

# DUBLIN II Regulation National Report

European network for technical  
cooperation on the application  
of the Dublin II Regulation



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## Acronyms

**Act on the Stay of Foreigners** - Act no. 404/2011 Coll. on the Stay of Foreigners and on the Changes and Amendments of Some Legal Acts

**Asylum Act** - Act no. 480/2002 Coll. on Asylum and on the Changes and Amendments of Some Legal Acts

**Asylum Department** - Asylum Department of Police Force of Bureau of Border and Foreigners Police of Presidium of the Police Force

**Bureau of Border and Foreigners Police** - Bureau of Border and Foreigners Police of Presidium of the Police Force

**Dublin Unit** - Dublin Unit of the Migration Office of the Ministry of Interior of the Slovak Republic

**Dublin II Regulation** - 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

**ECtHR** – European Court of Human Rights

**Migration Office** - The Migration Office of the Ministry of Interior of the Slovak Republic

**MS** – Member State

**Procedural Department** - Procedural Department of the Migration Office of the Ministry of Interior of the Slovak Republic

**UAM** - Unaccompanied minor

# Introduction

# 1

## 1.1 The Dublin II System: Perspectives and Challenges at the European Level

The Dublin Regulation,<sup>1</sup> as its predecessor the Dublin Convention, was designed to ensure that one Member State is responsible for examining the asylum application of an asylum seeker and to avoid multiple asylum claims and secondary movement. It is confined to fixing uniform grounds for the allocation of Member State responsibility on the basis of a hierarchy of criteria binding on all EU Member States as well as Iceland, Norway, Switzerland and Liechtenstein. More than eight years after its entry into force this research provides a comparative overview of national practice in selected Member States on the application of this Regulation.

Our research shows that the operation of the Dublin system continues to act to the detriment of refugees, causing families to be separated and leading to an increasing use of detention. The Dublin procedure leads to serious delays in the examination of asylum claims and by doing so, effectively places peoples' lives on hold. The hierarchy of criteria is not always respected whilst Art. 10 is the predominant criterion used in connection with Eurodac. State practice demonstrates that asylum seekers subject to this system may be deprived of their fundamental rights *inter alia* the right to be heard, the right to an effective legal remedy and the very right to asylum itself as access to an asylum procedure is not always guaranteed. Reception conditions and services may also be severely limited for asylum seekers within the Dublin system in a number of Member States. There is an increasing use of bilateral

<sup>1</sup> 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, L 50/1 25.2.2003.

administrative arrangements under Art. 23 and most States resort to informal communication channels to resolve disputes in the allocation of responsibility. Evidentiary requirements are very strict in some Member States, which in turn creates difficulties for asylum seekers in substantiating family links or showing time spent outside the territories of the Dublin system. A number of Member States also apply an excessively broad interpretation of absconding thereby extending the time limits for Dublin transfers further increasing delays in the examination of asylum claims. Furthermore the problems inherent in the Dublin system are also exacerbated by varied levels of protection, respect for refugee rights, reception conditions and asylum procedures in Member States creating an 'asylum lottery'.

The national reports provide an insight into the application of this Regulation at the national level whilst the comparative report outlines the main trends and developments at the European level. This research comes at a time when the Grand Chambers of both the European Court of Human Rights and the Court of Justice of the European Union have questioned the compatibility of the Dublin system with asylum seekers fundamental rights. In addition the EU institutions have recently reached a compromise agreement upon a recast Dublin III Regulation that introduces significant reforms including the creation of a mechanism for early warning, preparedness and crisis management. Despite these significant advances, the findings of this research demonstrates the continuous need to carefully evaluate the foundational principles of the Dublin system and its impact both with respect to asylum seekers' fundamental rights and Member States. It is hoped that this research will aid the Commission's review of the Dublin system within the forthcoming launch of a 'fitness check' and for any future dialogue on the assignment of responsibility for the examination of asylum claims.<sup>2</sup>

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<sup>2</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on enhanced intra-EU solidarity in the field of asylum, An EU agenda for better responsibility-sharing and more mutual trust, COM 2011 (835), 2.11.2011 p.7.

## 1.2 Overview of the Dublin II Regulation in Slovakia

The Dublin system operates as part of the Slovak asylum system and is directly coordinated by the specialised department of the Migration Office of the Ministry of Interior of the Slovak Republic (the Dublin Unit) in cooperation with the Bureau of Border and Foreigners Police. The Dublin Unit is responsible for conducting the entire Dublin Procedure in concrete cases, including interviewing asylum seekers, providing them with relevant information on the Dublin Procedure, communicating with other Member States, issuing the decision on the inadmissibility of the asylum application in Slovakia because another MS is responsible, etc. During the Dublin Procedure, the asylum procedure in Slovakia is suspended and the decision on the merits of the case cannot be issued until the responsible MS is established. The Bureau of Border and Foreigners police should provide particular assistance in the execution of Dublin transfers of asylum seekers from and to the territory of Slovakia. Although the Dublin II Regulation is directly applicable in the territory of European Union MSs, there are direct references to the Dublin Procedure in the Slovak Asylum Act.

This report provides detailed theoretical and practical information on the functioning of the Dublin Procedure in Slovakia, including the brief description of the asylum procedure and some case descriptions, and assessment of good and bad practices and recommendations. The authors of the report conducted desk-based research, which comprised of interviewing the Deputy Head of the Dublin Unit, and the lawyers representing asylum seekers in the Dublin Procedure, as well as monitoring concrete Dublin cases in the detention centres.

# 2 *The National Legal Framework and Procedures*

## 2.1 *Direct effect of Dublin II Regulation in Slovakia*

Asylum procedure in Slovakia is regulated by zákon č. 480/2002 Z. z. o azyle a o zmene a doplnení niektorých zákonov (an Act no. 480/2002 Coll. on Asylum and on the Changes and Amendments of Some Legal Acts (hereinafter “Asylum Act”). EU directives issued in order to harmonize the asylum system within the EU have been transposed into Slovak national legislation through the Asylum Act. The Dublin II Regulation, as a secondary legal act with direct effect, has not been transposed into national legislation but is directly effective and applicable in Slovakia. The Asylum Act contains reference to the direct application of the Dublin II Regulation in its § 53b (1): *„For determination of the Member State of the European Union responsible for examining an asylum application lodged by a third-country national in one of the Member States of the European Union the criteria and mechanisms stipulated in the legally binding acts of the European Communities<sup>3</sup> shall apply; ...”<sup>4</sup>*

Another reference of the Dublin II Regulation is laid down in § 4 (6) of the Asylum Act: *“A foreigner who is not an applicant and who is returned to the territory of the Slovak Republic from another Member State of the European Union due to the fact that the Slovak Republic is competent to act in the asylum granting procedure shall be considered an applicant; except for a foreigner whose application for asylum had been rejected in the past as inadmissible or manifestly unfounded or who had not been granted asylum, the asylum granting procedure shall commence once the foreigner enters the territory of the Slovak Republic.”<sup>5</sup>*

<sup>3</sup> 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.

<sup>4</sup> Informal translation.

<sup>5</sup> Informal translation.

Zákon č. 404/2011 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov (Act no. 404/2011 Coll. on the Stay of Foreigners and on the Changes and Amendments of Some Legal Acts (hereinafter “Act on the Stay of Foreigners”)) also contains reference to Dublin II Regulation, concretely in relation to detention of third country nationals. In its § 88 (1) c) it states that: *“A policeman is authorized to detain third country national for the purpose of performing his/her transfer under special regulations.”<sup>6</sup>*

In accordance with the above cited provision, the Dublin II Regulation is directly applied in Slovakia.

## 2.2 *Brief overviews of the asylum system in Slovakia*

As already mentioned above, asylum procedure in Slovakia is regulated by the Asylum Act. In accordance with § 1 defining the scope of the Asylum Act: *“This Act shall:*

*a) regulate asylum procedure,*

*b) stipulate the procedure for granting temporary shelter,*

*c) provide for the rights and obligations of asylum seekers (hereinafter only „applicant“), persons granted asylum, foreigners seeking temporary shelter and de facto refugees,*

*d) stipulate the powers of public bodies in the area of asylum and temporary shelter,*

*e) regulate the integration of persons granted asylum in the society,*

*f) regulate the stay in asylum facilities.”<sup>7</sup>*

<sup>6</sup> Council Regulation (EC) No 343/2003, and 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.

<sup>7</sup> Informal translation.

There are two specialized police departments in the territory of Slovakia called Oddelenie azylu Policajného zboru Úradu hraničnej a cudzineckej polície Prezídia Policajného zboru (Asylum Department of Police Force of Bureau of Border and Foreigners Police of the Presidium of Police Force (hereinafter “Asylum Department”)) responsible for accepting asylum applications (Adamov – Gbely in Western part of Slovakia and Humenné in Eastern part of Slovakia). It is also possible to lodge asylum application in the transit area of the international airport (Bratislava, Košice or Poprad) and in other specific places<sup>8</sup>, e. g. in case of detained foreigners in the detention centre for foreigners.

After lodging the application with one of the asylum departments of the police, the asylum seeker is issued a document for transport to the closed Reception Centre in Humenné, where every asylum seeker is obliged to go and is subjected to an entrance medical examination (x-ray, collection of a sample of blood and urine). There, they are quarantined from 2 to 4 weeks. Once their quarantine is completed, the asylum seeker is moved to one of the two opened accommodation centres – in Rohovce (men) or in Opatovská Nová Ves (women, families with children, unaccompanied minors or other vulnerable groups), where he/she stays for the rest of the asylum procedure. If the asylum seeker has sufficient resources, or if a state citizen of Slovakia provides him/her with accommodation, he/she can seek long-term permission to reside outside the asylum centre for the duration of the asylum procedure.

Migračný úrad Ministerstva vnútra Slovenskej republiky (The Migration Office of the Ministry of Interior of the Slovak Republic (hereinafter “Migration Office”)) is responsible for examining the asylum application within 90 days<sup>9</sup> from the date of lodging the application with the police department. This period, however, can be prolonged if necessary: e.g. for collecting more evidence. The extension of the decision-making time limit may be requested by the asylum seeker or the time limit may be prolonged by the decision maker.<sup>10</sup>

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<sup>8</sup> See § 3 (2) of Asylum Act.

<sup>9</sup> § 20 (1) of Asylum Act: In an asylum procedure the Ministry shall decide within 90 days from commencing the procedure.

