroad
- i) who has a long-term residence in another EU Member State⁹⁴
- j) separate type of a temporary residence is EU Blue Card that is granted to the third-country national for the purpose of highly qualified employment

For each of these categories there are different rules regarding entry and stay in the SR, different legal requirements for granting temporary residence and its extension and other rights and duties imposed up on the third-country nationals during their stay in the SR.

Third-country nationals submit an application for temporary residence in person (in principle, always if they need visa) at the embassy of the SR abroad accredited in the third-country that issued the travel document or at the embassy of the SR accredited in a third-country where they reside. If such an embassy is not available or in exceptional cases, the MFaEA SR upon agreement with the MoI SR determines another embassy at which the third-country national will lodge an application for temporary residence. Third-country national may lodge an application for temporary residence in person through the relevant Aliens Police Department if he/she is staying legally in the SR. The documents con-

⁹⁴ Pursuant to Act No. 404/2011 Coll. the Member State is defined as EU Member State, including Member States of EEA and Swiss Confederation, except the SR.

firming financial subsistence of the business activity have to be attached to the application for temporary residence for the purpose of business. More liberal conditions apply in the case of granting of temporary residence to the third-country nationals who have status of the Slovaks living abroad according to the Act on Stay of Aliens. Third-country nationals who have the status of Slovaks living abroad can start business immediately after obtaining temporary residence. The Act on Stay of Aliens stipulates also a protective period of 30 days in case of employment termination. During this period, it is not possible to terminate the temporary residence of a third-country national for the purpose of employment due to the termination of its purpose.

A specific type of a temporary residence is the EU Blue Card issued by the Department of Aliens Police for the purpose of highly qualified employment to a third-country national for three years; or for a period of employment extended by 90 days if the employment is for a period shorter than three years. The third-country national shall attach to the application for EU Blue Card, besides other documents, also the certificate of higher professional qualification, a binding job offer for highly qualified employment in writing, valid work contract for the highly qualified employment of at least one year, agreed monthly salary shall be at least 1.5 times the average gross monthly salary in the relevant sector for a calendar year preceding the year in which the application is lodged; plus confirmation from the Central Office of Labour, Social Affairs and Family regarding the possibility to fill a vacancy of the highly qualified employment. As of 31 July 2012, there were granted 5 temporary residences – EU Blue Card in total⁹⁵.

B. Permanent Residence

The permanent residence has a long-term character. The Act on Stay of Aliens distinguishes between permanent residence for 5 years, permanent residence for unlimited period and

long-term residence. The permanent residence for five years shall be granted for the purpose of family reunification or if it is in the interest of the SR. If this type of residence lasts at least for 4 years, a third-country national may apply for permanent residence for an unlimited period. In exceptional circumstances the permanent residence for unlimited period may be granted by the police department.

The condition for granting the permanent residence can be the statutory period during which the third-country national lived legally in the Slovak Republic or proving the purpose of stay in case the foreigner applies for permanent residence permit for the purpose of family reunification.

The permanent residence allows a third-country national to reside in the territory of the SR, travel abroad, and return to Slovakia during the period of validity of the permanent residence.

B1 Permanent Residence for Five Years

The permanent permit for five years can be issued to a third-country national who is:

- a spouse or a dependent relative of a Slovak citizen with a permanent residence in Slovakia;
- an unmarried child (younger than 18 years of age) placed in the custody of a foreigner who is the spouse of a Slovak citizen with a permanent residence in Slovakia;
- an unmarried child (younger than 18 years of age) of a foreigner with a permanent residence in Slovakia or an unmarried child (younger than 18 years of age) placed in the custody of a foreigner with a permanent residence in Slovakia;
- a dependent child (older than 18 years of age) of a foreigner with a permanent residence in Slovakia; or
- a person whose permanent residence status in Slovakia is in the interest of the Slovak Republic.

B2 Permanent Residence for Unlimited Period

The permanent residence for unlimited period can be issued to a third-country national who:

- has at least 4 years been granted permanent residence for five years;
- is a child younger than 18 years of age of a third-country national who holds the permanent residence for unlimited period;

The Police department may grant permanent residence for unlimited period:

- if it is necessary to provide protection and assistance to the witness in accordance to the Act on Protection of Witnesses;
- to a stateless person;
- in case of exceptional circumstances
- in case of proposal from the Slovak Intelligence Services due to the security interests of the SR; or
- to an adult person who was granted tolerated stay in the SR as a minor found in the territory of the SR for at least three years during which he/she studied in the SR

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

The permanent residence permit can expire or be cancelled.

C. Tolerated Stay

A tolerated stay is a specific provisional type of residence, which can be granted to a foreigner repeatedly (in justified cases) pursuant to Art. 58 of the Act on Stay of Aliens provided that:

- a) there is an obstacle to the administrative expulsion of the foreigner from Slovakia;
- b) the foreigner was offered temporary shelter in Slovakia;
- c) his/her leaving Slovakia is not possible and detention is not effective;
- d) is a minor found in Slovak territory;
- e) is a victim of the crime of human trafficking and is older than 18 years of age;
- f) is necessary because of a need to respect his/her private and family life (according to Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms);
- g) was illegally employed under particularly exploitative working conditions or to minor who was illegally employed if the presence of these third-country nationals in Slovakia is necessary due to the criminal proceedings

As a tolerated stay are also regarded the following periods of time:

1. provision of institutional care,
2. quarantine,
3. maximally up to 90 days from lodging of the application for the assisted voluntary return by the third-country national until its withdrawal,
4. maximally up to 90 days during which the third-country national who was a victim of trafficking in human beings decides if she/he will cooperate with the law enforcement authorities in criminal proceedings,
5. police custody and
6. serving a prison sentence

The tolerated stay is issued for a maximum of 180 days if the Act on Stay of Aliens does not stipulate otherwise, but it is possible to renew it repeatedly. In the majority of cases this period is 180 days, which means that the foreigner must apply for a new permit every 180 days. The tolerated stay is granted by the Aliens Police Department on the basis of conditions established by law and after review of the case. The Aliens

Police Department decides on granting or non-granting of the tolerated stay depending on the existence of the reasons for the tolerated stay. A tolerated stay permit can also be granted to a third-country national who, for a certain designated reason, stays illegally in Slovakia and cannot apply for temporary or permanent residence in Slovakia according to the Act on Stay of Aliens.

