



# Refugees at the Border

Country reports on activities related to the access to the territory and asylum procedure for persons in need of international protection

Published by: United Nations High Commissioner for Refugees Regional Representation for Central Europe



# Refugees at the Border



**UNHCR**

**United Nations High Commissioner for Refugees**  
Haut Commissariat des Nations Unies pour les réfugiés

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## Foreword

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This publication represents a compilation of seven country reports detailing the development and operations of the Border Management and Protection of Refugees activities in Bulgaria, Czech Republic, Hungary, Romania, Slovak Republic, Slovenia and Poland.

One of the main regional operational goals of UNHCR in Central Europe is access of asylum seekers to the territories of State Parties to the 1951 Geneva Convention and to the asylum procedure. In order to achieve this goal, UNHCR has established border monitoring projects across the region. These projects are based on tripartite cooperation framework between government authorities, non-governmental organisations (NGOs) and UNHCR. The first tripartite agreement was concluded in Hungary in 2006. Thereafter, similar agreements were signed in other countries of the region and notably Slovakia –September 2007, Romania – July 2008, Slovenia – October 2008, Poland October 2008, and Bulgaria in April 2010. UNHCR in the Czech Republic focuses on monitoring the asylum procedures at the Prague Airport through an NGO partner.

The report provides a detailed overview of those country level activities undertaken by the principle signatories to the agreement/s, which ensure that persons in need of international protection have access to the territory and procedures. The activities include monitoring visits conducted at the border cross points and detention centres to evaluate the access to the territory and procedures. During such monitoring visits the implementing partners do also provide protection information and legal counselling to persons of concern to UNHCR.

Among other activities the agreements foresee is training of the Border Police. The trainings are specifically designed, taking into account the specific needs of the Border Police of the countries involved. The trainings focus on the international refugee protection regime, paying attention to the needs of vulnerable persons and those with special needs. From an operational context, the country reports share details on how the national working groups set up, as envisaged in the signed agreements, handle and solve matters of concern identified during the monitoring activities.

This publication is an attempt to openly provide the reader with information on the successes, good practices and challenges of the BMPPR projects in Central Europe including areas where further focused actions are needed and being addressed.



**Gottfried Koefner**

Regional Representative for Central Europe

A map of Europe with the country of Bulgaria highlighted in a dark blue color. The rest of the map is light blue with white outlines for countries and borders. A dark blue horizontal bar is positioned at the top, containing the word 'Bulgaria' in white text.

# Bulgaria

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# Report on Border Monitoring Activities in Bulgaria

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# 1. Overview

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Bulgaria joined the European Union (EU) on 1 January 2007. The total length of its borders is 2,368 km, of which the length comprising of the EU external border is 1,226 km.

In 2002 the Law on Asylum and Refugees was adopted, and the responsibility for assessing claims for international protection lodged at the national borders was taken away from the competencies of the Border Police. The State Agency for Refugees (SAR) became the only competent body in charge of Refugee Status Determination (RSD) procedures. The border guards were obliged to defer to the SAR for processing any claim for protection made before them. With no responsibilities under the RSD procedure, the Border police had no budget to cover interpretation, food and medical treatment of asylum seekers.

The Chief Directorate of the “Border police” is a specialised guarding, operative and investigation police office of the Ministry of Interior responsible for the protection of the state borders and control of the observance of the border regime. It carries out its functions within the border zones, including the zones of the border control checkpoints, the international airports and seaports, the inner sea waters, the territorial sea, the adherent zone, the continental shelf, the Bulgarian part of the river Danube, the Border Rivers and water basins.

The Law on Asylum and Refugees was further amended in 2007, and one of the amendments made stipulates that RSD proceedings begin with the registration of the applicant (not the claim). The legal status of a person who applies for international protection (in particular before another state authority) is unclear from the moment of filing the application until he/she is registered in SAR, i.e. personally present. This legal limbo is of particular concern, as the person is not protected from refoulement

Meanwhile, in 2008 another piece of secondary legislation was enforced<sup>1</sup> which impeded access to RSD procedures. The provision of Art.16 of this Ordinance is of serious concern as it introduced a rule that all asylum seekers who claimed protection at the borders and who appeared to be undocumented should be transferred by the border guards to the centres for accommodation of illegal aliens but not to the State Agency for Refugees reception centres. Exception from this rule is made only with respect to vulnerable asylum seekers such as separated children, pregnant women and physically or mentally disabled individuals. This provision removes the responsibility from the SAR to accommodate asylum seekers upon their registration and shifts it to the Ministry of Interior.

Asylum seekers who claimed protection at the national borders upon entry were not properly safeguarded from refoulement and prolonged detention.

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<sup>1</sup> Ordinance for the Responsibilities and Coordination among the Government Agencies for the Implementation of EC N 343/2003 and EC N 1569/2003 Regulations on Dublin II, EC N 2725/2000 and EC N 407/2002 Regulations on EURODAC



## 2. Activities

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Bulgaria was one of the first countries in Central Europe to reach in 2004 an official agreement between the Border police and the asylum non-governmental sector formalising their practical cooperation and the existing monitoring methods and arrangements. In 2005, the Bulgarian Helsinki Committee (BHC) signed an agreement with the Border Police to perform border monitoring activities. The BHC has been an Implementing Partner of UNHCR since 1994. BHC is implementing systematic border monitoring in order to ensure that all asylum seekers who arrive at national borders are duly registered and protected from refoulement.

In 2009, monitoring covered Sofia Airport, Kapitan Andreevo and Novo Selo. Under a ERF-3 Legal Aid Project from June 2009, the monitoring was expanded to Lessovo, Elhovo and Burgas. During the reported period the BHC implemented 244 monitoring visits and checked 742 individual cases of illegal immigrants in border custody. Thus, refoulement of 314 asylum seekers, 42 of whom were children and 3 Dublin returns, was prevented, which constituted 36.8% of all asylum claims submitted in 2009. No cases of refoulement from the border were registered in 2009.

The BHC lawyers have easy access to the border crossing points and to the detention facilities (as most asylum seekers enter the country illegally, they are detained for 24 hours) run by the Border Police in order to collect the necessary information, meet with the asylum-seekers and provide protection information and legal counselling.

### **The following observations are of concern:**

The right to use one's mother tongue and/or a language the applicant understands is not safeguarded. The lack of interpreters of some of the languages at border areas can impede the proper identification by the Border guards of those persons in need of international protection. Stripped from obligation to assess asylum claims made in front of them, the Border police has not designated staff nor budgeted for interpretation services from and into the mother tongue/s of the asylum seekers or any other language understood them..

Legal aid is not provided neither to asylum seekers who apply at the border, nor to any other alien detained within the first 24 hours of border police custody on account of their illegal entry to the territory of Bulgaria.

The border monitoring activities of UNHCR's Implementing Partner – the Bulgarian Helsinki Committee, remain for the time being the only guarantee to the access to the territory and RSD procedure for those asylum seekers applying at the border areas. The Bulgarian Helsinki Committee through its regular monitoring of all national borders, provided assisted new arrivals with legal advice; and further provided interpreters ensure efficient communication with the border guards as well as proper submission and registration of the asylum applications. Once applications were registered further monitoring, counselling and assistance was provided at the inland Center for accommodation of Illegal Aliens (with closed regime) of Directorate Migration in Busmantsi, near the capital Sofia to ensure that none of the border applicants who were transferred to the centre would be deported. Hence, preventing a violation of the non-refoulement principle.

Appeals against detention and deportation orders were submitted before the relevant courts in each individual case to invoke a suspensive effect. Finally, a series of negotiations as well as interventions in group and individual cases were made in order to pressure the responsible asylum administration, the State Agency for Refugees, to start releasing border applicants from detention in due time and following strict sequence. Thus, discretion and subjectiveness was effectively decreased and prolonged detention avoided in practice.

The Transit Centre of the State Agency for Refugees in Pastrogor (near the Bulgarian-Turkish border) is still not functioning. Due process of asylum claims in border areas in terms of registration, interpretation and accommodation was not available.

Notwithstanding the prevented refoulement, asylum seekers who applied at the border were not granted immediate access to asylum procedures. The national asylum authority, SAR declared inadequate reception capacity. Instead of being transferred to reception centres, asylum seekers were transferred from the borders to the national detention centre for illegal immigrants (DC Busmantsi), together with all other undocumented aliens intercepted by border or immigration police. The duration spent in the detention centre before their release and registration by the SAR ranged from three weeks to six months on average without any specified time limit.

Out of the 853 asylum seekers who gained access to territory and asylum procedure in 2009, the BHC assisted 72% of them (617 asylum seekers) to gain access.

The majority of the persons seeking international protection in Bulgaria enter the country illegally from Turkey. The most common points of entry at the Bulgarian-Turkish border are the zones between the rivers Maritza (Evros) and Tunjda. The main countries of origin in the last couple of years are Iraq, Afghanistan, Iran and stateless persons- mainly Palestinians. These have also been the top countries of origin ever since 1993 when

the Bulgaria started conducting RSD, with over role Afghanistan coming first (5,567 applicants) followed by Iraq (4,156 applicants) out of 17,965 applications submitted for the period 1993 – 31 December 2010.

As the border area among Turkey, Greece and Bulgaria was the main route of entry for asylum seekers, the project took the initiative to explore the possibilities for establishment of tripartite cross-border cooperation of refugee assisting NGOs in these countries. Such cooperation would aim to facilitate the follow-up information gathering on individual cases where persons have been refouled, as well as to provide comprehensive overviews on each country's asylum situation. In June 2009 the BHC met with the Turkish Helsinki Citizen's Assembly and the Greek Group of Lawyers for the Rights of Refugees and Migrants. The first outcome was the agreement that further strengthening of cooperation was necessary as a response to specific protection problems in the region related to access and detention of asylum seekers..

In April 2010, the Tripartite Memorandum of Understanding on modalities of mutual cooperation and coordination to support the access of persons seeking protection to the territory of, and the procedure for granting protection in the Republic of Bulgaria was signed between the Chief Directorate of Border Police, UNHCR and the BHC. In accordance with the Tripartite MoU, a Working Group was established which would supervise the implementation of the MoU and would analyze monitoring reports taking into consideration the State's primary responsibility of ensuring that persons in need of international protection have access to the territory and asylum procedure in line with assumed obligations under international refugee legislation.

With the support of UNHCR, BHC organized a cross border meeting in June 2009 with NGOs from Turkey and Greece with the aim of establishing a joint mechanism for border monitoring. A follow up meeting took place in 2010.

UNHCR has provided regular training to Border Police officials since 2003 under a Cooperation agreement. In 2009, 51 border guards benefited from three training sessions. In 2010, three sessions have already taken place and the last one is intended for the border guards at Sofia International Airport.

Chief Directorate Border Police is sharing on a regular basis with both UNHCR and the BHC relevant information, and in particular, statistical data related to persons of concern as well as information on joint operations implemented in Bulgaria by the FRONTEX Agency

Refugee Law has been introduced as a regular subject in the Curriculum of the National Centre for Training of the Border Police with the Police Academy. UNHCR has equipped a special room for the lectures on Refugee law in the Centre in Pazardjik.

The level of cooperation with the border police is very good and constructive.

## Annex 1.

# Information material for asylum seekers (Bulgarian Red Cross)

### Английски · English

#### Български Червен кръст - Бежанско-мигрантска служба

If you want to receive assistance from the Bulgarian government or the Bulgarian Red Cross, after you have been granted refugee or humanitarian status, you must submit an application for the National Integration Program for refugees in Bulgaria. The application must be submitted to the State Agency for Refugees in Sofia or the Reception Center in Banya village.

In order for you to be accepted in the National Integration Program you have to answer to certain criteria i.e income, family status and general health. If your application is approved you will attend a Bulgarian language course followed by a vocational training course of your choice. During your studying you will receive assistance for rent and overhead expenses as well as 3 BGN stipend per study day. The assistance for rent is calculated in accordance with your family status.

After assessing your application the Bulgarian Red Cross can give you the following assistance:

- Text books and school materials for children who attend Bulgarian municipality schools. You will also receive monthly lunch allowance for school children for the duration of the school year.
- Reimbursement of kindergarten fees for children attending Bulgarian kindergartens.
- Social consultations
- Reimbursement of medicines up to 40%.
- Health consultation.
- Supplementing baby food for children up to 3 who are not yet enrolled in kindergarten.
- Psychological and psychiatric consultations and treatment.
- Financial assistance, once a year, for vulnerable refugees after submitting a written request, which has been approved by a committee in the Refugee and Migrant Service of the Bulgarian Red Cross.

## Annex 2.

### Information material for asylum seekers (Bulgarian Helsinki Committee)

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#### Английски · English

BULGARIAN HELSINKI COMMITTEE PROGRAMME FOR LEGAL PROTECTION OF REFUGEES AND MIGRANTS WHAT RIGHTS AND OBLIGATIONS DO I HAVE DURING THE REFUGEE PROCEDURE?

You have filed your asylum application and for the time while your application is being processed, you are being accommodated at RRC Sofia.

#### **During that time, you have the right to:**

- A registration card - your ID document while your application is being processed;
- A monthly social assistance allowance of BGN 55 which you will receive from the Bulgarian State through the State Agency for Refugees;
- Medical assistance, because health insurance is being paid for you by the Bulgarian State. The health insurance is only valid for the time while your application is being processed. For referral to a general practitioner, you should contact the medical service at the Agency for Refugees;
- Education for your children in a Bulgarian school.

While you are in a refugee procedure, you are obliged:

- To respect the rules at the hostel of the State Agency for Refugees;
- Not to leave the hostel without permission;
- To appear for interviews on the date and at the time specified by the State Agency for Refugees.

On all other issues, you may contact the BHC office.

Each case is different. For a personal consultation on the refugee procedure and the writing of the appeal application you may refer to the BHC lawyers.

The services of BHC lawyers are free for asylum seekers and refugees.

Address: Sofia, 1, Uzundjovska St., Floor 3  
Opening hours: Monday through Friday 9:00-17:00 h.  
Lunch-break: 12:00-13:00



A map of Europe with the Czech Republic highlighted in a dark blue color. The rest of the map is light blue with white outlines for countries and borders. A dark blue banner is positioned at the top, containing the text 'Czech Republic' in white.

# Czech Republic

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# Monitoring of the Border Procedure at Prague Ruzyně Airport in 2009

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# 1. Introduction

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As in previous years, in 2009 the Organization for Aid to Refugees (OPU) implemented a UNHCR sub-project directed at monitoring the asylum procedure in the Czech Republic, with a primary focus on the external EU border procedure at the Prague Ruzyně airport reception center for asylum seekers. In the framework of the sub-project, OPU monitored all aspects of the asylum procedure and focused on decisions concerning vulnerable applicants, particularly refugee women, Sexual and Gender Based Violence (SGBV) applicants and unaccompanied minors (UAM).

Asylum procedure of asylum seekers in Czech Republic was mainly monitored at the Prague Ruzyně international Airport, but also in the Bělá Jezová detention center and OPU offices. Special attention was paid to the implementation of migration legislation, as well as asylum and asylum-related legislation, in particular the first-phase EU instruments. OPU gathered data particularly in these areas:

- Government practice concerning admission to asylum procedure
- Procedural rights of asylum seekers
- Government practice towards vulnerable groups
- Quality of decisions
- Monitoring restrictions of freedom of movement

## 2. Methodology

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The methodology of the project included regular field visits as well as direct counseling and follow up in OPU offices in Prague, Brno, Plzeň and České Budějovice. Regular weekly field visits were conducted especially at the Prague Ruzyně Airport reception centre for asylum seekers where there were approximately 40 OPU visits (on a weekly basis and more as needed). Every week, OPU legal counselors and social counselors monitored the situation in the detention centre in Bělá Jezová. OPU unaccompanied minors team visited two special facilities for unaccompanied minors on a regular basis.

During these field visits and office hours, OPU legal counselors conducted individual interviews with asylum seekers aimed at examining whether the legal procedure and the above enumerated aspects of their cases are in accordance with the EU directives, national law and ECHR judicature. The interviews were held in a language understandable for the asylum seekers, therefore OPU usually arranged an interpreter to assist during the visit.

When discovering a potential discrepancy with either of the legal acts, with a primary focus on vulnerable, SGBV and UAM cases, OPU conducted individual case file studies, participated during asylum interviews, and individually assisted with lodging appeals during the asylum and/or expulsion procedure. Special attention was paid to the expulsion and detention procedures, the relatively new territory entrance procedure at the Prague Airport<sup>1</sup>, the reception conditions and the quality of decisions of the Ministry of Interior (Mol), Regional Courts and the Supreme Administrative Court.

### Interaction With Other Institutions

As an integral part of every field visit, OPU interacted and cooperated with the Refugee Facilities Administration of the Mol. During joint meetings, any changes in statistical data from the previous weekly visit were discussed, as well as current individual issues of concern primarily regarding the reception conditions, such as medical assistance funding. The special unaccompanied minors team also met the management of the facilities for unaccompanied minors during every visit. OPU also interacted with the Mol Department of Asylum and Migration Policy, for instance in joint SGBV prevention think tanks.

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<sup>1</sup> Leg.act 325/1999 Coll., Asylum Act, §73/4 – obligation not to leave the closed airport reception center for 120 days, with an exception of vulnerable cases enumerated in §73/7.



## 3. Main Findings at the Prague Ruzyně Airport Center – Issues of Concern

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### 3.1 Insufficient Identification of Vulnerable Groups

According to § 73/7 of the Asylum Act (325/1999 Coll.), the MoI must allow vulnerable asylum seekers entrance to the territory. Among the vulnerable groups which should be released immediately to the territory, are families with children, UAMs, SGBV victims, and victims of torture, violence or inhuman treatment.

Unfortunately, the territory entrance procedure is not being conducted effectively. Only the easily recognizable vulnerable cases, that is families with children and UAMs are being released. Where the vulnerability is less apparent, such as victims of torture and SGBV cases, there is no way to identify them as vulnerable, because the territory entrance decision is, in the vast majority of cases issued before the issuing officer even speaks to the asylum seeker – and only based on primary written materials submitted by the foreign police. Thus, the potential violence suffered, as well as other asylum reasons, is not being reflected in the territory entrance decision.

In summer 2009, OPU assisted two Sri Lankan male asylum seekers of Tamil nationality, who fulfilled the criteria for vulnerability. They reported being abducted by unknown persons from the civil army, driven in a car to an unknown place where they were beaten, kept for several days, and later released, all this due to alleged LTTE (Tamil Tigers) membership or support. All of the Sri Lankan asylum seekers were in very bad psychical condition, mainly caused by their sudden separation from families as a cause of the conflict, in some cases by their serious concerns about the lives of their family members, or even their being aware of the death of family members. They were in such condition in the Prague airport center environment, having no access to informational resources (internet<sup>2</sup>, radio, mobile phones). Despite this, their vulnerability was detected before the issuance of a negative territory entrance decision. The breach of law in similar cases of failure to identify vulnerability, as well as in cases of not ascertaining the asylum reasons in general, has been noted by the national judicature<sup>3</sup>.

OPU is convinced that especially in the cases described above, the less apparent vulnerabilities must be detected and stated first, yet the territory entrance for vulnerable groups still means in practice only the release of children and families. OPU submitted a claim to the City Court Prague in the territory entrance procedures of the Sri Lankan asylum seekers.

### 3.2 Asylum Interviews, Quality of Interpretation

During the Refugee Status Determination (RSD) procedure, a correct evaluation of an asylum seeker's statements is of key importance. Therefore, a satisfying level of interpretation, as well as good conditions for the interpretation must be ensured. It is understandable that it is not always easy to provide a professional interpreter for certain less common languages, and it is understandable that even good professionals cannot master every dialect of the respective distant language. However it is unacceptable to provide interpreters who in the end do not understand the asylum seeker's statements properly, or who breach professional rules by making personal comments on applicants statements. In such cases, asylum seeker's complaints should be always respected, and a different interpreter should be provided. OPU monitored several complaints about inappropriate conduct of the asylum interview by the asylum interviewer.

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<sup>2</sup> A significant positive change at the Prague Ruzyně airport reception center is the new equipment with PCs and internet since 1 June 2010, see „Best Practice.“

<sup>3</sup> City Court Prague dec.Nr.10 Ca 35/2008-83 of 3.December 2008, in the case of a tortured Sri Lankan asylum seeker of Tamil nationality: *“On 20.2.2008 he (the applicant) in his asylum interview protocol (held in the asylum procedure) stated he was seriously injured by a shooting weapon in his home country, and this above all for his political opinions(...)In this situation it is impossible to state without further information that the plaintiff (the asylum seeker) was not tortured neither subjected to another form of physical violence. If the defendant (the Ministry of Interior) found out, that the plaintiff's injury do not fulfil the legal criteria, it was his obligation to reason his thoughts in a clear and reviewable way, and include these thoughts to his decision of 20.2.2008 in which the territory entrance was not permitted.”*

City Court Prague dec.Nr.9 Ca 55/2008-59 of 29.March 2010, in the case of a Kurdish writer of politically critical poetry: *“In his decision about not permitting the plaintiff's (asylum seeker) territory entrance, the defendant (the Ministry of Interior) has however not reflected plaintiff's statements as stated in his asylum application and asylum interview, he did not evaluate these statements in any way, and without further information he made a conclusion about a misusing the asylum procedure. The misusing of the asylum procedure has thus became an illogical implication of the administrative entity.”*

### 3.3 Availability of Legal Assistance

In the Ruzyně airport facility, regular legal assistance is provided by Charita Prague, which helps with asylum appeals on a technical basis (a printed form of an appeal). However, Charita does not provide extensive assistance such as presence at the asylum interviews, legal representation for strong asylum cases at the MoI, legal assistance with submitting an appeal based on studying the case file, legal representation at the courts for strong and vulnerable asylum cases, territory entrance procedure assistance, administrative expulsion procedure assistance, communication with possible relatives/organizations in countries of origin, Dublin unit procedure assistance, and others. The sub-project conducted by OPU in the UNHCR framework is directed at monitoring the situation, not at legal assistance. The asylum seekers at the Ruzyně airport have no financial means<sup>4</sup> to seek private legal assistance, yet OPU monitored two cases in which applicants paid private lawyers who never visited them in the airport facility<sup>5</sup>.

### 3.4 Quality of Decisions

OPU believes that the airport procedure is too fast; not allowing sufficient time to examine all applicants' statements. In the vast majority of cases, the airport decision is issued within 3-4 weeks of the applicant's declaration of intent to seek asylum, whereas other in-land asylum cases usually take several months and in some cases years<sup>6</sup>. During the period monitored, there was not a single positive RSD decision issued at the airport.

OPU further assisted a Turkish asylum seeker of Kurdish nationality, who reported having been beaten during the celebrations in the birthplace of a pro-Kurdish politician, which took place in April 2009. OPU monitored several procedural mistakes in his MoI decision, e.g. the Country of Origin Information (COI) was dated one to two years before the events described by the applicant, so that none of the information could have actually included the events in question. OPU assisted the asylum seekers with a Regional Court claim.

### 3.5 Monitoring of Restrictions of Freedom of Movement

The majority of the cases of those who appealed against decisions banning their entry to Czech territory, which above all means restriction of liberty for the individual, were still pending at the City Court in Prague after several months. OPU believes that this is a breach of article 5 § 4 of the 1950 Convention for Protection of Human Rights and Fundamental Freedoms. As confirmed by the European Court of Human Rights, when a decision on depriving foreigner's liberty is taken by administrative or police authorities, there must be timely review (*Amuur v France*, § 43) and if such deprivation takes longer than several days it cannot be considered in compliance with article 5 § 1 of the Convention (*Shamsa v Poland*, § 59). However, as described in section 3 above, there was no sufficient legal assistance to these asylum seekers so that they could submit new claims to the European Court of Human Rights or Constitutional complaint. OPU discussed this matter with the Ombudsman, who was authorized to research the change of conditions and legislation after the decision *Rashed v. Czech Republic* came to force. OPU handed over all necessary materials about the procedures at the reception centre Ruzyně to the Ombudsman.

### 3.6 Reception Conditions

Health care: At the airport reception facility, a nurse is permanently present, and medical care is fully provided in emergency cases by transportation of the subject to a hospital. However, asylum seekers with long term medical needs cannot be cared for regularly. In addition, like Czech citizens, every asylum seeker has to pay 30 CZK for medical treatment and for some types of medical care which are not covered by insurance, independent of financial situation<sup>7</sup>.

Accommodation, Food and other material reception conditions: There were no major complaints in 2009 about accommodation conditions. The center is fairly well furnished, the separation of male and female accommodation

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<sup>4</sup> Even when the asylum seeker arrives with some financial means, these finances are deposited by the Refugees Facilities Administration and have to be used to cover the expenses of the airport reception center accommodation and food, thus there are no financial means left.

<sup>5</sup> This might be caused by the administrative procedure of getting an entrance permit to the airport facility.

<sup>6</sup> The practice to issue the decision within four weeks maximum might be supported by the legal limit set by §73/4 AA - if the ministry does not manage to issue the asylum decision within four weeks, the applicant must be transferred to another (open) asylum facility in the Czech republic.

<sup>7</sup> See also footnote No.4

rooms is respected, as is family unity. Occasionally, asylum seekers complain about the quality of food, depending on their cultural background.

The major concern with regard to reception conditions remains the general restriction of the freedom of movement, as described in sections 1 and 5 above, and the insufficient identification of vulnerable cases as described in section 1. This is because although the center is well equipped and furnished, it is a closed facility with no access to daylight, and the impact on asylum seekers' psychological state of mind, especially in vulnerable cases, is immense.

## 4. Best Practice at the Prague Ruzyně Airport Center

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In the year 2009 OPU observed a general positive change at the airport Ministry branch regarding the RSD interview conditions: there are two new interviewing officers in charge of the airport agenda. The new female officer is mainly in charge of interviewing female asylum seekers. The new male officer is mainly in charge of interviewing male asylum seekers and decision making. During the monitored period OPU legal workers visited more than 20 asylum interviews conducted by both of the new Ministry officers and found the interview conditions in general very satisfying and professional. No complaints against the new appointed officers were monitored.

At the Prague airport, throughout the monitoring period, in accordance with §73/7 of the Asylum Act, UAM's and families with children were immediately transferred to the UAM facility Modrá škola. The families with minor children were immediately transferred to another reception facility in Vyšní Lhoty (or to Zastávka from November) for the initial proceedings and then to an open asylum facility.

OPU monitored positive feedback regarding the Refugee Facilities Administration social workers at the airport Ruzyně center. The asylum seekers often mention the immense effort of the social workers.

Beyond the relevant time period of this article, OPU monitored a significant positive change in the airport center equipment; new computers with internet have been installed, so that asylum seekers can, insofar as is possible, communicate with their families and check the situation in their country of origin .

## 5. Recommendations

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1. A mechanism to identify vulnerable cases upon their arrival should be introduced.
2. Quality of interpretation should be ensured, a change of interpreter must be possible when requested.
3. Regular legal assistance for asylum seekers at the airport reception center should be guaranteed.
4. In every asylum case, the Mol should invest sufficient time to examine the COI situation properly using diverse COI information.
5. Mol officers conducting the asylum interviews should be regularly supervised by superior officers in the Mol and monitored by NGOs
6. The City Court Prague should decide quickly about territory entrance cases.

## 6. Description of Beneficiaries

- A total of 1450 women seeking asylum were assisted by OPU social and legal counselors. At the airport reception center, OPU monitored 106 female asylum seekers.
- At the airport reception center, OPU individually assisted 40 women coming from the following countries of origin: Armenia (1), Cameroon (1), Kazakhstan (2), Democratic Republic of the Congo (4), Cuba (3), Mongolia (5), Russia (2), Sri Lanka (2), Syria (6), Turkey (3), Ukraine (3), Vietnam (1), Stateless (7).
- OPU monitored a total of 10 SGBV cases.
- A total of 10 pregnant women were assisted by OPU in 2009.
- Approximately 25 UAMs seeking asylum were assisted and represented by OPU lawyers and social workers. Five of them received the asylum and two of them received subsidiary protection. The UAMs came mainly from Republic of the Congo, Nigeria, Mongolia, Democratic Republic of the Congo, Nepal and Somalia.
- OPU assisted an elderly couple from Chechnya accommodated in Kostelec nad Orlicí.
- One HIV positive asylum seeker from Afghanistan was assisted by OPU in 2009.