<sup>10</sup> § 20 (1) of Asylum Act: In justified cases the decision-making time limit may be extended by the superior of the employee acting in the case. The Ministry shall inform the applicant on extension of the time limit for decision on the application for asylum in writing.

If the decision of the Migration Office is negative, the asylum seeker has the option to submit a remedy to the Regional Court (in Bratislava or in Košice). In cases when the procedure is ceased<sup>11</sup> by the Migration Office (e.g. the res iudicata case), the applicant may challenge this kind of decision by lodging a complaint to the Minister of Interior.

The remedy<sup>12</sup> in general has a suspensive effect; however there are decisions when the remedy does not have an automatic suspensive effect (only if granted by the judge). This could be, for example, the decision on the inadmissibility of the asylum application because another Member State is responsible for examining the asylum application (Dublin procedure) which does not have an automatic suspensive effect. The Regional Court also has 90 days to decide on a remedy<sup>13</sup>. In case the Regional Court confirms the decision of the Migration Office, the applicant can appeal the decision of the Regional Court to the Supreme Court of the Slovak Republic, which has 60 days to issue a decision (in general without an oral hearing). The Supreme Court’s decision is final.<sup>14</sup>

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<sup>11</sup> See § 19 (1) of Asylum Act.

<sup>12</sup> See 3.5.4 Effective remedy.

<sup>13</sup> The court may cancel the decision of the Dublin Unit based on the following reasons laid down in the Article 250j (2) of the Act No. 99/1963 Coll. Civil Procedural Code (informal translation):

- decision of the administrative body was based on incorrect legal assessment of a matter,
- finding of facts that were the basis of the administrative decision is in contrary to the evidence in file,
- finding of facts is insufficient to assess the case,
- decision is not possible to review for its obscurity or lack of reasons, in the procedure of the administrative body such a defect was found that could affect the legality of the contested decision.

<sup>14</sup> See 3.5. 4 Effective remedy.

## 2.3 Dublin Procedure in Slovakia

If, during the asylum procedure, the statements of the asylum seeker (at the asylum interview) or other relevant evidence suggests that another Member State could be responsible for the asylum application under the criteria of the Dublin II Regulation, the Dublin procedure is initiated. If there are hits in the EURODAC database, the Dublin Unit of the Migration Office of the Ministry of Interior of the Slovak Republic (hereinafter "Dublin Unit") can initiate the Dublin procedure either immediately or very soon after the asylum seeker lodges his/her asylum application with the police department. If, however, the decision-maker of the Procedural Department of the Migration Office finds out that there are reasons to commence the Dublin procedure later in the asylum procedure, the decision-maker makes a reference of such a case to the Dublin Unit. The Dublin Unit

### Any interview on the Dublin procedure?

Once the Dublin procedure is initiated, the asylum seeker receives a written notice that his/her asylum procedure has been suspended, pending the examination of the responsible Member State. During this suspension of the asylum procedure the asylum seeker keeps the status of asylum seeker with all the rights<sup>15</sup> and duties and waits in the asylum centre for the outcome of the Dublin procedure. The Dublin Unit conducts in each case the interview with the asylum applicant. The period of 90 days prescribed by law for the first-instance (administrative) asylum procedure does not run during the Dublin procedure.

The Dublin Unit is responsible for the entire Dublin procedure, including communication with the Dublin Unit of the responsible Member State, for providing information to the asylum seekers on Dublin<sup>16</sup>, for conducting a supplementary interview with the asylum seeker (if necessary), for issuing and delivering the decision on the outcome of the Dublin procedure and for the communication regarding the arrangement of the Dublin transfer.

<sup>15</sup> The Reception Conditions Directive applies for Dublin applicants as well as for the other asylum seekers.

<sup>16</sup> See 3.5.1 Right to information.

Based on § 11 (1) c) of the Asylum Act: "the ministry rejects an asylum application as inadmissible if another state is responsible for the asylum procedure."

If the asylum seeker does not agree with the decision of the Dublin Unit rejecting his/her application as inadmissible, he/she may submit a remedy against this decision within 20 days from its delivery to the Regional Court. However, submitting a remedy does not have an automatic suspensive effect, only if granted by the court. Therefore, until the court decides on the suspensive effect, the asylum seeker may be transferred to the responsible Member State. In practice, the Dublin Unit generally waits for the decision of the court on the suspensive effect, initiating the transfer only if the decision is not granted.<sup>17</sup> The Dublin Unit coordinates the Dublin transfer with Úrad hraničnej a cudzineckej polície Prezídia Policajného zboru - Bureau of Border and Foreigners Police of Presidium of the Police Force (hereinafter "Bureau of Border and Foreigners Police"). Based on § 88 (1) c) of the Act on the Stay of Foreigners, the police have a right to detain the asylum seeker for the purpose of the Dublin transfer.

## 2.4 Procedural background

The Migration Office established the Dublin Unit in 2003 based on the need arising from the adoption of the Dublin II Regulation. The Dublin Unit is responsible for the Dublin procedure that takes place in Slovakia according to the Dublin II Regulation. The Dublin Unit has 8 employees that deal with the Dublin cases. Two employees work at the Bureau of Border and Foreigners Police. Both the Migration Office and Bureau of Border and Foreigners Police are authorities under the Ministry of Interior of the Slovak Republic. The Dublin Unit has decision-making competency and issues decisions in the Dublin procedure, whilst the Bureau of Border and Foreigners Police technically supports the transfers of Dublin asylum seekers from/to Slovakia. The employees of the Bureau of Border and Foreigners Police prepare instructions for

<sup>17</sup> See 3.5.4 Effective remedy.

the police officers at the international airports or check points for the purposes of the Dublin transfers, but have no decision making competency in the Dublin procedure.

Each foreigner that applies for asylum at the respective Asylum Department is fingerprinted and registered in the EURODAC database. The Slovak EURODAC database is located within the Criminology and Expertise Institute of the Police Force. The Migration Office receives information on so called "hits" in the EURODAC database immediately from the authorities. In general, the Procedural Department of the Migration Office (hereinafter "Procedural Department") deals with the asylum applications. However, if a hit in EURODAC database is positive, the Dublin Unit, rather than the Procedural Department, acts in the asylum procedure. An asylum seeker as well as his/her lawyer must be informed in writing by the Dublin Unit on the commencement of the Dublin procedure. During this time, the asylum procedure is suspended. If it is decided that the Dublin II Regulation should be applied in the case of the asylum seeker and Migration Office received a confirmation from the responsible Member State, an asylum seeker is issued the decision that his/her asylum application in Slovakia is inadmissible (in case the asylum seeker is represented by a lawyer the decision is delivered only to his/ her legal representative). He/she is also informed which Member State is responsible for examining the merits of their asylum application.

If an asylum seeker is issued the decision that his/her asylum application is inadmissible in the territory of Slovakia, the law enables the applicant to submit a remedy against the decision of the Dublin Unit to the Regional Court. There are two Regional Courts that decide the asylum cases in Slovakia; one is based in Bratislava (the Regional Court in Bratislava) and the second in Košice (the Regional Court in Košice). Submitting the remedy to the Regional Court does not have a suspensive effect; therefore it is necessary to request the court to issue a suspensive effect to the remedy. Otherwise, the foreigner may be transferred to another Member State before the court actually assesses the lawfulness of the decision. The Regional Court may either confirm the decision of the Migration Office or cancel it.<sup>18</sup> If the decision is confirmed, the foreigner may submit an appeal against the judgment of the

<sup>18</sup> See 3.5.4 Effective remedy.

Regional Court to the Supreme Court of the Slovak Republic. The Regional Court may also cancel<sup>19</sup> the decision of the Dublin Unit. If such a situation occurs, the case is returned to the Dublin Unit. Then, the Dublin Unit must follow the legal opinion of the court. When a case is brought before the Supreme Court of the Slovak Republic, the procedure due to the cassation principle is the same as it is before the Regional Court. The Supreme Court may either confirm the decision of the Migration Office, thereby finalizing the decision of the Dublin Unit and leaving the asylum seeker with no other legal possibility to submit the appeal to a higher instance, or the Supreme Court may change the judgment of the Regional Court, canceling the decision of the Dublin Unit and returning the case to the Dublin Unit for a new procedure. In the reasoning of the judgment the court may write down its legal opinion e.g. to apply Article 3 (2) of the Dublin II Regulation.

In cases when Bureau of Border and Foreigners Police apprehends the foreigner whose stay is unauthorized in the territory of the Slovak Republic and at the same time discovers that the foreigner has a card of being an asylum seeker in another Member State or has a positive hit in EURODAC, the respective police authority usually issues to such a foreigner a decision on detention<sup>20</sup> for the purpose of providing the Dublin transfer prior to the responsible Member State actually confirming the responsibility. Subsequently, the foreigner is placed into one of the two detention centers. There are two detention centers in Slovakia; one is located in the western part of Slovakia in Medveďov while the other is in the eastern part, in Sečovce. Afterwards, the Bureau of Border and Foreigners Police contact the Dublin Unit in order to commence the Dublin procedure.

<sup>19</sup> See the footnote No.11.

<sup>20</sup> See § 88 (1) c) of Act on the Stay of Foreigners.

# 3

## *The application of the Dublin II Regulation in Slovakia*

According to the information provided by relevant Dublin authorities, the hierarchy of criteria set down in the Dublin II Regulation is observed in practice. As Slovakia is a MS located at the external border of the Schengen area it is more a receiving than it is a transferring state in terms of the Dublin II Regulation (statistical data on the incoming and outgoing requests and on the transfers to and from Slovakia can be found as an attachment to this report). The most applied Dublin II Regulation criteria are the visa criterion (Article 9) and the EURODAC criterion (Article 10). The sovereignty clause has not been applied in practice in Slovakia; in relation to countries to which the Dublin transfers should not be realised because of the failing asylum system (Greece after the ECtHR M.S.S. judgement), the asylum cases (applications lodged in Slovakia) stay with the Procedural Department of the Migration Office. This means the Dublin Procedure is not initiated (which could be called an 'indirect' application of the sovereignty clause). However, the Migration Office has not issued any general prohibition on the Dublin transfers to any Member State until today, and according to the information gathered and decisions studied in the process of drafting of this report, Greece is the only country to which the Dublin transfers from Slovakia are not realised. According to the information and statistical data provided by the Dublin Unit, as well as the experience of NGOs, the humanitarian clause is hardly applied in practice.

