

## ASYLUM LEGAL FRAMEWORK AND POLICY OF THE SLOVAK REPUBLIC

Lucia Hurná

University of Economics in Bratislava  
Faculty of International Relations  
Department of International Law  
Dolnozemsá cesta 1/b, 852 35 Bratislava 5, Slovak Republic  
Telephone (+21 2) 6729 5408  
E-mail: [hurna@euba.sk](mailto:hurna@euba.sk)

Received on 11 July, 2012; accepted on 7 December, 2012

**Abstract.** *After the establishment of the independent Slovak Republic, legal and institutional ground rules were set for providing asylum to foreigners present on the territory of the Slovak Republic. The national legislation of the last twenty years was adopted in compliance with international treaties and the European Union instruments covering asylum matters. In the field of asylum policy, the Slovak Republic complies with its traditional pillars and supports new forms of protection following the new challenges faced by the international community. The currently valid Asylum Act regulates the international protection of aliens in the Slovak Republic, by defining the conditions and procedures related to granting asylum and provision of subsidiary protection and temporary shelter. The Asylum Act also covers the rights and obligations of different categories of persons, stay in asylum facilities and, partially, the integration of persons that are granted asylum. This article describes and analyses the development of the Slovak asylum legal framework and the concept of asylum policy. Furthermore, it looks at different protection statuses granted to foreigners and finally deals with the refugee migration trends in the Slovak Republic.*

**Keywords:** *international protection, asylum, subsidiary protection, temporary shelter, Asylum Act.*

## Introduction

In the beginning of the 1990's, after the fall of communism and during the peaceful division of the Czech and Slovak Federal Republic,<sup>1</sup> migration trends in the Slovak Republic started to alter radically. Because of the new societal situation, the Slovak Republic began to undergo an important change in the domain of international migration and a number of problems related to it have come to the foreground. Absolutely new categories of aliens, not well known until then, passing through or living on the territory of the country emerged. State policies dealing with migration were substantially modified and a more open approach towards migration was adopted. From the European Union perspective, the Slovak Republic belongs to the group of Member States who have had to adapt to the increased levels of immigration, in particular after accession to the European Union, and immigration is a relatively recent issue to which they have had to adapt very rapidly.<sup>2</sup>

Asylum seekers form an essential component of international migration on the territory of the Slovak Republic. As the institution of asylum was practically unknown to the former Czechoslovak legal order, the asylum issues in particular represent a new social phenomenon in the Slovak Republic. The Slovak Republic found it necessary to establish an institutional basis and pass the respective legislative and governmental provisions in order to address issues related to asylum.<sup>3</sup> In recent years, the Slovak Republic has introduced important new policies and legal frameworks in that area.

The aim of this article is to analyse the asylum legal framework and policy of the Slovak Republic. The first part of the article describes the development of the Slovak asylum legal framework in the past twenty years. The second part of the article introduces different international protection statuses granted to foreigners present in the territory of the Slovak Republic and the practical exercise and interpretation of different provisions of the national asylum legislation. Furthermore, it focuses on the consistency of these statuses with the Qualification Directive. The last part of the article deals with asylum trends in the Slovak Republic. To achieve these aims, historical, analytical, comparative and descriptive research methods were used.

- 
- 1 On 1 January 1993 the independent Slovak Republic was created after the split of the Czech and Slovak Federal Republic.
  - 2 European Migration Network. *Organisation of Asylum and Migration Policies in the EU Member States*. 2010, p. 22 [interactive]. [accessed on 2012-06-28]. <[http://www.emn.sk/phocadownload/emn\\_studies/emn-sk\\_study\\_on\\_organiz\\_of\\_migr\\_asylum\\_policy\\_synthesis\\_report\\_en.pdf](http://www.emn.sk/phocadownload/emn_studies/emn-sk_study_on_organiz_of_migr_asylum_policy_synthesis_report_en.pdf)>.
  - 3 Guličová, M. G.; Bargerová, Z. *Organisation of Asylum and Migration Policies in the Slovak Republic*. Bratislava: International Organization for Migration Bratislava, 2008, p. 23 [interactive]. [accessed on 2012-06-27]. <[http://www.emn.sk/phocadownload/emn\\_studies/emn-sk\\_study\\_on\\_organiz\\_of\\_migr\\_asylum\\_policy\\_sr\\_en.pdf](http://www.emn.sk/phocadownload/emn_studies/emn-sk_study_on_organiz_of_migr_asylum_policy_sr_en.pdf)>.

## 1. Establishment of the Slovak Asylum Legal Framework

The Slovak Republic provides international protection to those who need it, in accordance with its international obligations, European Union law and national legislation.

The Czech and Slovak Federal Republic, to which the Slovak Republic is a successor, acceded without reservations to the Convention relating to the Status of Refugees<sup>4</sup> on 24 February 1992 and its Protocol relating to the Status of Refugees<sup>5</sup> on 26 November 1991. Immediately after its foundation the Slovak Republic declared its standpoint to the refugee problems by the succession to the abovementioned instruments<sup>6</sup> on 4 February 1993.<sup>7</sup> As the majority of other states, even the Slovak Republic adopted national legislation relating to refugees, as a direct result of ratification of both documents.

Article 43 of the Charter of Fundamental Rights and Freedoms,<sup>8</sup> which refers to the duty of the Slovak Republic to grant asylum to those foreigners who are persecuted for the exercise of political rights and freedoms, represents the primary guarantee in the Slovak juridical system. Furthermore, Article 53 of the Constitution of the Slovak Republic<sup>9</sup> stipulates that: “The Slovak Republic shall grant asylum to aliens persecuted for the exercise of political rights and freedoms. Such asylum may be denied to those who have acted to violate the fundamental human rights and freedoms. Details shall be provided by law”.

The first legislative act dealing with asylum in the former Czech and Slovak Federal Republic, following the political changes at the end of the 1980s, was the Act on Refugees No. 498/1990 Coll. of 16 November 1990 (federal Refugee Act). The criteria of the federal Refugee Act for granting refugee status had already been based on the Convention relating to the Status of Refugees and the Protocol relating to the Status of Refugees and on humanitarian reasons.<sup>10</sup> This Act established procedures for processing applications for refugee status and defined the rights and duties of asylum seekers and refugees.

After the separation of the Czech and Slovak Federal Republic, this federal Refugee Act was revoked in the Slovak Republic and replaced by the new Act on Refugees No. 283/1995 Coll. of 14 November 1995 (Refugee Act). It was adopted by the National

4 Convention relating to the Status of Refugees (adopted on 28 July 1951, entered into force on 22 April 1954). 189 UNTS 150.

5 Protocol relating to the Status of Refugees (adopted on 31 January 1967, entered into force on 4 October 1967). 606 UNTS 267.

6 Notification of the Ministry of Foreign Affairs of the Slovak Republic No. 319/1996 Coll. of 19 November 1996.

7 Source: UNHCR.

8 Charter of Fundamental Rights and Freedoms, Constitutional Act No. 23/1991 Coll. of 9 January 1991.

9 The Constitution of the Slovak Republic No. 460/1992 Coll. of 1 September 1992.

10 European Commission. *Asylum-Seekers and Refugees, a statistical report*. Eurostat Working papers. 1998, Volume 3: Central European Countries (3/1998/E/no 19), p. 26 [interactive]. [accessed on 2012-06-26]. <[http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-AP-01-012/EN/KS-AP-01-012-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-AP-01-012/EN/KS-AP-01-012-EN.PDF)>.

Council of the Slovak Republic and entered into force on 1 January 1996. The Refugee Act was presented by many leading politicians as an important effort to adapt legislation and procedures to international circumstances. As regards terminology, the Refugee Act was using the term “refugee” instead of “asylum”.