Number of Beneficiaries: International Airport Prague – Ruzyně reception center (Location: Prague Airport)			
Age Group	Male (in absolute numbers)	Female (in absolute numbers)	Total (in absolute numbers)
0-4	6	3	9
5-17	3	4	7
18-59	57	32	89
60 and older	0	1	1
<b>Total:</b>	<b>66</b>	<b>40</b>	<b>106</b>

Number of Beneficiaries: Detention Centers (Location: Bělá Jezová)			
Age Group	Male (in absolute numbers)	Female (in absolute numbers)	Total (in absolute numbers)
0-4	3	4	7
5-17 – UAMs	6	5	11
18-59	81	26	107
60 and older	1	1	2
<b>Total:</b>	<b>91</b>	<b>36</b>	<b>127</b>

Number of Beneficiaries: UAM's in the Children Home Centers (Location: Prague –Radlická, Hříměždice u Příbram)			
Age Group	Male (in absolute numbers)	Female (in absolute numbers)	Total (in absolute numbers)
0-4	0	0	0
5-17	17	8	25
18-59	0	0	0
60 and older	0	0	0
<b>Total:</b>	<b>17</b>	<b>8</b>	<b>25</b>

Number of cases monitored:  
New claims for international protection in Ruzyně Airport reception center  
and at Bělá-Jezová detention center in 2009

Nationality	Ruzyně Airport	Bělá-Jezová
Syria	27	7
Stateless	14	—
Mongolia	11	15
Russia	9	7
Romania	9	—
Belorussia	—	9
China	—	7
Sri Lanka	7	1
Congo	5	—
Cuba	5	—
Turkey	4	2
Ukraine	4	37
Kazakhstan	3	4
Vietnam	2	6
Cameroon	2	—
Georgia	2	8
Guinea	1	—
Haiti	1	—
Indonesia	1	—
Pakistan	1	—
Uzbekistan	1	—
Zimbabwe	1	—
Bosnia	1	—
Afghanistan	1	1
Algeria	—	2
Armenia	—	2
Eritrea	—	1
Ghana	—	2
Guinea Bissau	—	1
Serbia	—	1
Somalia	—	1
Ivory Coast	—	1
India	—	1
Kirgizstan	—	1
Macedonia	—	1
Niger	—	1
Nigeria	—	6
Palestine	—	1
Senegal	—	1
<b>Total:</b>	<b>106</b>	<b>127</b>

# Annex 1:

## Information Material for Asylum Seekers in Detention

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Information for applicants for international protection, placed in facilities for detention of foreign nationals

**If you are afraid to return to your home country because of persecution which you may be exposed to for reasons of your race, nationality, religion, political opinion, or because you belong to a particular social group, or if on the basis of such reasons you reject the protection of your own country, you have the right to apply for international protection in the Czech Republic. You have the same opportunity, also, if in your home country you are in danger of torture or other inhuman or degrading treatment.**

You may also be granted international protection if you cannot or do not want to return to your country of origin based on other humanitarian grounds, or if your closest relatives have already been granted international protection in the territory of the Czech Republic.

### Frequently Asked Questions

#### How can I apply for international protection in a facility for detention of foreign nationals?

According to the Asylum Act you must make a declaration of intention to apply for international protection at **latest within seven days from the moment** you were informed of the possibility of applying for international protection by the Aliens Police. You must inform the Aliens Police of your intention to apply for international protection in writing or orally (which must subsequently be duly recorded in writing) so that it can be proved at any time that you showed your intention by the above deadline, with the possible participation of a translator/interpreter. **If you fail to make a declaration of your intention to apply for international protection within the seven day limit, your right to submission of an application in a facility for detention of foreign nationals shall expire.**

Whether you will be allowed to apply for international protection or not shall also depend on the purpose of your placement in this facility. If the purpose of your detention is expulsion in accordance with Section 124 of the Aliens Act, an application for granting of international protection can be submitted.

If the purpose of your detention is readmission (transfer) or transit in accordance with Section 129 of the Aliens Act, an application for international protection cannot be submitted. If you are not allowed to submit an application at the facility and you are afraid that, after you are handed over to a different country (by means of readmission or Dublin proceedings) you will be under threat of persecution or severe harm, we recommend that you apply for legal aid to any of the organisations listed below.

The purpose of your placement in this facility is given in the “Detention Decision” which you were given by the Aliens Police.

#### Will I be released from the facility after presenting an application for international protection?

Submission of an application for international protection does not in itself constitute a reason for release from the facility. If a foreign national makes a declaration of intention to apply for international protection at the facility, international protection application proceedings shall begin and be conducted at the facility. However, the decision on expulsion cannot be implemented before the decision on your application for the granting of international protection becomes final.

**According to the Aliens Act the police shall throughout the entire period of detention examine whether the reasons for detention still apply. The maximum period of detention at the facility is 545 days in the case of adults and 90 days for unaccompanied minors under 18 years of age or families with children below this age (this period begins on the date of detention). If the Aliens Police decides to terminate detention before effectual termination of the proceedings concerning your application for international protection, you will be released into Czech territory or transferred to an asylum facility where you shall wait for the result of the proceedings on the granting of international protection.**

**You may lodge an appeal against an expulsion decision** up to five days (up to 15 days in the case of minors) from delivery of the decision to the department of Aliens Police which issued the decision. You may also bring a judicial action **against a detention decision** to the competent Regional Court within a period of up to 30 days from delivery of the decision.

At any time during your detention you may submit a **proposal for review of the legality of the detention and release decision** to the competent Regional Court in whose jurisdiction the facility is located. The proposal should be presented to the Court directly or by means of the police authority which issued the detention decision. If you choose to submit such a proposal, be sure to include your name and surname, date of birth, nationality, name of the police authority which issued the detention decision and the reasons why you think your detention is illegal. Please also give any evidence supporting your proposal, and the subject of your proposal.

If you need the assistance of a lawyer, we recommend that you contact any of the non-governmental organisations below.

#### May I submit an application for international protection if in the past I have already applied for international protection in the Czech Republic?

Yes, you may. The number of applications for international protection is in no way restricted, but if you fail to provide new facts and findings which, through no fault of your own were not presented at prior proceedings, the proceedings for the new application will be stopped as inadmissible.



### Who decides about my application for international protection?

The first instance in applications for international protection is the Department of Asylum and Migration Policy (hereinafter referred to as „OAMP“) of the Ministry of Interior of the Czech Republic.

### What happens during the proceedings on granting international protection?

Before the OAMP issues a decision in your case, one of its workers will fill in an application form for international protection and will hold one or more personal interviews with you.

### If you require, you can ask the interview to be held and interpreted by a woman or man, as you choose.

You will be advised about the interview date in writing. During the interview you have the right to present specific evidence to prove your case or supply materials that you consider to be important for your case. Your obligation is to cooperate with the OAMP workers and provide true information about your identity and the reasons for requesting international protection in the Czech Republic. The Czech authorities will always treat the information you supply as confidential and, without your explicit consent, shall not transmit it to any authority in the country of your origin.

### What does interview entail?

The interview is vital for your proceedings. It is held by a qualified OAMP worker. If the interview is held with the assistance of an interpreter, please make sure that the interpreter understands very well what you are saying, otherwise your testimony may appear distorted and the OAMP may claim that your statement is not true. If you don't understand the interpreter well, request another interpreter immediately.

At the end of the interview, the OAMP worker will draw up a written report (in Czech) which will be kept in your file. We recommend that you ask the interpreter to interpret the whole statement to check the correctness of the recorded information. **If you have any remarks on the content of the statement, tell the OAMP worker and ask him/her to correct/add to the statement or to take a written record of your remarks. If you have no remarks on the statement, you will be asked to confirm the accuracy of the information therein by signing it.**

### How will I be informed about the OAMP decision?

The OAMP's decision written in Czech will be passed on to you at the facility. A relevant OAMP worker will inform you of the decision in the presence of the interpreter. If you refuse receipt of the decision without due reason, the decision shall enter into force on the date you refused to receive it. At this point the deadline period for submission of an action against the OAMP decision also begins.

### The result of the proceedings for granting international protection may be:

- you are granted international protection either in the form of asylum or subsidiary protection;

- proceedings regarding your application for granting of international protection are stopped (for example, for reasons of inadmissibility of your application in the Czech Republic because its assessment is the responsibility of another EU Member State);
- your request for granting of international protection is refused as unfounded or manifestly unfounded;

### How long do the proceedings for granting international protection last?

The decision to reject an application as manifestly unfounded must be issued within 30 days from the initiation of the proceedings. In other cases, a decision should be issued within 90 days. If this period is exceeded, the OAMP will inform you in writing of the reasons for extension of the period in accordance with the law.

### What should I do if I want to withdraw my request for international protection (i.e. stop proceedings)?

If you have applied for the international protection at your facility and now you want to withdraw your application for asylum, you should notify OAMP staff or the Aliens Police. To stop your proceedings before the Regional Court, you must withdraw your action. For assistance, you can ask the staff of the NGOs who visit the facility.

### Is the OAMP's decision final?

If you do not agree with the OAMP's decision, you can bring an action against it to the Regional Court. You can bring an action in your native language but not later than 7 days from delivery of the OAMP's decision. If this deadline is not respected, the right to review before the Court shall then cease.

In proceedings before the Regional Court, you are not required to be represented by a lawyer, but nevertheless we recommend that you always consult a legal adviser in preparation of the judicial actions from any of the following non-governmental organisations. An NGO legal adviser is available free of charge. You can of course also use your own legal representative, but at your own expense.

### Which court decides on the action?

The Regional Court in whose jurisdiction the facility lies decides on the action. The Court must decide on matters of international protection as a priority, but the law does not set any specific time limit.

The decision of the Court is final. Only in exceptional cases you can submit a complaint to the Supreme Administrative Court. If you need more information on the possibility to appeal against the decision of the Court, please contact an NGO legal adviser.

### What happens if my stay at the facility ends before the decision on my asylum case is issued?

The maximum period of detention laid down by law is 545 days. If your asylum proceedings are not terminated by this time, you shall be released into Czech territory where you shall wait for the decision of the OAMP or the competent Regional Court. At any time during the proceedings for granting international protection, you may withdraw your application for international

protection and return to your country of origin or to a third country which is willing to accept you. Address the application for voluntary repatriation (in writing) to the social workers at the facility. If you submit the request during the proceedings for international protection within the deadline for bringing a judicial action, or within 7 days after the completion of proceedings regarding your action to the Regional Court, or within 24 hours after the completion of legal proceedings on your procedural complaint to the Supreme Administrative Court, you may obtain a financial contribution to cover travel expenses and assistance with obtaining of a travel document.

#### May I leave the territory of the Czech Republic during proceedings for granting international protection?

During proceedings for granting of international protection you must remain in the territory of the Czech Republic. For the duration of the proceedings you must also surrender your national travel document. If you illegally enter, or attempt to illegally enter the territory of another state, the proceedings for granting international protection shall be stopped. If you illegally continue your journey into another EU Member State, this can have serious consequences for you; primarily, you can be arrested and returned to the Czech Republic.

**At any time during the proceedings for granting international protection you are entitled to the assistance of any of the following NGOs which provide free legal advice. If you choose to contact them, please remember to include your personal details: name, surname, date of birth and nationality, and a brief description of your situation or reasons why you are seeking protection in the Czech Republic. This will speed up contact being made.**

**If you wish to contact facility staff with some remarks or complaints, it is always best to do so in writing.**

#### NGOs assisting refugees in the Czech Republic

##### Organisation for Aid to Refugees (OPU)



Czech non-profit, non-governmental organisation providing social, psychological and legal advice to asylum seekers and their families. OPU also provides free legal advice during expulsion procedures and arrest.

Kovářská 4, 190 00 Prague 9, Czech Republic  
Tel: +420 284 683 714, Fax: +420 233 371 258  
Email: opu@opu.cz, www.opu.cz

##### Citizens' Association Concerned with Emigrants (SOZE)



Czech NGO providing legal, social and psychological advice to asylum seekers and other foreign nationals.

Mostecká 5, 614 00 Brno  
Tel.: +420 545 213 643  
Fax: +420 515 536 356  
Email: soze@soze.cz, www.soze.cz

##### Caritas Prague (Charita)



Czech non-governmental, non-profit, humanitarian organisation providing both social and legal advice to applicants for asylum and foreign nationals and material assistance and emergency accommodation network Caritas asylum houses.

Azylový dům sv. Terezie  
Pernerova 20, 186 00 Prague 8-Karlín  
Tel.: +420 224 813 418, Fax: +420 224 813 413  
Email: uprchlici@charita-adopce.cz  
www.praha.charita.cz

##### Association for Integration and Migration (SIMI)



Czech NGO providing social, psychological and legal assistance to refugees and persons applying for permission to reside in the Czech Republic.

Senovážná 2, 110 00 Prague 1  
Tel.: +420 224 224 379, +420 224 239 455  
Email: poradna@refug.cz, www.uprchlici.cz

##### International intergovernmental organisation

##### Office of the United Nations High Commissioner for Refugees (UNHCR)

International organisation that protects the rights of refugees.



Nám. Kinských 6, 150 00 Prague 5  
Tel.: +420 257 199 860, Fax: +420 257 199 862  
Email: czepr@unhcr.org, www.unhcr.cz



## Annex 2: Information Material for Asylum Seekers at Prague Ruzyně Airport

[Information for seekers of international protection placed in the Reception Facility at Prague Ruzyně Airport](#)

**If you are afraid to return to your home country because of persecution which you may be exposed to for reasons of your race, nationality, religion, political opinion, or because you belong to a particular social group, or if on the basis of such reasons you reject the protection of your own country, you have the right to apply for international protection in the Czech Republic. You have the same opportunity also if in your home country you are in danger of torture or other inhuman or degrading treatment.**

**You may also be granted international protection when you cannot or do not want to return to your country of origin based on other humanitarian grounds, or if your closest relatives have already been granted international protection in the territory of the Czech Republic.**

**The Reception Facility at Prague Ruzyně Airport serves to accommodate applicants for international protection. You must remain in this Reception Facility and may not leave it so the proceeding on your application for international of the Ministry of the Interior protection may be initiated and carried out including identification procedures and medical examinations in accordance with the Asylum Act.**

### Frequently Asked Questions

#### [Can I leave the Reception Facility during the proceedings on granting international protection?](#)

In addition to the cases prescribed by law which are elaborated below, all persons who have expressed their intent to apply for international protection in the transit area of an international airport must remain at the Reception Facility at the airport throughout the proceedings for granting international protection.

#### [Can I be released from the Reception Facility and who decides?](#)

Within five days from the day of your declaration of intention to apply for international protection, you shall receive a decision from the Department of Asylum and Migration Policy of the Ministry of Interior of the Czech Republic (hereinafter referred to as "OAMP") whether you have been granted or refused permission to enter the territory of the Czech Republic. If the OAMP refuses you entry to the territory you may bring an action against the decision to Prague City Court within 7 days. The Court has a duty to make a priority decision on this matter. If you need legal assistance, please contact a legal advisor at any of the non-governmental organisations listed below.

After one month of staying at the Reception Facility you may request the OAMP to review of the reasons for you remaining in the Reception Facility. You may also request a review of the reasons for remaining in the Reception Facility one month after the Court's decision on the action brought against the OAMP's decision to refuse entry.

The OAMP must allow entry into the territory of the Czech Republic in compliance with the Asylum Act to the following:

- families with minor children,
- unaccompanied minors,
- parents with adult disabled children,
- persons with severe disabilities,
- pregnant women,
- persons who have been subjected to torture, rape or other forms of psychological, physical or sexual violence.

#### [How long will I be in the Reception Centre?](#)

The total duration of your stay may not exceed 120 days from the date of making a declaration of seeking international protection until the Regional Court in Prague issues a decision on the action regarding international protection.

#### [Who decides about my application for international protection?](#)

The first instance decision on granting international protection is issued by OAMP of the Ministry of the Interior of the Czech Republic.

#### [What happens during the proceedings on granting international protection?](#)

Before the OAMP issues a decision in your case, one of its workers will fill in an application form for granting international protection and will hold one or more personal interviews with you.

#### [If you require, you can ask the interview to be held and interpreted by a woman or man, as you choose.](#)

You will be advised about the interview in writing approximately 2 days in advance. During the interview you have the right to present specific evidence to prove your case or supply materials that you consider to be important for your case. Your obligation is to cooperate with the executives and provide true information to OAMP about your identity and the reasons for requesting granting international protection in the Czech Republic. The Czech authorities will always treat the information you supply as confidential and, without your explicit consent, shall not transmit it to any authority in the country of your origin.

### What does interview entail?

The interview is vital for your proceedings. It is held by a qualified OAMP worker. If the interview is held with the assistance of an interpreter, please make sure that the interpreter understands what you are saying well, otherwise your testimony may appear distorted and the OAMP may claim that your statement is not true. If you don't understand the interpreter well, request another interpreter immediately.

At the end of the interview, the OAMP worker will draw up a written report (in Czech) which will be kept in your file. We recommend that you ask the interpreter to interpret the whole statement to check the correctness of the recorded information. **If you have any remarks on the content of the statement, tell the OAMP worker and ask him/her to correct/add to the statement or to take a written record of your remarks. If you have no remarks on the statement, you will be asked to confirm the accuracy of the information therein by signing it.**

### How will I be informed about the OAMP decision?

The OAMP's decision written in Czech will be passed on at the reception centre. A relevant OAMP worker will inform you of the decision in the presence of the interpreter. If you refuse receipt of the decision without due reason, the decision shall enter into force on the date you refused to receive it. At this point the period for submission of an action against the OAMP decision also begins.

The result of the proceedings for granting international protection may be:

- you are granted international protection either in the form of asylum or subsidiary protection;
- proceedings regarding your application for granting international protection are stopped (for example, for reasons of inadmissibility of your application in the Czech Republic because its assessment is the responsibility of another EU Member State);
- your request for granting international protection is refused as unfounded or manifestly unfounded;

### How long do the proceedings for granting international protection last?

The OAMP can decide on your request within 4 weeks from the date of making the declaration of seeking international protection. If the OAMP takes longer to decide, the OAMP must admit you into the territory of the Czech Republic, where you shall wait for the outcome of your application for granting international protection in a Ministry of the Interior asylum facility.

### Is the OAMP's decision final?

If you do not agree with the OAMP's decision, you can bring an action against it to the Regional Court in Prague. You can bring an action in your native language, but not later than 7 or 15 days from delivery of the OAMP's decision. The period is determined according to the type of OAMP decision and is indicated in the guidance of the

particular decision. If this deadline is not respected, the right to review before the Court shall then expire.

In proceedings before the Regional Court in Prague, you are not required to be represented by a lawyer, but nevertheless we recommend that you always consult a legal adviser in preparation of the actions from any of the following non-governmental organisations. An NGO legal adviser is available free of charge. You can of course also use your own legal representative, but at your own expense.

### Which authority decides on the action against the OAMP's decision?

The Regional Court in Prague decides on the action. The Court must decide on matters of international protection as a priority, but the law does not set any specific time limit. However, if the Regional Court fails to issue a decision within 120 days from the date when you make a statement on international protection, the OAMP must promptly admit you to the territory of the Czech Republic and enable you to wait for the decision of the Court in a Ministry of the Interior asylum facility.

The decision of the Court is final. Only in exceptional cases you can submit a complaint to the Supreme Administrative Court. If you need more information on the possibility to appeal against the decision of the Court, please contact an NGO legal adviser.

### May I leave the territory of the Czech Republic during proceedings for granting international protection?

No, during proceedings for the granting international protection you must remain in the territory of the Czech Republic. For the duration of the proceedings you must also surrender your national travel document, without which it is impossible to travel. If you illegally enter, or attempt to illegally enter the territory of another state, the proceedings for granting international protection shall be stopped. If you illegally continue your journey into another EU Member State, this can have serious consequences for you; primarily, you can be arrested and returned to the Czech Republic.

### What if I decide to return home during the proceedings?

At any time during the proceedings for granting international protection you may withdraw your application for granting international protection and return to your country of origin or to a third country which is willing to accept you. Address the application for voluntary repatriation (in writing) to the social workers at the facility. If you submit the request during the proceedings for granting international protection within the time limit for bringing a judicial action, or within 7 days after the completion of proceedings regarding your action to the Regional Court, or within 24 hours after the completion of legal proceedings on your procedural complaint to the Supreme Administrative Court you may obtain a financial contribution to cover travel expenses and assistance with obtaining a travel document.

At any time during the proceedings for granting international protection you are entitled to the assistance of any of the following NGOs which provide free legal advice. If you choose to contact them, please remember to include your personal details: name, surname, date of birth and nationality, and a brief description of your situation or reasons why you are seeking protection in the Czech Republic. This will speed up contact being made.

If you wish to contact facility staff with some remarks or complaints, it is always best to do so in writing.

NGOs assisting refugees  
in the Czech Republic

#### Organisation for Aid to Refugees (OPU)



Czech non-profit, non-governmental organisation providing social, psychological and legal advice to asylum seekers and their families. OPU also provides free legal advice during expulsion procedures and arrest.

Kovářská 4, 190 00 Prague 9, Czech Republic  
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Email: opu@opu.cz, www.opu.cz

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Email: uprchlici@charita-adopce.cz  
www.praha.charita.cz

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Czech NGO providing social, psychological and legal assistance to refugees and persons applying for permission to reside in the Czech Republic.

Senovážná 2, 110 00 Prague 1  
Tel.: +420 224 224 379, +420 224 239 455  
Email: poradna@refug.cz, www.uprchlici.cz

#### International intergovernmental organisation

#### Office of the United Nations High Commissioner for Refugees (UNHCR)

International organisation that protects the rights of refugees.



Nám. Kinských 6, 150 00 Prague 5  
Tel.: +420 257 199 860, Fax: +420 257 199 862  
Email: czepr@unhcr.org, www.unhcr.cz

A map of Europe with the borders of all countries outlined in white. Hungary is highlighted in a dark blue color, while the rest of the map is a light blue. A dark blue horizontal bar is positioned at the top left, containing the word 'Hungary' in white text.

# Hungary

Refugees  
at the  
**Border**

# Report on the Border Monitoring Activities in Hungary\*

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\* This report was produced by the Hungarian Helsinki Committee, the National Police Headquarters and UNHCR Regional Representation for Central Europe.

# 1. Introduction

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In 2008 and 2009, the Border Monitoring Project continued to be implemented in the framework of a Tripartite Agreement, signed on 28 December 2006, between the Hungarian Helsinki Committee („HHC”), the National Headquarters of the Border Guard („Border Guard”) succeeded by the National Police Headquarters („Police”), and the UNHCR Regional Representation for Central Europe („UNHCR”).

The comprehensive report on the Border Monitoring Program’s first year was made public by the Tripartite Working Group at a press conference in February 2009 held at the National Police Headquarters. The event was hosted by the director general for law enforcement, who is the deputy of the National Chief of Police. The report on *Asylum Seekers’ Access to Territory and to the Asylum Procedure in the Republic of Hungary*<sup>1</sup> gives a detailed overview of the Tripartite Agreement’s aims and the cooperation within its framework, as well as of experiences from the border monitoring. In the report the three cooperating organizations agreed to continue their cooperation in the future and made joint recommendations for improving respect for the rights of persons seeking international protection.

This report summarizes events and activities carried out jointly in 2008 and 2009 based on reports from individual border monitoring visits; furthermore, it reveals how the recommendations, jointly agreed in the 2007 report, had been realized. This report does not include an explanation of the border monitoring methodology, the rights of foreigners, or an account of the protection offered by visited police facilities, as the detailed description of these may be found in the report on the program’s first year in 2007.

In accordance with the Tripartite Agreement and the practices established in 2007, the parties continued to discuss their experiences gained throughout 2008 and 2009 in the Tripartite Working Group. The cooperating parties continued to consider the tripartite cooperation, which was considered exemplary in Europe at the time of signature, to be of great importance, as well as the joint assessment of practical issues and maintenance of a professional working relationship, as it efficiently facilitates cooperation between the parties implementing the Agreement, it results in the effective exchange of information and it positively influences the practice of the collaborating parties.

The cooperation on border monitoring in Hungary has been recognized as an exemplary practice across Europe and has been cited as a positive development in several international meetings. Since the signing of the Agreement in December 2006, it has served as a basis for regulations concerning border monitoring cooperation arrangements between civil society organizations and the authorities in many European countries. Similar agreements have been concluded in Slovakia (in 2007), in Slovenia and Romania (in 2008), in Poland (2009) and the conclusion of a Tripartite Agreement is expected in Bulgaria in the first half of 2010. UNHCR headquarters organized a conference in Geneva in November 2008 to which the Regional Representation and the HHC were invited. The presentation on the experiences of the tripartite cooperation raised great interest and participants from the United Kingdom and Angola expressed their intention to adapt the Hungarian practice to their national settings.

The Parties to the Tripartite Agreement discussed the conclusions and recommendations of the 2008-2009 report, the draft of which was prepared by the Hungarian Helsinki Committee. The Police’s supplementary remarks to the findings are set in ***bold, italicized*** font.

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<sup>1</sup> The report is available in English and Hungarian on the Hungarian Helsinki Committee’s website: [http://helsinki.webdialog.hu/dokumentum/Border\\_Monitoring\\_Report\\_2007\\_HUN\\_FINAL.pdf](http://helsinki.webdialog.hu/dokumentum/Border_Monitoring_Report_2007_HUN_FINAL.pdf)



## 2. Cooperation between the Parties

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### 2.1. Methodology

The constructive working relationship among the parties to the Tripartite Agreement continued in 2008 and 2009. Police officers in service at the monitored border sections continued to be cooperative and assisted the HHC monitors' work on every occasion, and were open to discussing individual cases presented by the monitors as well as solutions to potential problems arising.

The program was carried out in 2008 and 2009 in accordance with its content as determined by the Tripartite Agreement. Attorneys contracted by the HHC to perform monitoring regularly visited short-term detention facilities for foreigners located along the Ukrainian-Hungarian border, at the Budapest International Airport – and from April 2009 – at the Serbian-Hungarian border. They also contacted foreigners detained at these facilities. The monitoring lawyers had access to the (anonymous) files of foreigners in the case of persons who had already been returned from Hungary or were otherwise not present. Under the Agreement, the HHC must inform the other parties of the Working Group about the specific venues to be visited, and the time of the visit, two days in advance. Reports made on each monitoring visit are sent by the HHC to the cooperating parties within 15 days of each visit.

In 2008, HHC monitors paid 19 visits to the Budapest International Airport and visited the Ukrainian-Hungarian border section on 13 occasions. In 2009, the HHC's monitors carried out 21 visits to the airport, 23 to the Ukrainian-Hungarian border section, and 31 visits to the Serbian-Hungarian border section (For the full list of visits, see Chapter 6.)

Although preliminary plans for the 2008 border monitoring program included monitoring at the Serbian-Hungarian border section as well, due to the sudden death of the HHC's attorney based in Kiskunhalas and unsuccessful attempts to recruit a new attorney, the border monitoring project at this border section could not be realized in 2008. The border monitoring activity at the Serbian-Hungarian border section recommenced in April 2009 after a new attorney was identified.