The Rights and Obligations of Foreigners holding a Tolerated Stay:

- a) In general, persons with this status cannot be employed or conduct business throughout the duration of the residence. However, some foreigners on a tolerated stay can be employed for the following reasons: i. the requirement to respect their private and family life; ii. the Slovak Government offered them temporary shelter; iii. they are victims of the crime of trafficking in human beings; their tolerated stay was renewed after the initial 90 days, and they were granted a work permit.
- b) Foreigners who hold a tolerated stay have the right to a material need allowance. Based on the Act on Assistance in Material Need, both citizens and foreigners in Slovakia have the right to receive a material need allowance if the cumulative income of their household is below the minimum level specified by the law. However, persons holding a tolerated stay who wish to apply for financial assistance under this provision must provide a contact address to which benefits should be delivered. As those who hold a tolerated stay include individuals without homes, the requirement to provide an address can become an obstacle to securing this state benefit.
- c) They cannot have public health insurance (with the exception of the victims of human trafficking) and cannot receive any accommodation assistance.

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

Tolerated stay expires, if a third-country national:

- notifies a police department about the end of stay;
- has not applied for extension of the tolerated stay if the period for which it was granted expired;
- lodged an application for the granting of asylum;
- obtained another residence according to the Act on Stay of Aliens;
- travelled away from the SR;
- died or was declared dead;
- was subject to the administrative expulsion, or
- lost the temporary protection that was provided to him or her due to its expiration

The police department cancels the tolerated stay, if:

- they find out that the reason for which it was granted has expired;
- the third-country national threatens the state security or public order in cases as stated by law;
- facts are discovered that are the reason for refusal of an application;
- the third-country national who was a victim of trafficking in human beings has restored, out of his or her own will, contacts with persons suspected of committing a crime related to the human trafficking, who feigns cooperation with law enforcement authorities or who ceased to cooperate with the law enforcement authorities.

Renewal of the Residence

If a renewal of a residence is required, the foreigner has to apply for renewal before the valid residence expires. The application for the renewal must include the same documents required for the first application. If the police department does not reach a decision on the new application before the expiration of the original residence, then the original residence remains valid until the new decision on residence is rendered. This provision protects the status of the applicant in case of inactivity on the residence.

Change of the Purpose of the Residence

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

If a third-country national applies for a change of type of a residence or its purpose, his/her residence in the SR is considered to be valid until the decision regarding this application is rendered.

4.1.4 Integration

Integration Measures in the Process of Granting a Permanent Residence

When granting permanent residence the authorities primarily take into account the extent of foreigner integration. In this process, the authorities are required by law to consider the extent of a foreigner's integration into Slovak society. However, the Act on Stay of Aliens does not make the criteria clear for assessing the extent of integration. The application requires predominantly objective facts independent of the applicant's personal intentions, such as the purpose of the stay and the applicant's relationship to the sponsor (marriage or other family relationship), probity, financial and material security during period of residency in Slovakia, etc.

Integration Measures in the Process of Granting Citizenship

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

Apart from cases exempt by law, the applicant must meet a minimum length of residence requirement – 8 years of continuous permanent residency in Slovakia immediately prior to applying for citizenship. The Act assumes that the extent of applicant's integration increases with a longer stay.

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

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

Any exceptions to these requirements are listed in the Citizenship Act. Some groups of foreigners have certain advantages, such as spouses of Slovak citizens, persons granted asylum and persons whose stay would be advantageous to the Slovak Republic. Certain groups do not have to prove command of the Slovak language and a general knowledge of Slovakia. Under this category fall children younger than 14 years of age and applicants who have made a significant contribution to Slovakia in the areas

of economics, science, technology, culture, society or sports. The requirements for language proficiency and general knowledge can also be waived in the interest of the Slovak Republic for any other reason; in the case of such applicants, a statement from a relevant state body is sufficient.

Information on relevant stakeholders and adopted measures in the SR in the area of integration and its organisation are in the Chapters 2.1.1., and 3.4.

4.1.5 Citizenship

Citizenship of the Slovak Republic may be acquired in several different ways: in the case of a child by birth or by adoption; in the case of an adult – a foreigner who is not a citizen of the SR by naturalization.

The citizenship of the Slovak Republic may be granted to the applicant who is not a citizen of the SR and who has continuous permanent residence in the Slovak Republic for at least eight years immediately before lodging an application for acquiring citizenship. The citizenship of the SR may be granted also earlier than after eight years of permanent residence, e.g. if the applicant, for example, is the spouse of the citizen of the SR or a recognized refugee.

The Ministry of Interior of the SR decides on the application for acquiring citizenship of the Slovak Republic in accordance with Act No. 40/1993 Coll. on Citizenship of the Slovak Republic as amended. The application shall be lodged in person at the District Authority in the seat of a region (Department of General Internal Administration) according to the permanent residence or the last permanent residence in the SR; or at the embassy or a consulate of the Slovak Republic abroad.

An applicant who has reached at least 14 years of age has to complete a questionnaire of an applicant for Slovak citizenship when filing the application. The questionnaire form is issued by the Ministry of Interior of the SR.

The questionnaire of an applicant who is a minor must be also signed by the parents of an applicant or his/her legal guardians. If only one parent signs the questionnaire, the other parent's agreement officially verified by a public notary shall be attached.

While filling in the questionnaire by the applicant, the authority that accepts the application verifies through the interview whether the applicant has sufficient knowledge of the Slovak language, which is verified by methods that take into account applicant's health condition(s).

The District Authority sends the whole file with the application and statement from the relevant police department to the Ministry of Interior of the SR. The Ministry of Interior of the SR then considers and decides about the application. During this process the applicant may be invited for a personal interview in order to clarify any of the facts related to the applicant.

After fulfilling all statutory requirements, the Ministry of Interior of the SR may but does not have to grant the citizenship to the applicant. In the decision process, the Ministry of Interior of the SR takes into account interests of the Slovak Republic, particularly from the point of view of state security, internal law order, foreign policy interests, commitments of the Slovak Republic to third countries, socio-economic situation, as well as opinions of the relevant state authorities and the Police Force.

