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Detention and alternatives to detention in the Slovak Republic

National report
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Executive Summary

1. Introduction

The Human Rights League is the leading Slovak non-governmental organization in providing the legal assistance to third country nationals in the asylum procedure, immigration issues and detention for several years. Therefore, the project *Steps to freedom. Monitoring detention and promoting alternatives to detention of asylum seekers in the Czech Republic, Estonia, Latvia, Lithuania, and Slovakia,* provided great opportunity to benefit from the experience and information of the lawyers with the aim to contribute to the improvement of the system of immigration detention in Slovakia.

At the beginning, it must be highlighted that eventhough the main target group of the transnational project are the asylum seekers who might be subjected to the detention in the countries of the project, in Slovakia the legislation does not contain special provisions on detention of the asylum seekers as such. In Slovakia, the asylum seekers are not subjected to the immigration detention based on the fact of their asylum application. However, there might be special circumstances in which the asylum seekers might be held in detention that would be discussed further. As the legal grounds for detention are provided in the Act on the Stay of Foreigners[1] and apply to all third country nationals including the asylum seekers if they are subjected to decision in exceptional cases, the researchers were challenge to reflect and assess the whole system of immigration detention as such,.

The challenge has been even bigger due to the fact that at the beginning of 2010, the MoI (Bureau of the Alien and Border Police) proposed the first version of the new legislation on border control and stay of the foreigners with the expected entry into force on July 2011.[2] The proposal has been subjected to more than 600 comments by governmental and non-governmental organizations, including the Human Rights League. The unexpected interest of the society in the new legislation led to various meetings of the representatives of MoI and representatives of public society and other stakeholders regarding the provision of the new law. Those meetings lasted until 22. June 2011. Than the proposal has been assessed by the government bodies and delivered to National Assembly on 27. September 2011. The National Assembly approved the new law on its 451 session on 21. October 2011 and the law has been signed by the President and published in the Collection of Slovak law as the Act no. 404/2011 Coll. of 21st October 2011 on the Stay of Foreigners and Amendments and Changes to other Acts, with the entry into force on 1. January 2012.

[1] Act no. 48/2002 Coll. On the Stay of Foreigners and on Amendments and Changes to other Acts

[2] MoI: Bureau of the Alien and Border Police. Proposal of the Act on Border Control and Stay of the Foreigners. The document published on the portal of the legislation of the Ministry of Justice of Slovakia on 17. February 2011 and opened for the comments until 9. March 2011. For more information see: <https://lt.justice.gov.sk/Material/MaterialWorkflow.aspx?instEID=-1&matEID=3648&langEID=1&tStamp=20110927104430443>

The new law would replace the Act on the Stay of Foreigners and would transpose several EU law including the Return Directive that has not been fully transposed yet eventhough the transposition period expired on 24. December 2010[3].

The project that lasted since July 2010 provided us with unique possibility to take active part and contribute to the legislation process with our comments and proposals. Together with the national authorities in the area of detention (director of the Bureau of the Alien and Border police and Director of the Detention centre in Medveďov), we participated on the study visit to Sweden, followed by the participation of the Director of the Foreign Police department and Director of the Detention centre Medveďov, on the study seminar on detention in Vilnius. The study visits served as the excellent opportunity to include the experience and good practices observed into the new legislation that was just under the preparation at the very moment. Based on the outcomes of the study seminar in Vilnius, the national authorities included the provisions on alternatives to detention (proposal prepared by The Human Rights League) into new legislation. Also, some other important changes were negotiated and accepted.

In October 2011, the national seminar on detention and alternatives to detention was held in Bratislava, and brought together most important national experts in the area of detention and migration, including the judges of the Supreme Court of Slovakia, chiefs of the Bureau of the Alien and Border Police office, lawyers, NGOs experts and other stakeholders. The lively and fruitful discussion during the seminar focused on expected changes in the legislation, most significantly on the specification of the periods for judicial review of the detention decisions with many interesting entries and opinions. Finally, parliament adopted the new law on 21. October 2011.

To conclude, the project "Steps to freedom" provided us with great opportunity to participate on the preparation of the new legislation on immigration, administrative expulsion and detention. Due to the project activities, some important changes to the new legislation were negotiated, accepted and incorporated into the new law. Also, significant challenges for the further developing of the system on detention has been identified in the research and would be elaborated in detail further below. In the upcoming months, the study would serve as tool for the researchers to promote the findings and monitor the situation of the application of alternatives to detention in the practice.

The national report includes the description of the applicable legislation in 2010 and 2011, assessment of its application, challenges, barriers and concerns, and also highlights the upcoming changes to legislation since January 2012. The basic overview of the asylum system, detention legislation, implications on the asylum seekers, statistics and the assessment and main findings are included as well. The main recommendations for

[3] The Act. No. 48/2002 Coll. on the Stay of Foreigners declares in its final provisions (list of transposed EU acts) that the Return directive has been transposed by the act no. 594/2009 Coll. amending the act no. 48/2002 Coll., however, there were only few provisions of the Return directive included in the amendment. The most important provisions including the alternatives to detention would be transposed by the new law – act no. 404/2011 coll. on the stay of the foreigners since January 2012.

further development of the system are included in the document "National Policy Brief" that is part of this report.

The report is based on the data collected by the researchers. Data were collected using the following sources of information in varying proportions, bearing in mind the above-outlined purposes of the report. The research focused on the following target groups: detainees, asylum seekers, unaccompanied minors, vulnerable groups.

The information that was collected consisted of:

- Laws and regulations;
- Policy documents (strategies, action plans, etc.);
- Internal organisational rules of institutions and agencies;
- If available, relevant studies and reports completed by governmental agencies and/or national, NGOs and international organisations;
- Other relevant information like NGOs reports, police records, case law if available, etc;
- Interviews with relevant stakeholders (experts, lawyers, police and Migration office officers, NGO workers, social workers).

The main research methods were the desk research combined with semi-standardized interviews with detainees and asylum seekers as well as experts, lawyers, police and NGOs. The Human Rights League has had access to both detention facilities in Slovakia for many years and has represented majority of the detainees in judicial review procedure. The data and information from our database and our expertise has been used widely and significantly for the purpose of the report. Monitoring visits to detention centres were conducted as well.

The desk research included the valid law, legal proposals, judiciary and existing published and unpublished literature including studies that were carried out in the country. Research/studies specifically on the detention of the asylum seekers or detention in general have not yet been carried out/published in the country. We built upon the analyses carried out by international organizations on alternatives to detention as well. We carried interviews with the detainees and used our database of clients and information widely. The research has been carried in the way that the identification data of persons subjected to detention could not be enclosed.

The national report provides the brief overview of the asylum system and legislation on detention. When mentioning the term "detention", the report has in mind the "immigration detention" as stipulated in the act on the stay of foreigners. The report focuses on the application of detention, where some important challenges and issues of concern are highlighted and discussed. One of the main parts of the report focuses on the alternatives to detention in national legislation. For the reasons that the alternatives have not been included in the national legislation yet, the report focuses on providing the description of the process of including the alternatives into new legislation and explanation of its importance with the examples of the best practices from other states that could serve as direction for the application of alternatives when deciding on

detention since 2012. The fifth chapter of the report deals with the procedural safeguards of the asylum seekers in the asylum procedure and detention and the sixth part describes the conditions in detention facilities. The last chapter focuses on the perspective on alternatives to detention in Slovakia. The statistics, list of selected bibliography and list of acronyms are in the attachment.

Last, but not least, the researchers would like to take the opportunity and acknowledge the work, openness and attitude of persons who contributed to this report. We would like to thank our national authorities – Bureau of the Alien and Border Police for the willingness to provide us with the information and explanation on several issues and for their open and constructive approach during the negotiations about the comments to the new law. Also, our colleagues (lawyers and advocates), who have kindly provided us with their expertise and shared opinions with us, deserve our acknowledgements.

Our aim is not only to describe the framework of the detention system in Slovakia. We hope that the report would serve as a pointer to the future, as a basis for further enquiry and development of the principles and solutions based on the human rights oriented approach on inherent dignity and personal liberty of the individual.

2. Overview of asylum system in the state

History of protection of refugees on the territory of the Slovak republic is dated back in the time of the common state with the Czech nation within Czechoslovakia. After the iron curtain fell down in 1989, the issues of human rights and freedoms found their place within discussion in society. Until this period, Slovakia as a part of Czechoslovakia used to be a country producing refugees rather than providing them protection. Czechoslovakia acceded to various international human rights instruments, including the Convention Relating to the Status of Refugees (hereinafter "Geneva Convention 1951") and Protocol Relating to the Status of Refugees (hereinafter "New York Protocol 1967). The Geneva Convention 1951 entered into force for the Czechoslovakia on 24 February 1992. Taking into consideration mainly the international law, Federal Assembly of Czech and Slovak Federal Republic adopted Act No. 498/1990 Coll. on Refugees in 1990. The main purpose of this act was to regulate the process of state institutions in the refugee status determination procedure as well as the stipulation of rights and obligations of foreigners that have asked for refugee status.

In 1993 Czechoslovakia split into two countries: Czech Republic and Slovak Republic. Based on the succession, Slovakia became a party to the Geneva Convention 1951 and New York Protocol 1967 in January 1993.

First, solely Slovak, law relating to protection refugees and regulating refugee status determination procedure was adopted by the National Assembly of the Slovak Republic in 1995 as an Act No. 283/1995 Coll. on Refugees that entered into force on 1 January 1996. This Act aimed to be in line with the most important international treaties on human rights and protection of refugees, mainly with the Geneva Convention 1951, New York Protocol 1967, Universal Declaration of Human Rights, European Convention on

Human Rights, Convention on the Rights of the Child, bilateral or multilateral agreements, etc.

Current national legislation relating to the international protection (asylum and subsidiary protection) is contained in the Act No. 480/2002 Coll. on Asylum and on Amendments of Other Acts (hereinafter "Asylum Act"). The Asylum Act came into force on 1 January 2003 and is in line with the relevant human rights and refugee treaties as well as with the European Union law on asylum.

Foreigners may claim asylum either at the entry into the Slovak Republic at the border or after the entry into the Slovak Republic at the respective police departments of police. The asylum application has to be submitted in written form; otherwise the asylum procedure will not be initiated. The foreigner police take minutes, in which the basic personal data on the applicant and the reasons for applying for international protection are recorded. After submission of the asylum application a foreigner receives a status of an asylum seeker and thereafter may enjoy the rights according to the Asylum Act. At the beginning of the asylum procedure each asylum applicant has to go to the Reception centre in Humenné where he/she will be placed for approximately one month in order to undergo the health examination[4]. The Migration office of the Ministry of Interior of the Slovak Republic (hereinafter "Migration office") conducts an interview with the asylum seeker usually within the period of a few days after asylum seeker's placement at the reception centre. The asylum seeker is supposed to provide all personal data and the main reasons for which he/she applies for asylum in Slovakia. The decision of the Migration office should be issued within 90 days of the submission of the asylum application. In certain cases, the time limit for issuance of a decision is less than 90 days.[5] In justified cases, the time limit for issuance of a decision may be extended.

The Migration office may decide asylum cases differently.

A foreigner may be granted asylum. Such a protection is granted in few cases each year[6]. As soon as the protection is granted, a foreigner is eligible for a permanent residence permit in Slovakia from which he/she may benefit in the form of free movement within the whole European Union. After been granted asylum, foreigner may decide to use the possibility of living in the Integration centre in Zvolen for a period of six months. Subsequently, person granted asylum may move to an accommodation complex run by the Migration office and NGOs in certain Slovak towns.

The Migration office may grant a subsidiary protection to a foreigner as an international protection in cases of serious harm in the country of origin. In comparison to asylum, subsidiary protection is granted in more cases per year.[7] However the rights that beneficiaries of subsidiary protection are entitled to enjoy are not the same as rights of persons granted asylum. Foreigners on subsidiary protection are eligible for just a

[4] Health examination consists of X-Ray, blood test and other medical checks
[5] In case when asylum application is rejected as manifestly unfounded or is inadmissible
[6] Asylum was granted e. g. in 22 cases in 2008, in 14 cases 2009 and in 15 cases in 2010.
[7] Subsidiary protection was granted in 66 cases in 2008, in 98 cases in 2009 and in 57 cases in 2010.

temporary residence permit for the period of one year and each year have to submit an application for prolongation in cases where the need for the providing the protection is still justified. Persons with subsidiary protection granted may stay at the accommodation facilities run by the NGOs or are free to stay outside of these facilities.

If the Migration office decides to not grant asylum or the subsidiary protection, an asylum seeker may use the legal remedies in order to examine the decision of the Migration office. According to the Civil Code, the decision of the Migration office may be challenged at the Regional Court[8]. The Regional court may cancel the decision of the Migration office and return it to the Migration office for a new proceeding. If so, the Migration office is obliged to issue a new decision, but has to follow the legal opinion of the court. The other possibility is that the Regional court may decide to confirm the decision of the Migration office. If so, the person has still a chance to submit an appeal to the Supreme Court of the Slovak Republic. The Supreme Court may also cancel and return the decision to the Migration office or based on the procedural error return it to the Regional court or confirm the decision of the Migration office. Once the decision of the Migration office is confirmed by the Supreme Court, it becomes valid and there is no legal possibility of challenging it.