In 2008, the Police were unable to provide statistical data to the UNHCR and HHC in accordance with practices established in 2007– until their computer support software for administering the alien policing process had been modified in accordance with new legal and organizational conditions. Nevertheless, the HHC received statistical information from the Police in respect of particular organizational units - covering the period since the last monitoring visit - at the start of each monitoring visit, based on which the NGO could select files of interest and could also have access to these files as set forth by the Tripartite Agreement. Regular access to statistical data was resolved in 2009 in a satisfactory manner and information on persons expelled, ordered to return as well as on foreigners submitting asylum applications became again available to the cooperating parties every two weeks.

According to the Office of Immigration and Nationality (OIN), 3419 asylum applications were registered in 2007, 3118 in 2008 and 4672 in 2009. The rate of increase in asylum applications is close to 50% between 2008 and 2009. Meanwhile, the number of asylum claims submitted at the airport rose in 2008: compared to the 47 asylum claims submitted in 2007, 120 applications were registered at the Budapest Airport in 2008. In 2009, however, the number of asylum applications submitted at the airport decreased to 69 applications.

The UNHCR and the HHC are of the view that the 155 percent increase in asylum claims submitted at the Budapest Airport in 2008 once again confirms their earlier presumption that monitoring borders truly contributes both to advancing foreigners' access to the asylum procedure and also to effective cooperation between authorities and civil society. The presence and professional actions of the monitor also considerably enhanced the exercise of the right to seek asylum. Although only 69 foreigners applied for asylum in 2009 in the transit zone of the airport, this fact does not necessarily negate the above- mentioned presumption. The decrease in asylum claims at the airport is partly due to the overall gradual decrease of passengers at the Budapest International Airport as well as partly due to changes in human smuggling routes.

***As referred to in Chapter VII, Section 1.1. of the 2007 report, the Police continue to maintain the opinion -- without questioning that monitoring activities have brought many issues to the attention of the authorities***

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<sup>2</sup> Whereas approximately 8.3 million passengers passed through the airport in 2007, and 8,5 million in 2008, after accession to the Schengen area external traffic amounted to 2,5 million passengers, and in 2009 the overall number of passengers dropped to 8,1 million, of which only 1,7 million arrived from outside of the Schengen area.

**– that the rise in asylum applications can also be attributed to migratory trends and changes in methods employed by foreigners.**

**Our experience shows that Hungary is still not a destination country for refugees. As a consequence of Hungary's accession to the Schengen Area, border control activities on the EU's internal borders ended, creating a huge pull-factor for third country nationals (especially for those arriving illegally). In 2008, the number of third country nationals (typically from Kosovo and Afghanistan) entering our country unlawfully in the hope of an easier route to Western Europe with the end of border controls rose. Consequently, the number of apprehended foreigners at the Hungarian-Serbian and Hungarian-Ukrainian border sections rose and there was a rise in asylum claims as well. Persons arriving illegally express their protection claim after being arrested or after an alien policing decision has been taken in their case, when it becomes clear to them that they will not be able to continue their journey. It is still not typical for third country nationals who arrive in the country illegally to present themselves voluntary to the Police and express their claim for protection.**

**During the first five months of 2008, the number of asylum applicants at the Budapest International Airport rose significantly: typically, Egyptian and Pakistani nationals tried to transit at the airport in groups using the same method. When they failed to continue their journey, they submitted asylum applications. In some cases, they submitted claims written in Hungarian upon arrival to passport control officers. By June, group applications regarding both nationalities ended, and this resulted in a downturn in asylum applications.**

On several occasions in 2008 and 2009, foreigners who were placed provisionally in the premises at the airport for holding persons to be returned contacted the UNHCR Regional Representation or the HHC by telephone for further information and to express their claim for international protection. Once initial communication difficulties had been resolved, the Airport Police Directorate cooperated fully with the HHC and its monitor, within the frameworks set forth by the Tripartite Agreement on maintaining contact.<sup>3</sup>

## 2.2. Meetings of the Tripartite Working Group

The experiences of the Border Monitoring Project are evaluated at the meetings of the Tripartite Working Group. In 2008, members of the Working Group met on three occasions: on 9 April, 30 May and 27 November. Similarly, three meetings were held in 2009: on 18 February, 30 September and 21 December.

The first Working Group meeting took place on **9 April 2008** in Kiskunhalas (Alien Policing Department, Guarded Shelter) and at the Kelebia Border Control Field Office with the participation of staff members of the Bács-Kiskun County Police Department. At the meeting, Police staff provided information on the latest migration trends at the border section, on border control cooperation activities with organizations of the European Union (e.g. FRONTEX) and other Member States, and on the nationality composition of foreigners detained in guarded shelters. County Police Department staff reported on migration trends from the southern Balkans region - primarily from Kosovo - at the Serbian-Hungarian border section. According to the Police, accession to the Schengen zone and the independence of Kosovo may presumably be the reasons behind the significantly increased number of apprehended foreigners. Almost 90 percent of foreigners apprehended at the southern border sections up to April 2008 were of Kosovar origin. Foreigners were detained in the guarded shelter for shorter periods than previously. (The average length of detention in Kiskunhalas was 20.2 days in 2006, 13.9 in 2007 and 12.4 in 2008. Afterwards, persons whose expulsion could not be executed within a short time were transferred to the Nyírbátor detention facility, due to a lack of space). The Police informed the Working Group that during the first quarter of 2008, a total of 27 asylum claims were submitted by foreign nationals on the territory under the responsibility of the Bács-Kiskun County Police Department. According to information from the Police, 503 asylum applications were submitted during police procedures conducted in the county throughout the whole year, which shows a growing trend compared to 2007 (252 asylum claims were registered on the territory of the Kiskunhalas Border Guard Directorate in 2007).

In the framework of the meeting, the Working Group visited the border crossing checkpoint in Tompa (under the competence of Kelebia Border Control Field Office), where they observed the recently refurbished short-term holding facilities, part of which functions as a short-term holding facility for children (equipped with children's beds, baby changing room, toys and children's books covered by project funding). The Working Group also took part in a field trip where border guard patrols introduced them to their daily practices along the land border.

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<sup>3</sup> Tripartite Agreement, Article II. Section 3.



**On 30 May 2008** the parties of the Tripartite Agreement discussed the draft of the report on the first year of the Border Monitoring Program in the framework of a Working Group meeting held at the UNHCR Regional Representation for Central Europe. As the Police informed the Working Group that at the Serbian-Hungarian border section they had run out of information materials provided to them in 2007, the Working Group arranged for an additional supply of materials in order to ensure guidance for persons potentially in need of international protection.

At its third meeting held **on 27 November 2008**, the Working Group discussed the final text of the 2007 report, experiences from the training of mid-level police personnel held on 18-19 November, activities in 2008 and plans for the year 2009. UNHCR informed the parties about the outcomes of the conference organized by the UNHCR in Geneva, which focused on protection sensitive entry practices that meet international human rights norms. The UNHCR Regional Representation for Central Europe and the Hungarian Helsinki Committee also took part at the conference, where they shared the exemplary experience of the tripartite cooperation. The presentation was met with keen interest from several delegations. The representative of the Refugee Affairs Directorate from the Office of Immigration and Nationality was also invited to attend the Working Group meeting in November, thus an opportunity presented itself to discuss the issue of asylum seekers who continue to be held in alien policing detention during the in-merit phase of the asylum procedure.

The first 2009 meeting of the Tripartite Working Group was held **on 18 February 2009** at the National Police Headquarters in Budapest. This meeting aimed to discuss experiences regarding the implementation of the Agreement, especially the tasks related to the 2007-2008 annual report, as well as to review the 2009 annual plan. The parties discussed in detail the media coverage of the publication of the 2007 report (on 11 February, 2009) and its positive reception within the three cooperating organizations. The HHC and the UNHCR have expressed their appreciation to the Police for the excellent preparation and organization of the event and for offering the use of their premises.

With regard to training plans in 2009, the representatives of the police informed the Working Group that a meeting with the senior management of the Police College was under preparation, in order to include relevant training materials in the curriculum in all specialized fields related to access to asylum and to the identification of potential asylum applicants. The parties also discussed details relating to training events planned for border police personnel in 2009. Furthermore, it was agreed that they would jointly present their experiences from the project at the law enforcement conference to be held in June 2009 in Pécs.

At the Working Group meeting **on 30 September 2009**, the parties reviewed the draft structure and chapters of the teaching materials to be prepared for the Police College and agreed to finalize the text in early 2010. Additionally, the Working Group agreed to consider as the 2009 annual field visit their participation at the cross-border cooperation event that was held on 19-22 October 2009 in Uzhgorod, Ukraine and the visits to the Hungarian, Slovak and Ukrainian detention facilities within the framework of this event.

The third meeting of the Tripartite Working Group took place **on 21 December 2009**, when the parties discussed concerns raised by UNHCR and the HHC about the increased signals, from several sources, that asylum seekers from Ukraine have no access to the asylum procedure in Hungary and that they are returned to Ukraine without a registration of their asylum claim. In order to investigate these concerns, the Working Group agreed on an action plan: the Police will investigate whether the complainants are known to them based on their files, while the HHC will inform the parties in a separate summary about the cases in 2009.

## 3. Main Findings of the Border Monitoring Program

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The Parties to the Tripartite Agreement gave priority in 2008 and 2009 to fulfilling the joint recommendations agreed in the report on the program's first year.

### 3.1. The Application of Article 33 (1) of the 1951 Geneva Convention

The border monitoring program is primarily aimed at monitoring the practice of respect for the protection of the rights of foreigners who are potentially seeking international protection. The HHC's monitors examine, among other things, if:

- i) the foreigners concerned have an actual possibility to apply for asylum in Hungary;
- ii) the authorities take into account the special needs of vulnerable foreigners during their procedures;
- iii) foreigners under alien policing and other procedures are properly informed.

During the implementation of the program in 2008 and 2009 – taking into account the recommendations made in the 2007 report<sup>4</sup> – HHC attorneys paid particular attention to questions connected with the application of Article 33 of the 1951 Geneva Convention.

Article 33 (1) of the 1951 Geneva Convention sets forth the general principle of non-refoulement: „No Contracting State shall expel or return („refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

Several years of experience shows that exercising the right to seek asylum in practice is possible only if the communication between the Police and the foreigner allows the potential asylum seeker – based on the information available to him/her – to express his/her wish to submit an asylum application in a way that is comprehensible to the Police, that is, for the asylum claim to effectively reach the authorities, for them to „hear” it.

The practical importance of measures taken prior to the enforcement of a return measure<sup>5</sup> is that the Police must conduct these investigations usually within a few hours, while they are under no legal obligation nor is there the practical possibility to carry out a longer and more detailed interview of the foreigner.

Regarding the practical findings collected during the implementation of a return measure and expulsion<sup>6</sup>, it is important to highlight the fact that HHC monitors experienced different practices at the airport and at the Ukrainian-Hungarian border section as a result of different regulations concerning the two legal institutions. While at the Budapest International Airport return orders are common, the expulsion of foreigners irregularly crossing the border is typical at the Ukrainian-Hungarian border section.

According to reports by the lawyer monitoring the **Budapest International Airport**, based on files accessed, on several occasions the Police did not request the position of the OIN unit on duty to determine if the principle of non-refoulement was applicable in the case, although the nationality of the foreigner in question would have justified it.

- On 21 July 2008 the Airport Police Directorate returned seven members of an Afghan family to Damascus, Syria, in the course of which – according to documents found in the files – no information request was sent to the OIN unit on duty to determine the applicability of the *non-refoulement* principle.

The Airport Police Directorate did not commit a breach the law, since according to law<sup>7</sup>, consulting the OIN is only obligatory in case of doubt concerning risks the foreigner(s) may face upon return. The case shed light on the shortcomings of the legislation in force, mainly in regards to the lack of an interview for potential asylum seekers. According to the HHC, the argument of the Airport Police Directorate's colleagues -- that the family was accommodated for a few hours in the premises for holding persons who are about to be returned, thus they could have accessed information on the possibilities of seeking asylum through the information materials displayed in

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<sup>4</sup> See the report on Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary, Section VII.2.1., page 53

<sup>5</sup> Act II of 2007 on the entry and stay of third country nationals („TCN Act”), Section 40

<sup>6</sup> TCN Act, Section 43

<sup>7</sup> Government Decree no. 114/2207. (V.24.) on the execution of TCN Act, Article 124 (2)

the leaflet dispensers -- is not sufficient in terms of assessing the need for international protection. In any case, the composition of the family should have been assessed with special care at least in terms of whether return to the country of origin or a third country is safe for them, as well as their special needs and possible vulnerability resulting from such needs.

Contrary to practice at the airport, the monitoring activities of HHC at the **Ukrainian-Hungarian border section** focused primarily on expulsion orders. It could be established that regarding implemented expulsion orders, the Police, in compliance with legal obligations, have consulted the OIN unit on duty in each case. In cases where the necessity of an expulsion order arose, the OIN gave the Police its country of origin information assessment – based on the registered minutes of interviews – during the assessment of the *non-refoulement* principle. The HHC's experience shows that the country information assessment carried out by the OIN and its conclusions are often too short, and fail to provide sufficient time and space for an exhaustive assessment and consideration of the specific circumstances of the case. Hence, in certain cases, OIN country information assessment is not appropriate to allow for expulsion to be ordered based on a thorough assessment of all of the relevant circumstances of a case.

Although the OIN is not a member of the Tripartite Agreement, as it plays a key role in assessing the *non-refoulement* principle, it is important to note that as an administrative authority competent in this matter, it is obliged to respond to requests from the Police based on its up-to-date country of origin information database and other professional materials, since measures taken by the Police rely upon it.

While carrying out the border monitoring project in 2008 and 2009, the Hungarian Helsinki Committee became aware, through its contracted lawyers or the concerned foreigners, of some cases - which are difficult to reconstruct after the fact -- where the foreigners claimed that they had tried to seek asylum in Hungary, but no official data was later found in police files. There may be a number of reasons why the files did not contain this information: for example, the foreigner did not find a common language to clearly communicate his/her intention to seek asylum to the police officer. It is also possible that some expressions referring to asylum were used but the police officer did not consider them as an asylum claim.

- Since September 2008, the Hungarian Helsinki Committee has noted an increased frequency of cases where foreigners who were potentially in need of international protection due to their citizenship, personal circumstances and/or special vulnerabilities (women, children, separated minors etc.) were readmitted at the Ukrainian-Hungarian border to the Ukrainian authorities. From personal interviews carried out by Ukrainian non-governmental organizations, the Hungarian Helsinki Committee was informed that the Hungarian Police readmitted a number of Somali citizens to the Ukrainian authorities: 2 persons on 23 April, 1 person on 19 August, 2 persons on 30 September and 1 on 19 December 2008. All these Somali nationals stated that they had tried to ask for asylum in Hungary.

***All third-country nationals readmitted to the Ukrainian authorities were interviewed with the participation of an interpreter; the foreigners' statements were registered in official interview records taken by the Police. Consequently, based on the available documents, it cannot be concluded with full certainty that the above-mentioned foreigners could not submit asylum applications contrary to their intentions. Prior to ordering expulsion, in all cases the Police contact the competent asylum department of the Office of Immigration and Nationality (OIN) by sending the interview record for the purpose of assessing the applicability of the non-refoulement principle. Expulsion will not be ordered to a country that the person may not be expelled to according to the OIN's opinion.***

***Regarding unaccompanied minors, the proceeding authority takes the necessary measures in all cases, under section 40 (5) of the Act CXL of 2004 on administrative procedures and services, to appoint a case-guardian, who will then take part in all stages of the procedure. The Police would like to note that among the clients referred to in the above examples, some had claimed to be under 18 years of age before the Hungarian authorities, hence case guardians had been appointed for the duration of the alien policing procedure. However, the same persons later gave different personal data to the aforementioned Ukrainian NGOs, according to which they would have been considered as adults under the Hungarian law.***

***The competent Szabolcs-Szatmár-Bereg County Police Headquarters' Alien Policing Department and relevant border policing field units registered 555 asylum applications in the course of 2008, out of which 145 persons claimed to be Somali nationals. In April 2008, 41 asylum claims, 6 asylum claims in August, 6 asylum claims in September and 20 asylum applications in December were registered by Somali nationals, which were all forwarded to the asylum authority. In the course of the alien policing proceedings the persons referred to above did not indicate their intention to seek protection, yet the aforementioned statistics confirm that in such cases the Police act according to its obligations set out in law.***

The Hungarian Helsinki Committee finds particularly worrisome the readmission of those foreigners whose compatriots are otherwise all granted some form of international protection by the OIN: Somali, Afghan, and Iraqi asylum seekers were mostly recognized as refugees or granted subsidiary protection, while in a few cases in 2008 they were granted tolerated stay. The OIN's opinion was available in all of the examined files, which stated that „in respect of Ukraine the principle of non-refoulement is not applicable”, therefore the prohibition on return did not apply.

The OIN's practice on the examination of the principle of *non-refoulement* in respect of Ukraine appears to be contrary to the position of UNHCR on Ukraine from October 2007.<sup>8</sup> Authorities are obliged to examine individually in the case of each asylum seeker if the person concerned would face torture and/or inhuman or degrading treatment within the meaning of Article 3 of the European Convention on Human Rights in the country to which the person is to be returned. A further condition that should be examined is whether the receiving country respects the principle of *non-refoulement* and the person concerned is not sent to territories where his or her life, physical integrity or freedom would be threatened. Beyond the above negative conditions, a country can be regarded as a safe third country if international protection is available as set out in the 1951 Geneva Convention. According to the position of UNHCR and the Hungarian Helsinki Committee, realistic international protection in Ukraine is questionable, therefore in certain cases Ukraine cannot be considered as a safe third country.

According to the information obtained by the UNHCR and the HHC, there were no substantive changes and developments in the functioning of the Ukrainian asylum system or regarding the content of the international protection granted by Ukraine during 2008 or 2009. Colleagues from the UNHCR Regional Representation in Kyiv reported cases where asylum seekers who wished to avail themselves of legal remedies but were prevented from doing so, were forcibly removed to their country of origin in 2008. As an example, the UN documented a case of 11 asylum seekers from Sri Lanka being sent back to their country of origin on 10 March 2008.<sup>9</sup>

#### ***Citizens of Sri Lanka were not readmitted to Ukrainian authorities from Hungary in 2007, 2008 or 2009.***

The UNHCR informed the members of the Working Group about a case from 2008 that illustrates the examination of the principle of non-refoulement in practice and the current situation of the Ukrainian asylum system.

- An unaccompanied minor of Somali nationality requested the UNHCR's assistance in November 2008, after failing to express his intention to seek asylum in Hungary upon his apprehension by the Hungarian police and following his readmission to Ukraine. During the alien policing interview the minor stated in English that he had fled his country of origin because of the tribal war. First he travelled to Russia and then to Ukraine, where he tried to seek assistance from UNHCR. He also said that he did not want to go back to Somalia and he wanted to remain in Europe hoping to find a better life. In compliance with its obligation set out in the Act on Third Country Nationals, the Police contacted the OIN unit on duty after the office hours were over (after 4 p.m.) to obtain information regarding the application of the principle of *non-refoulement*<sup>10</sup>. The same day, at 6 p.m., the OIN notified the Police about the result of the examination of *non-refoulement*: the OIN established that the expulsion and removal of the Somali unaccompanied minor to the territory of Ukraine would not amount to refoulement. The Somali minor was readmitted to the Ukrainian authorities at 7:30 p.m. that day.

In his letter written to the UNHCR, the Somali minor described that after being readmitted to Ukraine he was seriously ill-treated by Ukrainian authorities and detained for six months. He added that despite his efforts to seek the assistance of NGOs, he was left without help and had lived on the streets in Ukraine ever since.

#### ***In connection with the above case the UNHCR requested clarification from the Police in November 2008.***

***Based on a notification by local residents, a police patrol checked the person's identity – as a member of a group of six -- at a bus stop. As they could not verify their personal identity and the lawfulness of their stay in Hungary, they were taken into short-term arrest under Section 67 (4) of the TCN Act. At the time of registering his personal data (based only on his statements), the Police established that the foreigner in question was an unaccompanied minor who spoke English, and appointed a case guardian and an***

<sup>8</sup> UN High Commissioner for Refugees, UNHCR Position on the Situation of Asylum in Ukraine in the Context of Return of Asylum-Seekers, October 2007, Corr. Available at UNHCR's website: <http://www.unhcr.org/refworld/docid/472f43162.html>

<sup>9</sup> UN press release: <http://www.un.org.ua/en/news/2008-03-10/>

<sup>10</sup> Government Decree no. 114/2207. (V.24.) on the implementation of TCN Act, Section 124 (3)

**English interpreter according to Section 40 (5) of the Act CXL of 2004 on administrative procedures and services.**

**The foreigner was informed about his rights and obligations and interviewed in the presence of the case guardian and the interpreter. During the interview he said that he had left Somalia in November 2007 due to the tribal war. With assistance from a Somali man, he was smuggled to Moscow for a fee, where he tried to seek assistance from the UNHCR but was told that it would be a lengthy procedure. Thereafter he traveled to Ukraine with the help of a smuggler. His travel documents were destroyed at the Russian-Ukrainian border. He again sought the UNHCR's assistance in Ukraine and he received a stay permit for two months. He travelled to Kyiv by taxi 15 days prior to being caught by the Hungarian police. A Ukrainian man who advised him to continue his journey by himself took him to the Hungarian-Ukrainian border. He met the five other intercepted foreigners in a village. He also stated that he did not want to return to Somalia and he wanted to stay in Hungary hoping to have a better life.**

**The Police are aware of the UNHCR's position on the asylum system in Ukraine related to the return of asylum seekers, however, according to the legal regulations in force, the examination of non-refoulement is referred to the competency of the OIN. Therefore the Police took measures to obtain information regarding the principle of non-refoulement under Section 124 (3) of the Government Decree no. 114/2207. (V.24.) on the implementation of the TCN Act. As office hours were already over, the request was sent to the On-duty Department of the OIN with the records of the interview attached. In its response, the OIN informed the Police that the expulsion and removal of the Somali person to the territory of Ukraine would not amount to refoulement, based on the available information and the content of the interview records.**

**After having established that the conditions to expel and remove the foreigner to Ukraine had been met, the case was transferred to the competent Alien Policing Department of the Police, which ordered the expulsion of the person under Section 43 (2) of the TCN Act on the basis of illegal entry to the country, and the forced removal under Section 65 (1) (c) of the TCN Act. Section 48 (1) of the TCN Act sets out that expulsion has to be carried out primarily under the readmission agreements in force. The Government Decree of the TCN Act sets out in Section 114 (2) that the Police are competent in expulsion cases only if the foreigner was intercepted in a border area while the Police had been carrying out border control tasks and the expulsion may be executed only under the readmission agreement. The Police's Alien Policing Department initiated the readmission of the foreigner directly at the Ukrainian counterpart in a so-called simplified procedure under Section 7 (1) of the Ukrainian-Hungarian readmission agreement signed on 26 February 1993 in Budapest, promulgated in Hungarian law by Act XXIV of 1995, and under Section 6 (1) of the bilateral agreement implementing the former agreement, signed on 27 October 1994 in Kyiv. The Ukrainian authorities accepted the readmission of the foreigner.**

**In the alien policing procedure the foreigner -- who had had access to information leaflets published by the UNHCR and the HHC -- did not express his intention to seek asylum in Hungary, moreover he was cooperative throughout the procedure, he signed the decisions and did not avail himself of his right to seek legal remedies. The case guardian was present throughout the proceedings.**

The Hungarian Helsinki Committee is of the view that the above case illustrates the vulnerable situation of unaccompanied minors who might be potential asylum seekers on the basis of their citizenship or national minority status. Section 45 (5) of the TCN Act sets out the conditions for ordering the expulsion of an unaccompanied minor: "an unaccompanied minor may be expelled only if adequate protection is ensured in his country of origin or in a third country by means of reuniting him with other members of his family or by state or other institutional care."

The above mentioned case and its later developments clearly indicate that prior to expulsion the competent authority did not take into consideration the existence of all circumstances foreseen by the law, since the six months long detention in Ukraine cannot be regarded as family reunification or institutional care. The following questions hence arise: what is the basis on which the authority orders the expulsion, does the background information refer to satisfactory conditions in Ukraine, and are the authorities in a position to follow up the case after the decision has been taken?

**The above-mentioned „unaccompanied minor” later again appeared on two occasions in the Police's view, first in August 2008 (which denies the fact of a six month detention in Ukraine) and second in 2009. Since he was never in possession of valid personal identity documents and he used different identities (name, date of birth) in all of these procedures the Police only found out in 2009 that the three persons were in fact only one. In the course of the second and the third arrest he claimed to be an adult (nearly 10**



**years older). He expressed his intention to apply for asylum in 2009, which was registered by the Police and forwarded to the competent asylum authority of the OIN.**

The present report does not aim to fully present the problem of readmissions to Ukraine; however the cooperating parties are convinced that the OIN should also be included in the evaluation of its country reports regarding the principle of *non-refoulement*.

The Parties to the Tripartite Agreement previously recommended in the 2007 border monitoring report<sup>11</sup> that in the interest of facilitating smooth coordination between the relevant state authorities, the representative of the OIN should be invited to participate in meetings of the Tripartite Working Group on an ad-hoc and consultative basis. Consequently the OIN was invited to the Working Group meeting held on 8 November 2008 and was represented by a representative of the Asylum Directorate.

In 2009, NEEKA, a Ukrainian NGO, informed the HHC of about 20 readmission cases at the Ukrainian-Hungarian border. The cases of the readmission of Somali and Afghan nationals were documented in questionnaires by NEEKA containing information both on the place of interception on the Hungarian side and the place of readmission on the Ukrainian side of the border, as well as other relevant circumstances stated by the interviewees themselves. Amongst the readmitted foreigners eight persons claimed to be less than 18 years of age.

The HHC informed the UNHCR Regional Representation about the cases and contacted the Police on 4 May 2009 in connection with the readmission of five Somali nationals. The Police confirmed that they had already known all five persons and they informed the HHC that these foreigners did not claim asylum during their alien policing interviews. Upon the request of the Police, the OIN – which is the competent body in assessing the risk of refoulement -- did not establish that the readmission of these persons to Ukraine would be in breach of the principle of non-refoulement. Consequently the Police considered that the above procedures were carried out in full compliance with legal regulations.

The increasing number of potential refoulement cases – discovered as a result of the cross-border cooperation with Ukrainian NGOs -- confirm that it is necessary to further improve **the identification of and communication with persons potentially in need of international protection** to ensure that those who wish to express their intention to seek international protection are able to do so.

On 21 December 2009 the Tripartite Working Group agreed that cases concerning the readmission of potential asylum seekers to Ukraine, which the UNHCR Regional Representation in Kyiv referred to the Regional Representation in Budapest, would be investigated. Although it is only possible to compare the foreigners' statements found in official police files with the data registered by Ukrainian NGOs, and the actual situations cannot be fully reconstructed, the cooperating parties will still try to satisfactorily resolve the questions that arose from the above cases. To this end, with the consent of the foreigners concerned – who were later successful in arriving in Hungary and now are living in Hungary, the majority as recognized refugees, -- the Working Group will organize personal interviews to further clarify the situation after the examination of available documentation.

### 3.2. The Application of Article 31 (1) of the 1951 Geneva Convention

When carrying out the border monitoring program in 2008 the application of Article 31 of the 1951 Geneva Convention came into the foreground in the course of implementing the recommendations of the 2007 border monitoring report.<sup>12</sup>

Article 31 (1) of the 1951 Geneva Convention provides:

*“The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”*

The UNHCR's and the HHC's position is that the Hungarian authorities fail to properly apply Article 31 (1) of the 1951 Geneva Convention because the criminal liability of asylum seekers for forging public documents is established without regard to this particular provision of the Convention. Due to the special characteristics of the

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<sup>11</sup> See the report on Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary, Section VII.2.9., page 55.