The Ministry of Interior of the SR will decide on the application for granting citizenship of the Slovak Republic within 24 months from the date of delivery of the application for granting citizenship of the Slovak Republic to the Ministry at the latest. If an opinion of other state authorities is needed for making a decision and the decision is dependent on them, the proceedings are suspended and the time limit does not lapse⁹⁶. The Ministry of Interior of the SR considers the

⁹⁶ Information available online at: <http://mic.iom.sk/sk/obciansstvo/udelenie-obciansstva/102-udelenie-obciansstva-slovenska-rozhodnutie.html> [consulted on 2012-09-15].

application and can also invite the applicant during this procedure for a personal interview in order to clarify any of the facts related to the applicant.

Currently, the integration tests are not used in the process of acquiring citizenship of the Slovak Republic.

4.1.6 Labour Market Access

Employment of foreigners from third countries is governed by a different legal regime than employment of the citizens of EU/EEA Member States. There are different rules for the employment of asylum seekers, foreigners with a tolerated stay permit or those who are provided subsidiary protection under a specific law (Asylum Act, Act on Stay of Aliens).

The legislative framework for the employment of foreigners consists mainly of the following Acts: the Act on Employment Services No. 5/2004 Coll. as Amended; the Act on Illegal Work and Illegal Employment No. 82/2005 Coll. as Amended; and the Act No. 311/2001 Coll. Labour Code as Amended; Act on Stay of Aliens No. 404/2011 Coll. as Amended; the Act on Asylum No. 480/2002 Coll. as Amended.

Whether a third-country national requires a work permit depends on the provisions of the Employment Services Act No. 5/2004 Coll., the kind of employment he/she wants to pursue, the type of residency in Slovakia and other facts. If Slovak law stipulates that a third-country national requires a work permit and a temporary residence for the purpose of employment, he/she needs to apply for both before becoming employed or any beginning of any other activity in Slovak territory. Otherwise he/she is in breach of the law involving illegal work. The Act on Illegal Work and Illegal Employment specifies illegal employment as an employment of the third-country national whose residence on the territory of the Slovak Republic is in breach of the Act on Stay of Aliens and the Act on Asylum and who carries out dependent work (§ 2 (5)).

A work permit is not required if the foreigner holds a permanent residence permit in Slovakia, a temporary residence permit for the purpose of a family reunion for a period longer than 12 months or for the purpose of study (where he/she can work ten hours per week), or if he/she maintains the status of a Slovak Living Abroad. This exemption also applies to persons granted asylum and asylum seekers whose asylum application has not been decided upon within one year from the beginning of the asylum process, or to persons who have been offered temporary shelter.

A third-country national holding a work permit and a temporary residence permit for the purpose of employment may only perform the activity for which the permit has been granted. If the foreigner wishes to change his/her employer he/she must apply for a new work permit. According to the amended Act on Stay of Aliens, the employer is obligated to inform the competent Aliens Police Department about the termination of the work contract with the foreigner (within three days).

4.1.6.1 Asylum - Labour Market Access for Asylum Seekers and Refugees

Separate Legal Regime

a) Asylum Seekers

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

b) Foreigners with Subsidiary Protection

Persons who are provided subsidiary protection can be awarded a work permit without consideration of the situation on the Slovak labour market.

c) Foreigners with Tolerated Stay Permits

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

- were offered temporary shelter and therefore are not required to have a work permit;
- were granted a tolerated residence permit due to respect for private and family life and may therefore obtain a work permit without consideration of the situation on the Slovak labour market;
- are victims of human trafficking and hold tolerated residence permits that were extended after 90 days and who therefore can obtain work permits without consideration of the situation on the Slovak labour market.

Asylum seekers may work in the Slovak Republic if no final decision on asylum granting is made within one year following the beginning of the asylum procedure.⁹⁷ Such asylum seekers do not need a work permit. The Migration Office issues a certificate confirming that they are asylum seekers entitled to work due to the duration of the asylum procedure. Based on this certificate such asylum seekers can legally work in Slovakia in any area they wish.

People who have been granted asylum enjoy the same rights as a Slovak citizen on the labour market. They do not need a work permit and are not in any other way restricted in the area of employment. However, in many cases, practical integration into the labour market is complicated by the fact that their command of Slovak may not be sufficient to allow them to compete with Slovak speakers and that they are not able to present a document proving their education. The Slovak Republic is not yet using any specific system to prove alternatively the level of education obtained, which results in the non-recognition of higher education in Slovakia.

⁹⁷ The Legal Clinic of the University in Trnava. FAQ.

4.1.6.2 Migration – Labour Market Access

General Legal Regime

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

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

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

The Labour Office may also request the following:

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

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

A third-country national who was granted temporary residence for the purpose of family reunification can pursue a business activity immediately after acquiring temporary residence; the exceptions are regulated by law. According to the Act on Employment Services, the work permit shall not be required if the third-country national was granted a temporary residence for the purpose of family reunification and pursuant to the Act on Stay of Aliens he/she is allowed to enter the employment relationship or similar employment relationship.

Responsible for the inclusion on the labour market are the local offices of labour, social affairs and family (working under the Central Office of Labour, Social Affairs and Family) which have a database of job vacancies. In this connection it is important to mention EURES (European Employment Services). EURES is composed of consultants trained by the European Commission whose tasks are to provide information, consultation and mediation services to clients throughout Europe.

The control of illegal work and illegal employment of the third-country nationals in the SR is carried out by the inspectors to the National Labour Inspectorate in cooperation with the police as well as by the department of control of the Central Office of Labour, Social Affairs and

Family and local offices of labour, social affairs and family.

4.1.7 Returns from Slovakia to the Countries of Origin

This section of the report describes the way Slovak authorities organise the return of foreigners to their countries of origin. We highlight the differences among the various categories of third-country nationals – those who were denied entry into Slovakia; those who do not have or have lost their entitlement to the residence in the SR.