The purpose of the Refugee Act was to lay down the procedures of state authorities on the process of determination of refugee status in the Slovak Republic and to define the rights and duties of aliens who applied for refugee status or who were granted refugee status in the territory of the Slovak Republic.<sup>11</sup> According to the Refugee Act, refugee status could be granted to the alien who, in the country of his or her nationality, had a well-founded fear of being persecuted for reasons of race, religion, nationality, for his or her political opinion or membership of a particular social group and was unable or, owing to such fear, unwilling to go back to the country of his or her origin.<sup>12</sup> Refugee status could also be granted for humanitarian reasons. Furthermore, the Refugee Act also covered aliens who were granted temporary protection on the territory of the Slovak Republic for the purpose of protection against the consequences of war in the country of their origin, or in the country of their former habitual residence (the so-called “de facto refugees”),<sup>13</sup> and that was considered as a novelty provision. The Refugee Act comprised the principle of non-refoulement that protected the applicant who applied for granting refugee status against expulsion or return to a country where this person had reasons to fear persecution.<sup>14</sup>

The procedures for the determination of refugee status were dealt within Part Two of the Refugee Act, comprising questions concerning the commencement of the procedure, the granting of refugee status to aliens, refusal to grant the refugee status, cancellation of the refugee status, accelerated procedure, suspension of the procedure, termination of the procedure, decision on granting the refugee status and the appeal procedure.<sup>15</sup>

According to the Refugee Act, participants in this procedure could be aliens who expressed written or oral intention to apply for recognition of refugee status in the Slovak Republic. An alien could do so directly at a border crossing point at the time of entry into the territory of the Slovak Republic at the police department,<sup>16</sup> or within 24 hours after crossing the border of the Slovak Republic at the police department, unless there were serious obstacles, or within the period of permitted stay in the territory of the Slovak Republic at the police department at the place of his or her stay.<sup>17</sup> The respective police department, where the alien expressed his or her intention to apply for granting refugee status, was obliged to prepare a written record about it and send it to the

---

11 Article 1(1) of the Refugee Act No. 283/1995 Coll.

12 *Ibid.*, Article 7(1).

13 *Ibid.*, Article 1(2).

14 *Ibid.*, Article 4(8).

15 *Ibid.*, Articles 3-16.

16 The Bureau of Border and Alien Police of the Ministry of the Interior of the Slovak Republic starts the asylum procedure. It is a body of the Ministry of the Interior which, among other tasks, to a limited extent manages asylum procedures.

17 Article 4(2) of the Refugee Act No. 283/1995 Coll.

Ministry of Interior of the Slovak Republic (Ministry of Interior) without delay. In this connection, the most criticised provision was the 24-hour-rule for applying for granting the refugee status. Although the Refugee Act allowed exceptions to the 24-hour rule, the time limit was considered as too strict because it limited access to the procedure. The police decided whether the alien was to be given access to the procedure or not.<sup>18</sup> When aliens were denied access to the procedure, there was no possibility of appeal and they received no written explanation.<sup>19</sup>

The procedure for the determination of refugee status on the territory of the Slovak Republic was under the competency of the Ministry of Interior and its bodies. The Migration Office of the Ministry of Interior (the ‘Migration Office’)<sup>20</sup> was the first instance in this process. The Migration Office had to take a decision in the procedure determining refugee status within 90 days from the day of its commencement. This decision could be appealed against to the Migration Office within the period of 15 days from its delivery. The Minister for the Interior constituted the appeal authority<sup>21</sup> and had to decide on the appeal within 60 days. The decision taken by the Minister for the Interior could be reviewed by the court<sup>22</sup> according to the Code of Civil Procedure.<sup>23</sup> The appeal procedure was criticized because of the absence of an independent body as the second instance in the procedure for determining the refugee status.

The positive improvement brought about by the Refugee Act was the introduction of the indefinite duration of the refugee status.<sup>24</sup> A recognised refugee was issued a permanent residence permit in the Slovak Republic.<sup>25</sup> According to the former federal Refugee Act, the refugee status was granted only for a period of five years.<sup>26</sup>

The Ministry of the Interior cooperated with the office of United Nations High Commissioner for Refugees during the determination of the refugee status procedure and the representative of the office of United Nations High Commissioner for Refugees could at any time participate in the determination procedure.<sup>27</sup>

In comparison with the former federal Refugee Act, this new Refugee Act No. 283/1995 Coll. was not only more extensive, but its content was much more elaborated. Significant improvements were adopted regarding the legal status of a recognised refugee

---

18 *Asylum-Seekers and Refugees, a statistical report, supra* note 10.

19 European Parliament. *Migration and Asylum in Central and Eastern Europe*. Brussels: Working Paper, 2004, p. 61 [interactive]. [accessed on 2012-06-26]. <[http://www.europarl.europa.eu/workingpapers/libe/pdf/104\\_en.pdf](http://www.europarl.europa.eu/workingpapers/libe/pdf/104_en.pdf)>.

20 The Migration Office of the Ministry of Interior of the Slovak Republic was established in 1993 by the Resolution of the Government of the Slovak Republic No. 501 of 13 July 1993. It is the main state authority responsible for providing comprehensive care for foreigners in need of some form of international protection, including asylum.

21 Article 14(2) of the Refugee Act No. 283/1995 Coll.

22 *Ibid.*, Article 14 (3).

23 Code of Civil Procedure No. 99/1963 Coll. of 4 December 1963.

24 Article 13(2) of the Refugee Act No. 283/1995 Coll.

25 *Ibid.*, Article 17 (1).

26 Article 24 of the Refugee Act No. 498/1990 Coll.

27 Article 26 of the Refugee Act No. 283/1995 Coll.

and the possibility was provided for a foreigner to obtain temporary protection in the Slovak Republic. But following the European Commission's opinion on the progress towards accession of November 1998, the Slovak asylum legislation needed to be more detailed, particularly regarding access to the procedure.<sup>28</sup> The European Commission had the same view in October 1999 and it emphasised that it was necessary to introduce improvements to the asylum procedure.<sup>29</sup> Generally speaking, the Refugee Act was only partially compatible with the asylum requirements of the European Union.

As a consequence of the criticism addressed to the Refugee Act No. 283/1995 Coll., it was amended after five years by Act No. 309/2000 Coll. of 19 September 2000. It entered into force on 1 November 2000. The aim of the amendment was to make it, to a certain extent, less restrictive. The most important change introduced by the amendment was the unlimited access of aliens to the procedure for the determination of refugee status, in other words, the abolition of the 24-hour rule for applying for granting refugee status. The other substantial innovations included the extension of the grounds for granting refugee status by inserting a new paragraph on family reunification, transposition of manifestly unfounded reasons for granting refugee status directly into the Refugee Act, and the obligation to inform the applicants on the decisions made in proceedings in the language they understand. The European Commission welcomed the significant progress in the Slovak asylum legislation in its report published in November 2000.<sup>30</sup> Despite the progress, the changes received some criticism. The amendments allowed too strong degree of discretion for border guards and the Migration Office in the examination of the applications. Furthermore, an independent body as the second instance in the procedure for the determination of refugee status had not been established.

During the negotiations for accession of the Slovak Republic to the European Union, differences between the European and Slovak asylum law were still apparent. Following the European Commission's opinion on the progress towards accession of November 2001,<sup>31</sup> the Slovak Republic was not yet fully in line with the *acquis* in the field of asylum. Accordingly, it was necessary to implement qualitative changes into the Slovak asylum legal framework before the accession to the European Union. Therefore, the National Council of the Slovak Republic adopted a new, more comprehensive Act on Asylum No. 480/2002 Coll. of 20 June 2002 (Asylum Act) that was meeting the requirements of the European Union, including compliance with the Convention

---

28 European Commission. *Regular report from the Commission on Slovakia's progress towards accession*, 1998, p. 35 [interactive]. [accessed on 2012-07-02]. <[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1998/slovakia\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/slovakia_en.pdf)>.

29 European Commission. *Regular report from the Commission on Slovakia's progress towards accession*, 1999, p. 50 [interactive]. [accessed on 2012-07-02]. <[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1999/slovakia\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/slovakia_en.pdf)>.

30 European Commission. *Regular report from the Commission on Slovakia's progress towards accession*, 2000, p. 69 [interactive]. [accessed on 2012-07-02]. <[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2000/sk\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/sk_en.pdf)>.