<sup>12</sup> Regarding the application of Article 31 of the 1951 Geneva Convention in Hungary, please see Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary, Section VII.2.9., page 31.

right to asylum and the circumstances of flight, asylum seekers are generally not in a position to comply with the requirements of legal entry (possession of national passport and visa) into the country of refuge. It may happen that in the situation when someone's life, physical integrity, or freedom is at risk, the refugee makes use of illegal means, such as false or forged documents, to flee his/her country of origin. Hence the use of forged documents may in many cases be an essential and unavoidable part of the flight from persecution. It is important to note that according to UNHCR's position, as refugee status is declaratory, Article 31 of the 1951 Geneva Convention also covers asylum seekers whose claim has not yet been determined. As the Hungarian Criminal Code and the 1951 Geneva Convention are both part of domestic law – the latter by virtue of Law–decree 15/1989 -- the 1951 Geneva Convention is applicable law in Hungary, which provides legal grounds for Hungarian prosecutorial authorities involved with refugees to refrain from criminal procedures, in compliance with the 1951 Geneva Convention.

According to the view of UNHCR, in the interest of implementing Article 31 (1) of the 1951 Geneva Convention -- and similarly, rights protected by the European Convention on Human Rights -- state parties have undertaken to apply concrete measures to ensure their international legal obligations. Therefore, the UNHCR position is that in cases where the criteria for applying Article 31 (1) of the 1951 Geneva Convention are fulfilled, asylum seekers or refugees should be exempt from criminal procedures.

In contrast, practice shows that Hungarian authorities, in applying Section 274 (1) (b) of the Hungarian Criminal Code in criminal procedures, do not apply the aforementioned provision of the 1951 Geneva Convention, nor take into account refugees' special circumstances. For Hungary to fully comply with international law obligations, the Hungarian criminal provisions on the use of forged public documents should be promptly brought in line with the 1951 Geneva Convention.

In such cases where the applicability of Article 31 (1) arises, the Hungarian authorities generally argue that they have to apply the provisions of the Penal Procedure Code, and that they are therefore obliged to report the criminal act once they become aware that the foreigner has been using a false travel document. The HHC's view is that the Penal Procedure Code is in violation of the 1951 Geneva Convention; thus Hungarian authorities are not acting in line with the object and purpose of the international treaty.

***According to Article 31 (1) of the 1951 Geneva Convention, states parties cannot impose penalties on persons covered by the Convention. However, the Police, as an investigating authority, must initiate criminal proceedings in case of a well-founded suspicion of the use of false public documents. An exception arises if the foreigner uses the false or forged travel documents, or someone else's genuine travel document, in the interest of entry into the country, provided that an alien policing procedure should be carried out against the foreigner<sup>13</sup>; i.e. when the foreigner's return is ordered and he/she does not enter the territory of the Republic of Hungary. The Border Guard (Police) are not authorized to impose penalties. In cases where the foreigner applies for asylum before his/her return, the criminal procedure may start ex officio. It will not be more difficult to exercise the right to seek asylum as a result of the criminal procedure, as the asylum authority will have been already notified of this intention.***

***In its own procedures, the Police cannot take into account the fact that the asylum seeker had committed unlawful actions in the interest of having access to asylum, because the asylum authority will independently consider this in the asylum procedure.***

In 2008, the HHC continued to provide legal representation to asylum seekers who were charged with using forged public documents.

- Iraqi asylum seekers (who were later recognized as refugees) who were provided with defense counsel by the HHC were found guilty by the XVIII and XIX district courts in Budapest, which ordered their probation on account of the forgery of official documents and other criminal offences. The second instance court (the Metropolitan Court) acquitted the principal defendant with regard to the application of Article 31 of the 1951 Geneva Convention, as a ground for exemption from culpability.<sup>14</sup>

The appellate court accepted the arguments of the HHC's attorney that the conditions for applying Article 31 of the 1951 Geneva Convention have been met in the principal defendant's case. The second instance

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<sup>13</sup> Section 170 (6) of the Act XIX of 1998 on the Penal Procedure Code

<sup>14</sup> Please see Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary, page 33. Metropolitan Court, judgement no. 28.Bf.XVIII.6559/2008/17.

court found that by explaining in detail during his first interrogation his reasons for fleeing his country of origin and by not having the intention to hide from the authorities, the Iraqi citizen fulfilled the condition set out in Article 31 that requires the applicant to present him/herself without delay to the authorities. In contrast to the position taken by the first instance court, the second instance court also established that the asylum seekers would not have been granted adequate protection in Turkey, as Turkey applies a geographical limitation to the 1951 Geneva Convention and only offers protection to asylum seekers from Europe. It should be noted that although the OIN also informed the first instance court that Turkey maintains an ambiguous position towards asylum issues, this court failed to appropriately assess the refugee situation in Turkey.

In April 2008, the UNHCR sent a request to the Prosecutor General about the interpretation and application of Article 31 of the 1951 Geneva Convention. In his reply dated 18 June 2008, the head of the Department for Supervising Investigations and Preparing Charges at the Office of the Prosecutor General explained that beyond the suspension of the criminal procedure, he would only see grounds to establish exemption from culpability (Criminal Code Section 22 (i)) if the criteria laid down in Article 31 were completely fulfilled and the asylum seekers were later recognized as refugees by the asylum authority or the court. Hence, according to the interpretation of the Office of the Prosecutor General, Article 31 may not be applied in the case of foreigners who later receive authorization to stay (non-refoulement status), as they are not covered by the scope of the 1951 Geneva Convention.

The Working Group also agreed to continue discussions on the immigration, criminal and asylum law aspects of Article 31 of the 1951 Geneva Convention at the international scientific conference of the Hungarian Society of Law Enforcement Studies and the Hungarian Society of Defense Studies that was held in Pécs in June 2009. Members of the Working Group gave presentations at the session on alien policing matters on the functioning of the Tripartite Agreement, practical experience, and the results of the border monitoring program as well as international feedback.

The number of foreigners who sought assistance from the HHC with regards to criminal cases related to Article 31 of the Geneva Conventional increased significantly in 2009, which was a substantial change from previous years. These foreigners were placed in pre-trial detention on the basis of a well-founded suspicion of having used false public documents before they had submitted their asylum applications.

In 2009, 17 foreigners sought the HHC's assistance in such cases. The HHC's lawyers acted as defense counsel in 13 cases, and 16 cases involved representation in the asylum procedure (altogether 6 Afghans, 9 Somalis and one person from Sri Lanka were represented by the HHC). Although the courts did not prolong the pre-trial detention in every case, the 17 clients (with the exception of three Somali unaccompanied minor girls and one boy) were detained in pre-trial detention for 5-6 months on average.

- An HHC lawyer acted as defense counsel for an Afghan family of 6 persons who had been intercepted at the airport on 24 December 2008, having used forged travel documents. The parents and the father's 15-year old brother were placed under short-term (72 hour) arrest, then in pre-trial detention; the children (aged 2, 4, 6 years) were taken into custody by the Metropolitan Child Care Service in the 8th district in Budapest.<sup>15</sup> The eldest daughter had serious muscle atrophy in the legs that had to be treated in Heim Pál (Children's) Hospital on several occasions. The father's handwritten asylum application covering all family members dated 31 December 2008 did not arrive at the OIN until February 2009, only after they had signed the power of attorney for the HHC's lawyer. The parents were only able to meet their children once a month in accordance with the general rules applying to pre-trial detainees. Although the defense counsel submitted several motions to request the termination of the clients' pre-trial detention, the court repeatedly rejected these, arguing that the Afghans would escape from the authorities if they were released. The 15-year old brother (who had been detained amongst adults for 4 months despite his age) was finally released from pre-trial detention on 24 April 2009 and the criminal procedure was also terminated in his case, with the prosecutor's reprehension order, on the very same day. By the time the parents were released to the OIN's reception centre in Békéscsaba on 22 June 2009, the young brother had already disappeared from the shelter for unaccompanied minors in Bicske. Due to the fact that the eldest daughter did not receive proper medical treatment in the reception centre, her physical conditions worsened significantly. The family absconded from Békéscsaba on 28 July 2009. The parents were found guilty and sentenced to pay a fine in their absence.

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<sup>15</sup> The case was published in a report by the weekly Magyar Narancs on 14 May 2009. It is available in Hungarian here: <http://manacs.hu/index.php?gcPage=/public/hirek/hir.php&id=18973>



- In the case of another Afghan family, the HHC's monitor at the airport witnessed a positive example of not ordering the pre-trial detention of the adult family members. On his visit to the airport on 19 May 2009, alien policing department staff informed the monitor that the criminal investigation department was just conducting the interrogation of an Afghan family who had been intercepted with forged travel documents when they had tried to transit at the airport. However, the Police did not initiate their pre-trial detention with special regard to their asylum application; instead, the family was transferred to Békéscsaba to the reception centre the same day. A further positive development emerged in the second half of 2009: the Police and the competent prosecutor's office seemed to have changed their practices regarding foreigners who were charged with the use of forged official documents, and the pre-trial detention of asylum seekers was initiated less frequently.
- According to the files consulted at the airport, in some cases during January and February 2009, the prospect of a criminal procedure, but mostly the pre-trial detention, significantly influenced foreigners' intentions to submit (or maintain) an asylum application. A person belonging to the Kurdish minority in Turkey had submitted an asylum application, but withdrew it after the criminal investigation department of the Police had interrogated him, because he was informed that he would be detained in a prison in Hungary. Later on he re-evaluated his situation and claimed asylum again despite the threat of pre-trial detention and imprisonment. The HHC is concerned that the practices of investigating authorities and the prosecutor's office gives the asylum seekers the impression that they would be punished for seeking asylum.

The HHC initiated a meeting with the 18<sup>th</sup> and 19<sup>th</sup> district Prosecutor's Office in the spring of 2009, due to the increasing number of asylum seekers charged with having used forged official documents, and in order to discuss the application of Article 31 of the Geneva Convention and Section 274 (1) (b) of the Hungarian Criminal Code. Based on the agreement concluded at the meeting, which was eventually held on 11 May 2009, the HHC shared summary reports on the human rights situation in the seven most relevant countries of origin in the asylum procedures with the Prosecutor's Office in July 2009.

Asylum seekers charged with the use of forged official documents contacted the HHC in different phases of their criminal proceedings. In some cases, the HHC's monitor met the asylum seekers at the airport upon interception when the investigation was initiated, whereas in other cases (Somali, Afghan and Lebanese) asylum seekers who had already been held in pre-trial detention in the Budapest Remand Prison informed the HHC that due to communication difficulties, they could not claim asylum up until that moment.

Five of the HHC's 13 clients represented in the criminal proceedings were later recognized by the OIN as refugees, and two persons as beneficiaries of subsidiary protection. In these cases the HHC's lawyers submitted motions for applying Article 31 of the Geneva Convention in the pending criminal proceedings. It should be noted that the staff of the Airport Police Directorate were cooperative, and informed the monitor about criminal investigations initiated at the airport in all cases. At the same time, they underlined that criminal investigations are within the competence of the criminal department and not the alien policing department.

Despite the findings of the above-mentioned judgment (no. 28.Bf.XVIII.6559/2008/17) by the Metropolitan Court, jurisprudence remained incoherent in cases that raise the application of Article 31 of the Geneva Convention. Experience shows that in some cases, courts imposed fines on the asylum seekers or refugees, regardless of the fact that these persons do not have an income or assets. The first instance court also rejected the defense counsel's motion to suspend the procedure until the refugee status determination procedure finished in order to see whether Article 31 of the Geneva Convention would be applicable.

### 3.3. Improving Communication between the Police and Foreigners

Based on border monitoring visits paid to the Budapest Airport, the HHC's monitor reported on several occasions that police staff increasingly used the services of interpreters over the telephone in order to resolve communication difficulties with foreigners. Furthermore, the monitor at the Budapest Airport reported that in several cases foreigners under the return procedure had been given written information about their rights and responsibilities in their native language, and that the police have started to use return decision forms in foreign languages.

- Police officers on duty used the help of an Arabic-speaking passenger during the submission of asylum claim by two Egyptian citizens on 2 January 2008.
- An Albanian citizen arrived from Tirana, Albania on 20 July 2008. The police ordered his return due to a SIS-hit. The person was given a decision and information sheet in Albanian.

- Turkish citizens who arrived on 25 March 2008 and 19 April 2009 received the decision in Turkish and an information leaflet in English.
- A Kosovar woman from Prishtina, Kosovo arrived in Budapest on 2 December 2008 and was given the decision on return in Albanian and an information leaflet in English.
- Proceeding police officers made use of phone interpretation on several occasions, for instance on 14 January 2009 when they interviewed an Iraqi asylum seeker.

The above cases confirm that communication difficulties may be resolved with a flexible and solution-oriented approach by the Police. The practice illustrated by the above examples may be considered as a positive development that facilitates the clear and comprehensive provision of information for foreigners. It also enables the third-country national to express his/her need for international protection. Furthermore, this allows the authorities to gather more precise information about foreigners subjected to alien policing procedures.

However, there were still some cases where Afghan and Iraqi citizens only received the decision and an information leaflet in English. The HHC is of the opinion that official documents written in a language that the foreigner concerned hardly understands are insufficient to fully inform these persons about their legal situation and of the available remedies.

- An Egyptian woman was returned with her two children on 25 March 2008. She only received the information sheet and the decision in English.

***The Egyptian woman spoke English. It can be established from her case file that she had received the decision on return in Arabic and the information leaflet in English.***

- An Afghan family of seven, who were returned to Damascus, Syria on 21 July 2008, was also provided with an English information leaflet.

***The return decision was communicated by an English speaking staff member of the Police, which was approved by the signature of the foreigners in question.***

- An Iraqi citizen who arrived from Damascus on 24 July 2008 was provided with the information leaflet in English before being returned to Syria. The return decision was communicated in English by an interpreter and it was signed by the Iraqi national.
- On 5 March 2009 a woman and her child arriving from Prishtina, Kosovo who had unknown nationality received the information leaflet in Hungarian.

The Police are not obliged by law to hand over decisions and information leaflets in foreign languages, and these have to be communicated orally to the client in his/her native language or in another language he/she understands. The 2007 report criticized on several occasions the fact that foreigners under return procedures only received official documents in Hungarian. Consequently, based on the recommendation in section VII.2.3. of the report, instead of using Hungarian information materials, the Police introduced official information and sample documents in foreign languages and also communicated the decisions in the client's native language (in one case above) or in a language the person understands (in the examples above the information was provided in English).

### 3.4. Training Sessions

According to the plans and recommendations<sup>16</sup> of the 2007 report on border monitoring activities, training sessions for police officers working in the alien policing field were held in 2008 and 2009.

In the framework of the 2008 project, altogether 70 members of the Police personnel participated in intercultural and human rights training sessions, which were organized by the HHC and funded by the UNHCR. The trainings took place in:

- Ferihegy Airport on 18 March and 10 April 2008,
- Kiskunhalas on 30 May 2008,
- Nyírbátor on 30 June 2008.

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<sup>16</sup> Please see Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary, page 54, Section VII.2.4.

The Police and the HHC jointly organized these training sessions in full cooperation.

The training agenda was elaborated by the HHC, taking into account the needs expressed by the Police. Participants acquired knowledge on essential basic questions of refugee law, the terminology of the Hungarian refugee status determination procedure, the role of country of origin information, intercultural communication skills, and practical knowledge that facilitates more effective identification of potential asylum seekers, in particular:

- basic principles of international refugee law (refugee definition, five grounds set out in the Geneva Convention, principle of non-refoulement, statelessness determination etc.);
- access to territory and the most important principles of the asylum procedure;
- practical issues related to recognizing foreigners' intention to submit an asylum application;
- distinction between the notions of refugee status, subsidiary protection and tolerated status;
- intercultural sensitization: religious customs, clothing, and the use of first and second names.

Training sessions on psychological sensitization were organized on four occasions in the framework of the 2009 project (13 May 2009 and 3, 4, 8 June 2009), and a total number of 80 police officers that work in the border control field took part in them. The training sessions were held by the HHC's trainer colleague and with the representatives of the Cordelia Foundation for the Rehabilitation of Torture Victims and were supported by the UNHCR. Police officers having different roles at various border sections concerned by the project participated in mixed groups at the training sessions, which were held in Budapest at a venue provided by the Police.

The experiences of the training confirmed earlier ones: police staff welcomed the consultation opportunities with psychologists, during which they shared the difficulties of their job, the challenges, and thereby their level of frustration, which had been accumulated due to the negative experiences encountered during their work, somewhat decreased.

Based on the positive experiences of the 2009 training sessions, the HHC plans to organize, together with the Cordelia Foundation, supervisory activities as part of the 2010 border monitoring program, which would be conducted by a psychiatrist and psychotherapist in smaller groups, once in a month.

## 4. Recommendations and Next Steps

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In February 2009, at the press conference on the report summarizing the experiences of the first year of border monitoring, the members of the Tripartite Agreement reinforced in a common statement their intention to continue cooperation in the border monitoring program and reaffirmed their commitment towards the international protection of refugees.<sup>17</sup>

Similarly to the process leading up to the 2007 report, the Tripartite Working Group jointly formulated its recommendations and future plans based on the experiences of the program's second and third year.

### 4.1. Interview in the so-called Simple Cases

UNHCR and the HHC continue to strongly recommend that, in order to ensure that not even one person in need of international protection is returned unlawfully; **during the alien policing procedure the Police should be obliged to interview all foreigners who belong to a vulnerable group (including citizenship as a vulnerability factor)**. A longer personal interview would be important to establish the facts of a case, particularly in the case of persons with special needs such as single women, unaccompanied minors, elderly and sick people, traumatised persons, and families with small children. Since the Police are not obliged by law to hold an interview in the so-called simple alien policing cases, currently it is up to the professionalism and personal conviction of the police officer on duty as to what information may be gathered from the foreigner.

In order to implement recommendation No. 10 of the 2007 report<sup>18</sup> summarizing the experiences of the first year of border monitoring, the Cooperating Parties shall take concrete steps to ensure that the Tripartite Working Group visits an international airport where air passenger traffic and the number of asylum seekers is high in order to learn about good practices regarding personal interviews.

### 4.2. Assessment of the Principle of Non-refoulement in Practice

In the interest of transparency in the application of the law, the HHC and UNHCR recommend that the Tripartite Working Group should initiate a discussion with the Office of Immigration and Nationality (OIN) regarding the **practise of ensuring respect for the principle of non-refoulement**. The **police practice** (see section 3.1.) preceding the return order may be particularly problematic in cases of potential asylum seekers whose nationality and special vulnerability (see section 4.1.) would justify a consultation with the on-duty officer of the OIN about the destination country and whether the principle of non-refoulement would apply. Likewise, it would be advisable that the OIN provide the Police with more solid and detailed country information upon their request when deciding about the expulsion of other vulnerable persons, based on which information the Police could make a well-considered decision.

### 4.3. The Application of Article 31 of the 1951 Geneva Convention

With regard to the fact that while participating in the border monitoring project, HHC lawyers have also started to act as defense counsel for asylum-seekers charged with using forged official documents, based on the proposal put forward by the HHC, the Working Group would deem it useful to involve the Criminal Directorate of the National Police Headquarters in their work as necessary in order to exchange views and experiences on criminal procedures launched on account of the use of forged official documents by foreigners.

The HHC plans to raise and discuss this issue within the framework of an EU-funded project in 2010 by organizing a round-table discussion for all stakeholders involved in the above matter.

### 4.4. Resolving Legislative Problems

Developing a legislative background precisely defining the responsibilities of the Police is closely connected to the previous recommendation. As also mentioned among the recommendations<sup>19</sup> of the 2007 report, in order to resolve the legislative problems and gaps in the law that have become evident during the project's implementation,

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<sup>17</sup> <http://www.police.hu/sajto/sajtoszoba/090211harmasemu.html?query=helsinki%20bizotts%C3%A1g>

<sup>18</sup> See Asylum Seekers' Access to Territory and to the Asylum Procedure in the Republic of Hungary, page 55, Section VII.2.10.

<sup>19</sup> Lásd A menedékkérők hozzáférése az ország területéhez és a menedékközi eljáráshoz a Magyar Köztársaságban c. jelentés, VII.2.8. pont, 55. oldal

the Tripartite Working Group will summarize in a common document its observations and recommendations and will initiate consultations with the Ministry of Justice and Law Enforcement.

#### 4.5. Foreign Language and Cultural Training Sessions

The Tripartite Working Group welcomes the continuation of the **training series on basic human rights principles and sensitisation of border policing staff** that builds on the positive experiences of the previous years. The Working Group considers it important that the parties continue to offer mutual assistance to each other in organizing and executing these training sessions.

The members of the Tripartite Working Group also welcome that the **training sessions** organized by the UNHCR and the HHC continued in 2009, and that in the framework of these sessions 80 staff members had the opportunity to attend psychological, human rights and intercultural trainings.

Complementing the training sessions sponsored by the UNHCR, the training sessions organised by the HHC were expanded in the framework of a project supported by the European Return Fund. At the training for mid-level police managers, 26 participants discussed the human rights aspects of the principle of non-refoulement. When planning the activities for 2009, the parties agreed that during the training of mid-level police managers, the general human rights situation of neighbouring countries relevant from the point of view of illegal migration and the latest country of origin information reports will be presented as well.

In 2009, the Tripartite Working Group initiated discussions with staff of the border policing team at the Police College, who are involved in teaching subjects relevant to the Tripartite Agreement, regarding the possible extension of the alien policing and refugee law curriculum with material based on the experiences of the border monitoring project from 2010.

## Annex 1. List of Monitoring Visits

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### Airport Police Directorate / Budapest International Airport:

21 February 2008	17 October 2008	19 June 2009
13 March 2008	31 October 2008	30 June 2009
28 March 2008	21 November 2008	23 July 2009
15 April 2008	5 December 2008	31 July 2009
29 April 2008	18 December 2008	6 August 2009
14 May 2008	13 January 2009	19 August 2009
28 May 2008	12 February 2009	31 August 2009
18 June 2008	25 February 2009	23 August 2009
30 June 2008	16 March 2009	30 October 2009
25 July 2008	25 March 2009	17 November 2009
18 August 2008	14 April 2009	30 November 2009
29 September 2008	30 April 2009	17 December 2009
19 September 2008	19 May 2009	
29 September 2008	29 May 2009	

### Ukrainian-Hungarian border section:

27 May 2008 – introductory visit by dr. Dobos József at the Beregsurány, Barabás and Záhony Border Guard Field Office	20 March 2009 - Záhony
	25 March 2009 - Nyírbátor – file consultation
27 June 2008 - Kölcse, Nyírbátor – file consultation	22 April 2009 - Kölcse
4 July 2008 - Nyírbátor – file consultation, Beregsurány, Barabás	6 March 2009 - Nyírbátor – file consultation
	27 May 2009 - Nyírbátor – file consultation
12 August 2008 - Záhony	28 May 2009 - Beregsurány
13 August 2008 - Kölcse, Nyírbátor – file consultation	17 June 2009 - Beregsurány
23 September 2008 - Beregsurány, Barabás	29 June 2009 - Nyírbátor – file consultation
24 October 2008 - Kölcse	13 July 2009 - Beregsurány
12 November 2008 - Nyírbátor – file consultation	26 July 2009 - Nyírbátor – file consultation
13 November 2008 - Barabás	4 August 2009 - Nyírbátor – file consultation
26 November 2008 - Beregsurány, Nyírbátor – file consultation	26 August 2009 - Kölcse
5 December 2008 - Záhony	23 September 2009 - Záhony
10 December 2008 - Nyírbátor – file consultation	30 September 2009 - Nyírbátor – file consultation
29 December 2008 - Nyírbátor – file consultation	15 October 2009 - Barabás
16 January 2009 - Kölcse	28 October 2009 - Nyírbátor – file consultation
28 January 2009 - Nyírbátor – file consultation	19 November 2009 - Kölcse
12 February 2009 - Barabás	27 November 2009 - Nyírbátor – file consultation
25 February 2009 - Nyírbátor – file consultation	16 December 2009 - Beregsurány



## Serbian-Hungarian border section:

- 16 April 2009 - Csongrád County Police Department – Alien Policing Department (Szeged) – file consultation
- 17 April 2009 - Bács-Kiskun County Police Dept. – introductory visit by dr. Bárkányi Gábor
- 21 April 2009 - Szeged, Rószke, Tiszasziget
- 23 April 2009 - Bács-Kiskun County Police Dept. - Alien Policing Department (Kiskunhalas) – file consultation, Tompa, Kelebia
- 24 April 2009 - Bácsalmás, Bácsbokod, Hercegszántó
- 12 May 2009 - Bács-Kiskun County Police Dept. - Alien Policing Department (Kiskunhalas) - file consultation
- 22 May 2009 - Csongrád County Police Dept. - Alien Policing Department (Szeged) – file consultation, Szeged, Rószke, Tiszasziget
- 29 May 2009 - Bácsalmás, Bácsbokod, Hercegszántó, Tompa, Kelebia
- 15 June 2009 - Szeged, Rószke, Tiszasziget
- 17 June 2009 - Kelebia, Bácsalmás, Bácsbokod, Hercegszántó
- 24 June 2009 - Csongrád County Police Dept. - Alien Policing Department (Szeged) - file consultation
- 25 June 2009 - Bács-Kiskun County Police Dept. - Alien Policing Department (Kiskunhalas) - file consultation
- 21 July 2009 - Csongrád County Police Dept. - Alien Policing Department (Szeged) – file consultation, Szeged, Rószke,
- 22 July 2009 - Bácsalmás, Bácsbokod, Hercegszántó, Tompa, Kelebia
- 23 July 2009 - Bács-Kiskun County Police Dept. - Alien Policing Department (Kiskunhalas) - file consultation
- 24 August 2009 - Csongrád County Police Dept. - Alien Policing Department (Szeged) – file consultation, Szeged, Rószke, Tiszasziget
- 25 August 2009 - Bácsalmás, Bácsbokod, Hercegszántó, Kelebia
- 26 August 2009 - Bács-Kiskun County Police Dept. - Alien Policing Department (Kiskunhalas) - file consultation
- 24 September 2009 - Szeged, Rószke, Tiszasziget, Mórahalom, Kelebia, Tompa, Bácsalmás, Hercegszántó
- 25 September 2009 - Bácsbokod
- 28 September 2009 - Csongrád County Police Dept. - Alien Policing Department (Szeged) – file consultation
- 29 September 2009 - Bács-Kiskun County Police Dept. - Alien Policing Department (Kiskunhalas) – file consultation
- 26 October 2009 - Csongrád County Police Dept. - Alien Policing Department (Szeged) – file consultation, Szeged, Rószke, Tiszasziget
- 27 October 2009 - Mórahalom, Kelebia, Bácsalmás, Bácsbokod, Hercegszántó
- 28 October 2009 - Bács-Kiskun County Police Dept. - Alien Policing Department (Kiskunhalas) - file consultation
- 25 November 2009 - Csongrád County Police Dept. - Alien Policing Department (Szeged) – file consultation, Szeged
- 26 November 2009 - Tiszasziget, Rószke, Mórahalom, Bácsalmás, Bácsbokod, Hercegszántó
- 27 November 2009 - Bács-Kiskun County Police Dept. – Alien Policing Department (Kiskunhalas) - file consultation
- 21 December 2009 - Csongrád County Police Dept. - Alien Policing Department (Szeged) - file consultation
- 22 December 2009 - Szeged, Rószke, Mórahalom, Tiszasziget, Kelebia, Bácsalmás, Bácsbokod, Hercegszántó
- 23 December 2009 - Bács-Kiskun County Police Dept. - Alien Policing Department (Kiskunhalas) - file consultation