The Migration office may also reject the application for granting asylum as manifestly unfounded if the asylum seeker justifies his/her application by facts or reasons other than those relating to persecution based on the five reasons or those related to the serious harm. The other grounds for rejection of an asylum application are that asylum seeker comes from a safe country of origin, does not cooperate[9] with the Migration office or other grounds stipulated in the Section 12/2 of Act on Asylum. This specific decision of the Migration office has to fulfil two procedural obligations. First of all, the decision must be issued within 60 days from the day of the commencement of the asylum procedure; otherwise the application cannot be rejected as manifestly unfounded and such a decision cannot be issued to an asylum seeker who is an unaccompanied minor.

The Migration office may also reject the decision of the Migration office as inadmissible. It is mainly in cases when another Member state of the European Union is responsible for examination of the asylum application.[10] Such a decision also has to be issued in 60 days as it was mentioned in the cases when asylum application was rejected as manifestly unfounded.

[8] Two Regional courts examine the decisions of the Migration office: Regional court in Bratislava and Regional court in Košice.

[9] e.g. does not appear for the interview

[10] The other grounds for rejecting asylum application as inadmissible are as follows: asylum seeker was granted asylum in non European Union state and protection provided can be effectively used or asylum seeker comes from safe third country or the asylum seeker was granted asylum by another European Union state or an asylum seeker is a national of a member state.

3. Application of asylum seekers' detention

3.1. Applicable standards

The immigration detention is a measure that interferes with basic human rights as it means the deprivation of liberty. In order not to be arbitrary, the detention must be applied in the manner consistent with the Article 5.1. of the European Convention of Human Rights (ECHR).

The Article 5.1. of the ECHR as well as the article 9.1. of the International Covenant on Civil and Political Rights (ICCPR) require that the grounds for any deprivation of liberty must be set forth in law in clear and exhaustive manner.

The legal basis for immigration detention is to be found in Article 5.1. (f) of the ECHR.

European Convention on Human Rights

Article 5.1.(f)

"Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: […]

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition".

The EU Return directive in its article 15 sets out the parameters for immigration detention (in order to prevent unauthorized entry or to facilitate the removal of migrants) within the European Union law. In order to apply such detention, an individual must be subjected to return procedures.

The EU Return directive is the first binding supra-national document providing the maximal length of the pre-removal detention. The time limit for pre-removal detention is set for 6 months and exceptionally 18 months. The duration of detention has to be determined based on the circumstances of individual case.

The standards for immigration detention as set up by international binding documents are as follows:

- The grounds for the detention must be set forth in the law /legitimate grounds/;
- Indefinite detention is arbitrary;
- The detention has to be necessary /art. 9 of ICCPR/ and proportional;
- The detention shall be maintained for as long as necessary to ensure successful removal /art. 15.5 of the Return directive/;
- Right to judicial review of the detention;
- Right to be informed of the reasons of detention in a language s/he understands

- The application of less coercive measures has to be considered before deciding on detention.

The other standards applicable to detention are that the detention of children shall be avoided and detention of vulnerable groups shall be limited to minimum.

Also, the detention shall not be used as a tool for deterring future asylum seekers and irregular migrants or to respond to political pressure. The detention is not a tool to be used for effective management migration. This is for the reasons that the research and experiences showed that the detention is costly, harms health and well being of person, is not an effective tool for managing migration and interferes with basic human rights.[11]

3.2. Grounds for detention

The provisions on immigration detention in Slovakia are included in the Part VI., § 62-74 of the Act on the Stay of the Foreigners. These provisions include the grounds for detention, conditions for detention institution and placement, regulation of the regime in detention facilities, provisions on health care for detainees, rights of the detainee, duration of the detention and grounds for release.

It must be noted that the law does not contain special provisions for detaining asylum seekers solely on the ground that they applied for asylum. In order to decide about the detention of the foreigner, the legal ground for detention as provided in § 62 (1) of the Act on the Stay of Foreigners must be met.

The legal grounds for detention, as listed in the § 62 (1) of the Act on the Stay of Foreigners, are as follows[12]:

§ 62 (1)

The policeman is entitled to detain a foreigner for the purpose of:

a) Enforcement of administrative expulsion or exercise of the criminal punishment on expulsion

[11] International Detention Coalition. (2010), *There are alternatives. A handbook for preventing unnecessary immigration detention.* Available at http://idcoalition.org/cap/handbook/ pgs. 011, 012

[12] Since January 2012, the provision on the legal purpose of the detention would be changed in line with the Return Directive and the new § 88 (1) would provide as follows: "The policeman is entitled to detain a foreigner:

a) subjected to administrative procedure with the aim to ensure his departure from the country according to § 77 (1) if:
    1. the risk of absconding, or
    2. the third country national concerned avoids or hampers the preparation of process of the enforcement of his administrative expulsion.
b) For the purpose of enforcement of his administrative expulsion or exercise of the criminal punishment on expulsion
c) Enforcement of transfer according to the special act
d) Return based on the special law if s/he entered the territory of Slovakia illegally, or is staying illegally at the territory of Slovakia.

b) Enforcement of transfer according to the special act[13]
c) Return based on the special law[14] if s/he entered the territory of Slovakia illegally, or is staying illegally at the territory of Slovakia.

The Act on Asylum provides in the § 22 (1) that the asylum seeker is entitled to lawfully reside on the territory of Slovakia during the asylum procedure, if not stipulated otherwise[15].

Therefore a foreigner apprehended by the police for the reasons of his unlawful stay or unlawful crossing of the borders shall not be detained if s/he expresses the will to apply for asylum.

However, the situation could be different in the case that the foreigner intends to apply for asylum on the police office that is not competent to accept the asylum application. In such case, the Act on Asylum in § 3 (8), first sentence, provides for the possibility of the detention:

"If the foreigner applies for asylum or for subsidiary protection on the police office that is not competent to accept the application according to the section 2, the police is obliged to instruct the foreigner on competent police office and **if does not decide on detention**[16] and his placement in the special facility according to the special act[17], issues the document on transportation to the foreigner valid for 24 hours."

As described, the Act on Asylum provides for the possibility of detention of the foreigner who wish to apply for asylum, but intends to do so at the incompetent police office. In such case, the police office has the legal possibility to decide on detention if other legal conditions are met – most importantly there must be the one of the legal grounds for detention as stipulated in the § 62 (1) of the Act on the Stay of Foreigners. However, it must be noted that we are not aware of single case in which police office would have decided on detention based on this provision. Usually, in the case that the foreigner applies for asylum on the incompetent authority, s/he is instructed or transported to the competent police authority. Therefore we have come to the conclusion that the specific provision of the § 3 (8), first sentence of the Act on Asylum is quite obsolete and shall be suppressed out of the law.

[13] 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. (*OJ L050, 25.2.2003*), Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 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, (*OJ L 222, 5.9.2003)*

[14] E.g. Agreement between the Government of the Slovak Republic and the Government of the Ukraine on transfer and acceptation of the foreigners on common borders (Announcement of the Ministry of Foreign Affairs of the Slovak republic No. 116/1994 Coll.)

[15] At this point, the law refers to the Penal Code for instance.

[16] Emphasis added

[17] The Act on the Stay of the Foreigners

Based on the above mentioned legal provisions, we can conclude that the asylum application could not be the basis for the decision on detention. In every case of detention, the legal grounds stipulated in § 62 (1) of the Act on the Stay of Foreigners have to be met in order to detain a foreigner.

The situations in which the asylum seekers could be detained in Slovakia could be based on following:

1. The foreigner is subjected to immigration detention based on the legal ground according to the § 62 (1) (a) or (c) of the Act on the Stay of Foreigners and after his placement in the facility s/he decides to enter the asylum procedure;
2. The asylum seeker is detained based on the § 62 (1) (b) of the Act on the Stay of Foreigners – the so called "Dublin transfer"
3. The asylum seeker is detained after being issued decision that his asylum claim is rejected as inadmissible[18] or as manifestly unfounded[19] or terminated[20].

Ad 1:

The legal status of the foreigner in the very moment of the enforcement of the detention in such cases is that of "irregular migrant". This is for the reason that s/he did not apply for asylum before the detention had been applied. When the foreigner applies for asylum while being placed in the detention facility, his asylum procedure is opened. However, the law provides that the asylum procedure does not have the impact on the detention. According to the law, the application for asylum or the registration for voluntary return is not a reason for release from detention.[21]

Since January 2012, the new law would stipulate that the detention of the asylum seeker would not be subjected to prolongation.[22] However, the law would preserve the provision that the entering of the asylum procedure is not the reason for release from the detention.[23]

Ad 2:

The legal ground for detention of the asylum seeker could be the enforcement of the transfer based on the EU Dublin II. Regulation. In practice, the law has been applied for the reasons of transfer of the asylum seeker from one EU Member State to the responsible EU Member State.

[18] See § 11 of the Act on Asylum
[19] See § 12 of the Act on Asylum
[20] See § 19 /i/ of the Act on Asylum
[21] See § 62 (2) of the Act on the Stay of Foreigners
[22] See § 88 (4) of the Act no. 404/2011 of the 21. October 2011 on the Stay of the Foreigners and on the Changes and Amendments to the other Acts
[23] See § 88 (4) of the Act no. 404/2011 of the 21. October 2011 on the Stay of the Foreigners and on the Changes and Amendments to the other Acts

The other ground is the detention of the asylum seeker whose asylum application has been rejected as inadmissible for the reason that the other EU Member State is responsible for the determination of the application. The enforcement of the transfer could be the legal ground of the detention because the appeal against the asylum decision does not have the suspensive effect unless the court decides otherwise. The good practice in Slovakia that has been observed is that the Migration office does not request the enforcement of its decision on rejection of the asylum claim as inadmissible until the court decides (at least) about the application for awarding the appeal with suspensive effect. According to our information, in majority cases the Migration office waits until the decision on the rejection of the claim becomes valid (e.g. the appellate procedure is finished).

We have been informed about one Dublin – related case in which the original legal ground for the detention had been the enforcement of administrative expulsion of the particular foreigner. Later on it has come out that the foreigner applied for asylum in other EU Member State and responsibility for determination of the asylum claim had been accepted by that particular State. Therefore the police decided to enforce the Dublin transfer to the respected MS instead of the administrative expulsion to the country of origin. The Court examining the decision on detention disapproved such practice and ruled that in the case that the original legal ground for detention had changed, the police had the obligation to release the foreigner from the detention. According to the law, the police have the duty to constantly examine the duration of the purpose of the detention and release the foreigner immediately when the purpose of detention has extinguished.[24]

Ad 3:

The asylum seeker, whose asylum procedure has not been lawfully finished yet, could only be detained if the appeal against the decision on asylum does not have the suspensive effect. The law provides that the appeals against the decision rejecting the asylum claim as inadmissible[25] or manifestly unfounded[26] lack the suspensive effect[27] if the court does not award the suspensive effect to the appeal.

The legal reasoning for applying the detention in such cases is that the lack of suspensive effect causes the asylum seeker to be in the position of irregular migrant and therefore eligible for detention if one of the legal grounds in the § 62 (1) of the Act on the Stay of Foreigners is fulfilled.

Contrary, there are opinions that disagree with the reasoning provided above. According to the Act on Asylum[28] the asylum seeker is entitled to lawfully reside on the territory of

[24] The judgment of the Regional Court in Košice No. 4Sp/7/2011 dated on 06.07.2011. Copy in the file of The Human Rights League.
[25] See § 11 (2) of the Act on Asylum
[26] See § 12 (1) (2) of the Act on Asylum
[27] See § 21 (2) in conj. with § 11 (1) and § 12 (1) (2) of the Act on Asylum
[28] The § 22 (1) of the Act on Asylum: "The asylum seeker is entitled to lawfully remain on the territory of Slovakia during the asylum procedure if this law or special act (Note of the authors: Footnote 11a is attached here and refers to the unspecified provisions of the Penal Code) does not provide otherwise."

Slovakia during the asylum procedure. The lack of suspensive effect of the appeal does not deprive the asylum seeker of his legal status or rights of the asylum seekers. Indeed, as an asylum seeker s/he has continual right to lawful remain on the territory of Slovakia for the duration of the procedure. In legal theory, the lack of suspesive effect means that the particular decision becomes enforceable prior to its legal validity. With regard to decision on rejecting the asylum claim as inadmissible or manifestly unfounded, the decision lacks the enforceable element, in the other words, there is nothing to enforce.

Therefore, we hold the opinion that the sole lack of the suspensive effect in above mentioned cases does not create the situation in which the asylum seeker is in the position of irregular migrant as he can still enjoy the right to lawfully remain on the territory of Slovakia as granted in the Act on Asylum. The decision on asylum is decision on awarding or not awarding somebody with certain status. If the decision on asylum claim is its rejection, the decision itself does not contain any legal obligation or duty to be enforced. Therefore the lack of suspensive effect could not terminate the rights of the asylum seeker, in particular the right to lawfully reside on the territory of Slovakia for duration of the asylum procedure.