31 European Commission. *Regular report from the Commission on Slovakia's progress towards accession*, 2001, p. 81 [interactive]. [accessed on 2012-07-02]. <[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2001/sk\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2001/sk_en.pdf)>.

relating to the Status of Refugees and the Protocol relating to the Status of Refugees. It entered into force on 1 January 2003. The former Refugee Act No. 283/1995 Coll. as amended by Act No. 309/2000 Coll. was repealed. With a view to harmonise the terminology used in the asylum legislation of the European Union, the term “refugee” disappeared from the new Asylum Act and was replaced by the term “asylum”. In comparison with the former Refugee Act, the Asylum Act regulates the asylum matters in more detail. It broadens the grounds for granting asylum, introduces the subsidiary protection status into the Slovak legislation and lays down more complex procedures for granting temporary shelter. It is aimed at making the asylum procedure more effective, above all by preventing the cases of misusing the procedure by third-country nationals who do not qualify for such protection. The Asylum Act also introduces appellate courts as an independent second instance in the asylum procedure. In its report published in October 2002,<sup>32</sup> the European Commission emphasised the progress achieved by the Slovak Republic with the adoption of the new Asylum Act.

The Asylum Act is currently valid although since its entry into force it has been amended six times. The Asylum Act was amended for the first time by Act No. 606/2003 Coll. of 6 November 2003, which came into force on 1 January 2004, before the accession of the Slovak Republic to the European Union. With this amendment, no European Union directive was transposed into the Asylum Act. The first amendment did not introduce any essential changes to the Slovak asylum law and it could be described as technical one. The subsequent amendments of the Asylum Act were adopted in order to transpose the European Union directives, i.e. Temporary Protection Directive<sup>33</sup>, Reception Directive<sup>34</sup>, *Qualification Directive*<sup>35</sup>, *Directive on Asylum Procedures*<sup>36</sup>. All of those amendments introduced a range of changes in the field of asylum in the Slovak Republic in legal terms and in practice. Generally speaking, also after the Slovak Republic joined the European Union on 1 May 2004, the process of transposition of the European Union legislation on asylum is still in progress.

32 European Commission. *Regular report from the Commission on Slovakia's progress towards accession*. 2002, p. 108 [interactive]. [accessed 2012-07-02]. <[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2002/sk\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/sk_en.pdf)>.

33 Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof. [2001] OJ L 212. The transposition deadline set in the Temporary Protection Directive was 31 December 2002.

34 Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers. [2003] OJ L 31. The transposition deadline set in the Reception Directive was 6 February 2005.

35 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. [2004] OJ L 304. The transposition deadline set in the Qualification Directive was 10 October 2006.

36 Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status. [2005] OJ L 326. The transposition deadline set in the Directive on Asylum Procedure was 1 December 2007, except Article 15 with the transposition deadline set for 1 December 2008.

The Asylum Act was amended for the second time by Act No. 207/2004 Coll. of 10 March 2004, which came into force on 1 May 2004. With this amendment, Temporary Protection Directive was transposed into the Asylum Act. After this amendment, the applicant older than 14 years of age has an obligation to undergo taking of fingerprints. Furthermore, granting of temporary shelter for the purpose of family reunification was introduced into the Slovak legal order.

The Asylum Act was amended for the third time by Act No. 1/2005 Coll. of 2 December 2004, which came into force on 1 February 2005, to transpose the Reception Directive. The rules on reception conditions for asylum seekers were incorporated in the Slovak legislation even before the adoption of the norms of transposition of the Directive, but after harmonisation they became more clear and detailed. After this amendment, the Asylum Act newly regulates locations where aliens can apply for asylum; sets a time limit, within which the asylum applicant must be informed about his or her rights and duties during the procedure for the determination of the asylum status; it newly determines persons legitimately authorised to have access to the applicant's file in the asylum procedure. It further provides that during the asylum determination procedure asylum seekers are granted basic standards, i.e. accommodation, food or board allowance, basic sanitary products and other things necessary for living, urgent health care (or more extensive health care in specific cases) and pocket money. The most important change introduced by the transposition of the Reception Directive is the fact that for the first time asylum applicants have access to the labour market in the Slovak Republic, if the Migration Office does not issue a decision regarding the granting of the asylum status within one year from the commencement of the asylum determination procedure. In the past, asylum seekers were excluded from the labour market. The amendment act introduces restrictive practice with regard to freedom of movement, as asylum seekers must ask permission to leave the accommodation centre. It also provides that a court is to appoint a guardian for asylum seekers, who are unaccompanied minors.

The Asylum Act was amended for the fourth time by Act No. 692/2006 Coll. of 6 December 2006, which came into force on 1 January 2007 to transpose the Qualification Directive. From that time, the Slovak Republic committed itself to grant the subsidiary protection as another form of international protection in addition to the asylum. It also established the reasons for its rejection, denial, withdrawal and revocation. Before the amendment was adopted, the subsidiary protection was partially covered by the institute of a tolerated stay established by Act No. 48/2002 Coll. on the Stay of Aliens of 13 December 2001 which, however, contained neither all the reasons for providing such a protection, nor the entire ambit of competences that pertained to foreigners in compliance with the Qualification Directive.

The last two amendments of the Asylum Act were contained in Act No. 643/2007 Coll. of 5 December 2007, which came into force on 1 January 2008 and Act No. 451/2008 Coll. of 24 October 2008, which came into force on 1 December 2008. They were adopted following the obligation to transpose the Directive on Asylum Procedures. These amendments introduced new, detailed regulation of the procedure for revoking the identity documents and issuance of asylum seeker's cards to foreign nationals.

Furthermore, the amendments clarify the rules for conducting interviews with asylum seekers with an emphasis on the special rights of unaccompanied minors. It contains an obligation to summon the asylum seeker for an interview by means of a written notice in the language which the asylum seeker is assumed to understand. Interviews with unaccompanied minors can only be conducted in the presence of their guardians who can inform the minor about the importance and possible consequences of the interview and prepare them for the interview. The amendments to the Asylum Act also newly specify the reasons for refusing the application as inadmissible or manifestly unfounded. Since 2008, the United Nations High Commissioner for Refugees has the possibility to participate in the asylum procedure only with a special consent from the asylum seeker. A new provision was also introduced, providing for free legal assistance to unsuccessful asylum seekers in appealing against a negative decision taken in the asylum procedures. This service is provided by the Legal Assistance Centre (state budgetary organisation).

In addition to the legislative changes in asylum matters, the Slovak Republic adopted broad policy papers and strategies, comprising multiannual action plans and policy documents on migration, covering also the area of asylum. After the establishment of the Slovak Republic, the Slovak Government passed Principles of Migration Policy of the Slovak Republic.<sup>37</sup> The latest document is the Migration policy of the Slovak Republic with a perspective by the year 2020, adopted in August 2011.<sup>38</sup>

## 2. Asylum and Other International Protection Statuses Granted by the Asylum Act and their Consistency with the Qualification Directive

The scope of the current Asylum Act, as amended is to regulate the asylum procedure; stipulate the procedure for granting temporary shelter; provide for the rights and obligations of asylum seekers, persons granted asylum, aliens who were granted subsidiary protection, aliens seeking temporary shelter and aliens who have been granted temporary shelter; to stipulate the powers of public bodies in the area of asylum, subsidiary protection and temporary shelter; regulate the integration of persons granted asylum in the society; and regulate the stay in asylum facilities.<sup>39</sup>

The asylum law of the Slovak Republic is developed not only by changes in legislation but also by judges through decisions of courts. The judgements of the Supreme Court of the Slovak Republic or regional courts of the Slovak Republic are not legally binding in general and do not represent a source of law, but have an impact on the practical exercise and interpretation of the different provisions of the Asylum Act. In this connection, the following text contains references to selected judgments of the Supreme Court of the Slovak Republic in asylum matters.