### *3.1 The Application of Dublin II Regulation Criteria*

#### *3.1.1 Heterogeneity of application within the country*

The Dublin Procedure in Slovakia is centralized, because the Migration Office is responsible for conducting it within the whole territory of the Slovak Republic. The heterogeneity of the Dublin procedure and asylum application is therefore secured by the system as such.

#### *3.1.2 Observance of the hierarchy of criteria*

Based on the information provided during the interview at the Dublin Unit<sup>21</sup> the hierarchy of criteria is observed in practice. In some cases, the facts of the concrete case are unknown to the Dublin Unit in the time of commencement the Dublin procedure; however, if the facts of the case are revealed during the Dublin procedure (e.g. information provided by the state which was requested to take the responsibility), then the criterion applied can be changed up to the time of the issuance of the decision on the responsibility of another Member State. The hierarchy of criteria is applied as prescribed by the Dublin II Regulation, based on all the facts and factors known at that given moment.

#### *3.1.3 Application of the criterion related to the Irregular border-crossing*

There is no statistical information on the numbers of incoming and outgoing requests or numbers of Dublin transfers realised based on Article 10, concerning irregular border-crossing criterion. In the statistical data provided by the Dublin Unit, the data on the numbers of requests and transfers are provided in one column for the "documentation and entry reasons" and include Article 9, Article 10, Article 11 and Article 12 criterions of the Dublin II Regulation. Statistical data are attached to this report.

<sup>21</sup> Interview with the Deputy Head of the Dublin Unit dated 16 April 2012.

### 3.1.4 *Application of the Visa criterion within the Dublin Regulation*

There is no statistical information on either the numbers of incoming and outgoing requests or the numbers of Dublin transfers realised based on Article 9 concerning visa criterion. In the statistical data provided by the Dublin Unit, the data on the numbers of requests and transfers are provided in one column for “documentation and entry reasons” and include Article 9, Article 10, Article 11 and Article 12 criteria of the Dublin II Regulation. According to the Deputy Head of the Dublin Unit the visa criterion is the most used criterion of documentation and entry reasons. Statistical data is attached to this report.

### 3.1.5 *Application of the Residence Permit criterion within the Dublin Regulation*

If the asylum seeker was granted a valid residence permit by the respective authority of the Slovak Republic, the Slovak Republic shall be responsible for examining the application for asylum. If the asylum seeker was granted a valid residence permit by the respective authority of another Member State, that country shall be responsible for examining the application for asylum. The same principle shall be applied if an asylum seeker is in possession of a valid visa. If the Slovak Republic (or another Member State) granted a visa to a foreigner, in such a case Slovakia (or another Member State) shall be responsible for examining the asylum application, unless the visa was issued when acting for or on the written authorization of another Member State. Then the latter state shall be responsible for examining the asylum application.

### 3.1.6 *Unaccompanied minors<sup>22</sup>*

When police find an unaccompanied minor (hereinafter “UAM”) within the territory of Slovakia, the respective local Úrad práce, sociálnych vecí a rodiny - Office of Labor, Social Affairs and Family must be contacted immediately by the police. The office takes the responsibility for UAM and submits a request to the respective District Court to issue an interim measure on the placement of UAM to the foster home and to appoint him/her a guardian – Office of Labour, Social Affairs and Family. The appointed employee of guardian, who is a social worker, interviews the child at the foster home and informs him/her on the legal possibilities. If possible, the reunification of UAM with his family members should take place. The guardian, on behalf of the UAM, may lodge the asylum application and the Dublin procedure will take place in order to reunite the child with the rest of the family. When the whereabouts of the family members is unknown, the guardian takes the necessary steps to trace the family members of UAM. If there does not exist any possibility to find the family members the guardian may either lodge the asylum application or at least submit the application for tolerated stay in order to legalize the stay of the child in the Slovak Republic.

Article 6 (2) of the Dublin II Regulation is interpreted in such a way that UAMs are usually sent back to the first Member State where they lodged an asylum application.

Concerning the age, Slovakia takes into account the age of the UAM determined by other Member State.

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<sup>22</sup> See also 3.6.2 Reception conditions in the responsible Member State, part on unaccompanied minors.

### 3.1.7 Family Unity

The Asylum Act does not contain the definition of family members. In general, the family members as a term are mentioned in § 10 of Asylum Act (Granting asylum for the purpose of family reunification): *“The Ministry shall grant asylum, unless otherwise stipulated by this Act, for the purposes of family reunification to*

*a) the spouse of a person granted asylum, if their marriage continues, and continued, also at the time when the person granted asylum left the country of origin, and if the person granted asylum gives a prior written consent to the reunification,*

*b) unmarried children of the person granted asylum or the person according to the letter a) younger than 18 years of age or*

*c) parents of an unmarried person granted asylum younger than 18 years of age, if the person granted asylum agrees.”*

According to the above mentioned article of the Asylum Act, as a family member is considered a spouse or minor children of a person granted asylum or parents of a minor child granted asylum.

According to the practice of the Dublin Unit, the Migration Office in relation with the family members does not consider an unmarried partner of an asylum seeker as a family member.

The Migration Office pays special attention to cases of unaccompanied minors that are willing to reunify with their family members in another Member State. The relationship of the unaccompanied minor with his/her parents and/or siblings should be relevantly confirmed by lawful evidence.<sup>23</sup> If needed, DNA testing should take a place in both Member States to verify that third country nationals are related.

<sup>23</sup> e.g. birth certificate.

## 3.2 The Use of Discretionary Provisions

### 3.2.1 Application of the humanitarian clause – Article 15

According to the information and statistical data provided by the Dublin Unit as well as the experience of NGOs the humanitarian clause is hardly applied in practice.

Statistical data for recent years:

2010: Incoming requests: 0, Outgoing requests: 1, but not accepted by the Netherlands (according to the information provided by the Dublin Unit, the Netherlands replied negatively with the explanation that Art. 15 should be applied only to asylum seekers, and that in this case the members of the family living in the Netherlands with whom the asylum seeker wanted to reunify were Dutch nationals).

**2011:** Incoming requests: 1 (from Germany) and accepted by Slovakia; however, the transfer was only realised in 2012. This transfer was for the purpose of family reunification – firstly, the mother and children were transferred to Slovakia (because Slovakia was responsible under the Dublin II Regulation), while the husband stayed in Germany, because Germany became responsible for his asylum application. However, Slovakia accepted him to its territory based on Article 15 in order to reunify the whole family.

Outgoing requests: 15 – accepted: 9 (8 to Luxemburg; 1 to Sweden); transferred: 9 – mother with 7 children reunified with the father of the family in Luxemburg; regarding Sweden: Slovakia sent a request based on Article 15 (the father was in Slovakia and his daughters in Sweden), however Sweden did not reply on time, so he was transferred to Sweden not based on Article 15, but because Sweden accepted its responsibility based on Article 18 (6) and (7) of the Dublin II Regulation.

**2012 (January – March):** Incoming requests: 1 (from Austria) – family reunification reason, still pending (not yet decided). Transfers to Slovakia: 1 (from Germany) – this is the transfer of the father of the family realised based on the request of Germany from 2011 (see above).

Outgoing requests: 0 - As can be observed, Slovakia in the last 2 years and 3 months has accepted only 1 Dublin transfer based on Article 15. They also have not received so many Article 15 requests.

### **Examples of the negative decisions of the Dublin Unit in relation to Article 15:**

In one case, an asylum seeker from Pakistan requested the Migration Office to initiate the Dublin procedure based on Article 15 of the Dublin II Regulation, because he wanted to reunify with his brother in Italy. However, the Migration Office refused to initiate such a procedure and claimed in the decision (dated, January 2012) that the definition of the “family member” is contained in Article 2 (i) of the Dublin II Regulation and “because the asylum seeker does not belong to any of these categories cited by the Regulation and is not directly dependant on his brother, requested transfer to Italy has not been possible to realise based on the above stated regulation”.<sup>24</sup>

An asylum seeker from Iraq in 2011 the requested Migration Office based on Article 15 and Article 3 (2) of the Dublin II Regulation not to transfer him to Switzerland and to consider his asylum application in Slovakia, because his girlfriend and daughter lived in Slovakia. However, the Migration Office issued him a decision on the rejection of his asylum application in Slovakia as inadmissible, because the Swiss Confederation accepted its responsibility for his asylum application under the Dublin II Regulation. In the decision it is stated that “crucial is the fact that during the whole asylum procedure the applicant has not been able to reliably prove his fatherhood to the child. As it is obvious from the administrative file, the applicant is not stated as the father of the daughter in her birth certificate, he failed to hand over the confirmation on the fatherhood in the form of the common declaration of both parents, which means there is no official evidence which could serve as the proof of the fatherhood (...)”. The asylum seeker appealed the decision of the Migration Office, but the court confirmed the decision of the Migration Office (see the case summaries – decision of the Regional Court in Bratislava no. 9Saz/16/2011-56 from 8 June 2011).

<sup>24</sup> Informal translation.

### **Example of the negative response on the request sent by Slovakia based on Article 15 to another Member State:**

An asylum seeker from Democratic Republic of Congo wanted to join his mother and brother in France. Slovakia sent a request to France based on Article 15 of the Dublin II Regulation in November 2011, however France repeatedly sent negative responses in January 2012 stating that “there are no humanitarian nor cultural reasons which would support the family reunification of the asylum seeker in the territory of the French Republic in accordance with Article 15 of the Council Regulation (EC) no. 343/2003”.

### *3.2.2 Application of the sovereignty clause*

The application of the sovereignty clause mentioned in Article 3(2) of the Dublin II Regulation according to which the Slovak Republic may examine an application for asylum lodged with it by a third country national, even if such examination is not its responsibility under the criteria laid down in the Dublin II Regulation has never been used in practice by the Migration Office.<sup>25</sup>

In Greek cases, the Migration Office does not commence the Dublin procedure or apply the Dublin II Regulation at all. Instead of it the Procedural Department, issues a decision in merit upon examination of the asylum claim, instead of transferring the case to the Dublin Unit.<sup>26</sup> This action taken by the Migration Office may only be considered as an informal application of the sovereignty clause, because the decision itself does not mention the application of the sovereignty clause.