To conclude, we believe that the detention of rejected asylum seekers whose appeals against the particular decisions in asylum procedure lacks suspensive effect (as provided above) is contrary to the provisions of the Act on Asylum. However, this opinion has not been accepted by the Slovak authorities yet.

3.3. Safeguards against arbitrary detention

The police office that decides on detention is obliged to issue the decision on detention to foreigner immediately and place the foreigner to detention facility.[29] If the identity of the foreigner could not be determined, evidences allowing the identification have to be attached to the decision.

In the case that the ground for detention is the return procedure based on readmission agreement, the detention could not last more than 7 days.[30]

The law allows the foreigner to be detained for the inevitably required time, maximum 6 months. Police office could decide on prolongation of detention for maximum 12 additional months if there is a reasonable presumption that notwithstanding of the steps already taken, the enforcement of his/her administrative expulsion would be prolonged because the foreigner does not cooperate enough or for the reason that the embassy did not issue the temporary travel document within the original period of detention; this does not apply for family with children or vulnerable person.[31]

[29] See § 62 (4 of the Act on the Stay of Foreigners

[30] See § 62 (5 of the Act on the Stay of Foreigners

[31] See § 62 (3) of the Act on the Stay of Foreigners : Cudzinec môže byť zaistený na čas nevyhnutne potrebný, najviac však na šesť mesiacov. Policajný útvar môže rozhodnúť o predĺžení lehoty zaistenia najviac o 12 mesiacov, ak možno predpokladať, že napriek vykonaným úkonom potrebným na výkon jeho administratívneho vyhostenia sa tento výkon predĺži z dôvodu, že cudzinec dostatočne nespolupracuje alebo z dôvodu, že mu zastupiteľský úrad nevydal náhradný cestovný doklad v lehote podľa prvej vety; to neplatí, ak ide o rodinu s deťmi alebo zraniteľnú osobu. English

The Act on the Stay of Foreigners prohibits the detention of unaccompanied minors[32] and prolongation of the detention of vulnerable persons and families with children.

The other vulnerable persons could be subjected to detention only as the last resort and for the shortest duration.[33]
The decision on detention is subjected to judicial review. The detainee has the right to appeal the decision on detention within 15 days since the delivery of the detention to the Regional court in Košice or Bratislava[34]. The appeal against the decision does not have suspensive effect. In the second instance, the foreigners are entitled to appeal the decision of the Regional Court to the Supreme Court of Slovak republic. The courts are obliged to decide about the appeal immediately[35].

The law requires the release of the detainee without any delays if[36]:

- The purpose of the detention extinguished;
- Based on the decision of the court; or
- The detention period expired.

The police office is obliged:

- To secure that the foreigner is informed, immediately after his detention and in the language s/he understands on the grounds of the detention, possibility to inform the embassy of the country of citizenship on the detention, and the possibility for judicial review of the detention decision;
- To immediately inform the embassy of the citizenship about the detention if the foreigner asked for;
- To enable the foreigner to inform the legal representative and one of the close persons[37] about the detention immediately;
- To undertake the measures and activities necessary for the enforcement of the expulsion or for identification of the foreigner without any delay;
- To constantly assess the duration of the purpose of the detention;
- To release the detainee without any delay if there are grounds to do so according to the law;
- To allow the entry of the IOM and NGOs employees to the detention facilities during the duration of the detention of the foreigner subjected to the approval of

translation: "A foreigner could be detained for the necessary time, maximum 6 months. Police department could decide on prolongation of the detention for maximum 12 additional months if it could be presumed that, notwithstanding the actions already taken for the purpose of the administrative expulsion, the enforcement of administrative expulsion would be prolonged because the foreigner does not cooperate enough, or because the embassy did not issued the travel document in the period provided in first sentence; this could not be applied in the case of vulnerable person or family with children."

[32] See § 62 (7) of the Act on the Stay of Foreigners

[33] See § 62 (7) of the Act on the Stay of Foreigners, second sentence

[34] Venue of the Courts based on the location of 2 detention centers – Sečovce and Medveďov

[35] The legal period for deciding about the appeal on detention is proposed to be changed for 7 days.

[36] See § 63 (f) of the Act on the Stay of Foreigners

[37] The definition of close person is provided in the § 116 of the Civil code: "Close persons are the persons related in the line, brothers and sisters, and husband/wife. Other relatives could be regarded as close if the harm suffered by one of them the other one would reasonably feel as if it was her own."

the director of the facility and ensure the contact with UNHCR office if the foreigner applied or wants to applied for asylum.

The information on the rights of the detainee as mentioned above is provided in written immediately after the decision on detention has been delivered to the foreigner. In many cases the information on rights is attached to the decision on detention on separated letter. In 2012, the obligations of the police office with respect to information duty would change slightly. The law would preserve the obligation to inform the foreigner on the grounds of the detention, possibility to inform the embassy of the country of citizenship on the detention, and the possibility for judicial review of the detention decision **in the language s/he understands**.[38]

Newly, the detainee would have the right to be informed on possibility to apply for assisted voluntary return, to contact NGOs or to contact UNHCR **in the language s/he understands or may reasonably be presumed to understand.**[39]

The wording of the respected provisions of the new law as quoted above would therefore preserve the standard on right to be informed as provided in the art. 5(2) of the ECHR. The wording in the second provision corresponds with the standard of the language of information as given by the Return directive.

The legal assistance to detainees is currently provided by NGOs, who visit the detention facilities on weekly basis. The legal assistance is based on the projects of NGOs founded by European Return Fund[40]. There are 2 NGOs providing the legal assistance to detainees:

1. The Human Rights League provides the legal assistance and representation to all detainees regarding their detention and related matters;
2. The Slovak Humanitarian Council provides the legal assistance in asylum procedure to detainees who apply for asylum in detention.

In the case that the detainee has the private lawyer, the lawyer has unlimited access to the detainee as well.

Since 2012, the foreigners who would be issued decision on administrative expulsion would have the right to free legal assistance in appellate procedure provided by the Legal Aid Centre of the Ministry of Justice.[41] According to the initial statement of the Legal

[38] See § 90 (1) (a) of the Act no. 404/2011 of the 21. October 2011 on the Stay of the Foreigners and on the Changes and Amendments to the other Acts

[39] See § 90 (1) (e) of the Act no. 404/2011 of the 21. October 2011 on the Stay of the Foreigners and on the Changes and Amendments to the other Acts

[40] The information on projects founded by the European Return Fund in Slovakia is available on the website of the Ministry of Interior: <http://www.minv.sk/?podporene-projekty-2> [downloaded on 03.11.2011]

[41] See § 77 (8) of the Act no. 404/2011 on Stay of the Foreigners "The third country national is entitled to be awarded by legal representation to the extent and based on conditions stated in special act." The special act in this provision is the § 3 of the Act. No. 327/2005 Coll. On Legal Aid to People in Poverty and on Amendment and Change of the Act No. 586/2003 on Advocacy and on Amendment and Change of the Act No. 455/1991 Coll. On Self – Employment as in the wording of the Act No. 8/2005 Coll.

Aid Centre, the legal aid would be primarily secured by assigned advocates.[42] This provision would implement the provision of art. 14 (3) of the Return Directive, on free legal assistance in the case of "decision on return". However, it does not include the right to free legal assistance provided with respect to decision on detention. Therefore the free legal aid to detainees would be provided and dependent on the projects founded by European Return Fund.

3.4. Detention of vulnerable groups

The Act on the Stay of Foreigners prohibits the detention of unaccompanied minors[43] and prohibits the prolongation of the detention of vulnerable persons and families with children.

The law states that vulnerable persons other than unaccompanied minors could be subjected to detention only as the last resort and for the shortest duration.[44]

Since 2012, the law would not allow the prolongation of the detention of the asylum seekers.[45] The provisions on detention of unaccompanied minors and vulnerable persons would remain the same.

3.5. Detention measures in practice

3.5.1. Situation

According to the official figures on detention[46], during the first 6 months of 2011, there were 139 persons detained in both detention facilities (86 persons in Medveďov and 53 persons in Sečovce). Out of these, 66 persons were released, 41 persons were expelled, 8 readmissions took place and 11 Dublin transfers were undertaken, 23 persons applied for asylum and 45 persons returned voluntary.

The number of detainees is lower than the same number in first 6 months of 2010 (193 persons detained). In 2010 almost the same number of persons were expelled (44) or released (66), but the number of asylum applications in detention was doubled in relevant time in 2010 (48) as well as the huge number of Dublin transfers (34) exercised in the same period in 2010. Otherwise the figures are similar.

The major detainees in Medveďov in first half of 2011 came from Ukraine (36) followed by Chinese (9), Vietnamese (7) and Pakistani (5). The majority of released persons were

[42] The information provided by Mr. E. Hebeň from the Legal Aid Centre during the National Seminar on Detention held on October 5th, 2011 in Bratislava, Slovakia.
[43] See § 62 (7) of the Act on the Stay of Foreigners
[44] See § 62 (7) of the Act on the Stay of Foreigners, second sentence
[45] See § 88 (4) of the Act no. 404/2011 of the 21. October 2011 on the Stay of the Foreigners and on the Changes and Amendments to the other Acts
[46] Bureau of Alien and Border Police of Polices of Ministry of Interior of the Slovak republic. (2011) Štatistický prehľad legálnej a nelegálnej migrácie za I. polrok 2011. Available at: <http://www.minv.sk/swift_data/source/policia/hranicna_a_cudzinecka_policia/rocenky/rok_2011/2011_I_polrok_UHCP-SK.pdf >

citizens of India (5) and Vietnam (3). The asylum applications were lodged by the foreigners from Benin (2), Congo (2) and Vietnam (2). The expulsion has been enforced against the persons from Ukraine (36), Vietnam (7), China (9) and Pakistani and Serbia (both 5).

Sečovce detention centre housed mostly Ukrainians (10) followed by Turkey (9), Somalis (7) and Afghans (6). The released persons came from Afghanistan (22) and Turkey (8). The majority of asylum applications were lodged by detainees from Turkey (9) and Somali (3). The expulsion has been realized against 8 persons from Ukraine. The differences between the nationality of the detainees and difference between the figures on nationality of asylum seekers, released and expelled persons are determined by the fact, the Sečovce detention centre is placement facility for these migrants found in the border area with Ukraine. The Medveďov detention centre serves as the detention for irregular migrants from all over Slovakia and frequently serves for the purposes of transnational transfers through the territory.

In general, number of detention in 2010 and 2011 dropped significantly compared to the figures in 2009 or even earlier. The decrease in the number of detainees corresponds with the decline of the overall number of the asylum seekers in Slovakia that is significantly lower than in 2009 or even earlier.[47] In 2011, the actual number of detainees during the weekly visits lowered to 15-20 persons in each facility.

The main ground for detention has been the enforcement of the administrative expulsion as the result of irregular entry or irregular stay on the territory of Slovakia. The reasons behind have covered the situation of irregular crossing of the Slovak-Ukrainian border, over exceeding of residence permit or visa, being failed asylum seeker or false proclamation of being unaccompanied minor.
However, other 2 reasons for detention have been applied as well.

To assess, the situation with regard to detention measures and its application has been constantly improving. The reasons for detention are clearly set up in the law and fall within the scope of the article 5 (1) f) of the ECHR. Both detention facilities are regularly visited by lawyers who provide legal assistance to detainees and by other employees of NGOs who provide social assistance, psychological and material assistance. The UNHCR and IOM have the access to detainees as well and the detention centres are under the supervision of the Public Prosecutor office.

Eventhough the general good condition of the detention in Slovakia, there were several barriers and concerns identified that would be discussed in details below.

[47] The Migration office registered 2642 asylum application in 2008, 822 application in 2009, 541 applications in 2010 and 336 application until September 2011. Source: Ministry of Interior of the Slovak republic, <http://www.minv.sk/?statistiky-20> [downloaded on 09.11.2011]

3.5.2. Barriers and concerns

In general, the current Slovak legislation on detention falls within the scope of the international standards. The barriers and concerns that were identified and would be discussed further are mostly concentrated to the manner in which the existing legislation is being applied in particular sort of cases.

The most important legal concern related to detention is that Slovakia did not fully transpose the Return Directive into its legislation yet. Some of the provisions of the Act on the Stay of Foreigners are in line with the Return Directive standards, however others are not. This problem would be solved since January 2012 when the brand new act on the stay of the foreigners[48] shall entry into force. The new act had been prepared since 2010 with the view to implement the provisions of the Return Directive and the main effort including the negotiations with authorities and NGOs who had submitted their proposals had taken place during whole 2011.

The issues that have been identified as barriers and concerns are as follows:

- Length of the procedure on judicial review of the detention decisions;
- Age assessment procedure;
- Duration of the legal purpose of the detention;
- Lack of interpreters from several languages
- Length of application procedure for asylum in detention; and
- Lack of alternatives to detention in legislation.