---

37 Resolution of the Government of the Slovak Republic No. 846 of 16 November 1993.

38 Resolution of the Government of the Slovak Republic No. 574 of 31 August 2011.

39 Section 1 of the Asylum Act No. 480/2002 Coll.

According to the Asylum Act, the Slovak Republic grants different protection statuses. International protection can be granted either in the form of asylum, or subsidiary protection.<sup>40</sup> Both kinds of international protection constitute the highest protection statuses possible which foreign nationals can obtain in the Slovak Republic.<sup>41</sup> The Asylum Act also regulates other form of protection granted to foreign nationals, the so-called temporary shelter. Furthermore, according to Act No. 404/2011 Coll. on the Stay of Aliens of 21 October 2011 tolerated stay is another kind of protection that can be granted to foreigners in the Slovak Republic. Tolerated stay is granted beyond the grounds set by the Convention relating to the Status of Refugees and is not harmonised within the European Union. It covers various types of temporary residence of foreign nationals, which predominantly have a humanitarian character and is granted in case foreign nationals fail to satisfy the conditions applying to the granting of permanent or temporary residence. The procedure for granting tolerated stay permit in the Slovak Republic is conducted independently from the asylum procedure set in the Asylum Act, this is why it will be not analysed further.

Asylum<sup>42</sup> means protection of an alien against persecution<sup>43</sup> on the grounds laid down in an international treaty (Convention relating to the Status of Refugees) or a separate regulation (Article 53 of the Constitution of the Slovak Republic).<sup>44</sup> Under the Asylum Act, asylum in the Slovak Republic may be granted for three different reasons: for reasons stipulated in the Convention relating to the Status of Refugees (Section 8 of the Asylum Act); for humanitarian reasons (Section 9 of the Asylum Act) and for the purpose of family reunification (Section 10 of the Asylum Act).

The Qualification Directive has clearly had a significant impact on the legal interpretation of the actors of persecution and serious harm in the Slovak asylum law. The Slovak Republic accepted that State, quasi-State or de facto authorities who control the whole or a significant part of the territory and non-State actors<sup>45</sup> could be agents of persecution.<sup>46</sup> However, a more restrictive approach to the interpretation of quasi-

40 Section 2(a) of the Asylum Act No. 480/2002 Coll.

41 Šnirerová, M.; Volanská, M. *The Different National Practices Concerning Granting of Non-EU Harmonised Protection Statuses in the Slovak Republic*. Bratislava: International Organization for Migration, 2009, p. 14 [interactive]. [accessed on 2012-06-27]. <[http://www.emn.sk/phocadownload/emn\\_studies/emn-sk\\_study\\_on\\_granting\\_of\\_protection\\_statuses\\_sr\\_en.pdf](http://www.emn.sk/phocadownload/emn_studies/emn-sk_study_on_granting_of_protection_statuses_sr_en.pdf)>.

42 Before the Asylum Act No. 480/2002 Coll. came into force, it was granting the status of a “refugee”.

43 Section 2(d) of the Asylum Act No. 480/2002 Coll.: “Persecution means serious or repeated conduct constituting a severe violation of basic human rights or an accumulation of various measures, which affect an individual in a similar manner.”

44 Section 2(b) of the Asylum Act No. 480/2002 Coll.

45 In the Slovak Republic, militia groups, armed insurgents, Islamic extremists, unknown Shi’a militants, persons fighting against the presence of foreign troops, family/tribe members in the case of honour killings, groups intimidating and threatening the applicant with expulsion from her house/area of residence, Chechen rebels, “masked armed men dressed in military uniforms speaking Russian”, masked men from the Russian federal troops, Kurdish attackers, and group of extremists kidnappers demanding ransom have all been considered as potential non-State actors of persecution or serious harm in the decisions.

46 Section 2(e) of the Asylum Act No. 480/2002 Coll.: “Actor of persecution or serious harm means 1. the State, 2. political parties or political movements or organisations controlling the State or a substantial part of the territory of the State, or 3. non-State actors, if the entities under points 1 and 2 are unable or unwilling to provide protection against persecution or serious harm.”

State actors and non-State actors is visible in the Asylum Act. The Slovak Asylum Act narrows the scope of Article 6(b) of the Qualification Directive by adding the adjective “political”, thus only parties that have or seek to attain political power and that control the State or a substantial part of the territory of a State qualify as actors of persecution. Furthermore, the Slovak Asylum Act narrows the scope of Article 6 (c) of the Qualification Directive because it does not explicitly include international organizations as potential actors of protection.<sup>47</sup>

The Asylum Act defines entities that can provide protection in the country of origin and sets out the criteria for assessing capacity to provide protection.<sup>48</sup> The State, as an actor of protection, is clearly established in the Asylum Act. The transposition of the Qualification Directive to the extent to which non-State entities, including international organisations, controlling the State or a substantial part of the territory of the State can provide effective and adequate protection is more controversial. Again there are differences in the wording of the legislation compared to Article 7 of the Qualification Directive, as in the Slovak Asylum Act the reference to “parties” is limited to “political parties or political movements” and the “international organisations” as potential actors of protection are not explicitly mentioned in the Asylum Act.<sup>49</sup> In the view of the UNHCR, most of the decisions in the Slovak Republic did not spell out any established or specific criteria relating to the adequacy or effectiveness of protection in terms of what constituted “reasonable steps to prevent persecution or serious harm”, and rarely any analysis of whether actors of protection operated an “effective legal system” as provided for in the Qualification Directive.<sup>50</sup> Moreover, the decision practice of the Slovak Migration Office displays a lack of critical review of the potential actors of protection with respect to the Russian Federation.<sup>51</sup>

The Slovak Republic grants asylum under Section 8 of the Asylum Act to a foreign national who has well-founded fear of being persecuted in his or her country of origin on the grounds of race, ethnicity or religion, or for holding certain political views or membership in a certain social group, and due to these fears he or she cannot or does not want to return to that country, or if he or she is persecuted in his or her country of origin for exercise of political rights and freedoms. According to the UNHCR analysis,

---

47 UNHCR. *Asylum in the European Union. A study of the implementation of the Qualification Directive*. Brussels, 2007, p. 42 [interactive]. [accessed on 2012-12-19]. <<http://www.unhcr.org/47302b6c2.html>>.

48 Section 19a(6) of the Asylum Act No. 480/2002 Coll.: “When assessing an application for granting asylum, the Ministry shall stem from the fact that protection against persecution or serious harm is usually provided in the country of origin when the State, political parties or political movements, or organisations controlling the State or a substantial part of its territory, take reasonable steps to prevent the persecution or suffering of serious harm, in particular, by means of an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.”

49 *Ibid.*, p. 48.

50 *Ibid.*, p. 50.

51 With regard to Chechens, most parts of the Russian Federation are accepted as possible areas of internal protection. The decisions do not demonstrate any analysis as to how far the Russian authorities can be considered as potential actors of protection, even though they may at the same time be considered as perpetrators of persecution or serious harm.

the persons who are compelled to leave their country of origin as a result of fear of persecution or serious harm in the context of generalised violence are not recognised as refugees under the Convention relating to the Status of Refugees (for example, Chechens, Iraqis, Palestinians, Afghanistansians).<sup>52</sup> Pursuant to the Judgement of the Supreme Court of the Slovak Republic, File No. 1SŽa/7/2009 of 21 April 2009: If the grounds for asylum application (unfreedom, the impossibility to express freely), arise from a generally known situation in the country of origin, without the necessity of the claimant to prove his legitimacy of fear or fear of persecution (as the fact defined in Section 2(d) of the Asylum Act), at the time of filing the application for asylum, i.e. usually at the time immediately succeeding the departure from the country of origin, the decision of the Migration Office not to grant asylum to the applicant is legitimate (applicant from China).<sup>53</sup> According to the Judgement of the Supreme Court of the Slovak Republic, File No. 1SŽa/78/2010 of 12 October 2010: Institution of asylum is applicable to a limited extent i.e. only concerning the persecution of legally recognised grounds, when the very existence of human beings and the rights and freedoms associated with it is protected only by the Institute, while the granting of asylum under Section 8 of the Asylum Act is objectively connected to the existence of persecution as a fact defined in Section 2(d) of the Asylum Act or to the justified concerns of this fact, and in both cases at the time of application for asylum, that is usually in the period immediately following the departure from the country of origin (applicant from Nigeria).<sup>54</sup>