## Annex 2.

### Asylum Applications on the Monitored Border Sections in 2008-2009<sup>20</sup>

	Bács-Kiskun County Police Department	Csongrád County Police Department	Szabolcs County Police Department	Airport Police Directorate	Total
2008	Asylum claims	Asylum claims	Asylum claims	Asylum claims	
January	3	2	52	37	94
February	8	18	127	8	161
March	16	0	33	10	59
April	9	7	50	25	91
May	5	14	33	9	61
June	22	7	13	8	50
July	16	2	25	6	49
August	26	11	38	3	78
September	110	22	31	6	169
October	112	51	54	2	219
November	107	37	57	4	205
December	69	64	42	2	177
<b>Total</b>	<b>503</b>	<b>235</b>	<b>555</b>	<b>120</b>	<b>1413</b>

	Bács-Kiskun County Police Department	Csongrád County Police Department	Szabolcs County Police Department	Airport Police Directorate	Total
2009	Asylum claims	Asylum claims	Asylum claims	Asylum claims	
January	81	28	19	8	136
February	129	58	13	2	202
March	111	55	4	2	172
April	42	46	9	5	102
May	57	41	19	8	125
June	67	47	8	8	130
July	186	32	7	1	226
August	114	58	15	5	192
September	105	76	19	15	215
October	157	91	23	1	272
November	61	51	5	7	124
December	14	55	11	7	87
<b>Total</b>	<b>1124</b>	<b>638</b>	<b>152</b>	<b>69</b>	<b>1983</b>

<sup>20</sup> Source: Police



### TRIPARTITE MEMORADUM OF UNDERSTANDING

#### ON MODALITIES OF MUTUAL CO-OPERATION AND COORDINATION TO SUPPORT THE ACCESS OF ASYLUM SEEKERS TO THE TERRITORY OF, AND THE ASYLUM PROCEDURES OF THE REPUBLIC OF HUNGARY

#### PREAMBLE

The Headquarters of the Border Guard of the Republic of Hungary (Border Guard), the Regional Representation of the United Nations High Commissioner for Refugees for Hungary, Poland, Slovakia and Slovenia (UNHCR) and the Hungarian Helsinki Committee (HHC), as UNHCR's duly authorised implementing partner NGO, hereafter referred to as the "Co-operating Parties",

**Recognizing** that the right of all persons to seek and enjoy in other countries asylum from persecution is a basic right enshrined, *inter alia*, in Article 14(1) of the 1948 Universal Declaration of Human Rights,

**Recalling** the United Nations Convention Relating to the Status of Refugees adopted on 28 July 1951 (Convention) and the Protocol Relating to the Status of Refugees adopted on 31 January 1967 which entered into force in the Republic of Hungary through the promulgation by Law Decree 15 of 1989; in particular Article 1 concerning the definition of the term refugee, Article 31 concerning refugees unlawfully in the country of refuge and Article 33 concerning the prohibition of expulsion or return ("refoulement") of refugees,

**Recalling** Article 35 of the Convention obliging contracting States to co-operate with the Office of the United Nations High Commissioner for Refugees in the exercise of its functions, in particular providing in appropriate form information and statistical data requested concerning the condition of refugees, the implementation of this Convention, and law, regulations and decrees which may relate to refugees,

**Recalling** that the United Nations General Assembly Resolution 428(V) of 14 December 1950, which adopted the Statute of UNHCR, ascribes to the High Commissioner the function of providing international protection to refugees, including promoting the admission of refugees, not excluding those in the most destitute categories, to the

territories of States Parties to the Convention, and of seeking permanent solutions for the problems of refugees,

**Recalling** the Constitution of the Republic of Hungary and in particular Article 65 which provides the right to seek asylum,

**Recalling** that Act CXXXIX of 1997 on Asylum and Act XXXIX of 2001 on Entry and Stay of Foreigners of the Republic of Hungary as well as their implementing decrees, outline specifically the rights of persons in need of protection in the Republic of Hungary,

**Considering** that ensuring access to the territory and asylum procedures, constitutes the most efficient and effective way to provide protection to refugees, asylum-seekers and others of concern (persons in need of protection), and that Conclusions 22 (Session XXXII), 71 (Session XLIV), 74 (Session XLV), 81 (Session XLVIII), and 82 (Session XLVIII), of the Executive Committee of the High Commissioner's Programme set out internationally accepted principles and standards governing the protection of refugees in this regard,

**Bearing** in mind the importance of the co-operation agreement signed by the Peoples Republic of Hungary and UNHCR on 4 October 1989, which entered into force through the promulgation by Government Decree 23/1990. (II.7.) and which this memorandum of understanding does not in any shape or form amend,

**Recognising** the need to return persons found not to be in need of international protection in a humane manner and in full respect for their human rights and dignity, without resort to excessive force and, in the case of children, taking due account of their best interests,

**Referring** to Section 37 of Act XXXII of 1997 on Guarding the State Border and on the Border Guards stipulating that the Border Guard shall cooperate, among others, with NGOs and recognizing the need to define the concrete procedures and modalities of mutual cooperation and coordination among the parties through an agreement which will strengthen the partnership of the cooperating parties,

Have agreed to carry out a joint activity that will be guided by the following principles and modalities:

### Article I

#### ESTABLISHMENT OF A MONITORING FRAMEWORK

1. With due regard to the principle that the State has the primary responsibility of ensuring that persons in need of protection have access to the territory and asylum procedures, the Co-operating Parties undertake to jointly and severally monitor the facilitation by the Border Guard of the entry of persons in need of protection



to the territory of, and access to the asylum procedures of the Republic of Hungary as well as their protection against *refoulement* (monitoring).

2. The Co-operating Parties will undertake the process of monitoring in an orderly, humane, safe and dignified manner as dictated by the sensitivities needed to treat persons in need of international protection.
3. In accordance with the principle of family unity, the Co-operating Parties shall make every effort to ensure that asylum seeking families are admitted into the territory and asylum procedure as units.

## Article II

### RESPONSIBILITIES OF THE BORDER GUARD

1. The Border Guard undertakes to guarantee and facilitate the admission of persons in need of protection into the territory of the Republic of Hungary, and as a cooperating agency in refugee affairs, facilitate access to the asylum procedures and will take, in consultation with the UNHCR and HHC, all measures necessary to uphold these fundamental principles of international protection.
2. The Border Guard will take all measures necessary to ensure that asylum seekers are in full knowledge of facts about their right to seek asylum and their right to access legal assistance in the Republic of Hungary. It also undertakes to make available the publications of UNHCR and HHC in areas which are accessible to persons of concern under its procedures.
3. The Border Guard, with the consent of the person concerned, shall facilitate unsupervised contact among UNHCR, HHC and the person concerned to allow for the monitoring forming the subject matter of this agreement. Persons carrying out monitoring are allowed, with the consent of the persons concerned, to look into the file of the foreigner and may make photocopies of it. They are allowed to use audio, video and photographic recording equipment, except where such use would jeopardise the security or safety of the facility. The intention to use such equipment shall be communicated in advance to the Border Guard staff designated to receive and escort the monitors.
4. The Border Guard undertakes to provide access to photocopies of files of pre-designated categories (citizenship and themes), in accordance with its technical means. The photocopies of documents shall be shared with the monitors without the personal identification details of the person concerned.
5. The Border Guard undertakes to provide statistical data from its records upon the request of UNHCR or HHC concerning aliens policing and refugee matters.

### **Article III**

#### **RESPONSIBILITIES OF UNHCR REGIONAL REPRESENTATION**

1. The UNHCR shall have free and full access to asylum seekers and persons of concern; it is entitled to examine whether or not the Border Guards facilitate entry of persons in need of protection into the territory of, and asylum procedures of the Republic of Hungary through monitoring the related activities of the Border Guard.
2. The UNHCR will undertake monitoring visits to areas and places defined in Article VI where persons in need of protection may be located, to examine and verify the implementation and adherence to international protection standards. In case of the need for immediate protection intervention, UNHCR will inform the local competent Senior Officer as well as the Head of the Department for Aliens Policing and Minor Offences at the Border Guard Headquarters.
3. The UNHCR shall verify Border Guard procedures to ensure those persons in need of protection with special needs, including women heads of households, unaccompanied and separated children, are protected and their fundamental rights, in particular the principle of family unity, are respected.
4. The UNHCR shall coordinate the mobilisation of funds for this project from the international community.

### **Article IV**

#### **RESPONSIBILITIES OF HHC**

1. The HHC will undertake activities to facilitate the implementation of this agreement on behalf of UNHCR and as specified in a partnership agreement with UNHCR. The said partnership agreement shall contain the terms and conditions under which HHC will conduct its activities under this agreement.
2. The HHC will proceed with a UNHCR partnership authorisation letter in its possession and will implement activities stipulated in III. 1-3. The letter of authorisation (Annex 1) valid until withdrawal will be forwarded to the Head of the Aliens Policing and Minor Offence Department of the Border Guard Headquarters for his/her countersignature.
3. The monitoring staff of the HHC shall clearly identify themselves as such to those persons of concern whom they may wish to interview during the course of implementing this agreement, and shall inform them of the purpose and voluntary nature of the interview and their right to refuse to be interviewed if they so wish.



The monitoring staff shall comply with requirements related to the provision of information stipulated by Section 6 (2) of Act LXIII of 1992 on the Protection of Personal Data and Publicity of Data of Public Interest. A note shall be made on the fact that the person in need of protection was informed as well as the manner of giving his/her consent (Annex 2). The note shall be signed by the person of concern, the monitor and the interpreter, in case an interpreter was involved and included in the individual file of the person concerned.

4. HHC shall monitor the accessibility of UNHCR and HHC publications; in case of need it shall replenish the supply.
5. HHC shall inform UNHCR and the Border Guard about the monitoring visits two working days before the commencement of the visits, specifying the dates and the locations. If an interpreter is involved, it will attach a letter of authorization as per Annex 3.
6. Reports made on the monitoring visits shall be shared with all Co-operating Parties within 15 days, and any one of them may offer comments, suggestions and clarifications for consideration and inclusion within 30 days from the date of receipt of the HHC draft report. The content of these reports may only be published after prior notification to the other Co-operating Parties, in case of a disagreement on the contents of the report to be published, the dissenting opinion or position of the relevant Co-operating Party will also be published in the same report.

### Article V

#### TRIPARTITE WORKING GROUP

1. The Co-operating Parties establish a Tripartite Working Group (Working Group) which shall supervise the implementation of this agreement and analyse the reports made of the monitoring.
2. The Working Group shall meet at least four times a year, extraordinary sessions may be convened at the express request of one of the Co-operating Parties. It shall adopt its own Internal Rules of Procedure.
3. The chairperson of the Working Group shall be from the Border Guard; UNHCR Regional Representation shall act as secretary and may be assisted in this role by a representative of HHC. The Working Group shall be composed of representatives of the Co-operating Parties who shall be accompanied at any meeting by such number of advisors as the party represented may deem necessary. Having signed the agreement, the principals of the Co-operating Parties shall forward within 8 days the names and contact details of representatives designated to be members and principals of the Working Group.

4. Meetings of the Working Group shall be recorded in notes. The Co-operating Parties shall receive the notes within 10 working days.
5. The Working Group may undertake visits or missions to locations relevant to the project.

### **Article VI**

#### **SITES COVERED BY THE AGREEMENT, THE RULES OF ENTRANCE AND STAY THERE**

1. The geographical scope of the agreement shall cover all facilities administered by the Border Guard where persons in need of protection may stay (short term detention facilities, areas designated for contacts/meetings within long term detention facilities, areas where foreigners prevented to enter are to stay until departure/return in a border guard field office) and areas where the entry into the territory of foreigners is facilitated, including in the so-called transit zones of the international airports open for public.
2. When HHC announces forthcoming monitoring visits, it shall communicate the names, date of birth, place of birth and identity document numbers of both monitors and interpreters, in order to facilitate the timely preparation of entry arrangements into the facility where the monitoring will occur. Entry into such facility shall only be facilitated for holders of the UNHCR authorization letter and appropriate identity documents, after the necessary information sharing has occurred.
3. A designated Border Guard staff member shall always accompany the monitor and the interpreter. Without such escort, monitors and interpreters are not authorised to move in facilities and areas administered by the Border Guards, with the exception of interviews with persons of concern which are not subject to supervisory control.

### **Article VII**

#### **FINAL PROVISIONS**

1. The Co-operating Parties undertake to pursue joint educational and awareness raising activities within the framework of this Agreement, especially on monitoring, principles of refugee law and international protection that enhance the access to territory of the Republic of Hungary as well as to the asylum procedures of persons in need of international protection.

2. The Co-operating Parties undertake to participate in regional review meetings which will be organized by UNHCR to exchange experiences with other partners and counterparts and by doing so to strengthen the implementation of the monitoring programme.
3. The present agreement is for an indefinite period. The review or the amendment of the Agreement may be initiated by the Cooperating Parties any time.
4. The Border Guard can temporarily suspend the implementation of the agreement in one or several locations covered by the agreement due to reasons of public health or any other emergency situation by providing justification.
5. The termination of the agreement can be initiated by submitting a written notice of termination by one Co-operating Party to the other two, which notice shall become effective at the end of eight (8) days from the latter date of receipt of notice by either of the other two Co-operating Parties.
6. Any question arising out of the interpretation or application of the present Agreement, or for which no provision is expressly made herein, shall be resolved amicably through consultations between the Co-operating Parties.
7. The present Agreement does not amend in any shape or form previously existing agreements between the Co-operating parties without the express and written consent of the parties concerned.
8. The present Agreement shall enter into force on date of signature by the Co-operating Parties.

In witness whereof, the authorized representatives of the Co-operating Parties have hereby signed the present Agreement.

Done at Budapest, this <sup>28</sup> day of <sup>dec</sup> .....2006 in sets of three originals in the English and Hungarian language, each set being equally authentic.

<p>On behalf of United Nations High Commissioner for Refugees:</p> <p><i>Lloyd Dakin</i></p> <p><b>LLOYD DAKIN</b> REGIONAL REPRESENTATIVE FOR HUNGARY, POLAND, SLOVAKIA AND SLOVENIA</p>	<p>On behalf of The Headquarters of the Hungarian Border Guards:</p> <p><i>József Bende</i></p> <p><b>BÉNDEK JÓZSEF</b> LIEUTENANT GENERAL SENIOR COUNSELLOR COMMANDER OF THE HUNGARIAN BORDER GUARDS</p>	<p>On behalf of The Hungarian Helsinki Committee:</p> <p><i>Kószeg Ferenc</i></p> <p><b>KÓSZEG FERENC</b> PRESIDENT OF THE HUNGARIAN HELSINKI COMMITTEE</p>
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Vlgyar Helsinki Bizottság  
Hungarian Helsinki Committee  
054 Bp., Bajcsy-Zs. út 36-38. 1/12.  
Telefon/Fax: 321-4141  
Adószám: 19013983-1-41



**AUTHORIZATION**

The  
Regional Representation of the United Nations High Commissioner for Refugees  
for Hungary, Slovakia, Slovenia and Poland

Hereby authorizes

The Hungarian Helsinki Committee

To act on behalf of UNHCR and implement the Tripartite Memorandum of Understanding on Modalities of Mutual Co-operation and Coordination to Support the Access of Asylum-Seekers to the Territory of, and the Asylum Procedures of the Republic of Hungary concluded by the Border Guards of the Republic of Hungary, the Regional Representation of the United Nations High Commissioner for Refugees for Hungary, Slovakia, Slovenia and Poland and the Hungarian Helsinki Committee.

Done at Budapest, this ..... day of .... 200

.....  
UNHCR

The person designated by the Hungarian Helsinki Committee to implement this authorization:

NAME:.....  
POB, DOB:.....  
ID card number:.....

This authorization is valid until withdrawal.  
Budapest, .....200..

.....  
Hungarian Helsinki Committee

Countersigned:

.....  
Headquarters of the Border Guard  
Head of the Head of the Aliens Policing and Minor Offence Department

**S T A T E M E N T**

NAME:.....

POB, DOB:.....

CITIZENSHIP:.....

Hereby approve that representatives of UNHCR and HHC present here:

NAME:.....

POB, DOB:.....

ID CARD NUMBER:.....

- |                         |     |    |
|-------------------------|-----|----|
| - Conduct an interview: | yes | no |
| - Make tape-recording:  | yes | no |
| - Make photo:           | yes | no |

I approve that representative of the above organisations present have access to documents of the proceedings

- |                            |     |    |
|----------------------------|-----|----|
| - make photocopies thereof | yes | no |
|----------------------------|-----|----|

My statements can be published:

- |   |     |    |
|---|-----|----|
| - Without identifying me in any manner: | yes | no |
| - With the initials of my name          | yes | no |
| - With my full name                     | yes | no |

I do confirm that I have been informed about the handling of my data and my related rights.

.....200

.....  
foreigner

.....  
monitor

.....  
Interpreter  
(name, ID card, signature)

Annex 3

**AD HOC AUTHORIZATION FOR INTERPRETERS**

The  
Regional Representation of the United Nations High Commissioner for Refugees  
for Hungary, Slovakia, Slovenia and Poland

Hereby authorizes

The Hungarian Helsinki Committee

To act on behalf of UNHCR and implement the Tripartite Memorandum of Understanding on Modalities of Mutual Co-operation and Coordination to Support the Access of Asylum-Seekers to the Territory of, and the Asylum Procedures of the Republic of Hungary concluded by the Border Guards of the Republic of Hungary, the Regional Representation of the United Nations High Commissioner for Refugees for Hungary, Slovakia, Slovenia and Poland and the Hungarian Helsinki Committee, and to contract an interpreter for individual occasions in the interest of implementing the above

Done at Budapest, this ..... day of .... 2006

.....  
UNHCR

The person designated by the Hungarian Helsinki Committee to implement this *ad hoc* authorization:

NAME:.....  
POB, DOB:.....  
ID card number:.....

This authorization is *valid from* ..... *to* .....  
Budapest, .....200..

.....  
HHC





A map of Europe with the borders of countries outlined in white. Poland is highlighted in a dark blue color. A dark blue rectangular box is positioned in the upper left quadrant of the map, containing the word "Poland" in white text.

Poland

Refugees  
at the  
**Border**

# Report on Border Monitoring Activities in Poland\*

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\* Report prepared by UNHCR Implementing Partner Halina Nieć Legal Aid Centre (HNLAC)

# 1. Introduction

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Access to the asylum procedure is the key issue in providing sufficient protection to aliens in need. In order to establish adequate access to the asylum procedure, the formal possibility of submitting an application needs to be combined with ample information, legal counselling and care for vulnerable groups. To enhance the system of protection and ensure observance of international and EU standards, as well as Polish law, it is necessary to monitor and evaluate key issues of protection through periodic visits to the detention facilities for aliens. The Halina Nieć Legal Aid Centre (HNLAC) monitors detention centres for aliens in Poland on a regular basis. During its missions to detention facilities HNLAC also provides legal assistance and information to persons seeking protection free of charge. These monitoring visits enable the assessment of the potential for possible infringement of regulations and the identification of gaps in the protection system in order to uncover possible solutions and areas for improvement in practice.

In accordance with the general rules of the United Nations Convention relating to the Status of Refugees, approved in Geneva on 28 July 1951 (hereinafter referred to as the 1951 Geneva Convention) and the European Council Directive 2004/83/WE of 27 April 2004, which sets the minimum standards/criteria concerning the qualification and status of third country nationals or stateless persons as refugees or persons requiring international protection, those seeking such protection should have free access to the proceedings. Detention of such foreigners may create a risk to their right to receive international protection and the right to present their own arguments/statements before the very bodies responsible for qualifying such persons as needing protection. Persons placed in detention face difficulties presenting their arguments accurately, accessing information, providing evidence, and participating in the proceedings freely and actively, all of which are guaranteed under article 10 of the Polish Code of Administrative Procedure (Act of 14 June 1960).

Detention of aliens who are staying in Poland illegally or whose legal status is temporary/not confirmed should be as short as possible and used only in specific circumstances, particularly when the person is seeking international protection.<sup>1</sup> While isolation of persons who have committed or are suspected of committing a punishable offence can be justified by the need to protect others, isolation of aliens for purely administrative reasons is related mostly to migration control or the necessity of deportation from the territory of Poland.

Additionally, the detention conditions of aliens should be as comfortable as possible and should meet all humanitarian standards of treatment, especially full access to information and legal aid.

Furthermore, considering the helplessness and uncertainty about the future that aliens in need of international protection experience, in most cases not knowing the language and not being familiar with the legal system of the host country, the means of detention needs to be particularly transparent. Thus, in realizing its statutory goals towards aliens, HNLAC decided to launch a programme in accordance with the UNHCR IP agreement that aims to provide support for access to the refugee status determination procedure in Polish detention centres through legal aid and monitoring of the centres, including along Poland's Eastern Border.

During the monitoring programme, which was conducted in addition to providing legal aid for aliens, five detention centres were visited.

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<sup>1</sup> For the purposes of this Report the term refugee shall be defined as a person who is either currently seeking international protection or has already been granted such protection, while the term refugees *sensu stricto* shall be defined as recognised refugees unless stated otherwise.

**The monitoring was conducted in order to examine:**

1. The legal provisions for placing aliens in guarded centres or in the arrest for the purpose of expulsion and an evaluation of the practical application of the law relating to detention and arrest.
2. Access to information and whether alien seeking asylum or who have been arrested for the purpose of expulsion or placed in guarded centres have the possibility to contact UNHCR.
3. Aliens' knowledge of the applicable administrative procedures and of their rights and duties as well as other issues associated with refugee status, such as the provision of relevant information by the institutions responsible for running the detention centres.
4. Realization of the right to send/receive correspondence and to lodge a complaint or relevant application.
5. The conditions in detention centres, including social allowances, type of accommodation, access to media, and the ability to tend to personal hygiene.
6. The conditions for obtaining medical care.

## 2. Border Monitoring Framework

---

### 2.1 Implementation of the AMAS Project

HNLAC's mission of carrying out activities related to providing legal information and aid to asylum seekers and other aliens in need of protection, monitoring aliens' detention facilities, and Border Police training was continued and enhanced in 2009. In line with UNHCR's regional priorities, HNLAC implemented a programme that involved the rendering of legal assistance solely on a limited scale and bound to pre-decision level, called the Access, Management and Support Project (AMAS Project). The scope of such legal assistance included providing legal information, consultations related to applying for asylum or other forms of protection, drafting of legal motions and the submission of relevant documents. These activities were reinforced by additional components of monitoring, including monitoring of Dublin II procedures, access to refugee status determination (RSD) procedures; and the training of Border Police. The project goals were as follows:

- Strengthen protection of beneficiaries by securing broader access to legal counselling and protection information in detention facilities;
- Monitor and evaluate access to RSD procedures in Poland, including Dublin II procedures;
- Raise awareness and knowledge of the Border Police about RSD procedures and identification and treatment of vulnerable persons.

During the implementation of consecutive stages of the AMAS Project, HNLAC focused on the introduction of the standard operating procedures (SOP) on sex and gender-based violence (SGBV) as a priority task.

### 2.2 Methodology

The monitoring consisted of a series of visits to detention centres and border crossing points that were undertaken by HNLAC's employees participating in the project. During visits, research was carried out on the basis of a questionnaire aimed at gathering data with respect to what extent the above-mentioned rights of aliens staying in detention centres met the statutory requirements. The monitoring was based on a questionnaire in addition to the provision of information or legal assistance to aliens placed in the detention facility. The lawyers involved in the project carried out the activities during regular visits to the centres throughout 2009.

### 2.3 Training of Border Police

Within the framework of the AMAS Project, HNLAC prepared and conducted three trainings specifically designed for the Border Police. All of the sessions were similar regarding the agenda and topics. HNLAC staff members and guest lecturers from UNHCR facilitated the trainings, with the assistance of external specialists.

Two trainings were carried out at the Central Training Centre for Border Police in Koszalin (July and September) and the third was carried out at the Training Centre for Border Police in Kętrzyn (December). Each session had about 20-25 officers selected by their own units, from across the country.

The trainings focused on the rules of protection, the definition of a refugee, understanding of the *non-refoulement* principle, exclusion clauses and the *non-refoulement* principle derogation, the particular social group concept, persecution on the grounds of sex and sexual abuse and violence, human trafficking, unaccompanied minors, victims of violence and trauma, and psychological conduct towards asylum seekers and refugees. Following the previous consultations with different Border Police units, an additional training module included information on major countries of origin of asylum seekers in Poland, their cultural background, religious beliefs and similar issues crucial within the context of intercultural communication.

The Border Police is a specific law enforcement agency that ought to be especially sensitive to protection issues and prepared to carry out its duties without restricting access to the territory of Poland and the refugee determination procedures to those persons who may be in need of protection.

The Border Police are the first persons of contact for anyone seeking asylum on the territory of Poland. The officer on duty fills in the application form and receives the initial statements of the alien. The officer also provides an alien with information concerning his/her legal status, as well as his/her rights and obligations. Thus the competence and knowledge of the officers may affect the further situation of the asylum seeker and his/her attitude during the proceedings.



For that reason it is important to raise the Border Police's awareness and understanding of RSD procedures, refugee protection, vulnerable groups, general human rights standards, *non-refoulement* and intercultural communication. It is important that the officers, apart from the legal regulations possess also the knowledge concerning jurisprudence and doctrine as well as understanding of cultural differences of aliens claiming asylum..

Special attention was paid to the theme of persons with special needs, or vulnerable groups, in the asylum context. Proper identification of such persons and recognition of their needs and vulnerabilities should be enforced as early as possible, ideally while crossing the border. This is the reason why the officers should be specifically trained in this regard.

## 3. Access to Territory and the Asylum Procedure

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### 3.1 Legal Framework

The Polish Constitution guarantees the right to asylum. It stipulates that aliens shall have the right to asylum in the Republic of Poland in accordance with the principles specified by law. Aliens seeking protection from persecution in the Republic of Poland may be granted refugee status in accordance with the international agreements to which the Republic of Poland is a party.

Access to the asylum procedure is determined in the Act of 13 June 2003 on Granting Protection to Aliens within the territory of the Republic of Poland (Journal of Laws of 2003, No 234, item 1695 with amendments), hereinafter referred to as the 2003 Aliens Protection Act. An alien may be granted protection on the territory of the Republic of Poland in one of the forms specified below:

- 1) refugee status;
- 2) subsidiary protection;
- 3) asylum;
- 4) a permit for tolerated stay; and
- 5) temporary protection.

Each application for granting protection shall be considered as an application for granting refugee status, unless the alien explicitly applies for granting asylum or if the application for protection results from a court award on inadmissibility of extradition of the alien or from the decision of the Minister of Justice on refusal of such alien's extradition.

The proceedings for granting refugee status shall be initiated upon an application submitted personally by the alien. An application for granting refugee status shall at the same time be considered an application for granting subsidiary protection. The applicant submits the application for granting refugee status on behalf of minor children accompanying the alien, on the condition that they are not married and that they are dependent on such alien.

The application for granting refugee status shall be submitted as a form containing the following information:

- 1) personal data of the applicant or the person on whose behalf the applicant is applying by the applicant (minor children accompanying the alien or spouse dependent on the alien and any minor children of such spouse, with the spouse's consent) within the scope necessary to conduct the proceedings for granting refugee status;
- 2) indication of the foreigner's country of origin;
- 3) indication of material events justifying the application for granting refugee status.

An alien shall submit an application for granting refugee status to the President of the Office for Foreigners through the commanding officer of the Border Police division or commanding officer of the Border Police checkpoint. Submitting the application shall require the personal appearance of the applicant and any person on whose behalf the applicant is making the application. An alien who stays in the territory of the Republic of Poland submits the application through the commanding officer of the Border Police division, covering the territorial scope the Capital City of Warsaw. An alien who does not have the documents authorizing him/her to enter the territory of the Republic of Poland shall submit an application for granting refugee status during the border control, through the commanding officer of the Border Police checkpoint. Aliens staying in a detention centre, or who are awaiting deportation in a prison or penal institution, shall submit the application through the commanding officer of the relevant Border Police division.