Length of the judicial review

The law provides that the courts shall decide about the appeal against the decision on detention **immediately**.[49] The provision is in line with the article 5 (4) of the ECHR[50] however its application has been subjected to continual criticism of NGOs and the Constitutional Court of Slovakia for its length that does not comply with the understanding of "immediately" or "speedily".

In general, the length of the appellate procedure on the first instance courts counts on weeks or even months (1-2 month) and on second instance counts in months.[51] Also, there were cases in which the final decision on legality of the detention had not been taken eventhough the police has already decided on prolongation of detention.

[48] Act no. 404/2011 of the 21. October 2011 on the Stay of the Foreigners and on the Changes and Amendments to the other Acts

[49] See § 62 (6) of the Act on the Stay of Foreigners

[50] Article 5 (4) of the ECHR provides: "Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful."

[51] In the past, there were even cases where the final judgment was taken when the 6 months for detention were almost over or even after when applicant had been released already. Such situations were common few years ago when there was no provision on possibility of prolongation of initial 6 months of detention.

The courts argue that the priority has been given to appeals against detention decisions but they have to proceed within the limits set up by the procedural and administrative code of the courts.[52]

In the decision making process, the courts have to respect the general rules of the civil proceedings as provided in Civil Procedure Code. For example, the Court has to announce the hearing in the way that the parties would have minimum 5 days for preparation and the invitation to the hearing must be delivered to both parties. Also the court has 30 days to write the judgment since its proclamation on the hearing. Therefore the length of the appellate procedure could not be shortened to days, according to the courts.

However the Constitutional Court of Slovakia disagreed with the courts and holds the opinion that the administrative and procedural routine could not be the reason for violation of the basic rights of the applicants as provided in the ECHR. The Court ruled that eventhough the respected regional court had been proceeding the actions necessary for the decision making process, but his proceedings could not be regarded as "immediate". According to the Constitutional Court, with regard to all the circumstances of the particular case, "*it had been possible and appropriate to provide the judicial review of the detention by the respected regional court in the period significantly shorter in the other words immediately*". With regard to the decision making process of the Supreme Court of Slovakia, the Constitutional Court ruled that "*it had been possible and appropriate to provide the judicial review of the detention by the Supreme Court in significantly shorter period counted on days*".[53]
The above mentioned decision of the Constitutional Court of Slovakia has had significant impact on the process of negotiations on the provisions of the new law. Based on the proposal of The Human Rights League that had been accepted by the Ministry of Interior of Slovakia, the new law would bind down the regional courts to decide about the appeal against the decision on detention *within 7 days*.[54] Similarly, the Supreme Court would have to decide in second instance within 7 days since the delivery of the case file.[55]

The specification of the explicit period for judicial review of the detention decision would be the major procedural change in the system of judicial review of the detention decisions. The respected courts would have to take the adequate measures to comply with the new law with particular regard to time reserved for the delivery of the case file by the

[52] See argumentation of the Supreme Court of Slovakia in the case no. II. ÚS 264/09-81 (the decision of the Constitutional Court of Slovakia dated on 19.10.2010), also the explanation provided in discussion during the National Seminar on Detention held on 05.10.2011 in Bratislava, Slovakia
[53] See the Decision of the Constitutional Court of Slovakia no. II. ÚS 264/09-81 dated on 19.10.2010, where the Constitutional Court decided that the right of the applicant granted by the art. 5 (4) of the ECHR has been violated by both the Regional Court in Trnava (there was period of 62 days that could be influenced and shortened by the Court) and the Supreme Court of Slovakia (the period of 50 days that could be influenced and shortened by the respected court).
[54] See § 88 (7) of the Act no. 404/2011 of the 21. October 2011 on the Stay of the Foreigners and on the Changes and Amendments to the other Acts
[55] See § 88 (8) of the Act no. 404/2011 of the 21. October 2011 on the Stay of the Foreigners and on the Changes and Amendments to the other Acts

administrative authority (police) to the court, revision of the case file and preparation of and for the hearing. However, not only courts would be affected by the change. The explicit period would challenge the work of the lawyers providing the legal aid to detainees as well as the police departments.

However, as long as the current change is not accompanied with the change of the general procedural rules for civil proceedings that apply to judicial review of detention as well, one could not be too optimistic and expect that the period for judicial review would be shortened to days or even hours. In order to really fully comply with the standards of "decide speedily" as required by the ECHR, the system of judicial review of detention would require other, more radical changes, including special provisions on time limits shorter than general ones stipulated in the Civil Procedure Code and right of the court to decide on immediate release of the detainee. Maybe, the best way would be the transformation of the system to one similar to judicial approval of pre-trial detention in the criminal procedure.

Age Assessment Procedure:

The law prevents the detention of unaccompanied minors. If a person declares that s/he is the unaccompanied minor, s/he is handed to the care of the office for labor, social affairs and family (OLSAF) in area where the unaccompanied minor has been found. The OSLAF requests the responsible court for preliminary ruling on providing the child with temporary institutional care and on appointing the custodian. The preliminary ruling is issued within few hours and the separated child is placed into the foster house for unaccompanied minors in Horné Orechové, or if it is a girl, into foster house for children in Medzilaborce.

According to the Act on the Stay of Foreigners, the foreigner who declares to be unaccompanied minor is obliged to undergo the examination for the purposes of the age assessment, with the exception that it is obvious that s/he is a minor. If the foreigner refuses to undergo the examination, he is considered to be adult for the purposes of the procedures according to the Act on the Stay of Foreigners.[56] If the police office founds the unaccompanied minor on the territory of Slovakia it has the obligation to hand him/her, without any delays, to responsible OLSAF.[57]

The law does not provide any specification on the medical examination for the age assessment. In practice, the medical screening includes the X-ray of the bones of the wrist and hand (elbow).

In 2011 there were cases[58] were the police office requested the age assessment of the unaccompanied minors placed in the foster house for unaccompanied minors Horné

[56] See § 49 (5) of the Act on the Stay of Foreigners
[57] See § 80a of the Act on the Stay of Foreigners
[58] Until November 2011 the Human Rights League documented 15 cases (7 Somalis, 1 Palestinian, 7 Afghanis), the case documentation available at Human Rights League

Orechové. The police office appointed the medical expert *ad hoc*[59] , doctor of radiology who, based on the outcomes of the X-ray concluded that the age of the foreigners in question is 18 years and more. Immediately, the foreigners, now alleged to be adults, were taken to the police department directly from the hospital and subjected to administrative expulsion followed by the immigration detention.

The detainees appealed the decision on detention arguing, *inter alia,* that the procedure conducted by the police office was not lawful. They objected the appointment of the non-State-approved expert eventhough there were other State approved experts in criminal anthropology or forensic pathology available in neighboring areas. They also objected to the appointment of the expert from radiology, claiming that according to the official instruction of the Ministry of Justice of Slovakia[60] provides the list of areas of expertise with the description and the age assessment is included in the description of anthropology or forensic pathology, not radiology. The applicants highlighted that the expert opinion, as provided by the expert *ad hoc* in the particular case-documentation, does not contain all the necessary documentation as stated in the law[61], therefore the expert opinion could not be used as the basis for their age determination. Also, the applicants claimed that the detention has been unlawful, because the applicants were detained in the time when the decision of the court on appointing the custodian and preliminary ruling on providing the child with temporary institutional care were still valid. Therefore, the applicants held the opinion that they were detained as unaccompanied minors and therefore in contradiction to § 62 (7) of the Act on the Stay of Foreigners (prevention of the detention of unaccompanied minors).

The court decided in favor of the applicants and the decision on detention has been canceled.[62] The court highlighted the fact that the expert opinion provided by the expert ad hoc did not fulfilled the conditions for expert opinion set up in the valid law and the form in which the expert opinion has been delivered does not fulfill the legal requirement for being used as the evidence on the age of the applicant in question. The court acknowledged the expertise of appointed expert ad hoc but stressed the fact that primary the science responsible for age assessment is the anthropology. The court also ruled that the next step in the procedure was supposed to be the solution of the situation of appointment of the custodian, because the result of the age assessment does not cause the annulment of the decision on appointment of custodian *per se*.[63]

The above mentioned cases have raised several important questions regarding the age assessment of the foreigners who declare to be unaccompanied minors. Apart of the several serious procedural mistakes, the cases highlighted the fact that the legal

[59] The argumentation on not appointing the official State approved medical expert that has been provided was that the State approved experts were not found in the area of the competence of police office and therefore the appointment of the expert ad hoc had been assessed as economic.

[60] Instruction no. 7/2009 of the Ministry of Justice of Slovakia dated on 25.03.2009 no. 23635/2009-51 on the organization and management of the expert, interpretation and translation services

[61] As stated in the § 17 (3) of the Act. No. 382/2004 on experts, interpreters and translators.

[62] Until November 2011 there have been delivered 10 decision out of 15 cases, judgments available in the case documentation of the Human Right League

[63] The judgment of the Regional Court in Trnava 38Sp/7/2011 and 38Sp/8/2011 dated on 20.09.2011, pg. 10, 11 , copy in the file of the Human Rights League

provisions on age assessment as included in the Act on the Stay of Foreigners are not clear and does not provide much guidance on which methods shall be used in order to determine the age, what are the procedural guarantees for the foreigner in question, which expert shall be selected to provide the relevant examination of the age.

To compare, the Act on the Asylum contains much more developed legislation on age assessment. If there are doubts about the age of the asylum applicant, s/he is obliged to undergo the medical examination. If it is medically proved that the applicant is adult, the migration office considers the applicant as adult and immediately informs the legal representative, custodian (if appointed previously) and respected court about the result of the medical examination. If the applicant or his custodian refuses to agree with the examination, the migration office considers the applicant to be adult for the purposes of the asylum procedure. If it is not possible to determine the age of the applicant, the applicant is considered to be minor. The migration office is obliged to instruct the applicant and custodian on the possibility to request age assessment, on the methods being used and results of the examination and possible influence on the asylum application as well as on the consequences of the refusal to undergo the examination.[64]

However, in the situation, where law does not provide which medical methods to use and which expert to appoint, the results of such age assessment could be disputable. Also, the age assessment procedure as such is not the procedure according to the law, there is no decision being taken. The result of the assessment would influence other procedures (appointment of custodian, expulsion and detention procedure, asylum procedure), in which the particular foreigner could use the procedural rights to defend himself/herself, but his possibilities to defend himself during the age assessment are very limited if non-existent.

Since 2012 there would be new provision on the age assessment applicable to foreigners apart of the asylum procedure. According to this provision, the foreigner who declares to be unaccompanied minor would be obliged to undergo the examination for the purposes of the age assessment, with the exception that it is obvious that s/he is a minor.[65] If s/he refuses to undergo the examination, s/he would be regarded as an adult for the purposes of this law. If he agrees with the examination, he is regarded as adult until the result on the age assessment is being taken. If, based on the medical examination, it is not possible to determine whether the foreigner is minor or not, s/he is considered to be minor. The police office has the obligation to instruct the foreigner on the right to request the medical examination, methods being used to do so, and on consequences of the examination on the procedure based on this law and consequences of the refusal to undergo the examination.[66]

The provision in the new law would provide different standard than the standard provided by the Act on Asylum, because the particular foreigner subjected to examination *would*

[64] See § 23 (7) of the Act on Asylum
[65] See § 111 (6) of the Act no. 404/2011 of the 21. October 2011 on the Stay of the Foreigners and on the Changes and Amendments to the other Acts
[66] See § 127 of the Act no. 404/2011 of the 21. October 2011 on the Stay of the Foreigners and on the Changes and Amendments to the other Acts

be regarded as adult until proved otherwise. However, such attitude could result in serious violation of the right of the child if the results of the examination would prove that the particular foreigner is minor. It is disputable whether this provision is actually in line with standard provided by the Convention of Rights of the Child (CRC), with special regard to *the principle of the best interest of the child*.

To conclude, the greatest challenge for Slovak legislation and its application is to find and clearly define the rules guiding the procedure of the age assessment of the foreigners in order to avoid possible deprivation of basic human rights of the persons in question and better protection of unaccompanied minors. It is worth to highlight that there are States that do not apply the age assessment examination due to its uncertainty and legal complications.[67] Any decision taken with regard this issue shall be result of systematic research and agreement of experts from different areas of law and medicine who are involved in the application of the immigration legislation and bear in mind the barriers and limitations.

Duration of the purpose of the detention:

According to the law, the detention shall be limited by its purpose and the detainee shall be released immediately if the purpose of the detention extinguished. The police department has the obligation to constantly assess the duration of the purpose of the detention.

The ECHR in article 5 (4) provides:

"Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and **his release ordered if the detention is not lawful**."

The Act on the Stay of Foreigners states that the detainee shall be released without any delays if the purpose of the detention extinguished; or based on the decision of the court; or if the legal period of the detention is expired.[68]

The valid law does not allow the court to order the release of the detainee if the decision on detention is canceled. The reasons for canceling of the administrative decision (decision on detention is administrative decision) in general are provided in the Civil Procedural Code and the law does not provide the possibility to order the release.[69] Moreover, it is dependent on the particular legal ground for the cancellation chosen by the court, if there is the possibility for further appeal or not.[70] Therefore there are situation in which the decision on detention is canceled on the first instance but if the police office appeals the judgment to second instance, the judgment on the first instance lacks validity and enforceability.