Although asylum granted on humanitarian grounds is governed by the Asylum Act, it is not harmonised at the European Union level and it is specially adapted to the conditions of the Slovak Republic. The Migration Office may grant asylum also on humanitarian grounds, even where no reasons for granting asylum under Section 8 of the Asylum Act are found within the procedure. It means that the asylum status can be granted also beyond the grounds set by the Convention relating to the Status of Refugees and laid down in the Asylum Act. There is no definition of exact conditions for granting asylum on humanitarian grounds in the Asylum Act, but Regulation No. 4/2003 of the Ministry of the Interior of the Slovak Republic stipulates that asylum on humanitarian grounds may be granted to a foreign national who has failed in the asylum procedure and belongs to the group of elderly persons, traumatised persons or persons with serious diseases, whose return to the country of origin could cause major physical or psychological suffering or even death. There is no entitlement to grant asylum on humanitarian grounds and it is examined by the Migration Office on an individual basis. In case a third-country national is not granted asylum on humanitarian grounds, the Migration Office shall review whether the conditions for granting subsidiary protection are complied with. According to the Judgement of the Supreme Court of the Slovak

---

52 *Asylum in the European Union*, *supra* note 46, p. 12, 87.

53 UNHCR. *Rozsudky Najvyššieho súdu Slovenskej republiky v azylových veciach v rokoch 2008-2010*. 2010, p. 32 [interactive]. [accessed on 2012-12-17]. <<http://www.unhcr-centraleurope.org/sk/pdf/zdroje/pravne-materialy/narodne-azylove-systemy-v-strednej-europe/rozsudky-najvyssieho-sudu-sr-v-azylovych-veciach-vrokoch-2008-2010.html>>.

54 *Ibid.*, p. 26–27.

Republic, File No. 1Sža/11/2009 of 26 May 2009: The Asylum Act does not explicitly oblige the administration body to include a negative decision on granting asylum on humanitarian grounds under Section 9 of the Asylum Act into the verdict. As this is not a claim that must be decided by the administration body *ex lege*, but it is an outcome of the administrative deliberation of the administration body that is not reviewable by the court, the objection of the claimant that the administrative body did not deal with the possibility of granting asylum on humanitarian grounds will not stand, especially where there was no dispute that claimant did not allege during the administrative proceedings that there were reasons stated in the present provision (applicant from India).<sup>55</sup>

The Asylum Act allows for reunification of a person granted asylum with their family but it does not allow family reunification for a person who was granted asylum on humanitarian grounds in the Slovak Republic. Upon meeting the conditions stipulated in the Asylum Act, asylum in the Slovak Republic for the purpose of family reunification is granted to the spouse of a foreign national who has been granted asylum, to their single children before they complete 18 years of age, or to the parents of a single foreign national younger than 18 years who has been granted asylum.

The Asylum Act regulates the asylum granting procedure in detail. The application for asylum is first processed by the police department (Asylum Department of the Bureau of Border and Alien Police), which starts the asylum procedure. At present, foreigners can submit a statement when entering the territory of the Slovak Republic at the border check point, after entering the territory of the Slovak Republic at the reception centre, or in the transit zone of an international airport. In addition to those places, the statement may also be submitted at specialised facilities (police detention department for foreign nationals, healthcare facility, prison, remand prison or facility providing social and legal protection of children and social guardianship), to which foreign nationals are placed for various reasons. It is not possible to apply for asylum abroad, e.g. at the embassy or a consulate.<sup>56</sup> Once a foreigner applies for asylum in the Slovak Republic, the application is considered by the Migration Office. After the statement has been submitted, the competent employee of the Migration Office shall conduct the initial interview with the foreigner. Foreigners who claim asylum in the Slovak Republic remain under the care of the Migration Office, which also provides them with all the necessary social assistance during their stay in the centres for asylum seekers until their asylum application is decided. The duration of the asylum procedure varies for different applicants. Based on the law, the Migration Office shall decide within 90 days from the day of commencing the procedure. All cases are individually considered and the time it takes to arrive at decisions varies accordingly. The Migration Office adopts its decisions mainly on the basis of the results from the interviews and the information on the applicant's country of origin. According to the Judgement of the Supreme Court of the Slovak Republic, File No. 1Sža/48/2010 of 18 May 2010: Assessing the credibility of an asylum seeker is the result of an overall evaluation

55 *Rozsudky Najvyššieho súdu Slovenskej republiky v azylových veciach v rokoch 2008-2010*, *supra* note 53, p. 24.

56 Guličová, M. G.; Bargerová, Z., *supra* note 3, p. 30.

process and deliberation of the defendant on the personality of the asylum seeker with regard to the degree of reality or credibility of his allegations concerning the reasons for leaving his country of origin when they are confronted with common knowledge about the country of origin. For coming to a conclusion of untrustworthiness of the asylum seeker, the decisive factors cannot be only some minor inconsistencies or ambiguities explained only by mistake in the arguments of the asylum-seeker, but the fundamental contradictions in the testimonies that the administrative body recognises (applicant from Pakistan).<sup>57</sup> Decisions on granting asylum are issued for an indefinite period of time. A person who has been granted asylum has the right to permanent residence in the territory of the Slovak Republic.<sup>58</sup> The favourable decision is followed by a process to help the recognised refugee integrate into the Slovak society.

The Asylum Act also introduced different kinds of negative decisions made by the Migration Office, i.e. an asylum application can be rejected as inadmissible, as manifestly unfounded, or granting of asylum can be denied. The Asylum Act contains obligatory provision on “internal protection” as one of the reasons for denying asylum.<sup>59</sup> Also in this case the Slovak legislation differs from the Qualification Directive because its Article 8 on internal protection in the determination of refugee status is optional. The Qualification Directive demands that the assessment of an application for international protection is carried out on an individual basis, and takes all the relevant facts into account. This also applies to any assessment of a potential internal protection alternative within the country of origin. However, according to the UNHCR opinion, the decisions in the Slovak Republic revealed a generic assessment of safety in the country of origin for one group of applicants, without apparent reference to the particular circumstances of each case. For example, the decision-making practice of the Slovak Migration Office displays a lack of critical review of the potential actors of protection with respect to the Russian Federation. With regard to Chechens, most parts of the Russian Federation are accepted as possible areas of internal protection.<sup>60</sup> Moreover, some Slovak decisions revealed a tendency to dismiss evidence of violation of human rights in the proposed internal protection area.<sup>61</sup>

The Asylum Act covers the establishment of an independent review authority, where appeals against negative decisions of the first administrative instance, the Migration Office, may proceed to court.<sup>62</sup> Legal remedies against the decisions of the Migration

57 *Rozsudky Najvyššieho súdu Slovenskej republiky v azylových veciach v rokoch 2008-2010*, supra note 53, p. 24.

58 Section 24(1) of the Asylum Act No. 480/2002 Coll.

59 Section 13(4)(d) of the Asylum Act No. 480/2002 Coll.: “The Ministry shall also deny granting of asylum, when the applicant could have availed himself/herself of an effective protection in a different part of the country of origin, if there is no well-founded fear of his/her persecution in this part of the country and the applicant can reasonably be expected to stay there; at that the Ministry shall have regard to the general circumstances prevailing in that part of the country and to personal circumstances of the applicant.”

60 UNHCR. *Asylum in the European Union. A study of the implementation of the Qualification Directive* [interactive]. Brussels, 2007, p. 59 [accessed on 2012-12-19]. <<http://www.unhcr.org/47302b6c2.html>>.

61 *Ibid.*, p. 61.

62 Section 21 of the Asylum Act No. 480/2002 Coll.

Office are decided by two regional courts – the Regional Court of Bratislava and the Regional Court of Košice.<sup>63</sup> Remedies against the judicial decisions of regional courts are assessed by the Supreme Court of the Slovak Republic. In case the Migration Office adopts a negative decision, an appeal can be filed with a court against the decision within 30 days from its delivery. In the past, it was not uncommon for petitioners to wait several months and in some cases more than 2 years, for a final decision to be made. Currently, regional courts should decide on the remedy against a decision of the Migration Office within 90 days from the delivery of the remedy. In the case of appeal procedure, the Supreme Court of the Slovak Republic shall decide on the remedy within 60 days from the delivery of the remedy to the appellate court. If the courts cancel the decision of the Migration Office, the file returns back to the Migration Office for further proceedings, in which the Migration Office is bound by the legal opinion of the court.