The authority receiving the application shall:

- 1) establish the identity of the applicant or the person on whose behalf the applicant is applying;
- 2) take photographs of the applicant and the person on whose behalf the applicant is applying and shall take their fingerprints (only in the case of persons over 14 years of age) with the use of a dactyloscopic card or an electronic fingerprinting device;

- 3) obtain information from the applicant relating to:
  - a) country of origin,
  - b) visas or residence permits issued to the applicant and the person on whose behalf the applicant is appearing, by authorities of foreign countries,
  - c) routes of travel to the border and the place of border crossing,
  - d) whether or not the applicant or any member of his/her family has applied for refugee status in another country, and
  - e) the degree of relation of any member of the applicant's family currently staying in the territory of another Member State, as well as their first and last name, place and date of birth, and address;
- 4) establish whether the applicant and any person on whose behalf the applicant is applying by the applicant has the necessary documents for crossing the border and shall check whether they are staying in Poland legally;
- 5) ensure that medical examinations and necessary sanitary procedures in relation to the applicant's body and clothes are conducted, as well as to the body and clothes of a person on whose behalf the applicant is applying;
- 6) inform the applicant in a language understandable to him/her about the:
  - a) principles and procedures of the proceedings for granting refugee status,
  - b) rights vested to him/her, his/her obligations and legal effects of non-performance of his/her obligations,
  - c) possibility of giving consent to the representative of the United Nations High Commissioner for Refugees for providing information about the course of the procedure and reviewing the files of the case and taking notes and copies of them, and
  - d) organizations which statutorily deal with refugee-related matters; and
- 7) shall inform the spouse of the applicant, in a language understandable to him/her about the consequences of giving the applicant his/her consent to apply on his/her behalf and on behalf of his/her children.

The authority receiving the application shall immediately forward the application to the Head of the Office for Foreigners. Applications submitted by aliens staying in detention centres or who have been placed in detention for purposes of deportation shall be forwarded within 48 hours.

Initiation of the refugee status granting proceedings shall cause, by operation of law:

- 1) visa invalidation,
- 2) expiry of a decision on obligation to leave the territory of the Republic of Poland,
- 3) stay of execution of any decision on deportation until the date a final decision in the matter of granting refugee status is delivered and issued to the applicant and any person on whose behalf the applicant is applying.

During the proceedings of granting refugee status:

- 1) the visa shall not be granted or prolonged,
- 2) the decision of obligation to leave the territory of the Republic of Poland shall not be given, and
- 3) the decision on deportation shall not be given.

The decision to grant refugee status should be rendered within a time limit of six months from the date of submission of the application - with the exception of applications that are manifestly unfounded - the decision on which should be given within 30 days from the date of submitting the application. The decisions of the Head of the Office for Foreigners (First Instance) may be appealed to the Refugee Board.

An alien applying for refugee status and any person on whose behalf the applicant is applying may contact a representative of the United Nations High Commissioner for Refugees as well as any organizations dealing statutorily with refugee matters. A representative of the United Nations High Commissioner for Refugees shall be allowed at any time to contact an alien applying for refugee status.

An alien shall be heard by the authority conducting the proceedings in order to explain the material facts for consideration of the matter and shall be provided with a copy of a record of such hearing. The applicant shall not be heard, if rendering a decision on granting refugee status is possible on the grounds of evidence collected or if the applicant cannot participate in the hearing or is not in a position to participate in the hearing for reasons of physical or psychological health or in the event the application is manifestly unfounded. The hearing shall continue in the absence of any person on whose behalf the applicant is applying, unless the authority carrying out the proceedings considers his/her presence to be necessary in order to explain the matter. The authority carrying out the proceedings shall ensure the assistance of an interpreter fluent in a language the applicant understands.

### 3.2 Protecting Refugees Within Broader Migration Movements (Agenda for Protection, Goal 2)

HNLAC, within the framework of the AMAS Project, provides legal counselling free of charge to asylum seekers and aliens seeking another form of protection in Poland. The Centre concentrates on ensuring legal assistance to bona fide refugees in order not to promote nor facilitate the abuse of the asylum procedure in Poland.

It should be noted that when other aliens (third country nationals) turn to HNLAC for help, they are provided with legal counselling within the framework of the “Welcome to Poland! Project – supporting the integration of third country nationals through legal aid and counteracting discrimination,” funded by the European Union Fund for Integration of Third Country Nationals and the national state budget.

### 3.3 Entry of Third Country Nationals to the Territory

An alien may cross the border and stay on the territory of the Republic of Poland if he/she is in possession of valid travel documents and a visa (unless a visa is not necessary according to Polish law or bilateral agreements). Crossing the border by an alien may be conditional on paying a fee related to entry into the territory of Poland. An alien stopped in the border zone directly after having crossed the border involuntarily and contrary to the binding laws may be immediately escorted to the state border of Poland.

An alien entering into the territory of Poland is obliged to possess and present at the request of the competent authority the financial means necessary to cover the costs of his/her entry into, transit through, residence on, and departure from the territory of Poland or the documents authorizing him/her to obtain those means as well as the authorization to enter into another state or to return to his/her country of origin, if such authorization is required.

An alien who crosses the border on the basis of:

- international agreements which release an alien from the obligation to possess these means or which stipulate an obligation to cover the costs of his/her stay by Polish State agencies or public institutions,
- agreements on local border traffic or agreements indicating conditions of border crossing in check points located on tourist routes, which cross the border,
- the entry visa,
- the residence visa for the purpose of carrying out employment,
- the residence visa for the purpose of enjoying temporary protection,
- the residence visa for the purpose of taking part in asylum proceedings and the residence card;
- an alien who crosses the border for the purpose of charitable work and
- an alien who takes part in rescue actions do not have to present above mentioned means and documents.

An alien can be refused entry into the territory of Poland under several circumstances: he/she does not possess valid travel documents or a visa, or did not pay the necessary fee, his/her data has been recorded in the index of aliens whose residence on the territory of the Republic of Poland is undesirable; he/she does not possess financial means or authorizations; circumstances connected with his/her entry into the territory of Poland demonstrate that the purpose of his/her entry is other than that declared; there is a well-founded reason to suspect that his/her entry into or residence on the territory of the Republic of Poland may constitute a threat to public health; his/her entry into or residence on the territory of the Republic of Poland may constitute a threat to state security and defence as well as to public security and policy, or it would be in breach of the interests of Poland.

Decisions on refusal of entry into the territory of Poland are rendered by the commanding officer of the Border Police checkpoint.

An alien who crosses the border illegally or who attempts to cross the border contrary to the law shall be placed in a detention centre.

### 3.4 Mechanisms for Identification/Profiling and Referral (Ten Point Plan of Action, point 5)

In 2009 Polish Border Police officers participated in specialized trainings, conducted by HNLAC, concerning *inter alia* the rules of protection, the human trafficking phenomenon, unaccompanied minors as well as aliens with special needs. The training aimed, among others, at raising awareness and knowledge of persons of first contact for asylum seekers and migrants, in order to better identify the profile of new arrivals and their eventual protection needs. Notwithstanding provision of free legal counselling, the referral of aliens to the appropriate response mechanism is still a challenge in Poland. In particular the situation of aliens qualifying as members of a “vulnerable group” (victims of trauma, unaccompanied minors, victims of human trafficking, etc.) is in need of improvement. It is an AMAS observation that in Poland the Border Police officers rarely identify vulnerable persons, which may have an impact on further proceedings.

### 3.5 Asylum Granting Procedure in the Territory of Poland

See point 3.1.

### 3.6 The Implementation of Article 31(1) of the 1951 Geneva Convention

National authorities of the Republic of Poland being a part of the 1951 Geneva Convention generally follow article 31 (1) of the Convention. HNLAC lawyers did not observe any abuses of this article (no aliens reported such instances to the employee of the Centre) during monitoring visits in guarded centres and arrests for the purpose of expulsion.

### 3.7 Respect for the Principle of Non-refoulement and Article 33(1) of the 1951 Geneva Convention

Article 33(1) of the 1951 Geneva Convention provides that “no Contracting State shall expel or return (“*refouler*”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.” The only exception where a country that signed the 1951 Geneva Convention can refuse the person benefiting from the provision is when a refugee can be reasonably recognised as a danger to the security of the country in which he is currently residing, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.

The 1951 Geneva Convention was only the first example of *non-refoulement* being enshrined in international law. Subsequently numerous treaties and conventions dealing either directly or indirectly with the rights of refugees have repeated the principle. In some cases it has been a direct transfer of the wording of the Convention, while in others the principle has been broadened somewhat. As the issues of human rights and regional organization continue to gain strength in international discussion, these instruments will become increasingly important. They are also extremely relevant as they illustrate the various options open to both refugees and states when dealing with problems of non-refoulement. Examples include:

- the 1966 Principles Concerning Treatment of Refugees, Article III(3), adopted by the Asian-African Legal Consultative Committee;
- the 1967 Declaration on Territorial Asylum, Article 3;
- the 1969 Organization of Africa Unity Convention Governing the Specific Aspects of Refugee Protection in Africa, Article 11(3); and
- the 1984 Cartagena Declaration, Section III, para 5.

The principle is also contained in standard-setting instruments relating to extradition:

- the 1957 European Convention on Extradition, Article 3(2); and
- the 1981 Inter-American Convention on Extradition, Article 4(5).

Article 3 ECHR 1950 provides that “no one shall be subjected to torture or to inhumane or degrading treatment or punishment.” Article 13 of the International Covenant on Civil and Political Rights (ICCPR) states that anyone who is lawfully within the territory of a state shall not be expelled from that state without due process. However, this rule does not have to be followed if national security is at stake. It is important that it specifies what action must be taken before anyone can be forcibly expelled. The relationship between torture and refugees is even more relevant when the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment is considered. Article 3(1) of this Convention provides that “no State Party shall expel, return (“*refouler*”) or extradite a person to another State where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.” The article also provides that authorities must look at whether there is a consistent pattern of serious human rights violations in the country in question. As one writer has pointed out, any state returning refugees to a state where torture is being practiced would become an accomplice to the crime of torture. Article 3(1) provides broader protection than the 1951 Geneva Convention in that it is an absolute right; however, its effect is restricted in that it only applies to situations involving torture.

In a series of early decisions, the most notable of which was *Amerkane v. UK* (No.596/72) 16 YB 356 (1973), the European Commission on Human Rights interpreted Article 3 so as to contain a *non-refoulement* component.

One of the cornerstones of the formation of the Common European Asylum System, the safe third country concept, was introduced in Council Directive no. 2005/85/EC of 1 December 2005 establishing the minimum standards on proceedings of granting and withdrawing refugee status in one of the EU Member States. It allows EU Member States to withdraw from examining an application for asylum lodged in their respective countries and assessing the security of an applicant, if the asylum authority determines that the applicant entered or attempted to enter the territory of the country from a safe third country. A country can be pronounced a safe third country if it ratified the 1951 Geneva Convention and observes its provisions without any territorial limitations, introduced asylum proceedings, ratified the Convention for the Protection of Human Rights and Fundamental Freedoms and observes its provisions, especially concerning appeals, and has been declared a safe country by the European Union Council. EU Member States shall nonetheless act in compliance with the *non-refoulement* principle and allow exceptions from the safe third country principle based on humanitarian, political or legal grounds. Any EU Member State issuing a decision based on the safe third country principle is obligated to inform the applicant of his/her rights and obligations, as well as provide him/her with a document, written in the language of his/her country certifying that his/her application has not been examined. If a safe third country refuses to take back the applicant, the EU Member State is obligated to provide him/her with access to its asylum procedure in accordance with all of the principles and guarantees provided in the 1951 Geneva Convention.

In the landmark *Chahal* case before the European Court of Human Rights, the Court recognised that the principle of *non-refoulement* to torture or cruel, inhumane or degrading treatment or punishment was absolute and did not allow for balancing with competing State concerns, even when such concerns related to national security.<sup>2</sup>

*“Article 3 enshrines one of the most fundamental values of democratic society... Unlike most of the substantive clauses of the Convention and of Protocols Nos. 1 and 4, article 3 makes no provision for exceptions and no derogation from it is permissible under article 15 even in the event of a public emergency threatening the life of the nation... The prohibition provided by article 3 against ill treatment is equally absolute in expulsion cases. Thus, whenever substantial grounds have been shown for believing that an individual would face a real risk of being subjected to treatment contrary to article 3 if removed to another State, the responsibility of the Contracting State to safeguard him or her against such treatment is engaged in the event of expulsion.”<sup>3</sup>*

The Canadian Supreme Court in *Suresh v. Canada* (MCI), 2002, SCC 1 held that: “We do not exclude the possibility that in exceptional circumstances, deportation to face torture might be justified (para 78).” This finding, the so-called “Suresh exception” has been the subject of robust criticism both by the UN Committee Against Torture and the HRC, which said in its concluding observations:

“The State party should recognise the absolute nature of the prohibition of torture, cruel, inhuman or degrading treatment, which in no circumstances can be derogated from. Such treatments can never be justified on the basis of a balance to be found between society’s interest and the individual’s rights under article 7 of the Covenant. No person, without any exception, even those suspected of presenting a danger to national security or the safety of any person, and even during a state of emergency, may be deported to a country where he/she runs the risk

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<sup>2</sup> “*Non-refoulement under threat. Proceedings of a seminar held jointly by the Redress Trust and the Immigration Law Practitioners’ Association*, 16 May 2006, Matrix Chambers, London, <http://www.redress.org/publications/Non-refoulementUnderThreat.pdf> (date of access: 4.01.2010), p. 2.

<sup>3</sup> *Ibidem*, p. 16.



of being subjected to torture or cruel, inhuman or degrading treatment. The State party should clearly enact this principle into its law.”<sup>4</sup>

The implementation of the principle of *non-refoulement* in general requires an examination of the facts of each individual case, and an unsuccessful applicant should be allowed to have a negative decision reviewed before rejection at the border or forcible removal from the territory. A denial of protection without appropriate scrutiny of the individual circumstances of the applicant would be inconsistent with the prohibition of *refoulement*. Equally, the practice of expediting returns of failed asylum seekers with final appeals still pending would violate the principle of *non-refoulement*.

One problem in the coexistence of these two legal systems is the influence of the Dublin II Regulation on the observance by the EU Member States of the *non-refoulement* principle. The Dublin II Regulation prevents applicants from lodging an application in more than one Member State. However, there are distinct differences between Member States in recognition rates as far as applications for asylum are concerned as well as regarding the access to social assistance, which raises questions regarding the fairness of the system.

Current concerns regarding the difference regarding the quality access to the RSD procedure lead to some developments regarding the returns to Greece. Based on EU Member States’ obligation to ensure access to fair and effective asylum procedures, including in cases subject to the Dublin II Regulation, UNHCR advises Governments to refrain from returning asylum-seekers to Greece under the Dublin Regulation until further notice. UNHCR recommends that Governments make use of Article 3 (2) of the Dublin II Regulation, allowing States to examine an asylum application lodged even if such examination is not its responsibility under the criteria laid down in such Regulation.<sup>5</sup> In practice, “Dublin returnees” encounter several obstacles in trying to lodge their claims upon arrival at Athens airport. Due to the lack of sufficient asylum personnel to ensure the immediate identification, registration and processing of asylum applicants, “Dublin returnees,” including vulnerable individuals, are automatically detained before their status is clarified and a decision is taken to either interview the applicant or refer him/her to the Central Asylum Department. Due to the lack of interpretation and legal services, asylum-seekers are often interviewed in a language they do not understand and without being counselled on their rights during the asylum process. Access to the asylum procedure continues to be problematic for “Dublin returnees” whose asylum claims are deemed to be “interrupted” as a result of having left Greece, without informing the authorities and before their claims had been decided or they had been notified of the results.

The above practice has been thoroughly documented in UNHCR’s July 2007 position on *The Return to Greece of asylum-seekers with “interrupted claims,”* which indicates that the “interruption” of claims by the Greek authorities may act as a bar to effective access to an asylum procedure. While a number of positive changes in the practice have been noticed in 2007, the legal framework underpinning the practice of “interruption” continues to leave room for different interpretations and fails to guarantee that “Dublin returnees” with “interrupted claims” are granted access to the procedure. This situation calls into question whether “Dublin returnees” will have access to an effective remedy as foreseen by Article 13 of the European Convention on Human Rights, as well as Article 39 of the Asylum Procedures Directive. Of relevance is the decision taken by the European Commission on 31 January 2008 to refer a case to the European Court of Justice against Greece for the infringement of the Dublin Regulation based on Greece’s failure to enact legislative amendments to abolish the practice of “interruption”.<sup>6</sup> In the application of the Dublin Regulation, all States are bound to respect their obligations under international human rights law and in particular the obligation to ensure that the transfers do not lead to a violation of the *non-refoulement* principle. The Commission is reflecting on ways to reinforce the observance of this principle, by ensuring that each asylum application falling within the scope of the Dublin system is subject to a full examination by a Member State.<sup>7</sup>

In 2009, Poland saw a substantial increase in the number of asylum applications lodged by persons of Georgian nationality filing in total 4217 applications for refugee status.<sup>8</sup> As of the date of this Report, none of them were granted protection in the country. The vast majority of the applications filed by Georgian nationals have been qualified for an accelerated procedure. The major travel route of the above applicants is by air from Georgia to Minsk, Belarus within the visa-free traffic regulation and then by train from Minsk to Brest/Terespol border crossing, where the application for refugee status is being made.

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<sup>4</sup> Ibidem, p. 16-17.

<sup>5</sup> UNHCR position on the return of asylum-seekers to Greece under the “Dublin regulation”, United Nations High Commissioner for Refugees, 15 April 2008, <http://www.unhcr.org/482199802.pdf> (date of access: 4.01.2010), p.1.

<sup>6</sup> Ibidem, p. 3-4.

In the midst of 2009 Belarus adopted a new law that regulates refugee status protection, including basic provisions relating to subsidiary protection and temporary protection. Moreover in 2008 Belarusian authorities concluded an agreement regulating the position of non-governmental organizations (NGOs) and international organizations and their role in monitoring borders with a special focus on providing access to the asylum procedure. The situation in detention centres and on the borders in Belarus is monitored by a mobile monitoring group.<sup>9</sup>

A report drafted by the European Council on Refugees and Exiles entitled “Here to stay? Refugee voices in Belarus, Moldova, the Russian Federation and Ukraine” from 2008 indicated that recognised refugees in Belarus have access to social services on the same level as citizens; however, not all of the applicable regulations are implemented in practice. Refugees may apply for maternal allowance, sickness allowance, unemployed allowance and there are applicable regulations on the minimum pay in place as well. Most refugees do not complain of having been confronted with xenophobia or racism and those instances which have been reported seem to be isolated cases. Most refugees would like to receive Belarusian citizenship but complicated procedures in this regard and the requirement to renounce previous citizenship hinders most of these attempts.<sup>10</sup>

### 3.8 Safeguards for Persons in Need of International Protection Provided in the Readmission Agreements

No data available.

### 3.9 Access to Asylum Procedure While in Administrative Detention and Right to Appeal

A foreigner who stays in a guarded centre or arrest for the purpose of expulsion, criminal prison or penal institution, shall submit the application through the commanding officer of the relevant Border Police division. The authority admitting the application shall immediately send it to the Head of the Office for Foreigners for consideration. Applications submitted by aliens who were placed or who are staying in a guarded centre or arrest for purpose of expulsion shall be sent within 48 hours.

Initiation of the refugee status determination procedure shall cause by virtue of law:

- expiry of a decision on obligation to leave the territory of the Republic of Poland,
- stay of execution of a decision on deportation until the date a final decision in the matter of granting refugee status is delivered to the applicant.

During the proceedings on granting refugee status the decision obliging an alien to leave the territory of the Republic of Poland and the decision on deportation shall not be given.

The decision to grant refugee status should be rendered within a time limit of six months from the date of submission of the application - with the exception of applications that are manifestly unfounded - the decision on which should be given within 30 days from the date of submitting the application. The decisions of the Head of the Office for Foreigners (First Instance) may be appealed to the Refugee Board.

An alien applying for refugee status and any person on whose behalf the applicant is applying may contact a representative of the United Nations High Commissioner for Refugees as well as any organizations dealing with refugee matters. A representative of the United Nations High Commissioner for Refugees shall be allowed at any time to contact an alien applying for refugee status.

### 3.10 Dublin II Regulation

One of the cornerstones of the Common European Asylum System is adopting a clear and workable method for determining the EU member state responsible for the examination of each asylum application lodged within the territory of one of the EU Member States. Thereby each asylum application can be examined only by one Member

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<sup>7</sup> European Parliament resolution on the evaluation of the Dublin system No 11, EP reference number: A6-0287/2008 / P6\_TA-PROV(2008)0385, Date of adoption of the resolution: 2 September 2008

<sup>8</sup> Information on the activities of the Office for Foreigners from 23–31 December 2009 (Informacja o działalności Urzędu do Spraw Cudzoziemców w okresie 23-31 grudnia 2009, [http://www.udsc.gov.pl/Zestawienie\\_tygodniowe,231.html](http://www.udsc.gov.pl/Zestawienie_tygodniowe,231.html)).

<sup>9</sup> UNHCR Global Report 2008, Eastern Europe, <http://www.unhcr.org/gr08/index.html#/Europe> (date accessed: 5.11.2009.), p. 226.

<sup>10</sup> Here to stay? Refugee voices in Belarus, Moldova, The Russian Federation and Ukraine, European Council on Refugees and Exiles, <http://www.unhcr.org/refworld/category,REFERENCE,,,BLR,49b11be53a7,0.html>.

State. To that end the EEC Member States signed the Dublin Convention on 15 June 1990 on determining the Member State responsible for examining applications for asylum lodged in one of the EEC Member States. After partial replacement of asylum policy to supranational level by virtue of the Amsterdam Treaty in 1999, the European Union was provided with the opportunity to establish more effective legal instruments in this domain. Thus the 18 February 2003 Council Regulation no. 343/2003 established the criteria and mechanisms of determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.

The aim of the “Dublin system” is to determine the Member State responsible for examining an asylum application lodged in one of the EU Member States, Norway or Iceland by a third country national. [REDUNDANT] The system involves Council Regulation no 343/2003 with implementing regulation, and Council Regulation no 2725/2000 of 11 December 2000 establishing the EURODAC system, an EU-wide electronic system for the identification of asylum-seekers together with implementing regulation. The territorial scope of the application of the Dublin system is extended to Switzerland by virtue of an interim agreement.

According to the Dublin II Regulation, each EU Member State is obliged to establish, given the objective criteria enumerated in the regulation in the order in which they should be applied, which Member State is responsible for examining an asylum application submitted on its territory. If on the grounds of one of the criteria it will be established that another Member State is responsible for examining the application, the Member State within which territory the application was lodged can make a request to take charge of the applicant and examine his/her application. If the requested Member State recognises its responsibility to examine the application, the first Member State is obliged to transfer the asylum seeker to that Member State. If a Member State has already examined or commenced examining the application, it is possible to make a request to that Member State to take back the asylum seeker who is staying illegally on the territory of another Member State in order to conclude the asylum proceedings or to initiate measures obliging such person to return to his/her country of origin. If the requested Member State recognises its responsibility, the country where the third country national resides without a valid residence document is obligated to transfer such person to the Member State responsible for examining the asylum application. The EURODAC regulation establishes an instrument facilitating the application of the Dublin II regulation by registering and comparing fingerprints of asylum seekers. According to that regulation, Member States are obligated to take fingerprints of each third country national over 14 years of age who lodges an asylum application or who has been detained during an attempt to cross the border illegally. Fingerprints can also be taken from illegal migrants to check whether they lodged an application for asylum (in that country or in another EU Member State). Member States are obligated to send any data immediately to the central EURODAC unit, subject to the European Commission, which registers such data in the central database and compares it against all of the data accumulated in the system.

The EURODAC system enables Member States to identify asylum applicants and persons who have been apprehended while unlawfully crossing the external border of the Community. By comparing fingerprints, Member States can determine whether an asylum applicant or a foreign national found illegally present within a Member State has previously claimed asylum in another Member State, or whether an asylum applicant has unlawfully entered European Union territory.

EURODAC consists of a Central Unit within the Commission, equipped with a computerised central database for comparing the fingerprints of asylum applicants, and a system for electronic data transmission between Member States and the database. In addition to fingerprints, data sent by Member States include, in particular, the Member State of origin, the place and date of the asylum application if applicable, sex, reference number, the date on which the fingerprints were taken and the date on which the data was forwarded to the Central Unit. Data is collected on anyone over 14 years of age and is entered directly into the database by the Central Unit. In the case of asylum applicants, data is kept for ten years unless the individual obtains citizenship of one of the Member States, in which case their particulars must be immediately erased. Data relating to foreign nationals apprehended when attempting to cross an external border unlawfully are kept for two years from the date on which the fingerprints were taken.

Data is immediately erased before the end of the two years if the foreign national:

- obtains a residence permit;
- has left the territory of the Member State; or
- has obtained citizenship of a Member State.

In the case of foreign nationals present illegally within a Member State, EURODAC makes it possible to check their fingerprints against those in the central database to determine whether an individual had previously lodged

an asylum application in another Member State. After the fingerprints have been transmitted for comparison purposes, they are no longer stored by EURODAC.

The criteria determining the Member State responsible for examining an application for asylum lodged in one of the EU Member States are contained in Chapter III of the Dublin II Regulation. The process should be based on the situation when the asylum seeker first lodged his application with a Member State.

Firstly, it should be established whether the applicant is an unaccompanied minor. If so, his/her application should be examined by a Member State, where his/her family members reside, on the condition that it is in the minor's best interest. In the absence of a family member, the country where the minor has lodged the application is responsible for examining the application.

If the applicant has a family member – regardless of whether the family was previously established in the country of origin – who has been allowed to reside as a refugee in a Member State, that state is responsible for examining the application, provided that the person concerned so desires.

When the asylum seeker has a family member in one of the EU Member States whose application has not been subject to a first decision on merits, that Member State shall be responsible for examining the application, provided that the persons concerned so desire.

The next criterion is possession of a valid residence document.<sup>11</sup> If so, the Member State that issued the document is responsible for examining the application for asylum. Analogically, in a situation where the asylum seeker is in possession of a valid visa, the application shall be examined by the country which issued the visa, unless it was issued when acting for or on the written authorisation of, another Member State. In such case the other country shall be responsible for examining the application for asylum. However, if a Member State before issuing a visa, consults central authorities of another Member State, for instance for security reasons, the latter's reply shall not amount to authorisation within the meaning of the provision cited above.

If an asylum seeker is in possession of more than one valid residence document or visa, issued by different EU Member States, the application shall be examined by the country which:

- issued the residence document conferring the right to the longest period of residency or, if the periods of validity are identical, issued the residence document having the latest expiry date
- issued the visa having the longest date, if various visas are of the same type
- issued the visa having the longest period of validity or, where the periods of validity are identical, the member state that issued the visa having the latest expiry date.

The principles expressed above should be also applicable where the asylum seeker is in possession of only one or more residence documents which have expired less than six months previously or one or more visas which have expired less than six months previously and which enabled the third country national to actually enter the territory of a Member State, as long as the applicant has not left the territory of one of the Member States.

However, where the asylum seeker is in possession of one or more residence documents which have expired more than two years previously or one or more visas which have expired more than six months previously and which enabled him/ her to actually enter the territory of a Member State, the application shall be examined by the country where it has been lodged. This principle is also applicable only where the asylum seeker has not left the territory of the Member State that issued the document.

The fact that the residence document or visa has been issued on the basis of false or assumed identity, or the submission of fraudulent, counterfeit or invalid documents does not release the Member State which issued a document or visa from responsibility for examining the application for asylum. However this principle does not apply where it can be established that fraud was committed after the document or visa had been issued.