The asylum seeker as well as his/her legal representative has a right to request the application of the sovereignty clause in any stage of the Dublin procedure at the Migration Office. If this is the case the Dublin Unit must consider this request for the application of sovereignty clause and if they decide not to apply it they should provide arguments why they decided so in the decision on the inadmissibility of the asylum application in Slovakia (which forms

<sup>25</sup> Interview with the Deputy Head of the Dublin Unit dated 16 April 2012.

<sup>26</sup> Interview with the lawyer of the Slovak Humanitarian Council, cases from March 2012.

the basis for Dublin transfer); then, similarly as in any other case, the judicial review of such decision is available.

A case was mentioned above in relation to Article 15 of the Dublin II Regulation (transfer to Sweden), when the first asylum application of the asylum seeker from Burundi was rejected in the accelerated procedure as manifestly unfounded (in May 2010). Only after he applied for asylum repeatedly in the detention centre (where he was detained for the purpose of his administrative deportation to the country of origin), the Dublin procedure was initiated in February 2011 after the applicant agreed to reunify in Sweden with his two daughters. Sweden did not reply on time and therefore accepted its responsibility based on Article 18 (6) and (7) of the Dublin II Regulation.

### 3.3 *The Practicalities of Dublin Procedures*

#### 3.3.1 *Transfer of responsibility in cases of non-respect of deadlines*

In general, The Dublin Unit respects the time limits laid down in Dublin II Regulation, but there are no available statistics on cases in which Slovak Republic became responsible because of non-respecting the timeframes.

#### 3.3.2 *Circumstantial Evidence and its application in the Dublin Regulation*

As stated during the interview with the Deputy Head of the Dublin Unit<sup>27</sup>, the Dublin Unit accepts the circumstantial evidence as listed in Annex II, List A, List B of the Commission Regulation (EC) No 1560/2003. No statistics are available concerning the use of circumstantial evidence; therefore, the Dublin Unit was not

<sup>27</sup> Interview with the Deputy Head of the Dublin Unit dated 16 April 2012.

able to provide information detailing what kind of circumstantial evidence is used in practice by the Dublin Unit. According to the Deputy Head of the Dublin Unit, its use depends on the individual circumstances of the case. However, the Dublin Unit usually does not accept any circumstantial evidence as the only means of proving its responsibility. Rather, it utilises circumstantial evidence only if submitted together with, or later supported by, other means of evidence (proof).

#### 3.3.3 *Stay outside the EU within the timeframe of Dublin*

The Dublin Unit respects and applies the timeframe stipulated in Article 4 (5) of the Dublin II Regulation according to which the obligation to take back an applicant ceases if the asylum seeker has left the territory of the Slovak Republic or other Member State for a period of at least three months or has obtained a residence document from a Member State. Concerning the evidence to show that an asylum seeker has been outside the territory, the Dublin Unit respects the Annex II of the Commission Regulation No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Dublin II Regulation.

#### 3.3.4 *EURODAC*

The use of the EURODAC system is regulated by the Council Regulation (EC) No 2725/2000 concerning the establishment of EURODAC for the comparison of fingerprints for the effective application of the Dublin Convention. The respective departments of Bureau of Border and Foreigners Police take fingerprints of the following third country nationals that are older than 14 years of age: asylum seekers, foreigners that are unlawfully on the territory of the Slovak Republic and foreigners that unlawfully cross the state border.

### 3.3.5 Timeframes

If the Slovak Republic agrees to take back an asylum seeker from another Member State, the transfer shall be carried out at the latest within six months of acceptance of the request or the decision on an appeal or review where there is a suspensive effect. However, in this scenario the asylum seeker should not have left the territories of the Member States for a period of at least three months, or have obtained a residence document from other Member State.

The Dublin Unit adheres by the CJEU case of Petrosian and others<sup>28</sup> according which, “where the legislation of the requesting Member State provides for suspensive effect of an appeal, the period of implementation of the transfer begins to run, not from the time of the provisional judicial decision suspending the implementation of the transfer procedure, but only from the time of the judicial decision which rules on the merits of the procedure, and which is no longer such as to prevent its implementation.”

## 3.4 Vulnerable Persons in the Asylum Procedure

### 3.4.1 Vulnerable persons/Medical cases

The health condition of every asylum seeker is examined at the beginning of each asylum procedure in the Reception centre for asylum seekers in Humenné, including those asylum seekers who should be transferred under the Dublin II Regulation to another Member State. The asylum seekers which are to be transferred to another Member State have the same access to medical treatment as other asylum seekers. This right to medical treatment is prescribed by § 22 (5) of the Asylum Act, which basically provides only for urgent medical care, as follows: “The Ministry pays for an urgent health care for the asylum seeker who does not have public

<sup>28</sup> CJEU, C-19/08 Petrosian & Others, 29 January 2009.

health insurance<sup>29</sup>. In cases requiring special attention, if based on an individual examination of the applicant’s health condition there are determined special needs for health care, the Ministry shall pay, on behalf of the applicant, also the costs of this health care. The Ministry shall provide due health care to minor asylum seekers who are victims of abuse, neglect, exploitation, torture or a cruel, inhuman and humiliating treatment or who suffered consequences of an armed conflict. The Ministry, for the purpose of the provision of the health care in accordance with this section, provides the asylum seeker with a document proving his/her right to receive medical treatment.”<sup>30</sup>

Asylum seekers are not provided with any additional medical examinations before Dublin transfers in order to determine whether they are fit for transfer. An exception is made only if the asylum seeker obviously has serious medical problems and therefore is not fit for the transfer. However, according to the information provided by the Dublin Unit, as far as they recall no Dublin transfer has been cancelled or delayed because the asylum seeker had medical problems in their experience.

If the asylum seeker is ill and needs medical treatment, a medical report with the information about diagnosis and needed medical treatment is sent to the responsible state by the Dublin Unit before the transfer takes place, in order to safeguard and ensure continuation in medical treatment.

If necessary, a vulnerable asylum seeker (e.g. unaccompanied minor) can be accompanied by an adult - a guardian, to the responsible state. However, this depends on individual consideration of the concrete case, and this possibility will be applied in general only in cases of small children. In case the unaccompanied minor is transferred to Slovakia, the guardian or social worker of the respective Office of Labour, Social Affairs and Family should wait for him/her at the airport or border check point and accompany him/her during his/her transfer to the facility for asylum seekers<sup>31</sup>/Foster home for unaccompanied minors<sup>32</sup>.

<sup>29</sup> E.g. those asylum seekers who are employed (they have a right to be employed if their asylum procedure is not lawfully finished within one year as per the EU Reception Conditions Directive) have public health insurance (similar to Slovak citizens); in general all other asylum seekers have only the right to get emergency medical treatment.

<sup>30</sup> Informal translation.

<sup>31</sup> In case, when unaccompanied minor is an asylum seeker.

<sup>32</sup> In case, when unaccompanied minor is not an asylum seeker.

## 3.5 The Rights of Asylum Applicants in the Dublin Procedure

### 3.5.1 Right to information

In accordance with the Asylum Act, asylum seeker should be informed about the initialisation of the Dublin procedure in his/her case. The provision of § 11 (3) of the Asylum Act states the following duty for the Migration Office: *“The Ministry shall immediately inform the applicant that an enquiry is taking place on whether another state is responsible for evaluation of his/her asylum application; for the duration of the enquiry, the period for the issuing of the decision<sup>33</sup> does not run. The Ministry in the legally binding part of the decision in accordance with section 1 letter c<sup>34</sup>) also states which state is responsible for the asylum procedure.”*

Once the Dublin procedure has commenced, the Dublin Unit delivers short written notice to the asylum seeker informing him/her about the initialisation of the Dublin procedure and the fact that their asylum procedure within Slovakia will cease for the duration of the enquiry. An example of such information as it is provided to asylum seekers is attached to this national report (see the list of Annexes).

The asylum seeker has the right to inspect his/her asylum file upon request, including the file at the Dublin Unit containing the information on the Dublin procedure. He/she has the right to use his/her own language in the procedure and the Migration Office is obliged to provide the asylum seeker with interpretation into the language he/she understands during the inspection of the file. He/she has also the right to request copies of the documents contained in his/her file. In case the asylum seeker is detained and other Member State has confirmed the responsibility, the employees of the Dublin Unit should arrive to the respective Detention centre in order to deliver and explain to him/her the decision on the inadmissibility of his/her asylum application. Before delivering the

<sup>33</sup> Decision means the decision in merits.

<sup>34</sup> § 11 (1) c) see cited above in part 2.1.3 of this Report.

decision, the asylum seeker is informed on the right to inspect the file in the presence of the interpreter.

The information brochure of the Migration Office provided to asylum seekers at the beginning of the asylum procedure contains information on the asylum procedure and on the rights and duties of the asylum seeker (“Advice of the Asylum Applicant on the Rights and Duties during the Asylum Procedure”). The brochure includes one section on the “Information on the Dublin Regulation and Dublin Proceedings”. The Advice of the Asylum Applicant is attached to this report (see the list of Annexes).

The asylum seeker is not informed about the itinerary of the Dublin transfer.<sup>35</sup> He/she only receives information on the time limit for carrying out the transfer. After the concrete date of the transfer is known, he/she is required to wait for the transfer and is not given a long-term permission to leave the opened accommodation centre, only short-term permission to leave the centre (up to maximum seven days). He/she is unofficially and orally informed about the date of the Dublin transfer by the employees of the accommodation centre. However, he/she does not receive any written information (on the exact date and itinerary of the transfer) in the language he/she can understand from the Dublin Unit.

### 3.5.2 Family Unity

The Asylum Act does not contain the definition of family members. In general, the family members as a term are mentioned in § 10 of Asylum Act (Granting asylum for the purpose of family reunification): *“The Ministry shall grant asylum, unless otherwise stipulated by this Act, for the purposes of family reunification to*

*a) the spouse of a person granted asylum, if their marriage continues, and continued, also at the time when the person granted asylum left the country of origin, and if the person granted asylum gives a prior written consent to the reunification,*

<sup>35</sup> See 3. 1 Recommendations.

b) unmarried children of the person granted asylum or the person according to the letter a) younger than 18 years of age or

c) parents of an unmarried person granted asylum younger than 18 years of age, if the person granted asylum agrees.”