[67] E.g. Czech republic, Sweden
[68] See § 63 (f) of the Act on the Stay of Foreigners
[69] See § 250j (1) (2) of the Civil Procedure Code
[70] See § 250ja (1) (2) of the Civil Procedure Code. There is always the possibility to appeal the judgment on the approval of the administrative decision. In the case of cancellation of the decision there is possibility to appeal the judgment if the cancellation has been based on wrong legal assessment of the case or the case

In the case that there is no possibility to appeal the judgment on cancel of decision on detention, the legal consequences of the judgment would only by enforceable if the judgment becomes valid (by its delivery to the parties). The court has 30 days to deliver the judgment since its announcement.

For the reasons described above, the detainees are not being released before the judgment of the court is delivered to the parties of the procedure. The delivery of the judgment could last up to 30 days (or even more) since the hearing/announcement of the judgment. In the case that there is possibility to appeal the canceling judgment, the detainees are not released unless the canceling judgment becomes final.

We believe that the above described practice is in contradiction with the provision of the art. 5 (4) of the ECHR as quoted above. In the situation when there is judgment on cancellation of the detention publicly announced (and especially in the situation when the law does not provide with the possibility to appeal), the purpose of the detention extinguished, according to our opinion. Eventhough the law binds the legal effect of the judgment on its validity and there is no possibility to order release of the detainee by the court, the law enforcement authorities including the detention facility shall bear in mind the wording of article 5 (4) of the ECHR and release the detainee based on the lack of the purpose of the detention. It is worth to mention that the exact wording of the provision of § 63 (f) (2) of the Act on the Stay of Foreigners is "the police office is obliged to release the foreigner *based on the decision of the court*" not "valid and enforceable decision".

The situation would change in 2012, because the wording of the respected provision would change and the release of the detainee would be based on "*valid decision of the court".*[71]

Even in such situation, we believe that the detainee shall be released immediately after announcement of the judgment on canceling of the decision on detention due to the lack of the purpose of the continual detention. Binding the release on the delivery of the judgment and its validity is very formal and restrictive attitude that is not in line with the article 5 (4) of the ECHR because it does not provide the guarantees for speedily review of the lawfulness of the detention.

<u>The lack of interpreters</u>

Currently, the police, courts and Migration office as well as lawyers deal with the urgent issue of not being able to provide official interpreters from various languages or even unofficial ones from some of the languages spoken by the foreigners. This merely concerns Somalis, who, since the beginning of the year, have crossed Slovak-Ukrainian borders in huge numbers[72] and were apprehended by the police.

[71] See § (2) (b) (2) of the Act no. 404/2011 of the 21. October 2011 on the Stay of the Foreigners and on the Changes and Amendments to the other Acts. The wording was subjected to comments of the NGOs and proposals to include the provision enable the courts to order release in the process of preparation of the new law, but this proposal was not accepted by the Ministry of Interior.

[72] According to the statistics provided by the Alien and Border Police, in first 6 months of 2011, the Somalis were the major nationality among the foreigners who crossed the border illegally (72 detected cases out of 184). In the same

Currently, there is no official Somali interpreter in Slovakia. For the purpose of the interpretation, the Somali migrants (holders of the subsidiary protection) were appointed as interpreters *ad hoc.* This practice has been challenged by the lawyers representing the foreigners to whom the interpretation had been provided, resulting in courts deciding in favor of the applicants. The respected court ruled that the ability of such interpreter ad hoc to understand Slovak is not certain and moreover and the police have the obligation to examine whether or not the interpreter speaks the specific Somali dialect used by the applicants.[73]

There were also cases where English speaking interpreter had been appointed to the foreigner. In the appellate procedure the applicant claimed that his mother language is not English and his ability to understand and speak English is very limited. The respected court decided in favor of the applicant ruling that the police office shall take into account the objection of the applicant regarding the language of the interpretation. Court stressed that the law provides the foreigner with the right to be informed in the language s/he understands eventhough there is no official Somali interpreter.[74]

Another case concerned the applicant who objected to the interpretation provided in Chinese eventhough he claimed to speak and understand Tibetan language only. The applicant argued that in the asylum procedure he had been provided with Tibetan interpreter secured through the videoconference. The appellate court has acknowledged the objection of the applicant and canceled decision on detention due to the fact that the applicant was not provided with the translation from the language he understands. The court ruled that the police office has the obligation to appoint the interpreter in the language that is proclaimed by the applicant as the language s/he understands without any speculations about the level and ability of the applicant to understand other language.[75] Here the court referred to judgment of the Supreme Court of Slovakia as included in the Collection of the decisions and opinions of the Supreme Court of Slovakia under the no. 19/2003 that was delivered in criminal proceeding.[76]

The above mentioned cases show that the situation regarding the interpretation from various languages is of serious concern in Slovakia. The police authorities are currently challenged to find applicable measures to provide the foreigners with adequate interpretation otherwise they risk that the decisions on detention would be canceled based

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time in 2010, Somalis were only the 5th most detected nationality regarding the illegal border crossing (15 cases out of 213 in total). Source: Ministry of Interior of Slovakia, Bureau of Alien and Border Police. Statistic overview of the legal and illegal migration in first half of 2011, < http://www.minv.sk/swift_data/source/policia/hranicna_a_cudzinecka_policia/rocenky/rok_2011/2011_I_polrok_UHCP-SK.pdf> , [downloaded on 09.11.2011]

[73] The judgments of the Regional Court in Trnava 38Sp/7/2011 and 38Sp/8/2011 dated on 20.09.2011, enclosed in the files of the Human Rights League.

[74] The judgment of the Regional Court in Košice 6Sp/17/2011 dated on 11.08.2011

[75] Judgment of the Regional Court in Trnava no. 44Sp/59/2011 dated on 18.07.2011, enclosed to the file of the Human Rights League

[76] In this judgment the Supreme Court ruled that if the defendant declares that he does not understand the language of the procedure, the authorities could not questioned the level of his actual ability to understand the language of the procedure, but are obliged to appoint the interpreter. Similar principle applies to any other procedure where the applicant claims that he does not understand the language of the procedure.

on the violation of the right to be provided with the interpreter from the language the foreigner understand. In this situation, the police could not refrain to its obligation by simply pointing on the situation that the adequate interpreters are not available in Slovakia. The possible solution to this issue might be the cooperation with other states and ensuring the interpretation through videoconferences in order to secure that the rights of the foreigners would be respected.

The length of the application for asylum in detention

The law provides that the police department in the detention facility is responsible for accepting the asylum application of the detainee.[77]

In practice the detainees could show their intention to enter the asylum procedure in written (on piece of paper given to them) or orally (announcing to the employees of the facility, or to lawyer or social worker who contacts the responsible employees of the detention facility). The law does not regulate the duration of the time spend between the announcement of the will to apply for asylum and actual taking of the application. In majority of the cases, most of the time is spend by arranging of the interpretation.

In 2011 we monitored the cases were the overall duration of the time passed by until the application has been accepted was 1 month. We believe that such length is not acceptable, eventhough that there might be several difficult issues to solve, first of all the availability of the interpretation. The law provides the form in which the asylum application is accepted. The form consists of identification data and declaration on applying for asylum with short description of the reasons.[78] Even if the applicant would not provide the information on the reasons for application, his application has to be accepted and sent to Migration office. Therefore, in some cases where it could be difficult to arrange the adequate interpretation, the asylum application could be limited to filling the identification data section and simple declaration on the will to apply for asylum with the aim to speed up the process of entering the procedure.

Alternatives to detention

This issue would be discussed further in the section 4 of this report.

3.5.3. Good practices

The good practice in Slovakia includes the prohibition of detention of unaccompanied minors and more favorable provisions on detention for vulnerable persons, as described earlier.

The legal grounds of the detention fall within the scope of article 5 (f) of the ECHR.

[77] See § 3 (2) (f) of the Act on Asylum
[78] The attachment no. 1 to the Act on Asylum

The judiciary in general is in line with the standards of detention provided by the ECHR. The recent decisions of the Constitutional Court of Slovakia in detention and immigration matters reflected the decisions of European Court of Human Rights and European Court of Justice and were much anticipated.

The access of detainees to legal assistance is on very good level, mainly due to the funding provided by the European Return Found to NGOs. The legal assistance is provided by lawyers and advocates from NGOs who visit both centers on weekly basis and provide legal counseling to detained foreigners. The general cooperation and communication between NGOs and detention authorities is on very good level regarding the access to the detainees and access to the information.

Also, the expected change in the legislation on not prolonging the detention of asylum seekers whose asylum procedure has not been finished yet, and on legal periods for judicial review is well anticipated example of good practice. In general, the cooperation with the Ministry of Interior in the process of preparation of the new law has been very well and resulted in several changes to the initial proposal of the new law.

3.5.4. Current debate

The current debate in Slovakia merely concerns on the changes in the law expected to come into force on January 2012. The new act on the stay of the foreigners will transpose several EU laws including the provisions of EU Return Directive that has not been fully transposed yet. The expected law would include several important changes to detention as well.

With regard to detention, the proposal will introduce alternative measures to detention into Slovak legislation (bail and report of residence) and will specify the period for the courts to decide on appeals against the detention decisions on 7 days for the Regional court and 7 days since delivery of the case file for the Supreme Court of Slovakia.

In general terms, the discussion in Slovakia related to immigration issues included the issue of providing the migrants with better access to information on their rights and duties and possibilities. Slovakia has been subjected to strong criticism for its discretionary procedures and unclear rules in 2011.[79] The NGOs highlighted the fact that information provided to migrants in general are not adequate as they are mainly in Slovak language. With regard to detention and asylum procedure, the authorities in general fulfill their legal obligation to inform the foreigners on their rights and duties as provided by the law. However, the language of the information is strictly formal and if not provided with interpretation/written translation from language s/he understands, the information would miss its purpose.

Also, the creation of the new Immigration and Naturalization Office started to be the issue again. The office shall be established until 2013 and join the Migration office and

[79] Source: MIPEX (Migrant Policy Index), http://www.mipex.eu/slovakia

the Bureau of the Alien and Border Police into one institution.[80] However, we are not aware of any development of the plan on transformation and creation of this institution yet.

3.6. Conclusion

In general, the Slovak legislation on detention is in line with the standard of the ECHR. One of the problematic issues that have been identified is the incomplete transposition of the Return Directive that would be fully transposed since January 2012, one year after the original transposition period.

The barriers and concerns that were identified above are mainly based on the manner in which the legislation has been applied (length of the judicial review, release from detention). However there are areas in which the rules are unclear resulting in violations of the rights of the foreigners (age assessment).

Some of the concerns would be partially solved by the entry into force of the new law in January 2012. The application of the new provisions would be the major challenge for Slovak authorities and stakeholders in upcoming months.

With regard to statistics, it must be noted that the general number of detained migrants has been significantly decreasing since 2008. It is not possible to predict whether or not the figures would remain the same in future, but if yes, the question of effectiveness of two detention facility could be legitimate.

4. Alternatives to detention

4.1. Applicable standards

The legal basis for applying the measures altering the detention in national legislations is to be found in the Council of Europe Twenty Guidelines on Forced Return[81] and in the Return Directive.

The Guideline 6.1 of the Council of Europe Twenty Guidelines on Forced Return /"Conditions under which detention can be ordered"/ provides:

"A person may only be deprived of his/her liberty, with a view to ensuring that a removal order will be executed, if this is in accordance with a procedure prescribed by law and if, after a careful examination of the necessity of deprivation of liberty in each individual case, the authorities of the host state have concluded that compliance with the **removal order cannot be ensured as effectively by resorting to non-custodial**

[80] Ministry of Interior of the Slovak republic. *Ministerstvo vnútra chce vytvoriť Imigračný a naturalizačný úrad* (13.7.2011), Article available at: http://www.minv.sk/?tlacove-spravy-6&sprava=ministerstvo-vnutra-chce-vytvorit-imigracny-a-naturalizacny-urad

[81] Council of Europe: Twenty Guidelines on Forced Return, September 2005, publicly available at <http://www.coe.int/t/dg3/migration/Source/MalagaRegConf/20_Guidelines_Forced_Return_en.pdf >, [downloaded on 02/10/2011]

measures such as supervision systems, the requirement to report regularly to the authorities, bail or other guarantee systems."

The Return Directive sets up the standard for applying the alternative measures to detention in EU Member States in article 15.1., in conjunction with recital 16.

Recital 16 of the Return Directive states:

"Detention is justified only to prepare the return or carry out the removal process and if the application of less coercive measures would not be sufficient."

Further in the article 15.1., the Return Directive provides that the deprivation of liberty may be ordered "unless other sufficient but less coercive measures can be applied effectively in a specific case".

The art. 15.1. of the Return Directive, in conjunction with Recital 16 of the Directive establishes a duty for Member States to examine in each individual case whether the application of the alternatives to detention would be enough before resorting to deprivation of liberty. Therefore, the Member States who did not already do so are encouraged to include measures alternating detention into their national legislations.