Where an asylum seeker has irregularly crossed the border into an EU Member State by land, sea or air having come from a third country, that Member State shall be responsible for examining the application for asylum. The

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<sup>11</sup> The Dublin II Regulation defines a residence document as "any authorization issued by the authorities of a Member State authorizing a third country national to stay in its territory, including the documents substantiating the authorization to remain in the territory under temporary protection arrangements or until the circumstances preventing a removal order from being carried out no longer apply, with the exception of visas and residence authorizations issued during the period required to determine the responsible member state as established in the Dublin II regulation or during examination of an application for a residence permit.

responsibility ceases 12 months after the date on which the irregular border crossing took place. If a Member State cannot be held responsible upon the above rule, and an asylum seeker has lived within the territory of another Member State for longer than five months than another Member State is responsible.

The Member State responsible for examining an application for asylum under this Regulation No 343/2003 shall be obliged to:

- take charge of an asylum seeker who has lodged an application in a different Member State;
- complete the examination of the application for asylum;
- take back an applicant whose application is under examination and who is in the territory of another Member State without permission;
- take back an applicant who has withdrawn the application under examination and made an application in another Member State; and
- take back a third country national whose application it has rejected and who is in the territory of another Member State without permission.

Where a Member State issues a residence document to the applicant, the obligations shall be transferred to that Member State. The obligations shall cease where the third-country national has left the territory of the Member States for at least three months, unless the third-country national is in possession of a valid residence document issued by the Member State responsible.

Where a Member State with which an application for asylum has been lodged considers that another Member State is responsible for examining the application, it may, as quickly as possible and in any case within three months of the date on which the application was lodged, call upon the other Member State to take charge of the applicant. Where the request to take charge of an applicant is not made within the period of three months, responsibility for examining the application for asylum shall lie with the Member State in which the application was lodged. The requesting Member State may ask for an urgent reply in cases where the application for asylum was lodged after leave to enter or remain was refused, after an arrest for an unlawful stay or after the service or execution of a removal order and/or where the asylum seeker is held in detention. The request shall state the reasons warranting an urgent reply and the period within which a reply is expected. This period shall be at least one week and shall not exceed one month.

The request that charge be taken by another Member State shall be made using a standard form and shall include proof or circumstantial evidence and/or relevant elements from the asylum seekers statement. The requested Member State shall make the necessary checks, and shall give a decision on the request to take charge of an applicant within two months of the date on which the request was received. Failure to act within this period entails the obligation to take charge of the person.

The transfer shall be carried out within six months of acceptance of the request. If necessary, the asylum seeker shall be supplied by the requesting Member State with a *laissez passer*. Where the transfer does not take place within the six-months time limit, responsibility shall lie with the Member State in which the application for asylum was lodged. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the asylum seeker or up to a maximum of eighteen months if the asylum seeker absconds.

Where the requested Member State does not communicate its decision within the one-month period or the two-week period (if the request is based on data obtained from the EURODAC system), such action shall be construed as agreement to take back the asylum seeker.

A Member State that agrees to take back an asylum seeker shall be obliged to readmit that person to its territory. The transfer shall be carried out in accordance with the national law of the requesting Member State as soon as practically possible, and at the latest within six months of acceptance of the request that charge be taken back by another Member State of the decision on an appeal or review where there is a suspensive effect. The requesting Member State shall notify the asylum seeker of the decision concerning his being taken back by the Member State responsible. This decision may be subject to an appeal or a review. Appeal or review concerning this decision shall not suspend the implementation of the transfer except when the courts of competent bodies decide on a case-by-case basis if the national legislation allows for this.



Assessment of whether in the given case the Dublin II procedure should be applied follows after filing an application. The procedure is also initiated if during examination of a refugee status application, the authority receives information justifying transfer to another Member State.

The Head of the Office for Foreigners sends information on the planned transfer of an alien to the Border Police Headquarters. The Board for Foreigners within the Border Police Headquarters sends written information to the subordinated units on the planned transfer of aliens, determining date and hour of the transfer, personal data of transferred persons (name, surname, date of birth, citizenship), as well as the indication of the legal basis for admission, which indicates whether the person had previously applied for refugee status in Poland and if so – at which stage the procedure currently is.

Upon the transfer the Border Police undertakes activities aimed at assessment of the alien's legal status in the territory of Poland. Depending on the results of these assessments, the Border Police may apply to the court for placing an alien in the guarded centre or in arrest for the purpose of expulsion. If not, an alien is released and in the case of asylum seekers, directed to the Central Reception Centre in Podkowa Leśna – Dębak to receive accommodation in one of the open reception facilities.

Border Police duties within the framework of admitting an alien are the following:

- Checking information concerning an alien in databases accessible to the Border Police;
- In the case of receiving the application for refugee status - conducting the procedure under article 29 of the 2003 Aliens Protection Act;
- Depending on circumstances – conducting proceedings in a case of offence or penal proceedings related to illegal crossing of the border, according to article 264 of Polish Penal Code (Journal of Laws of 2007, No 88, item 553);
- In the case of detention of an alien, the Border Police notifies the relevant consulate about the detention with consideration of article 9 of 2003 Aliens Protection Act. Afterwards, depending on the circumstances, the Border Police applies to the court for placing an alien in a detention centre or in the arrest for the purpose of expulsion. Unless there are premises to file such application, an asylum seeker is directed to the Central Reception Centre in Podkowa Leśna – Dębak and is accommodated in one of the reception centres in the Head of the Office for Foreigners' disposal.

The sole transfer procedure to/from another Member State usually takes 2-8 hours, depending on the number of transferred persons, the amount of personal belongings to be registered in deposit, or due to discrepancies in personal data. This time may be extended up to 12 hours in cases where the transferred persons were placed in detention centres.

The provisions for placing an alien in a guarded centre or in the arrest for the purpose of expulsion are stipulated by the Act of 13 June 2003 on Aliens and by the 2003 Aliens Protection Act. Article 102 of the Act on Aliens sets forth that an alien shall be placed in a detention centre if:

- it is necessary to ensure the effectiveness of the proceedings on expulsion or on withdrawal of the permit to settle or of the long-term resident's EC resident permit;
- there is a well-founded fear that an alien will attempt to evade the execution of the decision on expulsion or on withdrawal of the permit to settle or of the long-term resident's EC resident permit;
- he/she crossed, or has attempted to cross, the border contrary to the laws, if he/she was not escorted to the border immediately (for ex. readmission procedures etc.).



The grounds for placement of an alien applying for refugee status in Poland in a detention centre are determined in article 87(1) of the 2003 Aliens Protection Act. It sets forth that the applicant or a person on whose behalf the applicant is applying shall not be detained unless it is necessary:

- to establish their identity;
- to prevent abuse in proceedings for granting refugee status;
- to prevent a threat to other people's safety, health, life or property;
- to defend or ensure the safety of the state.

According to article 97(2) of the 2003 Aliens Protection Act, the grounds for placement in a guarded centre are as follows:

- the applicant or a person on whose behalf the applicant is applying has illegally crossed or attempted to cross the border, unless he/she arrives directly from the territory where the circumstances justifying their threat of persecution (within the meaning of Art. 13) or causing them to suffer serious injury (within the meaning of Art. 15) occurred and they entered the territory of the Republic of Poland or are stay on Polish territory without permission, provided that the application for granting refugee status shall be submitted immediately and the foreigner shall present acceptable reasons for his/her illegal entry or stay;
- the applicant's behaviour or the behaviour of the person on whose behalf the applicant is applying threatens the safety, health or life of other foreigners staying in the reception centre or for employees of the reception centre.

In addition, in the event there is a risk that the alien won't obey the rules applied in the guarded centre, the court is allowed to order the placement of an alien in the arrest for the purpose of expulsion (just for security reasons, no deportation order follows).

In accordance with the fact that persons transferred to Poland under the Dublin II procedure had usually crossed the Polish border illegally in the past, the Border Police, in the majority of cases of readmitting aliens applying for refugee status, applies to the court for placement in guarded centres or in the arrest for the purpose of expulsion. Such persons are at first placed in detention for a period of one month and then their stay can thereafter be extended until final resolution of the case.

According to the data received from the Border Police, the percentage of persons readmitted under the Dublin II Regulation strongly varies among the Border Police divisions. In the area within jurisdiction of the Sudecki Border Police Division only 18% of readmitted aliens were placed in guarded centres or in the arrest for the purpose of expulsion. In the area within the jurisdiction of the Karpacki Border Police Division it was 27%, while for the Nadodrzański Border Police Division it was 55%, and for the Łużycki BGD it was 90%.<sup>12</sup>

The data provided by the Foreigners Departments of the various Border Police Divisions<sup>13</sup> indicate that the realization of the admission procedure does not encounter greater difficulties. The problems reported concerned the limited number of interpreters in the Georgian and Armenian languages as well as the lack of precise regulations on the authority obliged to cover transportation costs from the detention facility to the reception centre in the case an alien does not possess sufficient financial means for such purpose.<sup>14</sup> Another problem indicated by the Border Police is the influence of the mental state of the transferred aliens, which sometimes renders the administrative procedure impossible or seriously hinders it. In addition, in some cases, family members are transferred separately, which only serves to worsen their psychological state.

In the case of persons granted international protection on the territory of Poland before being returned there on the basis of the Dublin II Regulation, it was observed that quite a number do not possess the financial resources to cover their living expenses. Moreover, in many of those cases the aliens had already exhausted the opportunity to benefit from the individual integration programmes (securing cost of living) or the deadline for applying to receive such support had passed during their stay abroad.

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<sup>12</sup> Data covers the period from 1 January 2009 to 29 September 2009.

<sup>13</sup> See footnote 2.

<sup>14</sup> As observed in practice it is usually the Border Police who covers the cost.

In cases where the refugee status determination procedure has been suspended by the Head of the Office for Foreigners, the procedure may be reopened after the alien's return to Poland.<sup>15</sup> If the procedure had already concluded, the returned person may apply once again for refugee status. Cases where transferred aliens had not applied for refugee status in Poland before leaving to other Member States are rare.<sup>16</sup>

The procedure for transferring aliens from Poland to other Member States is usually initiated upon checking in the data communication system STAY (POBYT) that the person hasn't already applied for refugee status in Poland. The alien may be placed in a detention centre or in the arrest for the purpose of expulsion until the Member State responsible for examining the refugee status application is determined. The average time between initiating the procedure and transfer is one to three months.<sup>17</sup>

In 2009, the largest number of Dublin II applications filed to Poland by other EU Member States was examined on the basis of article 16 of the Dublin II Regulation, i.e. within the admission and readmission procedure. In nine cases the humanitarian clause was applied.

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<sup>15</sup> According to estimated data received from the Łużycki Border Police Division in 2009 in 90% of cases returned aliens reopen previous refugee status procedure which was discontinued upon they absconded the procedure while leaving the country.

<sup>16</sup> In 2009 in the area within the jurisdiction of the Sudecki Border Police Division, all returned aliens applied for refugee status in Poland before being readmitted on the basis of the Dublin II Regulation.

<sup>17</sup> Data received from the Podlaski Border Police Division.

## 4. Description of Monitored Locations and Facilities

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### 4.1 Places Where Monitoring was Conducted

1. Arrest for the purpose of expulsion Warsaw – Okęcie with the Nadwiślański Border Police Unit, 1 Żwirki i Wigury Street, 00-905 Warsaw
2. Arrest for the purpose of expulsion and Guarded Centre with the Bieszczadzki Border Police Unit, 34 Mickiewicza Street, 37-700 Przemyśl
3. Arrest for the purpose of expulsion and Guarded Centre with the Podlaski Border Police Unit, 100 Bema Street, 15-370 Białystok
4. Lesznowola Guarded Centre in Lesznowola with the Nadwiślański Border Police Unit, 143 Wojska Polskiego Avenue, 05-600 Grójec
5. Guarded Centre in Biała Podlaska with the Nadbużański Border Police Unit, 19 Dokudowska Street, 21-500 Biała Podlaska

### 4.2 Cross-Border Cooperation with Neighbouring Countries

From 20-22 October 2009, HNLAC employees participated in the Cross-Border Cooperation Meeting – Cross-Border Missions in Uzgorod, Ukraine, organized by UNHCR Kiev. The meeting included an exchange of experiences and good practices on challenges with regard to mixed migration and refugee protection, as well as government – NGO cooperation between UNHCR Country Offices, State Border Police Services, Police, Immigration Officers and NGOs representatives from Ukraine, Belarus, Poland, Moldova, Hungary, Slovakia and Romania. Participants discussed the Ten-Point Plan of Action for Refugee Protection and Mixed Migration and attempted to identify good practices and challenges with regard to profiling and referral mechanisms.

Participants were also provided with the opportunity to visit detention centres in Ukraine and neighbouring countries. Firstly, participants were taken to the Chop border facility (Ukraine), where they were shown around the entire premises and where the Border Police officers provided them with a short presentation on Ukrainian migration law and the rules for placing and releasing aliens from detention centres. Conditions in the Chop detention centre may be evaluated as rather good. Aliens have the possibility to contact NGOs providing them with legal aid.

Similar visits took place at Nyírbátor detention centre in Hungary and Sekovce detention centre in Slovakia. Participants were acquainted with the Border Police responsibilities and the legal framework of placing and releasing aliens in detention centres in Hungary and Slovakia, respectively. Thereby they were provided with the opportunity to compare and evaluate three different alien detention systems, including one from outside the European Union.

### 4.3 Exchange of Information within Cross-border Cooperation

See point 4.2.

### 4.4 Monitoring at the Polish-Belarusian Border

Within the scope of the AMAS Project HNLAC undertook monitoring activities on the Polish – Belarusian Border throughout 2009.

On 7 September HNLAC lawyers visited the border crossing in Terespol. The visit was spurned by information on Border Police officers' alleged refusal to accept asylum applications submitted by Georgian citizens. The HNLAC lawyers spoke to the Head of the Border Crossing in Terespol, his substitute as well as the vice-Commander of the Nadbużański Border Police Unit.

The Border Police officers claimed that no interruption in accepting asylum applications had taken place. As proof of such fact, the lawyers were provided with statistical data on the number of persons who had submitted asylum applications within the last week. From 24 August to 30 August the number of applicants ranged from 10 to 39. In August 942 asylum applications had been submitted in Terespol, covering 1,658 persons (including 488 children). The information on 2,000 aliens waiting at the border did not correspond to the facts. The officers

stated that among some aliens of Georgian origin there was a belief/ gossip that the very Georgian nationality, together with a valid passport, entitled them to a residence permit in Poland. Therefore a large number of aliens did not express the intention to submit an asylum application, but the sole will to enter Poland. Under such circumstances aliens obtained decisions on refusal of entry and tried to cross the Polish border once again. Some of them had been trying to cross the border up to nine times and this phenomenon caused the increase in the number of decisions on refusal of entry within the last few weeks.

Given the situation presented above, Border Police officers in Terespol conducted preliminary interviews with all aliens of Georgian origin present at the border crossing. Lawyers from HNLAC observed one of the cases. During the interview an alien was questioned about his reasons for coming to Poland and in case of expressing the will to make an application for asylum or when from the alien's statements followed that he was an asylum seeker, he subsequently submitted the application.

Border Police officers also expressed concern over the phenomenon of abusing the asylum procedure, because only about 30% of persons who had applied for asylum actually reached a refugee centre, while the majority – according to the Border Police – were trying to stay illegally in Poland or continue on to other countries.

As far as the situation on the Belorussian side of the border is concerned, Polish Border Police had no information of any deficiencies in border controls. However, sometimes people arriving to Poland had to wait several hours for the train in Brest because there were only two trains to Terespol without reservation of seats. On the day of the visit, by 1 p.m. about 68 aliens had crossed the border. All of them came to Poland on the same day in the morning. Some of them have tried to enter Poland several times already. The HNLAC lawyers spoke to some of the aliens at the border. They confirmed that at the time the submission of asylum applications did not raise any reservations, however they said that three days earlier Border Police had not accepted any applications, and no preliminary interviews had taken place. In response, HNLAC lawyers were provided by the Border Police with the statistical data cited above. However, a small number of applicants (10 - 11, covering both the applicant and his family) justified the conviction that there might have been deficiencies in providing the aliens with access to the asylum procedure. Nonetheless, on the day of the visit, HNLAC lawyers did not detect any incorrectness in submitting asylum applications.

#### 4.5 Monitoring at the Border Crossing Point with Germany

On 15 December 2009 the media in Poland reported that approximately 150 asylum seekers and rejected asylum seekers of Chechen and Georgian nationality boarded a train in Wrocław with the intention of reaching Strasbourg, France. Their goal was to protest against poor living conditions for asylum seekers and refugees in Poland.

The HNLAC lawyers gathered information regarding this border incident from the Łużycki Border Police Unit and Caritas office in Zgorzelec as well as available media stories. HNLAC monitored the situation closely during and after the incident and acted as a support system for those involved by providing them with legal assistance. HNLAC continued its assistance and monitoring in the months following to ensure that participation in the protest has not adversely affected asylum claims.

On 15 December the train was stopped at the Polish/German border in Zgorzelec by the Border Police, who carried out control of their legal documents. As none of the 150 persons from this group had valid documents to cross the border, they were not let out of the territory of Poland. All 150 were placed under the custody of the Border Police and their status was verified. Upon verification it turned out that the protesting group consisted of asylum seekers awaiting decision in RSD procedures in Poland as well as rejected asylum seekers whose stay in Poland was illegal.

Subsequently, 110 asylum seekers were safely escorted to the Reception Centre in Podkowa Lesna Dębak. Additionally, seven asylum seekers were relegated to other refugee centres in Poland and they were set free to reach their destination on their own. The rest stayed in Zgorzelec, under the Border Police's custody waiting for Court decisions regarding their status. Those whose RSD procedures were finalized were facing deportation.

Some protesters claimed that living conditions for asylum seekers and refugees in Poland were unacceptable. Some of them also complained that their claims for refugee status in Poland were rejected and demanded the change of these decisions. They demanded that the Polish government allow them to leave Polish territory and travel to France, and cover the costs of their journey. In addition, they had the following demands:

- The release of all those detained in Zgorzelec;
- The dismissal of the management of the Reception Centre in Podkowa Lesna Dębak; and
- The issuance of a formal apology from the President of the Republic of Poland to the Chechen nation for the poor treatment of Chechen asylum seekers in Poland.

Upon further negotiations with the Polish Office for Foreigners, the Georgians withdrew their claims. The protesters were not visibly supported by other Chechen asylum seekers living in Poland and there were no signals that the protest would be extended to other centres. The Office for Foreigners assured that all asylum seekers would be set free and proposed that those unsatisfied with their living conditions could choose another reception centre for their further stay in Poland.

According to the representative of the Centre for Aid of Migrants and Refugees (“Caritas”) in Zgorzelec, the situation at the border did not include any instances of human rights violations. Protesters were handled with the appropriate care for their dignity and no means of coercion had to be used. After placing the protesting aliens in the custody of the Border Police in Zgorzelec they were visited by a representative of the local Caritas office. There was however information that some of the detained behaved aggressively toward the Border Police officers and in front of the Polish Court.

Since the beginning of the incident the UNHCR National Office in Poland has been monitoring the situation of involved persons of concern. The office was in contact with Polish authorities, NGOs and protesting asylum seekers and took part as an observer in the negotiation meeting with the protesters.

The Polish Ombudsman expressed his interest in the reasons for the asylum seekers’ protests at the Zgorzelec border crossing. Subsequently, the Ombudsman’s office monitored the living conditions in the refugee centres as well as the RSD files of those protesters who received negative decisions on their refugee status. As of the date of this Report the results of the above monitoring were not known yet.

## 4.6 International Airport in Warsaw

The visits to Warsaw–Okęcie Airport concerned the Arrest for the purpose of expulsion at Warsaw – Okęcie at the Nadwisański Border Police Unit. The findings of the monitoring of the Warsaw–Okęcie Airport are described in Chapter IV of this Report.

## 4.7 Dublin II Facilities

In Poland, there are no separate Dublin II facilities. Depending on the results of the initial appraisal, the Border Police may apply to the court for placing an alien in a guarded centre or arrest for the purpose of expulsion. An alien may also be released and directed to the Central Reception Centre in Podkowa Leśna – Dębak.

## 4.8 Detention Facilities (Short Term and Long Term)

According to 2003 Alien’s Protection asylum seekers in Poland may be placed in detention when it is necessary to establish their identity, to prevent abuse in proceedings for granting refugee status, to prevent a threat to other people’s safety, health, life or property as well as to protect the defence or safety of the state or maintain public order. Aliens can be also detained when they have illegally crossed or attempted to cross the border or threaten the safety, health or life of other foreigners staying in the reception centre or its employees. There are two types of detention centres: guarded centre and arrest for the purpose of expulsion.

Aliens who arrive directly from the territory on which any of the circumstances justifying their threat of persecution or suffering serious injury exist and have entered the territory of Poland or are staying on its territory without permission shall not be detained, provided that the application for granting refugee status will be submitted immediately and the foreigner will present acceptable reasons for his/her illegal entry or stay. Aliens should also not be placed in the guarded centre or under arrest for the purpose of expulsion if it may cause a serious threat to his life or health.

The decision on placement of aliens in the guarded centre or under arrest for the purpose of expulsion is rendered by the district court for a period of 30-60 days and can be extended upon the request of the President of the Office, the agency of the Border Police or of the Police. However, it should be noted that the maximum period of detention cannot be longer than one year.

Aliens staying in the guarded centre or in the arrest for the purpose of expulsion during the proceedings for granting refugee status have the possibility to contact organizations dealing with refugee matters by telephone or mail as well as to have personal contact with the representative of UNHCR or other organizations aiming at providing legal aid to such aliens (although in a few circumstances, the head of the guarded centre or an officer can restrict or exclude such possibility, i.e., for reasons of public security and policy or in observance of organizational rules in the guarded centre or when an alien has been placed in the arrest for the purpose of expulsion). Aliens also have the right to, *inter alia*, benefit from medical treatment and if necessary be placed in the medical care centre; undisturbed sleep between 10 p.m. and 6 a.m., on Sundays and national holidays. holy days until 7 a.m., access to sanitation and use of toiletries; exercise their religion, enjoy religious services as well as to listen to or to watch in the facility religious services transmitted by mass media, unless such is contrary to the rules of stay in the guarded centre or the arrest; to buy newspapers at his/her expense, and to keep such in the room for aliens or in the accommodation cell; to buy, at his/her expense, food, toiletries and to keep those objects in the social room or in the accommodation cell as well as submit petitions, complaints and requests to the head of the Police or the Border Police agency which supervises the centre or the officer responsible for functioning of the arrest for the purpose of expulsion or to the Police or the Border Police agency supervising the arrest.

Aliens may be released from the guarded centre or from arrest for the purpose of expulsion on the grounds of the decision of the Head of the Office for Foreigners if the basis for the placement was to prevent abuse of the proceedings for granting refugee status. In such case, the Head of the Office for Foreigners may render a decision on release from the guarded centre or arrest for the purpose of expulsion either *ex officio* or upon request of an alien, if the evidence of the case indicates the probability that the alien meets the conditions for being recognised as a refugee, or for being granted supplementary protection and his/her stay on the territory of Poland does not constitute a threat to state defence or safety or public order and safety.

An alien whose release from the guarded centre or from the arrest for the purpose of expulsion has been refused can lodge an appeal within seven days from the date the decision was delivered. The appeal shall be submitted to the district court, through the head of the guarded centre or through an officer responsible for the functioning of the arrest for the purpose of expulsion.

An alien who has been released from the guarded centre or from the arrest for the purpose of expulsion may be obliged to stay in a specified place or location, which he/she may not leave without the permission of the President of the Office, up to the date of rendering the final decision in the proceedings for granting refugee status. An alien may also be obliged to report to the authority indicated in the decision at the specified intervals of time.



## 5. Findings of the Monitoring, with Special Attention to the Respect of Rights Guaranteed by Legislation

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### 5.1 Exercising the Right to Asylum in Practice

Those aliens placed in the arrest for the purpose of expulsion or in one of the guarded centers had often entered or stayed illegally in the territory of Poland beforehand. A number of them filed applications for refugee status after their arrival in the detention centre. Others claim that they filed them after being stopped by the Police. In some cases those who were detained by the Police did not receive any information concerning refugee status proceedings or confirmation of having filed the application. Consequently, they had to file such application again, which negatively affects their legal situation. In cases where the alien was detained by the Border Police and the application was accepted, there was often no confirmation of the application having been filed; only oral instructions on further proceedings and standardized instruction forms regarding the Polish legal system.

The aliens often stated that while filing the application, they were not informed in detail about the rules of the refugee status procedure in Poland, nor about their rights and duties. They received documents that they didn't fully understand. They didn't know what would happen later on with their application, when someone would come to question them in detail on the reasons for filing the motion for asylum, when they would receive a decision, what the proceedings would be like, and how they should participate in them. The majority of aliens approached couldn't name their rights and duties in the refugee status proceedings. The aliens didn't have any information on the deportation proceedings towards them. Often those who had received deportation decisions didn't know the contents thereof or justification therefor. As a result, many aliens do not appeal against these decisions. Some aliens had objections to the language skills of examiners and said that the protocols of interrogation weren't reflecting what they've actually stated. Not everything was written down. The protocols are drafted in the Polish language and therefore the aliens often have difficulties in verifying their contents.

Aliens in the Arrest for the purpose of expulsion in Warsaw-Okęcie entered/stayed illegally in the territory of Poland, or were returned from other EU countries under the Dublin II Regulation. Some of them, like in other centres, applied for refugee status once they were already in detention. Others applied when detained or during the receiving procedure in the framework of readmission agreements or the Dublin II Regulation procedure. The detaining body was the Police or the Border Police. The applications were then accepted when the aliens were in detention and transferred to the Office or accepted by officers of the Nadwiślański Border Police Unit directly in the arrest. Aliens claimed that they didn't receive any written confirmation of having filed the refugee status application. They were only provided with oral instructions on behaviour rules and proper standardized instruction forms.

A significant number of the aliens examined in detention expressed their feeling that the persons conducting the interview for the purpose of the RSD procedure weren't interested in their individual situation; they felt dissatisfaction after the hearing, saying that it was too impersonal. They couldn't fully express their reasons, as the hearing was conducted, in their opinion, in a hurry. They didn't receive answers to their questions or detailed explanations nor instructions regarding time limits or the gathering of necessary evidence.

### 5.2 The Right to Information

Aliens placed in the Arrest for the purpose of expulsion at Warsaw-Okęcie are generally informed about the reasons for detention. A monitored facility provides written information concerning detention and release procedures, the right to telephone contact with non-governmental organizations providing legal aid for aliens, the right to file an application for refugee status and to lodge complaints and applications. Aliens usually receive information in their own language.

At the Arrest for the purpose of expulsion at Warsaw-Okęcie information about the right to contact non-governmental organizations providing legal aid for aliens telephone or mail, such as HNLAC and the Helsinki Foundation for Human Rights is available. There is also information about UNHCR.

An alien who applies for refugee status is usually informed about the next steps of the procedure for granting refugee status in a language he/she understands.

The process of issuing the first decision takes in most cases more than six months, which is the deadline set by the general rules of the Polish administrative procedure. Of particular importance is the fact that during the

procedure aliens are not informed by the authorities about the stages of the procedure or the date of issuing the decisions.

At the Guarded Centre in Białystok, Arrest for the purpose of expulsion at Warsaw-Okecie, Lesznowola Guarded Centre and at the Szczecin Guarded Centre, aliens are informed about the reasons for detention. Information concerning detention and release procedures, the right to telephone contact, the right to file an application for refugee status and to lodge complaints and motions is available at all of these facilities.

The alien is usually informed about their rights in a language he/she understands. In detention facilities in Białystok and Biała Podlaska, according to the aliens interviewed, the interrogation is not always carried out in a language that the asylum seeker can understand.

In Biała Podlaska Guarded Centre aliens are not always informed about the reasons for protracted detention. At the Lesznowola Guarded Centre information about the possibility to file an application for release from the facility is not made available.

At all of the facilities, information about the right to contact UNHCR by telephone or mail is available.