4.1.7.1 Forced Returns – Administrative Expulsion⁹⁸

The most important legal regulation in this field is the Act on Stay of Aliens. The conditions for administrative expulsions and relevant proceedings are specified in the Chapter 4 of the First Head of the Act on Stay of Aliens (Articles 77 to 81). The detention which is related to the administrative expulsion is governed in the Chapter 4 of the Second Head of the Act on Stay of Aliens. In 2009, a change was made by passing the Act No. 594/2009 Coll., which modified and amended the Act on Stay of Aliens and transposed the Return Directive. This amendment entered into force on 15 January 2010. Current Act on Stay of Aliens extended the definition of administrative expulsion for an obligation of a foreigner to travel to the EU Member States in which she/he has a right to reside in the case of an administrative expulsion decision. In this decision, the country is specified to which a foreigner's expulsion is to be carried out, if it is possible; and an entry ban if the period for voluntary return is not decided upon.

Further legal sources used in relation to administrative expulsion include, in particular, the following:

- i. international legal norms, especially the Convention for the Protection of Human

⁹⁸ This information was provided by the Bureau of the Border and Aliens Police of the P PF.

Rights and Fundamental Freedoms and the Convention on the Rights of the Child;

- ii. European legislation: Council Decision 2004/573/EC of 29 April 2004 on the Organisation of Joint Flights for Removals from the Territory of Two or More Member States, of Third-Country Nationals Who Are Subjects of Individual Removal Orders; Council Directive 2003/110/EC of 25 November 2003 on Assistance in Cases of Transit for the Purposes of Removal by Air; European Pact on Immigration and Asylum; Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals (hereinafter as „Return Directive“); Council Directive 2001/40/EC of 28 on the Mutual Recognition of Decisions on the Expulsion of Third Country Nationals (hereinafter as „Directive 2001/40/EC“);

On the national level, besides the Act on Stay of Aliens, it is necessary to take into account the Police Force Act No. 171/1993 Coll. (considering the recorded minutes from explanatory proceedings and when identifying foreigners) and the Act on Administrative Proceedings and Internal Regulations No. 71/1967 Coll., as well as internal regulations of the Ministry of Interior of the SR.

The legislation of the Slovak Republic recognises two types of expulsion: administrative expulsion and judicial expulsion.

Administrative expulsion – is the police decision that a foreigner does not have or lost the entitlement to reside on the territory of the SR and he/she is obliged to leave the country. The police have the power to determine the deadline for leaving the country for the country of origin, transit country or any other third country that receives him/her, or for the territory of the EU Member State or EEA in which he/she has a right to reside. As of 1 January 2012 it is possible to expel third-country nationals with the long-term residence into another EU Member State

and to render the entry ban only if he/she seriously threatens state security or public policy. Group expulsion of several foreigners based on one decision is not allowed.

A police department must ensure the enforcement of the decision on administrative expulsion when:

- the police did not specify the deadline for return in the decision on administrative expulsion;
- the third-country national did not depart within the deadline established in the decision on administrative expulsion;
- the third-country national is to be returned to the territory of a Contracting State according to an international treaty, or
- the third-country national cannot depart because he/she does not have a valid travel document or financial means for departure⁹⁹.

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

The third-country national may require from the police a written translation of the reason of administrative expulsion, period of entry ban and appeal instruction in a language which he or she is considered to understand.

The Act on Stay of Aliens re-introduced, in compliance with the Return Directive, the derogatory effect of the appeal against the decision on administrative expulsion, and sets a new time period for the foreigner's departure. Also, new facts to be considered by the police depart-

⁹⁹ Art. 84, Par. 1 of the Act on Stay of Aliens.

ment in deciding on administrative expulsion were added, such as the alien's health condition or the alien's status as a vulnerable person. In order to carry out the administrative expulsion or the judicial expulsion (the punishment in form of expulsion ordered by the court) the police officer is authorised to detain the person. Not every third-country national who was ordered administrative expulsion is subject to detention. The police department decides on the period of the detention if it is necessary on the basis of the grounds stated by the law. This person is then placed into the detention centre for foreigners. The maximum period of detention is 6 months. The police department can extend the period of detention by a maximum of 12 months. During the period of the alien's detention, the representatives of non-governmental organisation have access to the police detention facilities for foreigners, subject to the facility director's approval. The Act on Stay of Aliens defines the risk of absconding of the third-country national in paragraph 88 (2) as an existence of reasons or direct threat on the basis of which it is reasonable to assume that the third-country national will abscond or will hide, particularly when his/her identity cannot be immediately established, he/she does not have a right to reside or there is an assumption/threat of entry ban for more than three years. The Act on Stay of Aliens provides two alternatives to detention which are decided upon by the police pursuant to the statutory conditions. Firstly, there is an obligation to report the residence by the third-country national; secondly there is a financial guarantee. If those alternative measures are violated, the police decide on detention of a third-country national, if need be also on forfeiture of the financial guarantee. The police will return the financial guarantee to the person who provided it, immediately after the execution of administrative expulsion of the third-country national; after his/her return within assisted voluntary returns or if he/she was granted a residence, asylum or subsidiary protection. The costs related to the return of the financial guarantee are to be borne by the person who provided it.

The police department must instruct an alien about his/her rights and obligations and repeat these instructions in regular intervals. Just as in the case of expulsion, special attention is paid to vulnerable persons; foreigners under 15 years of age have access to education in case the stay in the facility is beyond 180 days¹⁰⁰.

Administrative Expulsion Proceedings

The responsible police department is the first decision-making body in the administrative expulsion proceedings. The competent directorate makes decisions in the second stage of the proceedings. The third-country national can appeal decisions on administrative expulsion within 15 days from receiving a decision. The police department which made the original decision will then review the appeal and if the appeal is fully accepted (the so-called "auto remedy"), the police department will issue a new decision overruling the original one. If the appeal is not accepted during the first stage, the police department will forward it to the second instance administrative body within 30 days of receiving it. The appeal against the decision on administrative expulsion has a deferring effect. The deferring effect of an appeal can be excluded (for instance, pursuant to Article 83 paragraph 9 of the Act on Stay of Aliens). As a consequence the appeal per se does not have an effect on the execution of decision on administrative expulsion. A third-country national who receives a decision with a determined period for departure regarding administrative expulsion is required to depart from Slovakia within this period. The APD determines the period for departure but not earlier than 7 and not later than 30 days from the date the decision was issued. This period can be appropriately extended with regard to the duration of the previous stay of the third-country national, private and family relations or health condition of the foreigner. If the foreigner does not leave the country by the established deadline, the police department will implement the decision on administrative expulsion.