According to the FRA[82], detention should not be resorted to when less intrusive measures are sufficient to achieve the legitimate objective pursued. In order to ensure that less coercive measures are applied in practice, EU Member States are encouraged to set out in national legislation rules dealing with alternatives to detention that require the authorities to examine in each individual case whether the objective of securing the removal can be achieved through less coercive measures before issuing a detention order, and provide reasons if this is not the case.

The alternatives to detention shall not be understood in the way of unconditional release. The alternative measures are in fact measures that apply certain restrictions on fundamental human rights such as freedom of movement or respect to privacy. On the other hand, such measures provide less harm to the right for liberty than the detention.

The national legislation shall provide clear rules for applying the alternatives to detention, in order to ensure that the deprivation of liberty would be used as the last resort. The alternative measures could be applied in the decision making process prior to the detention of the individual or in the process of reviewing whether there is a need to prolong the detention. It is possible to apply one measure, or several alternative measures in combination.

The FRA report on detention in return procedures describes several different alternatives to detention in national legislations of the Member States. These include the obligation to surrender passport or travel documents, residence restrictions, release on bail and

[82] FRA report: Detention of third-country national in return procedures, December 2010, pg. 54

provisions of sureties of third parties, release to support of case worker and electronic monitoring.[83]

With regard to different alternatives to be found in national legislations, the FRA has the opinion, that innovative forms of alternatives which include counselling the individual on the immigration outcome should be explored wherever possible. By contrast, given the restrictions on fundamental rights derived from electronic tagging, such an alternative should normally be avoided.[84]

The IDC in their handbook for preventing unnecessary immigration detention introduced the CAP – the Community Assessment and Placement model, which describes five steps that authorities can take to ensure that detention is only used as the final option in exceptional cases after all other alternatives have been tried or assessed as inadequate in the individual case. [85]

The five steps in the CAP model include:
1. Presumption that the detention is not necessary;
2. Screening and assessing the individual case;
3. Assessing the community setting;
4. Applying conditions in community setting if necessary; and
5. Detain only as a last resort in exceptional cases.

The CAP model could serve as useful tool for the immigration authorities when deciding about the application of the alternative measure to detention. According to the IDC, using the alternatives to detention that allow an immigrant to stay in the community while awaiting the removal, or while waiting for the determination of his status, results in the range of benefits including

- Costs less than the detention
- Maintain high rates of compliance and appearance
- Increase voluntarily return and departure rates
- Reduce wrongful detention and litigation
- Reduce overcrowding and long-term detention
- Respect, protect and fulfil the human rights
- Improves integration outcomes for approved cases
- Improve client health and welfare.[86]

To conclude, the States are obliged to consider the application of alternative measures to detention and use the detention as the measure of last resort. Each case shall be examined and assessed on individual basis, with regard to the community settings. The detention shall always be understood as the measure of last resort and its duration shall be strictly limited with effectiveness and purpose.

[83] Ibid., pg. 49-52
[84] FRA report on Detention of third/country nationals in return procedures, December 2010, pg. 53
[85] International Detention Coalition. (2010), *There are alternatives. A handbook for preventing unnecessary immigration detention.* Available at <http://idcoalition.org/cap/handbook/>, pg. 7
[86] Ibid, pg. 9

4.2. Best practices from other states

In the past, there were only few researches undertaken in order to examine existing practice on alternatives to detention in national legislation and they were mostly limited to alternatives for asylum seekers.[87]

The recent FRA report on detention of third country nationals provides some examples of best practices among EU Member States.[88] According to the report, about two thirds of the European Union countries provide for the possibility to impose alternatives to detention, either before resorting to detention or when reviewing if the time of detention should be prolonged.[89]

The different types of alternatives that were found to be included in EU national legislations could be grouped to following clusters:

- Obligation to surrender passport or travel documents
- Residence restrictions
- Release on bail and provisions of sureties by third parties
- Regular reporting requirements to the authorities
- Release to case worker support
- Electronic monitoring.[90]

With regard to proposed Slovak legislation on alternatives, the best practice from Canada on bail system could possibly illustrate the effective use of this measure. The IDC in their report on alternatives to detention states that Canada uses the negative financial consequences through a bail mechanism, as one possible condition of release from detention and is automatically considered at hearings to review the decision to detain. These hearings are undertaken by a member of the Immigration and Refugee Board within 48 hours of detention, then within another 7 days and then every 30 days thereafter, as required. At these hearings, release may be ordered with or without conditions (such as providing a nominated address, or handover of travel documents) and the application for release could be supported by a "bondsperson". A bondsperson agrees to pay a monetary bond which is paid up front, held in trust and then returned if the individual complies with the conditions of their release. In some situations, the money

[87] ECRE. (1997). *Research paper on alternatives to detention: Practical alternatives to the administrative detention of asylum seekers and rejected asylum seekers.* ECRE., Field, O., & Edwards, A., (2006). *Alternatives to detention of asylum seekers and refugees.* Geneva: UNHCR. Available at: http://www.unhcr.org/4474140a2.html , FRA. (2010), "Chapter 5: Alternatives to detention" in *Detention of third country nationals in return procedures: Thematic report.* Vienna: FRA. Available at http://www.unhcr.org/4474140a2.html , International Detention Coalition. (2010), *There are alternatives. A handbook for preventing unnecessary immigration detention.* Available at http://idcoalition.org/cap/handbook/

[88] FRA. (2010), "Chapter 5: Alternatives to detention" in *Detention of third country nationals in return procedures: Thematic report.* Vienna: FRA. Available at http://www.unhcr.org/4474140a2.html

[89] FRA. (2010), "Chapter 5: Alternatives to detention" in *Detention of third country nationals in return procedures: Thematic report.* Vienna: FRA. Available at http://www.unhcr.org/4474140a2.html , pg. 49

[90] FRA. (2010), "Chapter 5: Alternatives to detention" in *Detention of third country nationals in return procedures: Thematic report.* Vienna: FRA. Available at http://www.unhcr.org/4474140a2.html , pgs. 49 - 53

does not need to be paid unless the person does not comply with the conditions of their release.[91]

The IDC report further explains that the government founded special program called Toronto bail program, which has been operating since 1996 and identifies eligible detainees and than supports their application for release. The program costs CA$10-12 per person per day compared with CA$179 for detention. In 2009-2010 financial years it maintained a 96.35% compliance rate.[92]

The bail system has been applied in UK as well. The FRA report on detention says that authorities in UK (Scotland) are allowed to accept a symbolic amount as well, for instance of £5. This is for the reason that is assumed that many foreigners in removal proceedings would not be in possession of significant financial resources. The law also foreseen that the sureties by third parties could be accepted, but they can only be requested "if that will have the consequence that a person who might not otherwise be granted his liberty will be granted it".[93]

Very inspirative and interesting example comes from Australia. Both FRA and IDC report the use of intensive case resolution with complex cases by the Australian government.[94] In short, the program focuses on providing the immigrant with case-manager who works with the immigration authorities and provides them with the case-by-case risk assessment of the need to detain. The role of the case manager is to prepare and support a migrant throughout the immigration process, to help him understand and cope with the options available for resolving his status. One of the main impacts of the activity of the case manager is that the person concerned is assisted in making informed decisions. The research showed that between March 2006 and January 2009, the compliance rate was of 93%. Out of these, 66% of people received visa to remain, 20% departed independently, 7% absconded and 6% were removed by the Government.[95] Contradictory to commonly understand argument that migrants who remain in the host country for longer time would show more difficulties to undertake the decision to return voluntarily, the Australian example showed that out of all the persons who were not granted any residence visa or permit, 60% departed independently despite the long periods in the country and significant barriers to their return.[96]

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[91] International Detention Coalition. (2010), *There are alternatives. A handbook for preventing unnecessary immigration detention.* Available at http://idcoalition.org/cap/handbook/ , pg 044, TEXTBOX 14

[92] International Detention Coalition. (2010), *There are alternatives. A handbook for preventing unnecessary immigration detention.* Available at http://idcoalition.org/cap/handbook/ , pg 044, TEXTBOX 14

[93] See FRA. (2010), "Chapter 5: Alternatives to detention" in *Detention of third country nationals in return procedures: Thematic report.* Vienna: FRA. Available at http://www.unhcr.org/4474140a2.html ,pg 49, 50

[94] For further reading see: FRA. (2010), "Chapter 5: Alternatives to detention" in *Detention of third country nationals in return procedures: Thematic report.* Vienna: FRA. Available at http://www.unhcr.org/4474140a2.html ,pg. 51 under "Release to case worker support" and textbox 2 on pg. 53; and International Detention Coalition. (2010), *There are alternatives. A handbook for preventing unnecessary immigration detention.* Available at http://idcoalition.org/cap/handbook/ , pg. 040 Textbox 12.

[95] FRA. (2010), "Chapter 5: Alternatives to detention" in *Detention of third country nationals in return procedures: Thematic report.* Vienna: FRA. Available at http://www.unhcr.org/4474140a2.html , TEXTBOX 12, pg 040

[96] FRA. (2010), "Chapter 5: Alternatives to detention" in *Detention of third country nationals in return procedures: Thematic report.* Vienna: FRA. Available at http://www.unhcr.org/4474140a2.html , TEXTBOX 12, pg 040

Similar program as the Australian is applied in Sweden, where the case workers were introduced to the national system in late '90s. The case workers inform the migrant on their rights and ensure these are upheld. The case workers asses the case individually and advise to authorities when to apply alternatives or use detention. If the asylum status is refused or residence not granted, the case worker supports the person to make his or her departure with dignity.[97] The Swedish authorities confirmed that due the minimum of the migrants are placed to the detention as due to system, the migrants are well informed and prepared to take the informed decision on their future.[98]

4.4. Alternatives to detention in law

The applicable legislation in Slovakia does not contain the institute of the "alternative measures to detention". However, the new law, with entry into force since January 2012, includes two measures alternate the detention[99]. The original proposal on the alternatives to detention has been suggested by The Human Rights League[100] and accepted with several changes by the Bureau of the Alien and Border Police.

The law will provide that the police office applying the administrative expulsion may decide to impose the obligation to the third country national, alternating the detention, in the form of:

a) Residence restriction
b) Financial surety.[101]

The alternative to the detention would not be applicable in the case where the administrative expulsion is based on the fact that the third country national poses a serious threat to the national security or public order; or where the individual threatens the national security, public order or public health.

The decision on type of the alternative and conditions of its application would be under the discretion of the police office. The police office would be obliged to assess the person of the third country national, his/her personal situation and the amount to which s/he could jeopardize the purpose of the detention.

The law prohibits the possibility to appeal the decision on alternative measure.

[97] FRA. (2010), "Chapter 5: Alternatives to detention" in *Detention of third country nationals in return procedures: Thematic report.* Vienna: FRA. Available at http://www.unhcr.org/4474140a2.html , pg. 51 under "Release to case worker support"

[98] The information provided by the Swedish authorities during the study visit to Sweden in January 2011.

[99] Act no. 404/2011 of the 21. October 2011 on the Stay of the Foreigners and on the Changes and Amendments to the other Acts

[100] The Human Rights League: "*Administrative expulsion and detention. Principle comments"*, dated on 8. May 2011, in the file of The Human Rights League

[101] See § 89 of the Act no. 404/2011 of the 21. October 2011 on the Stay of the Foreigners and on the Changes and Amendments to the other Acts

4.4.1. Report of residence

The alternative measure in the form of the report of the residence would be applicable under two conditions:

1. The third country national would prove the accommodation available for the duration of the alternative, and
2. The third country national would provide the financial surety for his residence in the official amount of the residence costs coverage for third country nationals[102] in Slovakia.

If the alternative measure would be applied, the third country national would be obliged to sojourn on the specified address and report his residence regularly in person to the police office. The reporting period would be determined by the police office applying the alternative measure.

In the case that the third country national would breach the obligations under alternative measure, the police office would decide on his/her detention.

4.4.2. The financial surety

The specifics of the financial surety as the alternative measure to detention is that the police office would be entitled to decide about the application of the measure while the detention is applied to the third country national.

The law states that the amount of the bail and the period in which it has to be deposited is subjected to the decision of the police office. The third country national would have to deposit the guarantee on the bank account of the Police and would be subjected to residence restriction in the form of providing the address where he will sojourn and report every change of the residence.

Based on the law, the bail would not need to be deposited by the third country national himself, but there would be the possibility that the close person to the individual would be allowed to deposit the guarantee in behalf of the third country national.

In the case that the third country national would breach the obligation to report the residence or would be avoiding the administrative expulsion, the police office would decide on his detention and on the foreclosure of the bail.

The Police would be obliged to return the surety to the depositor, immediately after the administrative expulsion would be exercised; or after the assisted voluntary return of the individual would take place; or if the residence, asylum or subsidiary protection would be granted to the individual in concern. The costs of the return of the surety would be defrayed by the depositor.

[102] The MoI would regulate in the special act.

4.5. Alternatives to detention in practice

With regard the respected issue, the debate has been limited to the submitting the proposal to include the alternatives to detention into new law and negotiations on the acceptation of the proposal.