According to the above mentioned article of the Asylum Act, as a family member is considered a spouse or minor children of a person granted asylum or parents of a minor child granted asylum.

According to the practice of the Dublin Unit, the Migration Office in relation with the family members does not consider an unmarried partner of an asylum seeker as a family member.

The Migration Office pays special attention to cases of unaccompanied minors that are willing to reunify with their family members in another Member State. The relationship of the unaccompanied minor with his/her parents and/or siblings should be relevantly confirmed by lawful evidence.<sup>36</sup> If needed, DNA testing should take a place in both Member States to verify that third country nationals are related.

### 3.5.3 Access to the asylum procedure

Asylum Act in its § 4 (6) states the following: *“The foreigner who has been returned to the territory of the Slovak Republic from an EU Member State for the reason that the Slovak Republic is competent for carrying out the asylum procedure shall be considered to be an applicant, with the exception of the foreigner whose asylum application was already in the territory of the Slovak Republic rejected as inadmissible or as manifestly unfounded or the asylum was not granted to him/her; the asylum procedure commences with the entrance of the foreigner to the territory of the Slovak Republic.”*

In accordance with this provision, every foreigner who lodges an asylum application in another Member State, and is then transferred to Slovakia under the Dublin II Regulation, should be considered an asylum seeker in Slovakia automatically once they

<sup>36</sup> e.g. birth certificate.

have crossed the border or entered the international airport. This is provided that his/her asylum application had not previously been lawfully rejected as inadmissible or obviously unfounded, or if it is not a case of “res iudicata”. According to the information provided by the Dublin Unit, this provision is applied in practice in such a way that if the Dublin Unit is aware that such a person is to be transferred to Slovakia, the Dublin Unit informs the police department at the border check point or at the international airport and automatically admits the person returned under Dublin II Regulation to the asylum procedure. In practice, this means that the police should not wait until the foreigner himself/herself says that he/she wants to apply for asylum, but automatically start the procedure on lodging the asylum application. However, the lodging of the asylum application as such is needed.

In case the asylum seeker withdraws his/her asylum application after the Dublin procedure has been initiated by Slovak Dublin Unit, in accordance with the information provided by the Dublin Unit, the act of withdrawing the asylum application does not have influence on the continuation of the Dublin procedure in relation to take back cases, but the Dublin Unit has an obligation to inform the responsible Member State about the act of withdrawal. However, once the responsible Member State is established and accepts its responsibility, the Dublin transfer is not organized and undertaken because the former asylum seeker is no longer at the disposal of the Migration Office. At the same time the Migration Office informs the responsible Member State that the asylum application in Slovak Republic was withdrawn or that the person voluntarily returned to his/her home country. It is, however, questionable whether such a transfer would be executed if the asylum seeker is detained, and therefore at the disposal of the police authority and for the transfer.

### 3.5.4 Effective remedy

A remedy against the decision of the Migration Office’s rejection of an application for asylum as inadmissible can be filed with a Regional court (the Regional court in Bratislava or the Regional court in Košice) within 20 days of the delivery of a Dublin decision. Each decision of the Migration Office, including the decision of the Dublin Unit contains the information in writing on the right to

remedy. If the asylum seeker is not represented by a lawyer, the whole decision is translated to the asylum seeker by an interpreter secured by the Migration Office. The filing of an appeal does not have a suspensive effect, unless the court decides otherwise. The asylum seeker or his/her legal representative may request the court to order the suspensive effect. There is no time limit for the court to decide on the suspensive effect. Nevertheless, courts decide within a maximum of one month, and always before deciding on the merits of the appeal. Regional Courts shall decide on the remedy within 90 days from the delivery of the appeal. The Regional Court may either confirm the decision of the Migration Office or cancel<sup>37</sup> the decision. If the court confirms the decision of the Migration Office, the asylum seeker can file the appeal against the judgment of the Regional Court to the Supreme Court of the Slovak Republic. The Supreme Court shall decide within 60 days of the delivery of the appeal. The Supreme Court may also confirm or cancel the decision of the Migration Office. If Supreme Court confirms the decision of the Migration Office, the decision rejecting the application for asylum as inadmissible becomes valid. In such a case, there is no other legal possibility to challenge the decision of the Migration Office at a higher level. Once the decision of the Migration Office is cancelled either by the Regional Court or by the Supreme Court, the case is returned to the Migration Office for a further procedure and examination. The Migration Office shall be bound by the legal opinion of the court and during the further procedure should take into account its legal opinion. Asylum seekers have access to free legal aid provided either by the nongovernmental organizations or the state Centre for Legal Aid within the Ministry of Justice of the Slovak Republic.

<sup>37</sup> The court may cancel the decision of the Dublin Unit of the Migration Office based on the following reasons stipulated in the Article 250j (2) of the Act No. 99/1963 Coll. Civil Procedural Code (informal translation):  
f) decision of the administrative body was based on incorrect legal assessment of a matter,  
g) discovery of facts that were the basis of the administrative decision is contrary to the evidence in file,  
h) discovery of facts transpires to be insufficient to assess the case,  
i) decision is not possible to review for its obscurity or lack of reasons,  
j) in the procedure of the administrative body such a defect was found that could affect the legality of the contested decision. This footnote then solves my earlier question on the competence of the court so please just cross-reference to that.

If the decision of the Dublin Unit is cancelled based on the reason stipulated in the Article 250j (2) e) of the Civil Code, it may also be due to the incorrect use of the Dublin hierarchy criteria.

In relation to the right to effective remedy we have recently monitored cases when foreigners not seeking asylum in Slovakia but subject to Dublin procedure because of seeking asylum in another MS ("take back" cases) have been deprived of their right to effective remedy because they received only written notification on their Dublin transfer and not a decision with a possibility to appeal. The Dublin Unit informed us that the Dublin Unit has a "deciding" competency only in relation to asylum seekers (those seeking asylum in Slovakia) and not in relation to other individuals concerned third country nationals (not seeking asylum in Slovakia)<sup>38</sup>. However, it was the Dublin Unit who conducted whole Dublin procedure and issued the individuals concerned just with the "notification" on the result of the Dublin procedure without delivering any decision on the Dublin procedure.

## 3.6 Reception Conditions & Detention

### 3.6.1 Reception conditions in the transferring Member State

Foreigners may lodge the asylum application at the respective Asylum Department (one is located at the western part of Slovakia in Adamov-Gbely and the other one directly at the Reception centre in Humenné, at the eastern part of Slovakia) without any limitations. When an asylum seeker chooses to lodge the application at the western part of Slovakia, after the preliminary interview with the police, the asylum seeker is given a temporary asylum seeker card, valid for 24 hours, as well as the official document that the asylum seeker may exchange for a ticket at the

<sup>38</sup> Information from 22nd October 2012 provided in a form of a comment to this report.

railway station. After the asylum seekers arrival to the Reception centre, the Migration Office shall issue him/her the applicant's card immediately after arriving to the centre or at the latest within three days of commencement of the asylum procedure. The employee of the Migration Office informs the applicant of his/her rights and obligation during the asylum procedure, of the possibility of being represented in the asylum procedure, of access to legal aid and of pertinent non-governmental organizations, within 15 days after commencement of the procedure. The instructions are provided in written form and in the language understood by the asylum seeker. The Migration Office issues an applicant's card to all asylum seekers over 15 years of age. It is considered as an identification card of an asylum seeker. The asylum seeker may be placed at the accommodation centre or stay outside the Migration Office facility on his/her own. The Migration Office may decide that the asylum seeker is obliged to adequately cover the expenses relating to his/her stay in the asylum facility or the cost of medical care provided if his/her financial and proprietary circumstances are such, that it is possible to request from him/her at least a partial payment of the expenses relating to this stay. An asylum seeker is obliged to stay in the reception centre until announcement of the result of the medical examination. Minor asylum seekers have the same access to education as Slovak children. The asylum seeker must not enter any employment, or similar labour relations, or do business until the decision on granting asylum comes into effect. If no final decision is made within one year from initiation of the procedure, he/she is entitled to enter labour.

The reception conditions for an asylum seeker in Slovakia pending a Dublin Transfer are the same as in cases of other asylum seekers for whom Slovakia is responsible to examine asylum applications.

### 3.6.2 Reception conditions in the responsible Member State

Migration Office has not issued any general prohibition on the Dublin transfers to any Member State until today including on the basis of reception conditions.

Greece: The decision of the Constitutional Court of the Slovak Republic no. III ÚS 110/2011-39 from 31 May 2011, in which the Constitutional Court pointed out the ECtHR decision in the M.S.S. against Belgium and Greece case and unconditionality of Article 3 ECHR; mentioned the results of the intervention of the Commissioner for Human Rights submitted to the ECtHR in accordance with Article 36 (2) ECHR, the report of the Norwegian Helsinki Committee and the reports and opinions of other international human rights organisations, including UNHCR, Human Rights Watch and Amnesty International; and stressed that the information from official sources on the unfavourable conditions of the Greek asylum system and practice, and unacceptable and inhuman living conditions for asylum seekers in Greece, allow for the conclusion that the transfer of the applicant to Greece could violate basic human rights of the applicant (*this decision of the Constitutional Court is described in more detail in the case summaries*).

According to the information provided by the Dublin Unit, as well as official statistics, no single transfer to Greece has taken place since the above-mentioned decision of the Constitutional Court; however, this was also caused by the fact that there was no case referred to the Dublin Unit when Greece was considered the responsible state in the last year. In practice there is no "general prohibition" for the employees of the Dublin Unit to initialize the Dublin procedure in relation to Greece and every single case should be considered individually, respecting the decisions of the courts which are binding, and taking into consideration the current situation in Greece.

There have been some attempts of the asylum seekers and their legal representatives to prevent Dublin transfers to some other EU Member States, namely to Italy and Hungary; however, the Migration Office and the courts considers these countries and their reception conditions to be in accordance with international standards and the Dublin procedures are still initiated in relation to these states. Until today any relevant court judgment has not been issued that would change this practice and prevent Dublin transfers (at least in concrete cases) to Italy or Hungary.