¹⁰⁰ Mittelmannová, M. Programy a stratégie asistovaných návratov v SR a reintegrácia v tretích krajinách. EMN study. Bratislava: IOM 2010. p. 19-20.

If the APD does not determine the period for departure pursuant to the law, the person is detained to the respective detention centre and the execution of expulsion will be administered.

The Act on Stay of Aliens determines cases where the police department does not stipulate the period for departure in the decision on administrative expulsion, especially in the following cases:

- a) it can be assumed that the third-country national would escape, or would mar or hinder enforcement of the decision on administrative expulsion, especially when it is not possible to find out the foreigner's identity;
- b) if there is a possibility to detain the third-country national pursuant to Article 88, i.e. in cases of existing risk of absconding or if he/she avoids or impedes the process of preparation of administrative expulsion execution;
- c) the third-country national constitutes a threat to the security of the state, public order or health, rights and freedoms of others

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

- a) *for up to one year, if the foreigner:*
 1. refuses to prove his/her identity in a credible way;
 2. neglects to inform the authorities of a change in the purpose for which his/her residence was issued;
 3. did not leave the territory of the SR during the last day of the valid residence at the last test.
- b) *for up to three years, but at least one year, if the foreigner*
 1. performs activities other than those for which he/she has been granted a temporary residence or visa;

2. resides in Slovakia based on an international treaty or a Slovak government decision and acts in conflict with said treaty or the decision;
3. in any other way seriously or repeatedly violates binding legal rules.

c) *for three to five years, if the foreigner:*

1. constitutes a danger to the security of the state, public policy or health,
2. was lawfully sentenced for a deliberate crime and he/she was not sentenced to expulsion;
3. violates regulations on narcotics and psychotropic substances
4. when lawfully asked for identification presents a false or an altered document or the identification document of another person;
5. concluded marriage of convenience;
6. crossed illegally the external border;
7. is illegally on the territory of the SR;
8. obstructs the execution of the decision rendered by the state authority;
9. police cancelled or revoked his/her visa;
10. provided in the proceeding according to the Act on Stay of Aliens false, partial or misleading information; or false or forged documents; of document of another person

d) *for up to 10 years, if the third-country national constitutes a serious danger to the security of the state or public policy.*

The Act on Stay of Aliens specifically addresses the conditions for the expulsion of EU citizens, family members of EU citizens, foreigners who are victims of human trafficking, etc. In the case of these persons, legal safeguards relating to administrative expulsion have been strengthened. As a result, police departments can expel a foreigner only if he/she presents a serious threat to state security or public order and health. An indication of a serious threat posed by a foreigner to state security, for example, would be the foreigner's conviction for an exceptionally serious criminal offence. A threat to public health is not considered a valid reason for expulsion if a foreigner becomes ill more than three months after entering the Slovak territory.

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

- a) a child younger than 18 years of age, unless expulsion is in the interest of the child,
- b) a third-country national who contracted an illness which is a threat to the public health after he/she was granted a residence; unless he/she contracted an illness which is a threat to the public health before three months from the entry of the third-country national to the SR,
- c) a third-country national who is a victim of a trafficking in human beings and is older than 18 years of age for maximum of 90 days. Within these 90 days the foreigner has to decide whether he/she will cooperate with the respective authorities in a criminal investigation. This period can be prolonged by 30 days on the request of a person authorised by the Ministry of Interior.

Furthermore, the police department cannot expel a foreigner if there are obstacles to his/her administrative expulsion, as listed in Article 81 of the Act on Stay of Aliens. This provision states that a foreigner cannot be expelled to a country where:

- a) his/her life would be in danger because of his/her race, nationality, religion, political views, or because he/she belongs to a certain social group;
- b) he/she could be subject to torture or cruel, inhumane, or degrading treatment or punishment
- c) he/she was or could be sentenced to death, or it can be assumed that he/she would be imposed such punishment within the ongoing criminal proceedings;
- d) his/her freedoms would be infringed upon because of his/her race, nationality, religion, political views, or because he/she belongs to a certain social group. This does not apply in a case in which the foreigner presents a threat to the security of the Slovak state or

if he/she was sentenced for an exceptionally serious crime and constitutes a danger to the Slovak Republic.

A stateless person can be administratively expelled only if his/her conduct threatens state security or public policy and there are no impediments to expulsion as just mentioned.

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

- a) if the police department did not establish a deadline to leave the country in the decision on administrative expulsion;
- b) if the third-country national did not depart within the period determined in the decision on administrative expulsion;
- c) if, based on an international agreement, the foreigner is to be returned to the state which is a party to this agreement;
- d) if the third-country national cannot travel on his/her own, because he/she does not have a valid travel document or the financial means to travel

There are certain restrictions, however, on implementing expulsion. Based on the Act on Stay of Aliens, the police department will not implement the decision on administrative expulsion if the third-country national:

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

the assisted voluntary return does not happen within 90 days; or within the prolonged period according to paragraph 58 (5).

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

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

Before implementing such a decision, the police must obtain a statement from the state which issued the decision or the EEA state where the foreigner legally resides. The police department must also ensure that the expulsion meets all national and international regulations and must fully inform the state which issued the decision on the proceedings.

The foreigner who is administratively expelled may be allowed to return to Slovakia on humanitarian grounds, mainly in cases of death or serious illness of his/her relative or close person, or if the stay of such a third-country national is in the interest of the Slovak Republic and the issue cannot be dealt with abroad. EU citizens or family members of the EU citizens can ask authorities to revoke the entry ban imposed by the decision on administrative expulsion if they can prove that the circumstances which provided the reason for expulsion and the entry ban have significantly changed. The Ministry of Interior of the SR decides about this request within 180 days from the date of its delivery.

The MoI SR may cancel the entry ban if the third-country national proves that he/she left the country within the deadline established by

the police department in its decision or if he/she left the country under voluntary returns.

The aforementioned procedure is applied also to persons who were not allowed to enter the SR, or who are illegally in the SR; or whose right to residence expired.