The subsidiary protection (informally called “small asylum”) represents a new form of international protection. Pursuant to the Asylum Act, in addition to the asylum status, subsidiary protection<sup>64</sup> can also be granted against serious harm<sup>65</sup> in the country of origin. Subsidiary protection can be granted to third-country nationals failing to satisfy the conditions for granting the asylum status but in need of international protection. The Slovak Republic grants the subsidiary protection status from 1 January 2007, when the amendment to the Asylum Act transposing the Qualification Directive into the Slovak national legislation came into force. The Qualification Directive has thus expanded the scope of protection in the Slovak Republic. In the Slovak Republic, subsidiary protection status appears to be the main status granted. The legal provisions concerning the reasons for granting subsidiary protection are based exclusively on the Qualification Directive, and do not allow granting subsidiary protection in the Slovak Republic for other reasons than those stipulated in the Qualification Directive.<sup>66</sup> The wording of Article 2(f) of the Asylum Act differs slightly from Article 15 of the Qualification Directive because the term “in the country of origin” is omitted in the Asylum Act. Moreover, the term “person” rather than “civilian” is used in the Asylum Act.<sup>67</sup>

In practice, because there is no agreed definition of “internal armed conflict” in international law, the Slovak interpretation of this term is narrow. For example, the Slovak authorities did not consider the conflict in Chechnya as an internal armed conflict. Furthermore, they interpret the term “individual threat” restrictively. The impact of such interpretation of both terms results in the denial of subsidiary protection to persons who face a real risk of serious harm in their country of origin.<sup>68</sup>

63 Article 14 of the Act No. 371/2004 Coll. on Seats and Court Circuits of the Slovak Republic.

64 Section 2(c), Sections 13a – 13c of the Asylum Act No. 480/2002 Coll.

65 Section 2(f) of the Asylum Act No. 480/2002 Coll.: “Serious harm means imposition of a death penalty or its execution; torture or inhuman or degrading treatment or punishment; or serious and individual threat to life or inviolability of person by reason of arbitrary violence in situations of international or internal armed conflict.”

66 Šnirerová, M.; Volanská, M., *supra* note 41, p. 15.

67 *Asylum in the European Union*, *supra* note 46, p. 67, 75.

68 *Ibid.*, p. 71–81.

On 1 January 2007, single asylum procedure was introduced in the Slovak Republic, which means that the entitlement to asylum and subsidiary protection is assessed within one asylum procedure. The conditions applying to the subsidiary protection granting procedure are identical to the conditions applying to asylum seekers in the Slovak Republic. In case the Migration Office refuses to grant asylum under the asylum procedure or withdraws asylum, it shall also assess whether the alien fulfils the conditions for granting subsidiary protection.<sup>69</sup> The decision to reject granting asylum always contains a statement on granting or not granting subsidiary protection. Compared to asylum, subsidiary protection has a temporary character. It is granted for one year and after the lapse of one year, subsidiary protection shall always be renewed by one year upon request. An alien who was granted subsidiary protection shall be entitled to temporary stay on the territory of the Slovak Republic. The Asylum Act also allows for reunification of the person granted subsidiary protection with his or her family.<sup>70</sup>

Over the last years, the Supreme Court of the Slovak Republic rendered several judgements related to subsidiary protection. For instance, Judgment of the Supreme Court of the Slovak Republic, File No. 1SŽa/77/2010 of 12 October 2010: The meaning and purpose of subsidiary protection is to provide subsidiary protection and the possibility of legal residence in the territory of the Slovak Republic to those applicants for international protection who were not granted asylum, but it would be (for the reasons listed exhaustively in the Asylum Act) unreasonable, inappropriate or otherwise undesirable to require that they leave the country. Although the application of this institute of subsidiary protection is related to the objective threats upon possible return of the applicant to his or her country of origin, i.e. in part to the other factors arising at different time, as in the case of the application for the institution of asylum, the statements of the applicant himself or herself are determining when deciding whether to grant subsidiary protection or not, it is necessary to proceed from them (applicant from Pakistan).<sup>71</sup> Or the Judgment of the Supreme Court of the Slovak Republic, File No. 1SŽa/72/2010 of 14 September 2010: The ongoing internal armed conflict, in this case between the government and the terrorist groups (particularly the FARC and ELN), together with the existence of serious reasons for believing that upon returning to his country of origin the complainant would face a real risk of serious and individual threat to life or integrity of persons, in the situation when the administrative file of the documents proved that the target of violence, abductions and other forms of threat to life or integrity of persons are also civilians (the complainant claimed that he was the victim of kidnapping by guerrillas) and that they even account for the majority of the victims of conflict, is one of the facts that within the meaning of the Section 2(f) of the Asylum Act pertains to the forms of “serious harm” (applicant from Columbia).<sup>72</sup>

---

69 Section 20(4) of the Asylum Act No. 480/2002 Coll.

70 *Ibid.*, Section 13b.

71 *Rozsudky Najvyššieho súdu Slovenskej republiky v azylových veciach v rokoch 2008-2010*, *supra* note 53, p. 23.

72 *Ibid.*

According to the Asylum Act, the Slovak Republic may also grant temporary shelter<sup>73</sup>, which is the European Union instrument regulated by the Temporary Protection Directive. The term “temporary protection” was not transposed into the new Asylum Act word by word, but the term “temporary shelter” was accepted instead. Temporary shelter is granted for the purpose of protecting aliens from war conflicts, endemic violence, impacts of a humanitarian disaster or permanent or mass violation of human rights in the country of their origin. The legal provisions concerning the reasons for granting temporary shelter are based on the Temporary Protection Directive, and do not allow providing temporary shelter in the Slovak Republic for any reasons other than those set forth in that Directive.<sup>74</sup> In accordance with the decision of the Council of the European Union, the Government of the Slovak Republic determines the commencement, the conditions and termination of temporary shelter and allocates funds to pay the costs associated with the provision of temporary shelter. During the provision of temporary shelter, the de facto refugee is entitled to a tolerated stay on the territory of the Slovak Republic. Tolerated stay is a specific provisional type of residence that can be granted to a foreigner repeatedly. Temporary shelter can be also granted for the purpose of family reunification.<sup>75</sup>

### 3. Asylum Trends in the Slovak Republic

The asylum seekers form a large group of persons of foreign origin on the territory of the Slovak Republic. The absolute growth of asylum seekers has been truly remarkable in the country since 1993, although refugee migration in the Slovak Republic is principally characterised by a continuing declining trend in the number of asylum applications.

Different phases can be identified in the development of the number of asylum seekers in the Slovak Republic. Between 1993 and 1998, the number of asylum seekers was negligible. Between 1999 and 2000, the numbers started to grow visibly. The Slovak Republic recorded the highest number of asylum applications (11395) in 2004. The extreme upsurge began in 2001, thus shocking the authorities and the public. The ratio of the number of asylum seekers to the number of native inhabitants belonged to the highest in Europe. This number has been ever decreasing since 2005 up till now. From the point of view of the long-term development of the asylum applications in the Slovak Republic, the current state is comparable to the situation in the period until 1998.

The development of the number of asylum seekers at the beginning of the 21st century to a large extent resembled the development in the area of illegal migration, and at the same time reflected the liberalisation of the Asylum Act. Introduction of the possibility to seek asylum after being detained by the police led the illegal migrants to the greater utilisation of the institute, although the original intention of these people

---

73 *Rozsudky Najvyššieho súdu Slovenskej republiky v azylových veciach v rokoch 2008-2010*, *supra* note 53, Section 29–36.

74 Šnirerová, M.; Volanská, M., *supra* note 41, p. 15.