### Example in relation to Italy:

In the case of the Dublin transfer of the Somali national (who lodged an asylum application in Slovakia in September 2011) to Italy, his legal representative requested Slovakia to apply Article 3 (2) of the Dublin II Regulation, because the transfer of the applicant to Italy could violate his basic human rights guaranteed by ECHR. The Migration Office decided to reject the asylum application as inadmissible and to transfer the asylum seeker to Italy. In its decision No.: MU-31-24/DS-Ž-2011 from 24 November 2011 the Migration Office states the following: *“The Migration Office, after taking into account all the relevant facts, does not consider it to be appropriate to apply Article 3 (2) of the Dublin Regulation in case of the asylum seeker who does not belong to the group of vulnerable persons and who does not have any humanitarian reasons to be taken into account. (...) The application of the Article 3 (2) depends on the consideration of the concrete state, which decides to apply the sovereignty clause if there are concrete reasons to apply it, because no single legal act presumes the obligation of the member state to apply the sovereignty clause. Regarding the described problems in the Italian asylum system we state that the Italian Republic is a regular Member State of the European Union and the signatory of the relevant international treaties and conventions, and is therefore bound by the same obligations as other Member States. In relation to the information provided to the procedure by the legal representative of the applicant, the Migration Office of the Ministry of Interior of the Slovak Republic admits that the reports of the organizations Amnesty International and PRO ASYL describe worsened conditions of the asylum procedure in Italy for the asylum seekers returned to Italy under the Dublin Regulation. However any concrete legally binding regulations preventing the transfers of the asylum seekers to this Member State have not been adopted until today. The Member States applying the Dublin Regulation respect the principle of non-refoulement and are considered to be safe countries for the third country nationals.”*<sup>39</sup>

### Hungary:

In 2012, we have monitored one case of an asylum seeker from Afghanistan who applied for asylum at the Detention centre in Slovakia. The Dublin Unit started the Dublin procedure in relation

<sup>39</sup> Informal translation.

to Hungary. After Hungary accepted its responsibility, the asylum seeker was delivered by the Dublin Unit the decision on the rejection of his asylum application as inadmissible, because the responsible state was Hungary. The Dublin Unit issued this decision although they knew that the asylum seeker had been issued the decision on deportation to Serbia from Hungary and was familiar with all the reports on the current conditions of the Hungarian asylum system (which were submitted by the legal representative of the applicant). Currently there is a remedy pending at the Regional Court and the suspensive effect was granted to the appeal by the judge.

Reception conditions of the asylum seekers returned under Dublin II Regulation should be the same as those of other asylum seekers with one exception – as a penalty may be considered § 22 (8) c) of the Asylum Act according which the asylum seekers returned under Dublin II Regulation do not receive pocket money if they abscond from the territory of the Slovak Republic and Slovak Republic subsequently took them back according to the Dublin II Regulation: *“The applicant shall not be entitled to any pocket money if they have voluntarily left the territory of the Slovak Republic and were returned back to the territory of the Slovak Republic (...)”*

### Services provided to asylum seekers (including those returned under Dublin II Regulation):

Accommodation in the reception / accommodation centre for asylum seekers,

- Health care,
- Meals provided in the camp (three times per day; children and pregnant women should be provided with food five times per day),
- Basic sanitary products and other things necessary for living,
- Slovak language course.

Unaccompanied minor asylum seekers, including those returned under the Dublin II Regulation, are placed first at the Reception centre in Humenné and subsequently to the Accommodation centre

in Opatovská Nová Vec. According to the Asylum Act<sup>40</sup> the Migration Office “shall create appropriate conditions for the accommodation of minors unaccompanied by their representative at law on the territory of the Slovak Republic...” The Asylum Act also presumes that unaccompanied asylum seekers are placed separately from adults, in rooms specially prepared for the unaccompanied minors.

However, the asylum facilities are not suitable for providing care and adequate services (including education) to children. In comparison, unaccompanied minors not seeking asylum or those already granted asylum or subsidiary protection are placed in foster homes for children, which means that, in terms of reception conditions, seeking asylum is disadvantageous for separated children.<sup>41</sup>

### 3.6.3 Notion of absconding

The Act on the Stay of Foreigners lays down in its § 88 (1) c): “The Police officer shall be entitled to detain the third country national for the purpose of his/her transport pursuant to special regulation.”

According to the footnote No. 85 of the Act on the Stay of Foreigners, the special regulation means the 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.

After the Dublin Unit issued the decision rejecting the asylum application as inadmissible, according which another Member State is responsible for examination of the asylum application, the police may detain the foreigner for the purpose of the execution of the Dublin transfer.

However, there have been some cases, when the police detained the foreigners for the purpose of the execution of the Dublin transfer even before receiving the acceptance of the responsible Member

<sup>40</sup> See § 39/1-2 of Asylum Act.

<sup>41</sup> See the Research of The Human Rights League: “Analysis of the Legal Status and the Integration Possibilities of the Unaccompanied minors in the Slovak Republic” [Fajnorová, K.; Števelová, Z.: Gerthofer, Zohor, 2009, available online: <http://hrl.sk/pages/publications>], on pg. 94.

State. In such cases any legal title for the detention did not exist, because the execution of the Dublin transfer could not take a place without the prior confirmation of the responsible Member State.

The reasoning of the decision on the detention was based mainly on the existence of the risk of absconding.<sup>42</sup>

### 3.6.4 Detention

The detention of foreigners is governed by the Act on the Stay of Foreigners. Currently, there are two detention centres<sup>43</sup> for foreigners in Slovakia – Detention centre in Medveďov (western Slovakia) and Detention centre in Sečovce (Eastern Slovakia, near Slovak-Ukrainian border). The capacity of these centres is:

Medveďov – maximum capacity 152 foreigners (112 men and 40 women),

Sečovce – maximum capacity 176 foreigners (104 men and 72 women including families with children).

Statistics<sup>44</sup> of detained foreigners in both detention centres for the years 2010 and 2011 are as following:

2010 – Total number of detained foreigners: 319 (175 in Medveďov and 144 in Sečovce),

<sup>42</sup> The risk of absconding is defined in § 88 (2) of the Act on the Stay of Foreigners as follows:

„The risk of escape of the third country national shall mean the condition when it can be anticipated, based on the reasonable apprehension or direct threat, that the third country national will escape or hide especially if it is impossible to identify him/her immediately, if he/she has no residence permit pursuant to this Act or if there is a threat of entry prohibition for a period of more than three years.”

<sup>43</sup> Detention centres are solely for third country nationals who do not meet the criteria for authorised stay on the territory of the Slovak Republic. Therefore it includes both asylum seekers and irregular migrants?? A detention centre is not a prison.

<sup>44</sup> Statistical overview of legal and illegal migration in Slovakia 2011 prepared by the Bureau of Border and Foreigners Police – available for download in English on [http://www.minv.sk/swift\\_data/source/policia/hranicna\\_a\\_cudzinecka\\_policia/rocnkyrok\\_2011/2011-rocnka-%20UHCP-EN.pdf](http://www.minv.sk/swift_data/source/policia/hranicna_a_cudzinecka_policia/rocnkyrok_2011/2011-rocnka-%20UHCP-EN.pdf) [see page 62].

2011 – Total number of detainees: 242 (171 in Medveďov and 71 in Sečovce).

Statistical information of those detained for the purpose of Dublin transfer:

2010 - 46 (27 in Medveďov and 19 in Sečovce),

2011 - 18 (15 in Medveďov and 3 in Sečovce).

Therefore, 46 foreigners in 2010 were detained for the purpose of Dublin transfer; in comparison to 18 in 2011. The most common reason for the detention of foreigners is the execution of the deportation orders. Statistics in more detail (as to the purpose of detention) can be found in the Statistical overview of legal and illegal migration in Slovakia 2011 prepared by the Bureau of Border and Foreigners Police.<sup>45</sup>

**NOTE:** Numbers of those placed in the detention centres since the beginning of 2012: Medveďov – 17 (as of 2<sup>nd</sup> April 2012) and Sečovce – 10 (as of 31<sup>st</sup> March 2012).

According to § 88 (1) c) of the Act on the Stay of Foreigners, detention for the purpose of the transfer in accordance with the special regulation (the Dublin II Regulation) is one of the reasons for the detention of the foreigner.

The detention of foreigners seeking asylum in Slovakia whose asylum applications are rejected as inadmissible is not a common practice in Slovakia, but we have monitored cases when foreigners were detained e.g. few days before their transfer. In such cases we think the detention is realised mainly for “practical” reasons – namely, that the police authorities want to make sure the applicant will be at their physical disposal at the time of the transfer. We have monitored also few cases in second half of 2012 when the police department detained a third country national for the purpose of his Dublin transfer just based on the fingerprints found in the EURODAC system the same day when he lodged his asylum claim in Slovakia and before the actual Dublin procedure was initiated. However the court cancelled such decisions on detention.

<sup>45</sup> [http://www.minv.sk/swift\\_data/source/policia/hranicna\\_a\\_cudzinecka\\_policia/rocniky/rok\\_2011/2011-rocenka-%20UHCP-EN.pdf](http://www.minv.sk/swift_data/source/policia/hranicna_a_cudzinecka_policia/rocniky/rok_2011/2011-rocenka-%20UHCP-EN.pdf) (see page 62).

### Example:

An Iraqi national was detained at the Detention centre for foreigners in Medveďov in November 2011 on the grounds of his deportation to the responsible state – the Netherlands. His asylum application in Slovakia was rejected as inadmissible in April 2011 and he was properly informed about his transfer to the Netherlands. He waited for the transfer in the accommodation centre for asylum seekers until November, when the police came to the accommodation centre and detained him just a few days before his transfer. They argued that he resided illegally in Slovakia, without a residence permit and without financial resources, and they concluded that there was a reason to detain him for the purpose of his transfer. His transfer occurred a few days after his detention. It is obvious from this case that the detention was primarily for a practical reason – the police detained him to “ensure” that the transfer will be realised in accordance with the planned itinerary. The asylum seeker lodged a remedy to the court against the decision of the police to detain him and the court cancelled the decision of the police (their judgement was given in March 2012, a few months after the asylum seeker was transferred to the Netherlands). The main reasoning of the court<sup>46</sup> was as follows:

- It was not explained in the decision on detention why it was not possible to transfer the applicant without his detention (the necessity of the detention);
- The police did not take into account that detained foreigner was in the position of the asylum seeker in another MS, so should not be considered equally as illegal migrant;
- The EU legislation was not taken into account by the police;
- The period of detention as determined by the police in the decision on detention (from November 2011 until May 2012) was not proportional taking into account all the circumstances of the case and was not properly explained in the decision on detention.