4.1.7.2 Assisted Voluntary Returns¹⁰¹

The conditions for assisted voluntary returns are regulated by:

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

Assisted voluntary return (AVR) means “a return to the country of origin or former place of residence of a third-country national, or to any third country to which the foreigner decides to return and which accepts the foreigner” and which is carried out by the IOM International Organization for Migration or other non-governmental organisation on the basis of an agreement with the Slovak Government¹⁰². Asylum seekers, unsuccessful asylum seekers or illegal migrants can join the AVR programme any time and in the SR it is the only possibility of voluntary return.

The participation of an applicant for assisted voluntary return in the programme of voluntary returns and his/her return is subject to approval by the BBAP PPF. It is possible for the BBAP PPF to deny approval of the assisted voluntary return due to the fact that the foreigner fails to comply with the conditions for assisted voluntary return or does not fall into the target group (e.g. he/she has a valid residence).¹⁰³ Assisted

¹⁰¹ This information was provided by IOM International Organisation for Migration in Bratislava, 25 November 2008.

¹⁰² Art. 2 letter. j) of the Act on Stay of Aliens.

¹⁰³ Mittelmanová, M. Programy a stratégie asistovaných návratov v SR a reintegrácia v tretích krajinách. EMN Study. Bratislava: IOM 2010.

voluntary return is subsequently carried out by the IOM.

The foreigners can find more information regarding the AVR programme on the special webpage of the IOM, www.avr.iom.sk. This webpage provides information for migrants regarding the AVR programme in six different languages (Slovak, English, Vietnamese, Russian, Chinese, and Arabic) that are most common among the applicants for the return. Further information can be obtained through low-rate helpline 0850 211 262, by e-mail or via face-to-face consultation. They also find out about the possibility of the AVR programme on the webpage www.minv.sk. The police department – APD PPF has the leaflets and other information regarding the voluntary returns available. In the decision on administrative expulsion given to the foreigner there is stated the possibility of return through the AVR programme. This is also a way how to inform the foreigners regarding the AVR.

Since 2006, the AVR programme is financed from the European Refugee Fund II and since 2009 from the European Return Fund of the General Programme Solidarity and management of migration flows which is co-funded also by the MoI SR.¹⁰⁴ IOM provides the possibility to obtain a reintegration grant to assist migrants in starting-up a small businesses after return to the country of origin. Furthermore the returnees have the possibility to obtain financial assistance to cover basic necessities of their life after return.¹⁰⁵

4.2 Relation to Other Policies

There is an apparent though often peripheral relationship between migration issues and the foreign, development, employment and social policies of Slovakia. This peripheral relationship is mainly due to the marginal position migra-

p. 25. Available online at www.emn.sk [consulted on 2010-05-02].

¹⁰⁴ <http://www.iom.sk/sk/aktivita/dobrovolne-navraty/aktualne-projekty> [consulted on 2012-08-11].

¹⁰⁵ At the time of the compilation of this study, the maximum amount of reintegration assistance was EUR 2,300, while the final amount depends on the client's specific needs.

tion and asylum issues occupy compared to other aspects of policy. Coordination of work in this area by relevant institutions is extremely important since carrying out policy regarding migrants is usually dependent on the cooperation of several ministries. The Managing Commission for Migration and Integration plays a key role in this work.

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

In May 2009, the Slovak Government approved the Mid-Term Strategy of Official Development Aid of the Slovak Republic for 2009–13 upon the initiative of the Foreign and European Affairs Ministry. It is a conceptual and strategic document for all the planning and programming documents in the field of official development aid of the Slovak Republic in the given period. Slovakia wishes to keep the coherence principle in favour of development, which means that it makes efforts to promote coherence between the development policy of the SR and the priorities of its foreign, security, economic and migration policies. Development aid will be provided in countries regarded by Slovakia and the EU as important countries of origin and transit countries of migrants (e.g. Ukraine, Georgia, Moldova, Afghanistan and Vietnam). The Strategy defines four sectoral priorities of the development aid of the SR the selection of which should promote the sustainable economic, social and ecological development of the

partner countries:

1. Building democratic institutions, the state of law, civil society and peace (e.g. experience of the SR in democratisation, building of the state of law, developing a civil society, etc.);
2. Social development (assistance in, for example, health care, education of children and adults, social services, etc.);
3. Economic development, building a market environment, promoting the macro-economic environment, public finances management, support of small- and medium-sized enterprises (experience of the SR in creating a business environment, including promotion of employment and support of small- and medium-sized businesses, etc.);
4. Infrastructure development with a positive impact on the sustainable development and environment protection (promotion of business infrastructure, environment protection, agriculture, food safety etc.)¹⁰⁶.

The Ministry of Foreign and European Affairs and the Ministry of the Interior are responsible for concluding bilateral readmission agreements. The agreement between the European Communities and the Russian Federation, which became effective in 2007, did not require any special implementation measures by the SR. As of 31 July 2012, the SR had 20 readmissions agreements signed at the bilateral level. The SR signed bilateral readmission agreements with the following EU Member States: Austria, Belgium, Bulgaria, the Czech Republic, France, Germany, Hungary, Italy, Luxembourg, the Netherlands, Poland, Romania, Slovenia, Spain and Sweden. As for third countries, the SR signed readmission agreements with Croatia, Norway, Switzerland and Vietnam. The Slovak Republic is also a party to those readmission agreements signed by the European Community on behalf of its Member States with third countries.

¹⁰⁶ Potočková, 2010: 50 according to the document Middle-Term Strategy of the Official Development Aid of the Slovak Republic for 2009 – 2013, approved by the Government of the SR by Resolution No. 170 of 04 March 2009. Available online at [http://www.rokovania.sk/appl/material.nsf/0/1B71C1003E418302C125756900473162/\\$FILE/Zdroj.html](http://www.rokovania.sk/appl/material.nsf/0/1B71C1003E418302C125756900473162/$FILE/Zdroj.html).

The Slovak embassies abroad and the police attachés posted to them take an active part in the early warning system monitoring the growth of migration. In their intelligence reports they highlight the need to address migration issues in order to prevent any negative impact which – among other things – may be eliminated by means of readmission agreements. The Ministry of Foreign and European Affairs immediately analyses intelligence reports and forwards the results to the Ministry of the Interior¹⁰⁷.