75 Section 31a of the Asylum Act No. 480/2002 Coll.

was not to stay in the territory of the Slovak Republic. A stay in the country at the time of asylum proceedings gave them the security of not being returned or expelled, and enabled them to get prepared and realise the illicit crossing of the Slovak border in the direction of the originally planned destination.<sup>76</sup> On the other hand, several persisting factors can be distinguished causing the radical decrease in the number of asylum seekers in the Slovak Republic since 2005. The first one includes the general decrease in the number of asylum seekers within the European Union. The second one concerns the application of the Dublin Regulation.<sup>77</sup> In compliance with the enactment of the regulation, a person who applied for asylum in the Slovak Republic has only a minimal chance to obtain asylum in another European Union Member State by virtue of the fact that the Slovak Republic would be responsible for reviewing of this asylum application. Therefore, potential asylum seekers, being self-evidently aware of this fact, do not seek for asylum in the Slovak Republic.<sup>78</sup> The other reasons are improved effectiveness of the state border protection after joining the Schengen Area, the absence of large foreigners' communities in the Slovak Republic and a less-developed economic environment, compared to the economically more advanced countries of the European Union.<sup>79</sup> In spite of these facts, it is necessary to admit that some foreigners seek asylum in the Slovak Republic with the intention to settle down and to get integrated into the society.

Despite the high number of asylum seekers in the Slovak Republic, only a small number of applicants were granted asylum here. The lowest number of asylums since the creation of the Slovak Republic was granted in 2006. Generally, in recent years the Slovak asylum policy has been known for its massive rejection of asylum claims. This circumstance is often subject to criticism by non-governmental organisations, international institutions and migrants.<sup>80</sup> State authorities argue for a strict observance of the laws because in most cases the intentions for seeking asylum are not genuine, but primarily those of economic nature.

The number of asylums granted on humanitarian grounds varies each year, which is due to the fact that such asylum can be granted to a foreign national where a competent employee of the Migration Office, after an appropriate deliberation, comes to the conclusion that though the person fails to satisfy the conditions for granting asylum under Section 8 of the Asylum Act, certain humanitarian reasons to be considered in

---

76 Divinský, B. *Zahraničná migrácia v Slovenskej republike. Vývojové trendy od roku 2000*. Bratislava: Výskumné centrum Slovenskej spoločnosti pre zahraničnú politiku, 2007, p. 34.

77 Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. [2003] OJ L 50.

78 Divinský, B., *supra* note 76, p. 34.

79 International Organization for Migration. *Annual Report on Asylum and Migration Statistics in the Slovak Republic (Reference Year 2007)*. Bratislava: International Organization for Migration, 2009, p. 12 [interactive]. [accessed on 2012-06-27]. <[http://www.emn.sk/phocadownload/emn\\_reports/emn-sk\\_ann-report-on-asyl-migr-statistics-sr\\_2007\\_en.pdf](http://www.emn.sk/phocadownload/emn_reports/emn-sk_ann-report-on-asyl-migr-statistics-sr_2007_en.pdf)>.

80 Divinský, B. *Active Civic Participation of Immigrants in Slovakia*. Oldenburg: Carl von Ossietzky Universität, 2005, p. 9 [interactive]. [accessed on 2012-07-03]. <<http://www.politis-europe.uni-oldenburg.de/download/slovakia.pdf>>.

the given case exist. In most cases, asylum in the Slovak Republic was mainly granted for reasons stipulated in Section 8 of the Asylum Act. For example, in 2004, asylums on humanitarian grounds were granted to 6 persons, in 2005 to 13 persons, in 2006 to 1 person, in 2007 no asylums were granted and in 2008 asylum was granted to 3 persons.<sup>81</sup>

Between 1993 and 2011 the Slovak Republic granted the majority of asylums to the nationals of Afghanistan (224) and Iraq (54).

Besides asylum, from 1 January 2007 the Slovak Republic also started granting subsidiary protection as another form of international protection. In that year, subsidiary protection was granted in 82 cases. As regards temporary protection, the Slovak Republic has not granted any temporary shelter since 1999.<sup>82</sup>

Immigrants can apply for asylum in the European Union only once, and the probability that they will obtain asylum in the Slovak Republic is very low. The fact that the Slovak Republic continues to be a transit country for asylum seekers is manifested by the large number of asylum applications that have not been assessed on their merit, but rather, the asylum granting procedure was suspended because the foreigners did not show any interest in having their applications assessed in the Slovak Republic.<sup>83</sup> In most cases asylum seekers escape after a certain time from the refugee camps toward western European countries not thus fulfilling the conditions of the asylum procedure.

*Table.* Overview of the asylum seekers in the Slovak Republic between 1993 and 2011

Year	Number of applications	Asylum granted	Asylum not granted	Granted/not granted subsidiary protection	Procedures stopped
1993	96	41	20		25
1994	140	58	32		65
1995	359	80	57		190
1996	415	72	62		193
1997	645	69	84		539
1998	506	53	36		224
1999	1320	26	176		1034
2000	1556	11	123		1366
2001	8151	18	130		6154
2002	9743	20	309		8053

81 Šnirerová, M.; Volanská, M., *supra* note 41, p. 34.

82 *Annual Report on Asylum and Migration Statistics in the Slovak Republic (Reference Year 2007)*, *supra* note 79, p. 11.

83 *Ibid.*, p. 13.

2003	10358	11	531		10656
2004	11395	15	1592		11782
2005	3549	25	827		2930
2006	2849	8	861		1940
2007	2642	14	1177	82/ 646	1693
2008	909	22	416	66/273	457
2009	822	14	330	98/165	460
2010	541	15	180	57/104	361
2011	491	12	186	91/48	270
Total	56487	584	7129	394/1236	48392

Source: Migration office of the Ministry of the Interior of the Slovak Republic, Statistical report – year 2011.

## Conclusion

Asylum issues represent a dynamic agenda subject to an increasing extent of harmonisation at the European Union level. The Slovak Republic fully supports all activities aimed at the adoption of a common asylum system of the European Union, making use of the best experience of individual Member States. At the same time, this system respects the right of each Member State to decide independently on the terms and conditions of provision of international protection to aliens. Despite the more or less identical legislative measures, asylum seekers face severe differences in keeping their rights and overall treatment in different European Union Member States.

The Slovak Republic does not have a long-standing tradition of providing asylum to those who need it and asylum is still a field that receives relatively limited attention. The legal framework of the European Union has been, and will remain in the future, the determining basis for the Slovak Republic with respect to the asylum policy due to the reasons determined by the character of the European Union membership. In general, the transposition of the European Union legislation into the Slovak legal system has had a positive impact on the asylum policy in the country. Despite the fact that the Slovak Republic usually enacts only the minimum standards required by the relevant directives, the adoption even of such minimum standards represents a positive contribution to the national asylum system.<sup>84</sup>

However, refugee migration in the Slovak Republic is principally characterised by a continuing declining trend in the number of asylum applications compared to the previous years. Although asylum seekers represent a considerable proportion of immigrants coming to the Slovak Republic, only about one third of the claimants continued in their asylum procedure. Compared to other countries, the Slovak Republic

84 Guličová, M. G.; Bargerová, Z., *supra* note 3, p. 52.

remains closed not only to persons that are willing to ask for international protection, but also to those that want to live in the Slovak Republic based on the authorisation of the respective state institutions. Slovak immigration policy takes the national security into account in the first place. This and other factors may be the reason for the fact that the Slovak Republic is rather a transit than destination country for foreigners.