<sup>46</sup> The decision of the Regional Court in Trnava no. 38Sp/22/2011 from 20 March 2012.

### Other examples:

We have monitored the cases when foreigners were detained firstly on the ground of their deportation from Slovakia to their countries of origin and only later, during their detention, due to the changed circumstances or new facts found out by the police, the grounds of their detention were “changed” to the transfer under Dublin II Regulation.

In December 2011 the police department detained two Russian women illegally crossing the border from Poland to Slovakia for the purpose of eluding their deportation orders to Russia from Poland. (They had been issued decisions on administrative deportation to Russia and prohibition from entering Slovakia). However, at the time when the police department issued the decisions on deportation and detention, they were aware that both Russian women were asylum seekers in Poland. In spite of this information, they detained them for the purpose of their deportation. The police initiated the Dublin procedure to Poland only after the two women were detained. The decision on detention of the applicant was cancelled by the court<sup>47</sup>; however, before the court’s decision became effective, the applicant had been transferred to Poland.

Another case concerned a foreigner from Senegal who was convicted in criminal proceedings in Slovakia for using a false French passport. Police detained him in order to execute the deportation sanction issued by the court in the criminal procedure. However, during the interview at the police department before his detention, he declared that he resided legally in Italy with a work permit for several years. In order to prevent his deportation to Senegal, he applied for asylum at the detention centre. After the Dublin Unit contacted Italy, they confirmed their responsibility and therefore the Dublin Unit issued him the decision on the rejection of his asylum application in Slovakia as inadmissible. Meanwhile the police decision on detention was cancelled by the court, so they had to release him. On the same day that he was released from detention, he was taken to the police department and was issued a new decision on detention for the purpose of his transfer under the Dublin II Regulation, which practically means he was brought back to the detention centre on the same day being detained for different

<sup>47</sup> The decision of the Regional Court in Trnava no. 38Sp/1/2012-44 (included in the case summaries).

ground (not for the purpose of his deportation to Senegal but for the purpose of his Dublin transfer to Italy).

The conditions in Slovak detention centres meet international standards. Detained foreigners have the right to be informed immediately after their detention on the reasons of their detention in the language they understand, they are provided with food three times per day (one hot meal); they have a right to at least one hour walk in fresh air per day; they can have one visit every three weeks (however, with the permission of the director of the detention centre it can be more often, usually once per week); they have an access to phone and are provided with free telephone cards (by the social workers of NGOs); they have access to lawyers and attorneys (of NGOs) that visit detention centres every week and to the workers of International Organisation for Migration (IOM) that offer them assisted voluntary return; they can request the visit of the UNHCR officer; and they are provided with basic sanitary needs and emergency health care. At the beginning of their stay, they are provided with information leaflets in the language they understand about their rights and duties in the detention centre (an example of such a leaflet from the Detention centre in Medveďov in English language is attached to this report). They have also right to lodge an asylum application directly in the detention centre for foreigners; however, applying for asylum does not constitute their release from the detention centre, so they are detained during their asylum procedure as well. The length of detention varies from case to case and depends on whether the applicant was detained just during realisation of the already-planned transfer (then he is usually detained just for a few days) or whether he is detained during whole Dublin procedure (e.g. those foreigners who apply for asylum in the detention centre and only after the Dublin procedure starts, or those who are illegally in Slovakia but are asylum seekers or subsidiary protection holders in another EU country, or those detained immediately after submitting their asylum claim in Slovakia just on the basis of their fingerprints found in the EURODAC system; in such a case the detention can take from few weeks to few months).

For more information on the detention in Slovakia and problems related to detention of third country nationals you can also check the publication “Detention and alternatives to detention in the Slovak Republic – National report” published by HRL in November 2011.<sup>48</sup>

<sup>48</sup> <http://hrl.sk/pages/publications> (also in English).

Every detained foreigner has a right to submit an appeal against the administrative/police decision on his/her detention if he/she voluntarily does not renounce his/her right to appeal. However, we have monitored various cases when foreigners did renounce their right to appeal<sup>49</sup> directly at the police department, but did not understand the legal consequences of such action.

If they do renounce a right to appeal, they have 15 days upon the delivery of the decision on detention (which is basically the date identical with the date of their detention) to submit a remedy to the court. Lawyers of the Human Rights League visit both detention centres every week and help foreigners through preparing remedies/appeals and representing them at the court.

According to a new Act on the Stay of Foreigners, effective since the beginning of 2012, the Regional Court has 7 days to review the administrative decision on detention (upon the appeal is submitted to the court). If the Regional Court confirms the decision of the police on detention, there is possibility to appeal to the Supreme Court, which has 7 days to render a decision as well. Therefore, since January 2012, the courts have rendered decisions within 7 days, but then have 30 days to issue the decision in written form. Courts however do not have the right to order the release of the detained foreigner; the court only cancels the decision of the police and “returns the case back for further procedure”. The detention centre releases the foreigner only based on the “legally effective” decision of the court, which in practice means that the detainee has to wait in the detention centre until the decision becomes “legally effective” (meaning it is not possible to appeal it), which can take from a few weeks to few months (depending on the reasons the administrative decision was cancelled and therefore whether there is a possibility to appeal it or not, as well as depending on how quickly the judge issues the decision in writing and the court delivers it to both parties of the procedure). We have also monitored various cases in the previous two years when the police department, after the decision on detention was cancelled by the court and returned back for further procedure, formally released the foreigner and within the “further procedure” issued him with a new decision on detention and placed him back in the detention

<sup>49</sup> They signed at the police department the declaration saying they revoke their right to appeal.

centre the same day, which basically means the judicial review in those case was ineffective.

According to the Act on the Stay of Foreigners unaccompanied minors should not be detained and other vulnerable groups<sup>50</sup> can be detained only in inevitable cases and for the shortest time possible.<sup>51</sup> In practice unaccompanied minors are not detained, however we have monitored cases when foreigners claiming to be minors were detained because based on the medical examination (X-ray tests of wrists) they were assessed as adults by the police. We have also monitored cases of detained foreigners with psychiatric diseases and were not assessed as vulnerable persons by the police. Families with children are being detained in the detention centre in Sečovce (Eastern Slovakia).

### 3.7 Member State Co-operation

#### 3.7.1 Exchange of Information with other Member States

The Dublin Unit has not observed any serious problems in the communication with other Member States. In relation to the respect of the deadlines, only Greece was notorious in the past for not responding on time, or not responding at all, to the information requests as well as to the requests for accepting its responsibility. However, since 2011, the improvement in this regard has been noted by Slovak Dublin Unit and although since 2011 (including 2011) there has not been any request to accept the responsibility sent to Greece, the Greek Dublin Unit has been reacting on time to the information requests.<sup>52</sup>

<sup>50</sup> According to § 2 (7) the vulnerable person is “mainly a minor person, disabled person, person older than 65 years of age, pregnant woman, single parent with a minor child and a person who was subjected to torture, rape or other serious forms of psychical, physical or sexual violence”.

<sup>51</sup> § 88 (10) of the Act on the Stay of Foreigners.

<sup>52</sup> These information were provided by the Deputy Head of the Dublin Unit; interview dated 16 April 2012.

### 3.7.2 Cooperation with other Dublin states

The Dublin Unit has an informal communication with other Dublin states and communicates any ad hoc problems. At this point, they have not needed to settle any serious disputes concerning the Dublin cases.

### 3.7.3 Use of conciliation mechanisms between Member States

According to the information provided by the Dublin Unit, any official conciliation mechanism has not been applied in practice in order to solve a dispute between Slovakia and another Member State in relation to Dublin procedure until this time. All the disagreements have been solved in the form of communication between Dublin units of the two states.

### 3.7.4 Member State Administrative Arrangements under Article 23

There exist following arrangements with two Member States: Hungary and Austria.

#### Hungary:

- Administrative Arrangement on Cooperation between the Government of the Slovak Republic and the Government of the Hungarian Republic with the goal of the enforcement of the Council Regulation (EC) no. 343/2003 (in Hévíz, 3 October 2008); in force since 11<sup>th</sup> December 2008<sup>53</sup>

This arrangement was concluded based on the Article 23 (1) of the Dublin II Regulation. Its aim is to facilitate the conditions and rules of establishing a Member State responsible for considering the asylum application lodged in one of the Member States by the third

<sup>53</sup> Administratívna dohoda o spolupráci medzi vládou Slovenskej republiky a vládou Maďarskej republiky s cieľom vykonávania nariadenia Rady (ES) č. 343/2003 z 18. februára 2003 [Hévíz, 3. októbra 2008], <http://www.minv.sk/?madarska-republika>

country national. The main purpose of this arrangement is to shorten deadlines for responding and for evaluating its responsibility. The deadlines agreed in the administrative arrangement are as follows:

- 45 days for evaluating the request for taking charge if the request is submitted in accordance with Article 9 of the Dublin II Regulation (according to Article 4 (1) of the Arrangement),
- without delay and no more than 14 days for responding to the request to take back based on EURODAC hit(s) (according to Article 4 (2) of the Arrangement),
- 30 days for responding to the information request based on Article 21 (1) – (3) of the Dublin II Regulation (according to Article 5 of the Arrangement),
- In case there is a urgent request sent based in Article 17 (2) of the Dublin II Regulation the responsible authorities should determine a contact person, which should respect for the deadlines set in Article 4 (2) of this Arrangement (according to Article 6 of the Arrangement).

There have been also agreed concrete border crossings between Slovakia and Hungary used for the Dublin transfers. In accordance with Article 11 (2) of the Arrangement these are:

- Rajka – Čunovo (Dunascúny),
- Slovenské Ďarmoty (Szlovákgyarmat) - Balassagyarmat,
- Slovenské Nové Mesto (Szlovákújhely) – Sátoraljaújhely.

The transfers should take place on these border crossings and just in exceptional cases at the airports:

- Airport M. R. Štefánika in Bratislava (Slovakia), and
- Airport Ferihegy in Budapest (Hungary).

If needed, another border crossing or airport can be agreed ad hoc between the two parties (Article 11 (4) of the Arrangement).

According to Article 12 of the Arrangement, in case of any questions or doubts, a working group composed of the representatives of both parties to the Arrangement should be created. Beside the possible evidence listed in Attachment no. II of the Commission Regulation (1560/2003), other comparable sources of evidence, including

circumstantial evidence, can be considered during the process of clarification of the practical questions by the working group. This (circumstantial) evidence should be taken into consideration when evaluating the responsibility for considering the asylum application (Article 12 (2) of the Arrangement).