Individual projects related to migration already include some form of assistance to migrants in the country of their origin in order to help stabilise populations which tend to migrate. This assistance can be classified as a form of development aid. For example, the IOM has carried out projects through which it has offered migrants a reintegration grant for starting up small businesses upon their return to their country of origin since 2006.¹⁰⁸ These projects were co-funded by the European Refugee Fund and European Return Fund of the General Programme Solidarity and management of migration flows and the Ministry of Interior of the SR.¹⁰⁹ This financial support is allocated to the applicants based on a business plan written with help of the IOM or social workers in the reception facilities prior to the migrants' return home. The returning migrants also received financial support to cover basic needs upon their return to their country of origin. This project is meant to ensure that migrants become gainfully employed or establish profitable businesses in their country of origin to prevent them from repeatedly migrating¹¹⁰.

The issues of migrant integration in Slovakia concern all political areas in the SR. However, due to the limited scope of this study, it is not possible to deal with this topic at a greater ex-

¹⁰⁷ Summary Report.

¹⁰⁸ At the time of the compilation of this study, the maximum amount of reintegration assistance was EUR 2,300, while the final amount depends on the client's specific needs.

¹⁰⁹ <http://www.iom.sk/sk/aktivita/dobrovolne-navraty/aktualne-projekty> [consulted on 2012-08-11].

¹¹⁰ IOM in Slovakia 2005 – 2006. Activity Report, Bratislava: IOM, 2006, p. 13.

tent. These issues have a specific relation to health care or broader problems associated with the employment of foreigners from third countries in the SR.¹¹¹

¹¹¹ More details on these aspects of migration to the SR can be found in the publication *Integrácia migrantov v Slovenskej republike. Výzvy a odporúčania pre tvorcov politik.*

05

Analysis of Asylum and Migration Systems in the Slovak Republic

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

Years 2009 and 2010 were stagnant in the area of migration and asylum. No fundamental changes occurred in the political, institutional or legal areas either. In spite of the fact that the global financial crisis had an impact on the situation of migration in the world, mainly in the field of labour migration, the SR has not adopted any restrictive measures preventing migrants to work in the SR or measures supporting the return of migrants to their countries of origin.¹¹²

On the other hand, in 2011 significant changes occurred in these areas such as adoption of Migration Policy of the SR. It looked ahead to 2020 and the respective creation of action plans by the relevant ministries in order to fulfil the measures resulting from it: adoption of the new Act on Stay of Aliens that came into force on 1 January 2012; plus the amendment of the Act on Employment Services and Act on Illegal Work and Illegal Employment.

5.1 The Realm of Migration Policy

The situation in the area of migration has not changed dramatically for several years when comparing the statistical data on number of migrants from third-countries in the SR. Therefore it is possible to establish that the trends remain the same in the area of migration.

The fact that the SR defined its Migration Policy with the long-term perspective (until 2020) can be regarded very positively. The Migration Policy was elaborated with the participation of all relevant stakeholders on the basis of broad discussion. According to its authors it is a basic document and a starting point in develop-

¹¹² Potočková, 2010: 5.

ing modern and goal-oriented policy of the Slovak Government in the area of migration. At the same time it is a declaration of preparedness and willingness to participate in the harmonisation of migration policies of EU Member States.¹¹³ However, it is questionable whether the ministries will be able to actively fulfil – and to what extent – the ambitious measures that result from this policy in the form of action plans. Currently, it is not possible to evaluate their performance since the deadline for the accomplishment of the majority of tasks is 31 December 2012 or 31 December 2013. The measures of the Action Plan of the Migration Policy to 2020 for 2012–13 comprise, for instance, tasks such as the creation of rules for economic migration by defining the Slovak criteria for highly qualified migrants, introduction of point system for determining priorities in admission of particular categories of migrants, update of legal conditions regulating seasonal work, temporary and circular migration, new definition of recognition of education and qualifications, improvement in effectiveness of data collection regarding the labour market and their availability to the public, provision of inter-linking of residence registers, tax office registers and registers of the social and health security and databases of the offices of labour, social affairs and family, including the establishment of information and consultation centres for migrants in the countries of their origin, establishment of a mechanism for the systematic fulfilment of migrants' integration indicators, consideration of a change in the acquisition of the citizenship of the SR. In comparison to the previous Migration Policy from 2005, the new Migration Policy also deals with the emigration of the citizens of the SR, namely with the emigration of highly qualified work force, which has negative consequences.

Another positive fact is adoption of the Strategy for Foreigners' Integration in 2009. This Strategy defined for the first time the areas of integration of migrants in the SR according to thematic

¹¹³ The Annual Report on State of Fulfilment of Tasks, Intentions and Goals of the Migration Policy 2011.

topics, established the principles and goals of the policy, proposed legislative, organisational, conceptual and practical measures and the responsible stakeholders. In 2011 the update of the strategy was discussed with respect to the lack of its implementation. Newly adopted Migration Policy with the perspective until the year 2020 comprises also measures in the area of integration.

We think it is expedient to create independent central state institution that would be responsible for the majority aspects of immigration agenda. The Migration Policy with the perspective until 2020 mentions the creation of Immigration and Naturalisation Office as part of the MoI SR, which should cover all range of activities from the legal entry of the foreigner into the SR, acquisition of residence or international protection, integration into the society even up to the possibility to apply for citizenship of the SR. At the same time it would be suitable to replace the unstable project funding by stable and long-term funding for information and consultation centres for foreigners that are currently operational only in Bratislava and Košice through the IOM projection. Partial funding by the state would secure their long-term existence.

The adoption of the new Act on Stay of Aliens in 2011 is another positively evaluated fact. This Act harmonises national legislation with the EU legislation not only as regards content but also regarding the terminology. The new amendments are expected in the near future related to the need to transpose new EU legislation (e.g. Single Permit Directive).

Between 2009 and 2012, several innovative projects in the area of migration and asylum cofunded by the EU and the SR through the funds under the programme Solidarity and Management of Migration Flows Programme were implemented by various institutions, despite the fact that they were not active in this field in the past. (Detailed information can be found in the EMN Annual Policy Reports 2008, 2009, 2010, 2011 and on the website of the Re-

sponsible body for the general programme Solidarity and Management of Migration Flows).