4.6. Conclusion

As explained earlier in this section, the alternative measures to detention are not provided by existing national legislation.

The model of the alternatives to detention chosen by the authorities is rather conservative and has been inspired by the Czech national legislation. It must be noted that the original comment to the proposal on the alternatives to detention prepared by The Human Rights League proposed the possibility to apply similar alternatives to detention as those used in the criminal pre-trial detention[103]. However, the proposal was not accepted in full and only two alternative measures were incorporated into the text of the new law.

During the negotiations the authorities showed position that is rather cautious. There are doubts in the effectiveness of the measures on the individual in concern. In general, there is the assumption that there would be the tendency to misuse the alternatives by the third country nationals, resulting in abscond. This could be the reason why the less favorable regime of the alternative measures than the originally proposed one had been chosen in the process of the negotiations.

Contrary, the research shows that there is a wide range of alternative measures applied in the national legislation all around the world and their application shows merely positive results. The application of those measures results in the effective case-management, high rate of compliance by migrants, less costs for government that would be otherwise spent for detention and helps to lower the number of cases where the detention would be applied.

Another result of the research is that the systems where migrants are provided by the complex information on their rights, duties and possibilities and where their case is individually assessed are among most effective to reduce the detention and increase the compliance with the decision of the authorities on the status of the migrant.

The practice would show whether and how the new alternative measures would be applied and if the concept chosen would be effective and applicable to at least some of the third country nationals subjected to administrative expulsion and return procedures. Indeed, the major challenge for the authorities is to improve the level of information on their possibilities provided to migrants and the level of assessment of the particular circumstances of each individual case.

[103] The original proposal available at the file of the Human Rights League

5. Procedural safeguards of asylum seekers

5.1. Applicable standards

A common European asylum system assumes that all European Union member states are open to accept those who seek international protection within the European Union. In the same way, all member states have an obligation to harmonize their national legislation with the European Union legislation on asylum and thus contribute to the creation of an area of freedom, security and justice.

All relevant European Union law on asylum was transposed into the national legislation of the Slovak republic. It is important to mention it, because procedural safeguards of asylum seekers were primary stipulated in the respective directives and even then were subsequently transposed into Slovak law.

Those, who seek an international protection on the territory of Slovakia, may enjoy rights and safeguards stipulated in the Act on Asylum or European Union law. According to the Preamble, part 13 of Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (hereinafter "Procedural directive") *"In the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1 of the Geneva Convention, every applicant should, subject to certain exceptions, have an* ***effective access to procedures****, the opportunity* ***to cooperate and properly communicate with the competent authorities*** *so as to* ***present the relevant facts*** *of his/her case and* ***sufficient procedural guarantees*** *to pursue his/her case throughout all stages of the procedure. Moreover, the procedure in which an application for asylum is examined should normally provide an applicant at least with the* ***right to stay pending a decision*** *by the determining authority,* ***access to the services of an interpreter*** *for submitting his/her case if interviewed by the authorities, the* ***opportunity to communicate with a representative of the United Nations High Commissioner for Refugees (UNHCR)*** *or* ***with any organisation*** *working on its behalf, the* ***right to appropriate notification of a decision****, a* ***motivation of that decision in fact and in law****, the* ***opportunity to consult a legal adviser or other counselor****, and the* ***right to be informed of his/her legal position at decisive moments in the course of the procedure****, in a language he/she can reasonably be supposed to understand."*

The following parts of this report will be focused on these procedural guarantees of asylum seekers: access to information on detention, access to legal assistance in detention cases, access to asylum procedure, information on asylum procedure, access to legal assistance on in negative asylum decisions, access to UNHCR and NGOs.

5.2. Access to information on detention

In general, asylum seekers are not detained in Slovakia, with the exceptions elaborated above. If person who unauthorized entered or unauthorized stays on the territory of the Slovak Republic is intercepted by the police and applies for asylum, he/she is not

detained, but sent to the Reception centre for asylum seekers in the town Humenné. However, the Act on Asylum[104] stipulates that if a person applies for asylum at a police department that is not competent to receive the asylum application, police is obliged to inform the foreigner which police department is competent for submitting the asylum application if prior does not make a decision on detention.

All persons that are placed in the detention centers find themselves before at the respective department of police. Each person that is about to be detained should be informed by the respective police authority about his/her rights. Instruction of rights should consist of a right to seek an asylum.

Before the placement into the detention, police has an obligation to instruct a person in a language understood by him/her on where he/she is placed, on rights and obligation while being detained an as well on the internal policy of the detention centre.

5.3. Access to legal assistance in detention case

Foreigners that are placed at the detention centers in Slovakia may challenge the decision on administrative expulsion as well as the decision on detention. As was mentioned above, asylum seekers cannot be placed at the detention centre. The only exemption exists in cases when an asylum seeker is going to be transferred to another European Union member state based on the Dublin Regulation. Most of the asylum seekers at the Slovak detention centers are therefore those who apply for asylum after being taken to detention. Regardless of the legal status of a foreigner in detention, all of them have secured legal assistance in detention cases nowadays. The legal assistance is provided mainly by lawyers and attorneys of nongovernmental organizations[105] or in a few cases by private attorneys.

According to the Act on Stay of Foreigners[106] police authority has the obligation to inform the foreigner on the reasons of administrative expulsion, period of entry ban and the possibilities for appeal in a language that the foreigner understands. This obligation is unfortunately dependent on the application of a foreigner; otherwise such information is included in the decision in Slovak language only.

Unconditional instruction of police authority to a foreigner exists in cases of detention, when police has an obligation to inform a foreigner of reasons for his/her detention and besides other rights, on a possibility to examine the legality of a decision on detention in a language that he/she understands. This information provided by police is usually very formal and minimal foreigners are able to understand it. Therefore legal counseling is more than needed.

[104] Article 3 (8) of the Act on Asylum
[105] The Human Rights League and Slovak Humanitarian Council at the Detention centre in Medveďov and The Human Rights League and The Goodwill Society at the Detention centre in Sečovce
[106] Article 56 (2) of Act on Stay of Foreigners

The Act on Stay of Foreigners[107] enables nongovernmental organizations to have access to detention centers with the consent of the director of a respective detention centre. In addition, the law stipulates[108] that the police authority has an obligation to instruct the foreigner of the possibility to contact the nongovernmental organization and in cases when the foreigner has asked for asylum as well of the possibility to contact the Office of the United Nations High Commissioner for Refugees.

Lawyers from nongovernmental organizations visit detention centers once a week and inform the detainees of their rights, the process of their cases / the stage at which their cases are at and mainly prepare the remedies against the decisions on administrative expulsion as well as against the decisions on detention. Free legal aid includes legal representation at the regional courts that examine the legality of decisions on detention.

5.4. Access to asylum procedure

Asylum seekers do not have to face the problem that asylum seekers used to face back in the 1990's after the adoption of Act No. 283/1995 Coll. on Refugees when the asylum application had to be submitted within 24 hours of entering the Slovak Republic.

Nowadays, the Act on Asylum just stipulates that the asylum procedure starts by submitting the statement at the respective police department without any time limitation.
Place of submission of asylum applications may be divided into two groups.
Firstly, the application may be lodged while entering the Slovak Republic at the border check point.

Secondly, in cases where the person has already entered the territory of the Slovak Republic, the application may be submitted at the following respective police department:

- Asylum department of Police Force or
- Police department in the transit zone of an international airport or
- Police department at the detention centre or
- Police department at the health care facility or
- Department of foreign police according to the location of the facility for social and legal protection of minors and social custody or
- Police department according to the location of prison or custody.

5.4.1. Information on asylum procedure

The Procedural Directive stipulates the obligation of the European Union member states in relation to providing the information on asylum procedure to asylum seekers. All asylum seekers should be *"informed in a language which they may reasonably be supposed to understand of the procedure to be followed and of their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities. They shall be informed of the*

[107] Article 63 (g) of Act on Stay of Foreigners
[108] Article 63 (h) of Act on Stay of Foreigners

time-frame, as well as the means at their disposal for fulfilling the obligation to submit the elements as referred to in Article 4[109] of Directive 2004/83/EC. This information shall be given in time to enable them to exercise the rights guaranteed in this Directive and to comply with the obligations described in Article 11[110].”

Having regard to the Act on Asylum, Slovak law mentions the obligation to provide the information to asylum seekers in the following manner: *“Prior to filling in the questionnaire, but at the latest within 15 days after commencement of the procedure, the authorized employee of the Ministry shall instruct the applicant of his/her rights and obligations during the asylum procedure, of possible consequences of not fulfilling or violating his/her obligations under this Act, of the possibility of being represented in the procedure under this Act and of access to a legal aid. The Ministry shall also provide the applicant with information about non-governmental organizations focusing on the care of applicants and persons granted asylum; if possible, the instruction and information shall be provided in writing and in the language which is supposed to be understood by the applicant.”*

In general, the Migration office informs all asylum seekers about their rights and obligations within a few days of their arrival to the Reception centre. The information is given to them in a written form and each asylum seeker should sign it.

Information on the asylum procedure is provided as well by the nongovernmental organizations. There exist several types of leaflets on international protection available for asylum seekers placed either at the asylum facilities or the detention centers. One of them is a leaflet prepared by The Human Rights League, Office of the United Nation High Commissioner for Refugees and Bureau of Alien and Border Police of the Presidium of Police of the Ministry of Interior of the Slovak Republic that is at disposal at each asylum facility or facility under the control of Bureau of alien and Border Police.

5.4.2. Access to legal assistance on in negative asylum decisions

Each asylum seeker that receives the negative decision of the Migration office in the asylum procedure may benefit from the free legal counseling provided either by the Legal

[109] See Article 4 of the Qualification Directive: Assessment of facts and circumstances

[110] Article 11 of the Procedural Directive: Obligations of the applicant for asylum

1. Member States may impose upon applicants for asylum obligations to cooperate with the competent authorities insofar as these obligations are necessary for the processing of the application.
2. In particular, Member States may provide that:
(a) applicants for asylum are required to report to the competent authorities or to appear before them in person, either without delay or at a specified time;
(b) applicants for asylum have to hand over documents in their possession relevant to the examination of the application, such as their passports;
(c) applicants for asylum are required to inform the competent authorities of their current place of residence or address and of any changes thereof as soon as possible. Member States may provide that the applicant shall have to accept any communication at the most recent place of residence or address which he/she indicated accordingly;
(d) the competent authorities may search the applicant and the items he/she carries with him/her;
(e) the competent authorities may take a photograph of the applicant; and
(f) the competent authorities may record the applicant’s oral statements, provided he/she has previously been informed thereof.

Aid Center, the budget organization under the Ministry of Justice of the Slovak Republic, or by the nongovernmental organizations[111]. Asylum seekers do not have to pay for legal aid and it is available in every facility where they might be accommodated[112].
Legal aid consists mainly of preparing and writing appeals against the negative decisions of the Migration office on non grating asylum or subsidiary protection that have to be submitted to the Regional court. If the Regional court confirms the decision of the Migration office, lawyers help asylum seekers to prepare the appeal against the judgment of the Regional court to the Supreme Court of the Slovak Republic.

Legal counseling is provided in many other cases, e. g. in cases of cessation of asylum procedure when a remonstrance against the decision on cessation of the procedure has to be submitted to the Ministry of Interior of the Slovak Republic or in cases when the application is canceled as inadmissible or manifestly unfounded.

5.4.3. Access to UNHCR and NGOs

The Office of the UNHCR in the Slovak Republic was established in October 1993 and since 1 January 1994 provides aid to asylum seekers and persons with granted international protection. Under the current internal structure, the UNHCR in Slovakia is under the Regional Representation for Central Europe that has its seat in Budapest, Hungary.

The UNHCR pays an important role within the protection of refugees in Slovakia. It monitors if person of UNHCR concern have an access to the territory of the Slovak Republic and to the asylum procedure. The other areas of UNHCR concern are e. g. living conditions of refugees with taking into account their age, gender and other differences and special needs.

According to the Article 17 (1) of Asylum Act *"A party to the procedure shall have the right to be in contact with the Office of UNHCR and non-governmental organizations involved in care for applicants and persons granted asylum on the territory of the Slovak Republic during the procedure"*.
The access to the asylum facilities and detention centers where asylum seekers are accommodated is subjected to the consent of either the director of the Migration office in relation to asylum facilities or to the consent of the respective director of detention centre.

Each year, the UNHCR creates a multifunctional team that monitors the living conditions and situation of asylum seekers and persons granted asylum or subsidiary protection. Visits are conducted to all asylum facilities, detention centers and other places where persons of UNHCR concern live or are placed. A report from conducted visits is prepared with a general description of a situation including the findings and recommendations for respective institutions.