The arrangement with Hungary was signed for an indefinite period of time.

#### **Austria:**

- Agreement on the practical enforcement of the 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 between the Ministry of Interior of the Slovak Republic and the Federal Ministry of Interior of the Austrian Republic (in Bratislava, 25 April 2005)<sup>54</sup>

In this agreement, the parties of the agreement closed in accordance with the Dublin II Regulation (Slovakia and Austria) agreed on the state bodies responsible for dealing with all Dublin requests (Article 1). In Article 2, they agreed they would prioritize the requests based on the positive hits in EURODAC in accordance with Article 20 (1) b) of the Dublin II Regulation. Once the responsible state accepts its responsibility, the competent authorities (Directory for security in the Lower Austria and Bureau of Border and Foreigners Police in Slovakia, as stated in Article 6 of the Agreement) should agree on the date of the transfer, which should be realised in general within 3 days after the delivery of the request to the responsible state (Article 3). In accordance with Article 4 of the Agreement, the parties have agreed that they will exchange all the information and evidence related to the applicant as well as all the information which indicates that third state should be responsible for the application. According to Article 5 the parties should use for communication on the Dublin cases the DublinET system. The transfer of the applicants should be

<sup>54</sup> Dohoda o praktickom uplatňovaní Nariadenia Rady (ES) č. 343/2003 z 18. februára 2003 ustanovujúcom kritériá a postupy na určenie členského štátu zodpovedného za posúdenie žiadosti o azyl podanej štátnym príslušníkom tretej krajiny v jednom z členských štátov medzi Ministerstvom vnútra Slovenskej republiky a Spolkovým Ministerstvom vnútra Rakúskej republiky (Bratislava, 25. apríla 2005), <http://www.minv.sk/?rakuska-republika>

realised on the border crossing Jarovce – Kittsee. For the purpose of addressing and solving practical problems, the working group should be established and meet regularly “with the purpose of further development of the mutual cooperation in the execution of the Regulation as well as the perspective improvement of its application in accordance with Article 23 of the Regulation” (Article 8 of the Agreement). This Agreement is valid since 1 May 2005.

According to the Dublin Unit, the Agreement between the government of the Slovak Republic and Federal Government of the Austrian Republic on the establishment of the common contact workplace Jarovce – Kittsee is also applied for the purpose of Dublin transfers (signed in Prague, 15 May 2008; in force since 1 July 2008). This agreement states that the border crossing Jarovce – Kittsee (near Bratislava) shall be used for Dublin transfers between Slovakia and Austria.

According to the Deputy Head of the Dublin Unit, an administrative arrangement between Slovakia and the Czech Republic is planned for future.

### *3.8 The Impact of European Jurisprudence at national level*

#### *3.8.1 Suspensions of Transfers to Greece*

Since the decision of the Constitutional Court<sup>55</sup>, no single transfer to Greece has taken place; however, this was also caused by the fact that there was no case referred to the Dublin Unit when Greece was considered the responsible state in the last year. In practice there is no “general prohibition” for the employees of the Dublin Unit to initialize the Dublin procedure in relation to Greece and every single case should be considered individually, respecting the decisions of the courts which are binding, and taking into consideration the current situation in Greece.

<sup>55</sup> Dated 31 May 2011.

### 3.9 Good Practices in Slovakia

#### 3.9.1 Identification of good practice

The asylum seeker in whose case the Dublin Procedure was initialised may benefit from rights secured by the Reception Conditions Directive. There is no distinction between the asylum seeker and asylum seeker within the framework of the Dublin II Regulation in terms of access to accommodation, health care, meals, sanitary products and legal aid (the only distinction in this regard is that asylum seekers returned to Slovakia under the Dublin II Regulation do not have a right to receive a pocket money).

Another good practice applied in Slovakia is that the transfer of a third country national does not take a place in cases when the asylum seeker has submitted an appeal to the Regional Court on the decision of the Dublin Unit's rejection of his/her application as inadmissible, while at the same time asking the court to grant the suspensive effect of the remedy. Until the court decides on the granting or non-granting of a suspensive effect to a remedy, the third country national has a right to stay within the territory of the Slovak Republic. However, if the suspensive effect to a remedy is not granted, the person may be transferred to other responsible Member State according to the Dublin II Regulation.

Interstate communication is considered good practice. Accordingly the Dublin Unit is always aware that a foreigner is to be transferred to Slovakia and informs the police department at the border check point or at the international airport and automatically admits the person returned under Dublin II Regulation to the asylum procedure.

The provision of Article 4(6) in the Asylum Act which explicitly states that those returned under the Dublin II Regulation shall be considered as applicants for asylum is a good practice.

## Conclusion and Recommendations

# 4

Although the authorities do not admit it, despite some good practice examples the Dublin system in Slovakia is not ideal and there is significant room for improvement. Most concern stems from the lack of issuance of the decision on the Dublin transfer to third country nationals who are not asylum seekers in Slovakia, the detention of the asylum seekers (although not widely applied) prior to their Dublin transfer, the placement of unaccompanied minors into the facilities for adult asylum seekers, the lack of automatic suspensive effect of the remedies submitted to the court against the decision of the Migration Office on the inadmissibility of the asylum application in Slovakia, the lack of clear guidance for the employees of the Dublin Unit on the transfers to Member States which are problematic in terms of the protection and reception conditions for asylum seekers (mainly Greece and Hungary at the moment, potentially also other MSs), etc.

As reaction to these deficits, but also other problems identified during our research, we prepared a list of national recommendations which we believe should be considered by relevant Slovak authorities in order to improve the practical aspects of the Dublin Procedure in Slovakia.

## 4.1 Recommendations

1. In order to secure a higher legal certainty of an asylum seeker in the Dublin procedure, the Migration Office should change the system of providing information to a third country national within the Dublin procedure. The foreigner has a right to be informed about the itinerary of the Dublin transfer. At the current time, he/she is not given any written information (on the exact date and itinerary of the transfer) in the language he/she can understand.
2. Asylum seekers who are waiting for the Dublin transfer should not be detained in any case just for the purpose of their transfer, which essentially means they are at the physical disposal of the police. The fact they are not issued with the long-term permits to live outside the accommodation camp should be sufficient means to secure an asylum seeker's availability for the transfer.
3. Submitting the remedy against the decision of the Dublin Unit which rejects the asylum application as inadmissible because another Member State is responsible under the Dublin II Regulation: this should in fact have an automatic suspensive effect.
4. In cases of unaccompanied minors and other vulnerable groups of asylum seekers the Dublin transfer should take place only in case this is in their best interest; otherwise the sovereignty clause should apply.
5. Migration Office should issue clear guidance for the employees of the Dublin Unit on the transfers to Member States which are problematic from the point of view of the protection and reception conditions for asylum seekers, such as Greece and Hungary. This should be done in order to secure full respect of the existing jurisprudence of the European Court of Human Rights as well as reflecting existing reports of the human rights organisations. These guidelines/internal instructions should be regularly updated.
6. Asylum seekers returned to Slovakia under the Dublin II Regulation should have the right to receive pocket money as this provision of the Asylum Act cannot be considered justifiable: it is just punishing those asylum seekers that left Slovakia voluntarily and were sent back afterwards. This provision of the law is general and does not allow for taking into account the individual circumstances of each case.
7. Right to family and private life should be fully respected in Dublin cases. Slovakia should be in the majority of cases applying the sovereignty clause where the asylum seeker has close ties in Slovakia (including having a partner/fiancée/fiancée here or a child). The humanitarian clause should be applied by Slovakia in cases when another Member State requests Slovakia to accept an asylum seeker who has family members in Slovakia (including brother, sister, uncle, aunt, etc.) which were granted international protection (asylum or subsidiary protection) here.
8. Unaccompanied asylum seeking children should not be placed in the facilities of the Migration Office during the Dublin procedure, but be placed in foster homes for unaccompanied minors in order to guarantee their protection and well-being.
9. Police Departments of Bureau of Border and Foreigners police shall not detain a foreigner prior receiving the confirmation from the responsible Member State on the acceptance of the foreigner.
10. Third country national who have not lodged an asylum application in Slovakia but should be transferred under the Dublin II Regulation from Slovakia to another MS should be issued the decision based on the direct application of the Dublin II Regulation with a possibility to appeal it; because the fact they currently receive only written notification on the transfer violates the standards guaranteed by the Dublin II Regulation, as well as basic procedural rights which should be respected in every administrative proceedings.
11. Slovak Republic should recognise a "partner" as a family member for the purposes of the Dublin II Regulation.

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- Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention
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- <http://hrl.sk/pages/publications> (also in English)

## Relevant Statistics and Documents issued in the Dublin Procedure

- Annex no. 1: Advice of the Asylum Applicant on the Rights and Duties during the Asylum Proceeding
- Annex no. 2: Information about the start of the procedure according to Council Regulation (EC) No. 343/2003 issued to asylum applicants
- Annex no. 3: Information about the start of the procedure according to Council Regulation (EC) No. 343/2003 issued to non-asylum applicants

- Annex no. 4: Information about the result of the procedure according to Council Regulation (EC) No. 343/2003 issued to non-asylum applicants
- Annex no. 5: Information about the transfer of asylum applicant detained in the detention centre for the purpose of Dublin transfer (in Slovak language only)
- Annex no. 6: Instructions for foreigners detained in the detention centre for foreigners Medvedov
- Annex no. 7: Statistics 2010 – incoming requests
- Annex no. 8: Statistics 2010 – incoming requests accepted
- Annex no. 9: Statistics 2010 – incoming requests transferred
- Annex no. 10: Statistics 2010 – outgoing requests
- Annex no. 11: Statistics 2010 – outgoing requests accepted
- Annex no. 12: Statistics 2010 – outgoing requests transferred
- Annex no. 13: Statistics 2011 – incoming requests (including accepted, refused and transferred)
- Annex no. 14: Statistics 2011 – outgoing requests (including accepted, refused and transferred)

## Relevant National Case Law

Case summaries elaborated based on a selected national case law list attached to this report.

*In case of further interest in practical aspects of the application of the Dublin II Regulation at national level in the Slovak Republic please contact the lawyers of the Human Rights League:  
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