5.2 The Realm of Asylum Policy

Asylum policies have undergone several abrupt changes during the existence of an independent Slovakia, and these changes have often been criticised both by national and international institutions and organisations. As indicated in the publication *Needs of Migrants in Slovakia*, as well as in Divinský¹¹⁴, state institutions and non-governmental organisations have differing opinions about the number of foreigners granted asylum in the SR. Asylum seekers and some representatives of NGOs consider the asylum policy of the SR to be too restrictive, the assessment of criteria for asylum too rigorous, asylum procedure too strict, and conditions for the successful integration of recognised refugees insufficient¹¹⁵.

In general we note that the transposition of EU legislation into the Slovak legal system has had a positive impact on the asylum policy in the country. Despite the fact that Slovakia usually enacts only the minimum standards required by the relevant directives, the adoption of even these minimum standards represents a positive contribution to the asylum and migrant system of the SR. A report evaluating the integration of asylum seekers and recognised refugees in Slovakia prepared by the so-called Multifunctional Team (comprised of representatives of the UNHCR, NGOs and state institutions) states that “in contrast to the past, visible and positive changes have taken place regarding the conditions in which asylum seekers and recognised refugees live in the Slovak Republic.” This positive growth, the report goes on to note, is reflected in “the improvement of the quality of accommodation facilities, fulfilment of basic needs, especially of asylum seekers, and in the

114 Divinský, 2006. Zahraničná migrácia v SR. Potreba nových prístupov. <http://www.euractiv.sk/socialna-politika/analiza/zahranična-migrácia-v-sr-potreba-novych-prístupov>. The original version of this analysis was published in the magazine *Zahraničná politika*, vol. 3, 2006. SFPA (hereafter Divinský, SFPA).
115 Ibidem.

initialisation of employment activities of those asylum seekers who are allowed to work.” The report also proposes specific proposals and solutions for the elimination of persistent shortcomings¹¹⁶.

So far, no in-depth analysis of the impact of EU legislation in the field of asylum on the Slovak legislative system exists. It is therefore impossible to look more closely at the process or results of legislative changes that have occurred since 1993. Primary research of this kind is currently unavailable in Slovakia.

Since 2005, the number of asylum seekers in Slovakia has been declining, and the structure of their countries of origin has also been continuously changing. There are fewer migrants coming from countries with on-going war conflicts or countries routinely persecuting their inhabitants (the Balkans, Afghanistan, Iraq) and more migrants coming from countries with increasing emigration due to economic reasons (Southern and Eastern Asia, Eastern Europe). To this end, it is vital that the focus and activity of relevant institutions, the allocation of financial resources, media coverage of the issue and, of course, practical measures in migration management be adjusted.¹¹⁷ Certain improvements can be observed in this field between 2008 and 2012. Some organisations and institutions started to provide care, besides asylum seekers and persons granted asylum, to other migrant groups, too, and the coordination of activities between the organisations and their cooperation has also improved.

According to Divinský, at the end of June 2006 the Aliens Police Department registered only 88 of all recognised refugees still living in Slovakia, which is one-fifth of the total number of asylums granted by that time. We have no current data on the number of persons granted asylum presently living in the country but likely not much has changed over the past years. Many

116 UNHCR. Hodnotenie začleňovania žiadateľov o azyl a azylantov v Slovenskej republike s ohľadom na ich vek, pohlavie a iné odlišnosti (September 2007). Available online at <http://www.unhcr.sk/slovakia/images/stories/pdf/svgagdm07.pdf> [consulted on 2008-09-23], p. 23 – 24.
117 Divinský, SFPA.

persons granted asylum continue to leave the SR for various reasons. Impediments to more effective integration of persons granted asylum as well as other migrants from third countries persist, such as:¹¹⁸

- external factors - in the countries of Western Europe wages are substantially higher, communities of fellow country nationals (including family or friends from the country of origin) are larger and better established;
- internal factors - in the SR there are no long-term integration programmes, problems with integration in the labour market continue and public attitudes towards foreigners are not generally favourable.

Additionally, despite a few high-quality projects financed by programmes such as ESF or EQUAL, unavailability of long-term state financing and the number of projects implemented by organisations active in the field of asylum, migration and integration result in problems regarding the long-term sustainability of these few activities that contribute to improving the situation of asylum seekers in Slovakia and to a better integration of persons granted asylum and third-country nationals with other types of residence. Limited resources and the difficulty of maintaining uninterrupted financing have resulted in significant negative impacts on many NGOs (in terms of personnel and sustaining institutional memory).

Since 2010, the Slovak Republic has been actively involved in resettlement programmes, primarily in assisting EU countries in the resettlement of ten refugees from Malta. Besides this activity, in August 2009 Slovakia received 98 Palestinian refugees for a period of six months who had been previously placed in the refugee camp Al Waleed in Iraq at the Syrian border. Their stay in Slovakia was temporary and they were gradually transferred to third countries. This activity was conducted on the basis of the trilateral Agreement between the Govern-

118 Divinský, SFPA.

ment of the Slovak Republic, the UN High Commissioner for Refugees, and the International Organization for Migration on Humanitarian Transfer of Refugees in Need of International Protection.¹¹⁹ This successful transfer led to the signing of a new Agreement in December 2010, on the basis of which 46 Afghan women and children were admitted in May 2011 and a group of 40 Somali refugees from Eritrea was admitted in December 2011. In July 2012, 50 refugees (27 adults and 23 children) from Somalia, Ethiopia, Sudan, Iraq, and Eritrea were admitted. These refugees will be placed in Reception Centre in Humenné for a period of six months and subsequently they will be resettled into third countries. A new trilateral Agreement was signed on 21 July 2012, on which basis the SR will admit 50% more refugees, i.e. 150, compared to the previous agreement for a total period of up to six months. The SR will provide accommodation, food and basic care¹²⁰.

From a legislative point of view, the work on amendment to the Asylum Act will start in the near future due to the need to transpose the new recast Qualification Directive.

119 Potočková, 2010: 28.

120 UNHCR, Slovakia increases capacity of refugee transit center in Humenné, 27, 6. 2012, Available online at: <http://www.unhcr-centraleurope.org/en/news/2012/slovakia-increases-capacity-of-refugee-transit-centre-in-humenne.html> [consulted on 2012-09-23].

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