[111] The Human Rights League, the Slovak Humanitarian Council or the Goodwill Society
[112] Asylum facilities or detention centers

5.5. Barriers and concerns

One of the major barriers as well as concern relating to asylum procedure is the lack of qualified interpreters as already described above with respect to detention. *"The lack of qualified interpreters from languages considered to be rare (such as Somalis, Kurds, Tibetans, etc.) is problem which affects whole territory of Slovakia. The reasons are that 1.the number of foreigners residing in Slovakia is low (less than 1% of population); and 2. Because of the limited possibilities, the authorities use the services on unqualified interpreters."*[113]

After the concern on quality of interpretation was raised by lawyers and asylum seekers several times in the past, the UNHCR has conducted a common meeting of interpreter and the respective representatives of the Migration office where an Ethical Code of Conduct for Interpreter in the asylum procedure was introduced and finally signed by interpreters that act in the asylum procedure. Still, it does not affect the situation that there is not enough interpreters from rare languages and interpretation from these languages shall by secured by the state authorities.

Another concern that has been stressed by the NGO lawyers was the placement of unaccompanied minors from the foster home to the asylum facility after an unaccompanied minor lodges an asylum application. The NGOs were concerned about the fact that children were actually accommodated together with adult asylum seekers in the same facility and the surveillance of a guardian was not secured at that level as in the foster home for unaccompanied minors.

There were many proposals from nongovernmental organizations as well as the UNHCR on this issue. One of them was to enable the unaccompanied minor placed at the foster home for unaccompanied minors to remain there and not to transfer him/her to the Reception centre in Humenné which is located on the other side of the country. The only purpose for such transit is the medical examination that the asylum seeker has to undergo. However, there is no need for it, as each unaccompanied minor undergoes the medical examination at the beginning of a placement at the foster home.

5.6. Good practices

The quality of interpretation in the asylum procedure is getting better after several seminars organized by the UNHCR took place in the recent period of time. Migration office usually calls the official interpreter that is on the list of official interpreters at the Ministry of Justice. Still, the lack of qualified interpreters from rare languages, such as Somali language is unsolved.

The general good practice is that asylum seekers are not detained in Slovakia. However there exists a possibility to detain an asylum seeker in cases when an asylum application

[113] For more information on this issue see the Report on Practices in Interviewing Immigrants: Legal Implications prepared by Zuzana Števulová within the project „Practices in interviewing immigrants: legal implications "funded by the Visegrad Fund. The report is available on www.hrl.sk.

is manifestly unfounded or is inadmissible or in cases when the asylum procedure is stopped, because submitting an appeal does not have a suspensive effect. Notwithstanding, the Migration office in most cases processes in line with the Convention relating to the status of refugees according to which the refugees should not be detained in asylum procedure.

5.7. Current debate

Current debate on asylum is about the decreasing number of asylum seekers on the territory of the Slovak republic. In 2004[114], Slovakia registered the highest number of asylum applications. Comparing this to following years, the registration of asylum seekers started to decrease with 541 asylum applications that were lodged in 2010.

Another, mainly expert's discussion was held in order to establish the Naturalization and Immigration Office that should replace the Migration office and Bureau of the Alien and Border police within the period of two years. This office should be responsible for the entry of foreigners into the Slovak republic, for granting the residence permits, integration of foreigners and granting of a state citizenship.

As mentioned above, a significant debate was conducted on the issue of unaccompanied minors within the asylum procedure. The problematic moment was the movement of unaccompanied asylum seekers from foster homes for unaccompanied minors to asylum facilities where mainly adult asylum seekers are accommodated. These facilities are not suitable for young asylum seekers, whereas the specialized foster homes are as special care for them is secured there. The Migration office of the Ministry of Interior, Ministry of Labor, Social affairs and family of the Slovak republic, UNHCR and representatives of nongovernmental organizations were trying to find a solution. The nongovernmental organizations were of the opinion that unaccompanied minors should stay during the all asylum procedure within the foster homes and not to be moved to other places and in case of not granting asylum to be returned back to the foster home for unaccompanied minors. The state institutions came to a conclusion that a legislation measure needs to be taken in order to leave the children in the foster homes while in asylum procedure. To date, the legislation has not changed and unaccompanied minors have to leave the foster home for the period of time while being in asylum procedure.

5.8. Conclusion

The asylum procedure in Slovakia is in line with all relevant international obligations as well as the European Union law. But still, the difference between the old European Union countries and Slovakia is in the numbers of granted international protection that is in general considered to be very low.

One of the recent phenomenons in Slovakia is that the number of asylum applications has been significantly decreasing since 2004. The decreasing number of asylum applications in the last few years should be used by the Migration office in focusing to increase the

[114] 11 395 asylum applications

quality of asylum procedure in Slovakia by training its employees in the area of asylum and migration issues. Only well trained decision makers may ensure that the asylum system in Slovakia will be valued as much as the system of other European Union countries.

One of the most awaiting changes in Slovakia is the creation of Naturalization and Immigration office that will pay an important role in field of asylum and migration.

Despite the fact that migration issues are still not an area of interest of politicians a group of experts and settled nongovernmental organisations that dealt with asylum and migration was created in Slovakia.

6. Conditions in detention

6.1. Basic description of facility

As already mentioned, there are two facilities of the Bureau of Border and Alien Police that are used as detention centers in Slovakia. One in is placed in the western part of Slovakia, in Medveďov and the second one is placed in the eastern part of Slovakia in Sečovce. The detention centre in Sečovce is a special facility for families with children and other vulnerable groups. It is necessary to mention that unaccompanied minors cannot be detained in Slovakia, but if a minor is accompanied by a legal representative or other person that is responsible for him/her; such a minor may be placed in a detention centre

Each detention centre has its own internal rules of conduct that foreigners have to obey.

6.2. Detainees

Each person that is about to be placed at the detention centre after being issued a decision on detention is obliged to undergo a body search and a search of personal belongings. The purpose of such a conduct against the detainee is based on the fact that it has to be determined that a person will not e.g. cause a danger to security of persons or property, etc.

Before placing a person in the detention, police have to take into consideration age, health condition, family relations and religious, ethnical or national specificities of a person. It means that families are placed together in one room and in the same facility. Persons with the same religious belief should be accommodated with others with same religion. According to the Act on Stay of Foreigners, a foreigner is obliged to observe the internal rules of the detention centre, and to carry out orders and instructions of the police[115].

[115] § 69 of Act on Stay of Foreigners

Concerning the rights of detainees, law stipulates, that a person in detention has a right to a continuous eight hours sleep and daily walks within the detention centre for at least one hour.[116] A minor detainee who is at the detention centre together with his/her legal representative should have access to education if the period of the detention is longer than three months.

6.3. Material conditions

Men and women are accommodated separately. The only exemption is made in cases of families, where family members are placed in a common room. Both detention centers have a place for social, cultural and visiting purposes. Each detention centre has a designated area for spending time outside of the facility.

An accommodation unit, where detainees spend most of their daily time is equipped with a table, chairs, beds, cupboards.

6.4. Ill-treatment

No ill-treatment at the detention centers was recorded in Slovakia. Detention centers are under the supervision of a district prosecutor that visits both detention centers on a regular basis.

6.5. Medical issues

A Foreigner that is placed in the detention centre has to undergo a medical examination, including the necessary diagnostic and laboratory examination, vaccination and preventive measures. If it is needed and the foreigner's health condition requires it, then police can secure health care outside of the detention…

6.6. Regime

The regime at detention centers is ruled by the police that belong to the Bureau of Alien and Border Police.

6.7. Contact with outside world

Detainees may contact the non-governmental organizations; UNHCR and International organization for Migration. Employees of all of these institutions should inform the detention center about any planned visit, but basically access to both detention centers for above mentioned institutions is not limited.

[116] § 70 of Act on Stay of Foreigners

Detainees are entitled to send post from the detention center, but they have to cover all expenses relating to it as well as expenses related to ordering books, daily press and magazines.

Visiting of detainees at the detention centre is limited to 2 persons once a week for 30 minutes. In justified cases, the director of the detention centre may grant an exemption.

The detainees have access to the telephones that are installed in the facilities where they are accommodated. The access is provided based on the pre-paid telephone card that can be purchased for detainee by the facility and covered by the detainee or provided by the NGO.

The detainees do not have access to internet.

Concerning the legal aid that is provided for persons in detention the law does not stipulate any limitations. It means that lawyers may come to the detention centers for the purpose of providing legal counseling without any time limitation.

6.8. Complaints procedure and inspection

Each detainee may submit a complaint or request to the state authorities. Police present at the detention centre should be at the disposal of a foreigner and such a complaint or request should be sent on expenses of the detention centre.

6.9. Staff

Staff at the detention centre consists mainly of police employees. There are civil workers as well as a doctor, nurse or persons that take care of hygiene or cooking.

6.10. Current debate

Current debate relating to detention is focused on the preparation of new Act on Stay of Foreigners. It should replace the old Act No. 48/2002 Coll. on Stay of Foreigners and on Amendments and Changes of other Acts. The New act incorporates all important changes concerning the latest development in the field of detention.

Concerning the detention issues, the new act introduces alternatives to detention that should be imposed instead of a restriction on personal freedom. Persons who no longer fulfill the conditions for stay in the territory of Slovakia may, in the period for voluntary departure, either regularly report their stay or deposit a financial guarantee. If a person violates such an alternative to detention, the police authority decides on the detention of a foreigner.

6.11. Conclusion

The new act on the stay of foreigners[117] incorporates alternatives to detention that should be used prior to making a decision on detention. This new institute may be considered as an important step further in the process of protecting personal freedom of foreigners in Slovakia. The future will show how this principle will be used in practice.

7. Perspectives on alternatives to detention

7.1. National stakeholders on alternatives to detention

As already described earlier, the major debate among the stakeholders, with respect to alternatives to detention, has started after the submission of the comments to the proposed act on the border control and stay of the foreigners. The participation of the selected stakeholders on the international seminar on the alternatives to detention offered the opportunity to discuss the proposal in detail that led into the incorporation of the respected legal provisions to the new law.

The national seminar on alternatives to detention had been scheduled on October 5th, 2011 due to the length of the legislation process regarding the acceptation of the new law. Finally, the new act on the border control and stay of the foreigners has been approved by the parliament on its 24th session on 21st October 2011, with entry into force on 1. January 2012.

Therefore, the debate about the practical implementation has been limited. The authorities announced that they would prepare the new operation guidance for the police departments with the view of the practical application of the law including the application of the alternatives to detention.

During the national seminar, the different models of alternatives to detention, best practices from other States and guidance for decision making process on alternatives were presented. The seminar has been attended by the highest officials of the Bureau of the Alien and Border Police, Supreme Court judges and stakeholders, NGOs and UNHCR representatives, lawyers and experts.

The other important issue that has been discussed was the period of 7 days for judicial review. The Supreme Court judges expressed their doubts whether the courts would be able to proceed within expected time if other legal periods of civil procedure must be respected as well.

[117] Act no. 404/2011 of the 21. October 2011 on the Stay of the Foreigners and on the Changes and Amendments to the other Acts

7.2. Conclusion

The situation with regard to immigration detention would change significantly in January 2012. The incorporation of the alternatives to detention is the great opportunity for the authorities to prevent unnecessary detention and limit the cases of detention to minimum. Such solution would prevent the general bad impact of the detention on the well-being of detainees and would provide economical solution than the costly detention.

7.3. Recommendations

The authorities shall use the opportunity to apply the detention in progressive and less intrusive manner. In the situation when Slovakia face decline in the number of migrants subjected to detention, such attitude could lead to better system that will apply detention only as the matter of last instance. Such attitude would fully comply with the international standard of deprivation of the liberty of an individual.

Annex 1: STATISTICS

I. Asylum Statistics[118]

Year	Asylum applications	Granted asylum	Not granted asylum	Granted subsidiary protection	Not granted subsidiary protection	Cessation of asylum procedure
2010	541	15	180	57	104	361
09/2011	336	9	141	56	36	171

II. Residence permits

Year/Form of residence permit	Permanent residence permit	Temporary residence permit	Tolerated stay	Total number of residence permits issued
2010[119]	5505	3764	266	9535
06/2011[120]	2766	1666	128	4560

III. Detention

Year	Number of persons placed in Detention centre Medveďov	Number of persons placed in Detention centre Sečovce	Total number of persons placed in detention centers
2010[121]	175	144	319
06/2011[122]	86	53	139

IV. Administrative expulsion

Year	Number of persons expulsed from Detention centre Medveďov	Number of persons expulsed from Detention centre Sečovce	Total number of persons expulsed from both detention centers
2010[123]	73	30	103
06/2011[124]	33	8	41

[118] Migration office of the Ministry of interior, Statistics, <http://www.minv.sk/?statistiky-20>
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Annex 3: LIST OF ACRONYMS

CJEU	Court of Justice of the European Union
CPT	European Committee for the Prevention of Torture and inhuman and Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
EC	European Community
ECtHR	European Court on Human Rights
ECHR	European Convention on Human Rights
ECRE	European Council for Refugees and Exiles
EU	European Union
FRA	European Union Agency for Fundamental Rights
ICCPR	International Covenant on Civil and Political Rights
IDC	International Detention Coalition
IOM	International Organization for Migration
JRS	Jesuit Refugee Service
MoI	Ministry of Interior of the Slovak Republic
NGO	Non Governmental Organizations
UNHCR	United Nations High Commissioner for Refugees

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