## References

- Act on Refugees No. 283/1995 Coll. of 14 November 1995.
- Act on Asylum No. 480/2002 Coll. of 20 June 2002.
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. [2004] OJ L 304.
- Divinský, B. *Active Civic Participation of Immigrants in Slovakia*. Oldenburg: Carl von Ossietzky Universität, 2005 [interactive]. [accessed on 2012-07-03]. <<http://www.politis-europe.uni-oldenburg.de/download/slovakia.pdf>>.
- Divinský, B. *Zahraničná migrácia v Slovenskej republike. Vývojové trendy od roku 2000*. Bratislava: Výskumné centrum Slovenskej spoločnosti pre zahraničnú politiku, 2007.
- European Commission. *Asylum-Seekers and Refugees, a statistical report*. Eurostat Working papers, 1998, Volume 3: Central European Countries (3/1998/E/no 19) [interactive]. [accessed on 2012-06-26]. <[http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-AP-01-012/EN/KS-AP-01-012-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-AP-01-012/EN/KS-AP-01-012-EN.PDF)>.
- European Commission. *Regular report from the Commission on Slovakia's progress towards accession*. 1998 [interactive]. [accessed on 2012-07-02]. <[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1998/slovakia\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1998/slovakia_en.pdf)>.
- European Commission. *Regular report from the Commission on Slovakia's progress towards accession*. 1999 [interactive]. [accessed on 2012-07-02]. <[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/1999/slovakia\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/1999/slovakia_en.pdf)>.
- European Commission. *Regular report from the Commission on Slovakia's progress towards accession*. 2000 [interactive]. [accessed on 2012-07-02]. <[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2000/sk\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2000/sk_en.pdf)>.
- European Commission. *Regular report from the Commission on Slovakia's progress towards accession*. 2001 [interactive]. [accessed on 2012-07-02]. <[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2001/sk\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2001/sk_en.pdf)>.
- European Commission. *Regular report from the Commission on Slovakia's progress towards accession*. 2002 [interactive]. [accessed on 2012-07-02]. <[http://ec.europa.eu/enlargement/archives/pdf/key\\_documents/2002/sk\\_en.pdf](http://ec.europa.eu/enlargement/archives/pdf/key_documents/2002/sk_en.pdf)>.
- European Migration Network. *Organisation of Asylum and Migration Policies in the EU Member States*. 2010 [interactive]. [accessed on 2012-06-28]. <[http://www.emn.sk/phocadownload/emn\\_studies/emn-sk\\_study\\_on\\_organiz\\_of\\_migr\\_asylum\\_policy\\_synthesis\\_report\\_en.pdf](http://www.emn.sk/phocadownload/emn_studies/emn-sk_study_on_organiz_of_migr_asylum_policy_synthesis_report_en.pdf)>.
- European Parliament. *Migration and Asylum in Central and Eastern Europe* [interactive]. Brussels: Working Paper, 2004 [accessed on 2012-06-26]. <[http://www.europarl.europa.eu/workingpapers/libe/pdf/104\\_en.pdf](http://www.europarl.europa.eu/workingpapers/libe/pdf/104_en.pdf)>.

- Guličová, M. G.; Bargerová, Z. *Organisation of Asylum and Migration Policies in the Slovak Republic*. Bratislava: International Organization for Migration Bratislava, 2008 [interactive]. [accessed on 2012-06-27]. <[http://www.emn.sk/phocadownload/emn\\_studies/emn-sk\\_study\\_on\\_organiz\\_of\\_migr\\_asylum\\_policy\\_sr\\_en.pdf](http://www.emn.sk/phocadownload/emn_studies/emn-sk_study_on_organiz_of_migr_asylum_policy_sr_en.pdf)>.
- International Organization for Migration. *Annual Report on Asylum and Migration Statistics in the Slovak Republic (Reference Year 2007)*. Bratislava: International Organization for Migration, 2009 [interactive]. [accessed on 2012-06-27]. <[http://www.emn.sk/phocadownload/emn\\_reports/emn-sk\\_ann-report-on-asyl-migr-statistics-sr\\_2007\\_en.pdf](http://www.emn.sk/phocadownload/emn_reports/emn-sk_ann-report-on-asyl-migr-statistics-sr_2007_en.pdf)>.
- Šnirerová, M.; Volanská, M. *The Different National Practices Concerning Granting of Non-EU Harmonised Protection Statures in the Slovak Republic*. Bratislava: International Organization for Migration, 2009 [interactive]. [accessed on 2012-06-27]. <[http://www.emn.sk/phocadownload/emn\\_studies/emn-sk\\_study\\_on\\_granting\\_of\\_protection\\_statures\\_sr\\_en.pdf](http://www.emn.sk/phocadownload/emn_studies/emn-sk_study_on_granting_of_protection_statures_sr_en.pdf)>.
- UNHCR. *Asylum in the European Union. A study of the implementation of the Qualification Directive*. Brussels, 2007 [interactive]. [accessed on 2012-12-19]. <<http://www.unhcr.org/47302b6c2.html>>.
- UNHCR. *Rozsudky Najvyššieho súdu Slovenskej republiky v azylových veciach v rokoch 2008-2010*. 2010 [interactive]. [accessed on 2012-12-17]. <<http://www.unhcr-centraleurope.org/sk/pdf/zdroje/pravne-materialy/narodne-azylove-systemy-v-strednej-europe/rozsudky-najvysšieho-sudu-sr-v-azylovych-veciach-vrokoch-2008-2010.html>>.

## PRIEGLOBSČIO TEISINIS REGULIAVIMAS IR POLITIKA SLOVAKIJOS RESPUBLIKOJE

Lucia Hurná

Bratislavos ekonomikos universitetas, Slovakija

**Santrauka.** *Štraipsnyje analizuojamas Slovakijos prieglobsčio teisinis reguliavimas bei prieglobsčio politikos koncepcijos plėtra. Taip pat aptariamos užsieniečiams suteikiamos skirtingos apsaugos formos bei pristatomos pabėgėlių migracijos tendencijos Slovakijos Respublikoje.*

*Prieglobsčio institutas buvo praktiškai nežinomas buvusios Čekoslovakijos teisinėje sistemoje, todėl prieglobsčio klausimai yra naujas socialinis reiškinys Slovakijos Respublikoje. Per pastaruosius dvidešimt metų, atsižvelgiant į tarptautines sutartis bei Europos Sąjungos teisės aktus, prieglobsčio srityje buvo priimti nacionaliniai teisės aktai, formuojama institucinė sistema.*

*Šiuo metu pagrindinis nacionalinis teisės aktas, reguliuojantis prieglobsčio suteikimo klausimus, yra Prieglobsčio aktas Nr. 480/2002, priimtas 2002 m. birželio 20 d. Šis aktas reguliuoja tarptautinę užsieniečių teisinę padėtį ir jų tarptautinę apsaugą Slovakijos Respublikoje. Pagal Prieglobsčio aktą, Slovakijos Respublikoje gali būti suteikiamos skirtingos apsaugos formos. Tarptautinė apsauga asmenims gali būti užtikrinama suteikiant pabėgėlio statusą arba papildomą apsaugą. Prieglobsčio aktas taip pat reguliuoja ir kitas užsieniečiams*

suteikiamas apsaugos formas, pavyzdžiui, laikinąją apsaugą. Akte įtvirtintos pabėgėlio statuso suteikimo sąlygos bei procedūros, taip pat jame numatytos įvairių kategorijų asmenų teisės ir pareigos. Prieglobsčio aktas reglamentuoja ir prieglobstį gavusių asmenų integracijos klausimus.

Slovakijos Respublikoje palyginti su ankstesniais metais pastebimas nuolat mažėjantis prieglobsčio prašymų skaičius. Nors prieglobsčio prašytojai sudaro nemažą dalį imigrantų, atvykstančių į Slovakijos Respubliką, tačiau tik apie trečdalis jų toliau tęsia prieglobsčio procedūrą. Todėl galima daryti išvadą, kad daugeliui migrantų Slovakija yra tik tranzitinė valstybė.

**Reikšminiai žodžiai:** tarptautinė apsauga, prieglobstis, papildoma apsauga, laikinoji apsauga, Prieglobsčio aktas.

---

**Lucia Hurná**, Bratislavos ekonomikos universiteto Tarptautinių santykių fakulteto Tarptautinės teisės katedros docentė. Mokslinių tyrimų kryptys: Europos Sąjungos teisė, Europos Sąjungos institucijos, Europos laisvės, saugumo ir teisingumo erdvė.

**Lucia Hurná**, University of Economics in Bratislava, Faculty of International Relations, Department of International Law, Associate Professor. Research interests: European Union Law, European Union Institutions, European Area of Freedom, Security and Justice.