The majority of centres monitored make available written information concerning detention and release procedures, the right to telephone contact with non-governmental organizations providing legal aid for aliens, the right to file an application for refugee status and to lodge complaints and motions. The centre in Biała Podlaska also makes available information on acquiring refugee status in the EU Member States as well as on the Dublin II Regulation. The information on the right to lodge a complaint against detention is not available at the centre in Warsaw-Okecie. Information on the right to lodge a complaint against a decision on accommodation in the centre or on application for release is not available in Lesznowola. Aliens responding to the monitoring questionnaire stated that the above information is available, depending on the centre, in Russian, English, French, Vietnamese and Polish through leaflets and posters in the rooms where the aliens reside. At the Lesznowola centre, the information is also available through books and magazines accessible in the library. The regulations of stay in arrests or in guarded centres are available in the rooms generally accessible to aliens or made accessible upon personal request.

In the Przemyśl, Biała Podlaska and Warsaw-Okecie centres information about the right to call or mail UNHCR can be found in "Instructions on the code of conduct and course of refugee status proceedings and rights available to aliens, duties resting on them and legal consequences of non-performing."

### 5.3 Right to Interpretation

Interpreters participate in the refugee status determination proceedings, in detention procedures and in applying for accommodation in the reception centre. They generally do not inform aliens about their role in the proceedings. At the Biała Podlaska centre aliens didn't have any objections to the manner or the accuracy of translations. At the Przemyśl centre some of the aliens, e.g., Vietnamese stated that the translator knew the officers and provided them with facts that could be related to the case but which were not stated by the alien (i.e., stereotyping). At the Lesznowola centre some aliens claimed that the interpreter took side of detaining authorities so he wasn't impartial.

A written or oral translation of the main elements of decisions (concerning refugee status, detention or deportation), including information on the available legal remedies are provided in a language the third country national understands or may reasonably be supposed to understand.

### 5.4 The Right to use one's Native Language

Aliens have the right to use their native languages both in their private conversations and during legal proceedings in Poland (detention procedure and refugee status procedure). The authority carrying out the proceedings shall ensure the assistance of an interpreter having command of the language understandable for the applicant. What is more, the personnel in the visited centres usually speak, or at least understand the most common languages among detainees: Russian and English.

### 5.5 The Right to Legal Remedies

The majority of aliens in the arrest for the purpose of expulsion or in the guarded centre in Przemyśl entered or stayed illegally in the territory of Poland. Some of them filed applications for refugee status already in the centre. Others claim that they filed upon being detained. In such cases, those who were detained by the Police did not

receive any information concerning refugee status proceedings nor any confirmation of filing the application. Consequently, they had to file such application again, which negatively affected their legal situation. If they were detained by the Border Police the motion was accepted, however they didn't receive any confirmation, only oral instructions on rules of behaviour.

The aliens often admitted that during filing the application, they weren't informed in details about the rules and the refugee status procedure in Poland, as well as their rights and duties. They received documents that they didn't really understand. They didn't know what after would happen with their application, when somebody would come to question them, when they would receive a decision, how the proceedings look like and how they should participate in it. Often having received deportation decisions they didn't know its contents and explanation. Some aliens didn't appeal against these decisions, as they didn't know the institution of appeal proceedings as well additionally they didn't understand the reasoning of the decision, given in Polish language. They also had objections to lingual competences of interviewees and said that the protocols from RSD interviews weren't compatible with their words. Not everything was noted down. The interview protocols were in Polish language. Two persons weren't instructed on the possibility to receive a copy of the protocol.

Similarly like in Przemysl, aliens in the arrest for the purpose of expulsion and guarded centre in Biała Podlaska entered or stayed illegally in the territory of Poland. The part of them filed applications for refugee status already in the centre. Others claim having filed these motions when they were detained. They encounter similar problems with the access to information on the state of their RSD procedure as mentioned above.

Aliens in the arrest for the purpose of expulsion in Warsaw-Okęcie as well as in the guarded centre in Lesznów entered, stayed illegally in the territory of Poland or were turned back from other EU Member States under the Dublin II Regulation. Some of them, as in other centres, filed motions already in detention. Other filed them when detained or during the receiving procedure in the framework of readmission agreements or the Dublin II Regulation procedure. The detaining body was the Police or the Border Police. The situation regarding their proceedings was similar to this in other detention facilities.

## 5.6 The Right to Maintain Unsupervised Contact with the Legal Representative or Representative of Consular Authorities

There are no free phone calls in the Arrest for the purpose of expulsion in Warsaw-Okęcie. The aliens have to have their own telephone card. They have a limited amount of time - about 15 minutes per person - for using the phone. Due to the location of the telephone, close to the Border Police officers, there is no privacy while making calls.

Aliens placed in guarded centres may not carry mobile phones with video recording or photo-taking capabilities. They can use their phones only during certain times during the day; the rest of time mobile phones are placed in a deposit box.

A visit with representatives from HNLAC can be arranged, at an agreed date and time, after notifying Border Police management. Visits take place in a special room (in Przemysł, Warsaw-Okęcie) and are supervised. Employees providing legal advice are generally permitted to visit those foreigners who request an appointment.

There are no free phone calls at the Przemysł centre. Privacy during the calls is considerably limited since the telephone is located at the duty centre where the Border Police officials work. While theoretically aliens have the possibility to receive phone calls, this cannot be confirmed with any degree of certainty.

In Lesznów telephone booths are located at duty centres in each building. There is no possibility to make free phone calls. However, there is a possibility to make free phone calls using the phone in the administrative building upon written request, but in the aliens' opinion it is difficult to obtain such permission. Privacy of phone calls is considerably limited since the telephone is located at the duty centre or in the corridor.

There are no free phone calls at the facility in Białystok. The aliens have to pay to use the phone. Sending documents by post or by fax is also not free of charge. Such situation can lead to the violation of article 89 of 2003 Aliens Protection Act, but also affects the real range of the accessibility of protection proceedings for foreigners and the possibility to provide them with aid or information by a statutorily appointed social organization.

At the centres in Biała Podlaska and Warsaw-Okęcie, the privacy of phone calls is considerably limited since the telephone is located in the passageway. Aliens do have the possibility to receive phone calls.

Aliens who have their own mobile phones are obliged to place them in a deposit box. Upon request, they can get the phones back from officers and make any calls in their presence. They cannot have these phones all the time because they are considered to be dangerous objects and also because of the possibility of recording images and sounds. In Biała Podlaska and in Warsaw–Okęcie, upon request from the officers, foreigners can get their phones back, with the exception of phones that can record images.

## 5.7 The Right to Send and Receive Packages and Correspondence and to Receive Visitors

The aliens in Biała Podlaska Guarded Centre, Arrest for the purpose of expulsion Warsaw-Okęcie, Lesznowola Guarded Centre and in Szczecin Guarded Centre have the possibility to send and receive letters by post office and letters and messages by fax.

In the arrests for the purpose of expulsion and guarded centres there is an unlimited possibility to send and receive letters. In Przemyśl, aliens can ask for envelopes and stamps when they need them and they are provided.

Aliens also have the possibility to send and receive messages and letters by fax. The waiting time in Przemyśl, Warsaw and Lesznowola amounts to one day; in Lesznowola, however, sometimes delays happen usually because of the weekends.

Sending documents by post or by fax is free of charge. Generally, there is no problem in using those ways of communication with authorities or non-governmental organizations.

The aliens pay for post or fax when it concerns their personal matters.

In Biała Podlaska aliens may receive visitors between 7 and 15:30 during working days. The manager of the centre gives his consent to a visit at alien's request and his guest. Sometimes the waiting time amounts to some hours. In the Arrest for the purpose of expulsion in Warsaw-Okęcie visits have place at alien's request, according to the regulations of the centre, after notifying the manager of the arrest for the purpose of expulsion about the date of the meeting. A suitable motion has to be submitted by visiting person. The motion is examined with some delay that is why visits are arranged at a concrete date and hour. In exceptional circumstances a visit can be arranged on the same day the motion was submitted. The manager of the centre gives his consent to a visit that takes place in a special room and is supervised by the guards.

In Lesznowola visits take place in a special room that is not watched by the guards.

Please refer to point 4.7 regarding access to mobile phones.

## 5.8 The Right to Exercise one's Religion

In all of the facilities visited, the right to exercise one's religion is respected. There are special rooms designed for prayer, which however aren't often used by foreigners. Detainees can also watch religious services on television. Upon request, priests may also visit the centres.

## 5.9 The Right to Use Available Public Education Possibilities

At the moment, public education is not available for children in detention facilities for aliens. That is why steps should be taken to reduce the scope of children detention. However, the new directive of the European Parliament and the Council of the European Union on common standards and procedures in Member States for returning third-country nationals, which should be implemented by 24 December 2010 at the latest, stipulates that: *"Minors in detention shall have the possibility to engage in leisure-activities, including play- and recreational activities appropriate to their age, and shall have - depending on the length of their stay - access to education."*

## 5.10 The Right to Accommodation, Food, Wearing own Clothes and Open-air Exercise

In most cases, the asylum seekers interviewed stated that they do not have any reservation towards residential conditions in guarded centres. The most common issue pointed out by asylum seekers is that there are several people placed in one cell. This situation, according to asylum seekers, causes conflicts among them.

The aliens in Warsaw-Okęcie Arrest for the purpose of expulsion are placed in accommodation cells assigned to four foreigners. According to statements from aliens, cells are too small and not comfortable enough. They also complained about lack of space for their personal belongings.

In the Warsaw-Okęcie Arrest for the purpose of expulsion asylum seekers can move between cells only if they have a guard's permission. The asylum seekers clean cells. The cells are air-conditioned.

The aliens in Białystok Guarded Centre and the Arrest for the purpose of expulsion Warsaw-Okęcie are placed in accommodation cells assigned to four foreigners. In Biała Podlaska Guarded Centre the number reaches eight, but there is a possibility to request a single room.

In Warsaw-Okęcie Arrest for the purpose of expulsion, asylum seekers pointed out that their bedclothes are changed every two weeks. Access to hot water, bath and sanitary facilities was described as limited (including the use of the toilet) and only with the officers' consent. The detainees may take a bath only once a week. In general, sanitary conditions were described as good.

According to information received from the aliens interviewed aliens are treated differently based on cultural differences or the ability to speak the Polish language. For example, foreigners from Belarus or Armenia are allowed to bathe more frequently as they were better able to communicate with the guards, while the Vietnamese for example were unable to negotiate more frequent bathing due to the language barrier.

In all of the facilities aliens stated that their bedclothes were changed every two weeks (besides Biała Podlaska, where they are changed less often). The aliens can take a bath every day, but access to hot water is limited in Guarded Centres in Biała Podlaska and Białystok as well as the Arrest for the purpose of expulsion Warsaw-Okęcie. In general, sanitary conditions were described as good.

In all of the facilities monitored, aliens receive three meals daily, including one hot meal (dinner), and drinks. The daily nutritional value of the meals served cannot be less than 2,600 calories. Aliens under 18, sick persons, pregnant women and nursing mothers receive meals and drinks with a value not less than 3,200 calories. Religious restrictions concerning food are respected. Food is served in the canteens and due to legal provisions it should be eaten in sanitary conditions provided by the canteens. Thus, when aliens insist on taking the meals back to their rooms, this sometimes causes considerable tensions between the aliens and the centre's management.

Aliens have the right to use their own clothes unless their belongings can no longer be used or are impermissible for hygiene reasons. In such cases aliens receive clothes, shoes and underwear according to the seasons of the year. They are expected to pay for these items unless they do not have the financial means, in which case they receive them free of charge.

Regulations envisage one walking hour per day in open air. Aliens often do not take the opportunity to go out because they do not agree to the chosen time for open-air exercise and demand the right to go outside any time they want. The latter is not possible due to logistical reasons – the aliens must be monitored by Border Police officers, who due to other obligations, cannot go outside at any foreigner's request.

## 5.11 The Right to Medical Treatment

In the guarded centers and the arrest for the purpose of expulsion, the doctors are available only a few times a week. The psychologists are available only upon the alien's request. Requests for psychological aid are in practice very rare.

The guarded centres are not suited to aliens with serious health issues, physical or psychological. Despite this fact there are many aliens who require the care of a specialist. The aliens are released from detention when their condition is so poor that there is a serious threat to his/her life or health. This in turn causes situations where aliens purposely try to worsen their state of health by for example going on a hunger strike, thus forcing the centre's authorities to set them free.

During the monitoring no cases of persons with special care needs (disabled, ill, etc.) were identified.

## 5.12 Protection of Vulnerable Categories of Asylum Seekers, Including Unaccompanied Minors and Single Women

The law allows for placing unaccompanied minors without legal status in Poland in a guarded centre for aliens. There is a possibility however to request that the court place the minor in a facility for children. According to the Act of 13 June 2003 on Foreigners an unaccompanied minor staying in the guarded centre shall be placed in a separate part of the centre in a manner that makes his/her contact with adults placed in the centre impossible. Pursuant to the 2003 Aliens Protection Act an unaccompanied minor applying for asylum, as well as a foreigner whose psychophysical state allows one to assume that he/she was a victim of violence or has a disability, should



not be placed in a guarded centre for aliens. According to the 2005 Agreement between the Capital City of Warsaw and the Office for Foreigners, unaccompanied minors in the asylum procedure are placed in Children's Home no 9 in Warsaw. In 2009, 14 children (four girls and 10 boys) seeking protection in Poland and identified as unaccompanied minors were placed in Children's Home no 9.

Minors who are accompanied by their parents/legal guardians while in Poland may be placed together in a guarded centre for aliens upon the decision of the court.

*Statement of Good Practice* is a document setting out the policy and practice for the Separated Children in Europe Programme's work in order to present a clear description of the regulations and practice required to implement the means to ensure the promotion and protection of unaccompanied minors' rights in Europe. It contains universal rules that should be applied in any kind of work with children. The rules contained in *Statement of Good Practice* are mostly based on the Convention on the Rights of the Child (CRC) and two other documents: *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum* (1 February 1997) and *Position on Refugee Children by the European Council on Refugees and Exiles* (November 1996). The fundamental principles, which should be borne in mind in all stages of care and provision for separated children are the following:

- the best interests of children shall be a primary consideration in all actions concerning children;
- separated children are entitled to the same treatment and rights as national or resident children; they should be treated as children first and foremost; all considerations of their immigration status should be secondary;
- the views and wishes of separated children should be sought and taken into account whenever decisions affecting them are being made; measures should be put in place to facilitate their participation in line with their age and maturity;
- it is vital that separated children be able to maintain their mother tongue and links with their culture and religion; provision of childcare, healthcare and education should reflect their cultural needs; care should be taken not to perpetuate those aspects of cultural traditions that are harmful to and discriminate against children; preservation of culture and language is also important should a child return to their home country;
- separated children should be provided with suitably trained interpreters who speak their preferred language whenever they are interviewed or require access to services or legal procedures;
- care should be taken not to disclose information about a separated child that could endanger the child's family members in their home country; the permission of separated children should be sought in an age-appropriate manner before sensitive information is disclosed to other organizations or individuals; information should not be used for purposes other than for those for which it was given;
- separated children should be provided with accessible information about, for example, their entitlements, services available, the asylum process, family tracing and the situation in their country of origin;
- organizations, government departments and professionals involved in providing services to separated children should cooperate to ensure that the welfare and rights of separated children are enhanced and protected; a holistic approach should be adopted in trying to meet the interconnected needs of separated children;
- those working with separated children should receive appropriate training on the needs and rights of separated children; immigration or border police staff should receive training in conducting child-friendly interviews;
- separated children should take account of, to the greatest extent possible, the long term best interests and welfare of the child;
- all decisions regarding separated children should be taken in a timely fashion taking into account the child's perception of time.

Other principles concern access to the territory, child victims of trafficking, identification of separated children, family tracing and contact, appointment of a guardian or adviser, registration and documentation, age assessment, freedom from detention, interim care, health, education, and training.<sup>18</sup>

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<sup>18</sup> Separated Children in Europe Programme, *Statement of Good Practice*, Third Edition, 2004.



The conclusions emerging from the analysis of the situation of unaccompanied minors in Poland in comparison to the *Statement of Good Practice* are alarming. According to the Statement separated children seeking protection should never be refused entry or returned at the point of entry. In practice, on the Polish border there is no difference in treatment of adult asylum seekers and children, including unaccompanied minors. Separated children, like adults, can be refused entry to Poland if they don't meet the criteria stipulated by law. This is also contradictory to the fundamental principle of good practice, i.e., the best interests of children being a primary consideration in all actions concerning children. What is more, separated children should not be detained for solely immigration reasons. Meanwhile, they are often detained on the border, in police cells, prison cells or guarded centers for young people. In such guarded centers they wait for the appointment of a legal custodian. They wait in isolation, alongside juveniles waiting for transfer to an appropriate juvenile detention centre. According to detailed provisions on care for children, stays in such centres should not exceed three months. However, as a result of procedural problems related to legal status of unaccompanied minors, they stay in the centres much longer. In the above situations HNLAC intervenes immediately after receiving information on any such cases.

HNLAC lawyers encountered two unaccompanied minors in the Guarded Centre in Krosno Odrzańskie. They came from Afghanistan and were detained for having illegally crossed the Polish border. When they applied for refugee status, the authority admitting the application immediately addressed the custody court with an application to establish a guardian to represent them in the proceedings. One of the Border Police officers was appointed as a guardian. Actions aimed at finding any relatives of these unaccompanied minors are currently being undertaken. They are waiting for an interview in the embassy. According to the information received from Krosno Odrzańskie Guarded Centre the authority admitting the refugee status application hadn't addressed the custody court with an application to place the minors in the care of an educational centre because in the Centre there is a special room for unaccompanied minors. In 2009, they had five cases of separated children and the procedure was as above. It raises concerns in light of article 88(2) of the act on granting protection to aliens, which sets forth that unaccompanied minors shouldn't be placed in guarded centers. During their visits in the Guarded Centre in Krosno Odrzańskie as well as in the Guarded Centre in Kętrzyn, HNLAC lawyers visited such special rooms for separated children. The living conditions in these rooms as well as in the entire centre were of a high standard, nevertheless the Centre in Kętrzyn doesn't receive unaccompanied minors since doesn't have appropriately qualified personnel to take care of such children. Also, in other Guarded Centers visited by lawyers (Przemyśl, Białystok, Biała Podlaska, Lesznowola) there weren't any unaccompanied minors for the same reasons.

Furthermore pursuant to the above mentioned *Statement* at ports of entry immigration authorities should put in place procedures to identify separated children and to refer such children to the appropriate child welfare authorities. Where an adult accompanies the children, it will be necessary to establish the nature of the relationship between the child and the adult. In practice, the Border Police assigns a child to a group of people with whom he crosses the border, which often does not reflect the real bonds between a child and the people accompanying him/her. There are no special procedures that would simplify the process of qualifying children crossing the border as unaccompanied minors. Unless an adult accompanying a minor can prove with valid documents that he is the child's legal caretaker, special means should be envisaged to protect the minor. An accurate identification system depends on the degree of training of the Border Police officers and their sensitivity to unaccompanied children. That is why HNLAC employees organize trainings each year for Border Police where one of the priority subjects is vulnerable groups in the refugee status procedure. They emphasize the importance of conducting child-friendly interviews in rooms suitable for children, of which there are none directly on the Polish border.

Special care and treatment is provided to those aliens who inform the authority carrying out the procedure that they were a victim of violence or to those whose psychophysical status allows one to assume that they were victims of violence. It may be difficult to identify such persons as very often they don't understand that they are victims of violence or are scared to admit it. Victims of violence may suffer from PTSD (Post Traumatic Stress Disorder) as a result of traumatic experiences, such as intensive war acts, bombardments, devastation of their homes, mutilations, torture, sexual abuse or death of a family member. The following behaviour can help to identify refugees as victims of violence:

- keeping away from situations and things connected with traumatic experiences;
- exaggerated emotional and physical reactions to some situations and things recalling the incident;
- emotional numbness, isolation from people and places, avoiding conversation, loss of interest, restriction of emotions;
- hyperactivity (problems with sleeping, problems with concentration, overreactions, abrupt outbursts);
- panic attacks;

- depression ,
- drug abuse;
- psychosomatic symptoms (aches and pains, drowsiness, loss of appetite);
- hostility, as a result of deep-seated distrust of other people, especially those holding an official position, state officers, police officers, medical personnel, who may be identified with traumatic situations caused by these kinds of persons in their home countries;
- hostility, as a result of fear of betrayal, towards other refugees from the same or another country, whom the victim doesn't know and who in his imagination may be a spy or constitute a potential danger to him/her or his/her family.<sup>19</sup>

The identification plays a very important role as the refugee status procedure may worsen the psychological condition of a person seeking protection. The procedure may last for several months or even years. This deepens discomfort and the feeling of uncertainty about the future as the decision is essential to the fate of the refugee. What is more, as refugees cannot work in the receiving country, they have a lot of time to brood over traumatic events from the past. The responsibility to identify victims of violence lies first and foremost with the Border Police officers. It is very important that even if they are not sure that the person is a victim they write down in the form of an official note each suspicion they may have. These remarks will also be verified later by the Office for Foreigners during the procedure and can be extremely helpful in the identification of a refugee as a member of a vulnerable group. The problem is that the law doesn't govern the procedure with the participation of this category of refugees. It only provides that the Head of the Office for Foreigners shall ensure that medical or psychological examinations of the alien are carried out, and it is the alien who informs the authority carrying out the procedure that he/she the victim of violence, is disabled or whose psychophysical status allows one to assume that he/she was the victim of violence, in order to acknowledge such circumstances. Such alien shall not be placed in a guarded centre or arrest for expulsion unless the foreigner's behaviour poses a threat to the safety, life or health of other aliens staying in the open centre or the employees of the centre.

One of HNLAC's lawyers represented a person identified by the Border Police as suffering from trauma, who was left all alone at the airport. The man, of Chechen origin, was transferred from France to Poland under the criteria of the Dublin II Regulation. The Border Police informed him that he should head to the Reception Centre in Podkowa Lesna Dębak but the asylum seeker couldn't manage without help, and was unable to do anything by himself. Luckily, with the assistance of a stranger, he contacted HNLAC. According to the medical examination received from the asylum seeker's sister (she is granted refugee status in France) he suffered from trauma because of violence he and his family experienced during the war in his home country. As a consequence he has permanent difficulties with concentration, nervousness and aggressiveness due to recurring nightmares that cause anxiety. He also has problems of psycho-traumatic origin with gesticulation, stammering and expressing himself. In the doctor's opinion he needed permanent care and close contact with his family. HNLAC's lawyer made an application on the asylum seeker's behalf, citing the humanitarian clause of the Dublin II regulation, article 15(2) stipulating that in cases in which the person concerned is dependent on the assistance of another on account of pregnancy or a newborn child, serious illness, severe handicap or old age, Member States shall normally keep or bring together the asylum seekers with another relative present in the territory of one of the Member States, provided that family ties existed in the country of origin. The application was accepted by the Office for Foreigners and the alien is now awaiting the decision of the French authorities.

Domestic violence is generally agreed to be the most under-reported crime as it is often considered a private matter. The UN Declaration on the elimination of violence against women defines violence as any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life. Violence against women includes physical, sexual and psychological domestic violence (battery, sexual violence in the family, marital rape, female genital mutilation and other traditional practices harmful to women, and non-spousal violence), violence in the community (rape, sexual abuse and/or harassment in the workplace, educational institutions or elsewhere, trafficking of women, and forced prostitution). Violence against women is often perceived as something individual, non-attributable to political structures and as a consequence victims of such violence are often refused refugee status or other forms of protection. Meanwhile women who face harsh or inhumane treatment originating from social rules followed by their communities should be treated as part of a social group that is persecuted in their home country unless the State provides them with effective protection.

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<sup>19</sup> Source: [www.health24.com](http://www.health24.com).

One of HNLAC's lawyers represents a victim of violence against women, including trafficking. The woman at an early age was sold by her family in order to conclude marriage. She was repeatedly forced into sexual intercourse with her husband, treated as a slave, pushed, beaten, slapped and pulled by her hair. Luckily she managed to escape and applied for refugee status in Poland. She fears coming back to her country of origin because her family or her husband would kill her for what she had done. If she is granted refugee status this decision will be crucial and may have an impact on other cases of violence against women where the State doesn't provide the victim effective protection, which would justify granting refugee status in Poland.

## 6. Conclusions and Recommendations

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### 6.1 General Findings

### 6.2 Recommendations

- decrease of detention measures in favour of alternative control methods, or at least replacing arrest for the purpose of expulsion with a system of reorganized guarded and semi-guarded centres;
- decrease of the maximum period for stay in detention;
- creating mechanisms for evaluating quality of procedures run by bodies responsible for deportation;
- making legal regulations regarding placement in custody more clear and precise,
- building a Polish common and general system of legal aid based on NGO experience;
- introducing public regulations considering rules of custody institutions;
- providing access to information based on the proceedings executed by the Border Police; enhancing the written information given to aliens.
- providing information and instruction regarding imprisonment and deportation;
- providing interpreter services or conducting administration proceedings in two languages.
- preparing protocols and decisions in the asylum seeker's native language or another language he/she understands;
- ensuring free phone/mail contact if the alien does not have the funds;
- providing appropriate medical care, considering epidemiological risks;
- provision of food related to the country of origin's tradition, if possible;
- providing leisure time for persons in detention;
- providing Border Police with training that would enhance their skills with regard to detecting and preventing human trafficking and detecting Post Traumatic Stress Disorder;
- providing adequate time frames for interviewing asylum seekers held in the detention.

### 6.3 Conclusions

Access to territory and the asylum procedure is fundamental to those seeking protection after fleeing their countries of origin and is conditional upon several factors. These factors include access to adequate information on the legal regulations, the status of a given person and his/her rights and obligations. In order for this information to be effective, access to legal aid is essential. Moreover, access to territory is also clearly linked with the scope and basis for the use of detention measures vis-à-vis foreigners seeking protection in Poland and the technical possibilities of receiving information and legal aid while in detention.

The survey carried out by HNLAC incorporated questions relating to all of the issues mentioned above. The results of the research are similar to projects conducted by HNLAC in 2008 and earlier.

As far as access to information is concerned, no grave violations in this regard were recorded in 2009. Every asylum seeker receives a brochure describing the internal rules of guarded centers or arrest for the purpose of expulsion in a language that he/she understands. These brochures contain elements of the administrative procedure; they provide information about the right to file a complaint against a court ruling regarding the asylum seeker's placements in detention or extending his/her stay there. Moreover, these brochures contain information about NGOs, International Organizations and governmental institutions providing assistance to asylum seekers. The list does not contain information about the scope of the organizations' activities. This is why NGOs should provide Border Police with such information and update their contact details.

It should also be underlined that the effectiveness of access to the asylum procedure is conditional upon provision of adequate information to asylum seekers. In order for this information to be effective, more often than not, oral explanations of the RSD modalities could play a vital role. The Border Police's obligation to provide information is formally satisfied by providing all aliens with a printed brochure on their rights but considering the purpose

of the right to information and the nature of asylum in general it should be noted that written materials are often insufficient. Border Police should be therefore providing at least basic information orally.

The presence of an asylum seeker and his/her legal representative or NGO employee during court hearings to extend a period of stay in guarded centers or arrest for the purpose of expulsion should be legally regulated. The monitoring showed that most court rulings on an alien's placement in detention overlook the individual situation of the person in question and in many cases imposing detention measures is excessive and unnecessary.

It is also important to regulate time frames for refugee case interviews and to separate the position of interviewer from translator.

Another important outcome of the monitoring is the lack of adequate legal assistance to asylum seekers and other aliens seeking protection. This is due to the fact that there are not enough qualified lawyers and due to the limited finances of the NGOs that provide such help. This, in turn, prevents the education of new employees.

Another important issue relates to the state law obligation to use only the Polish language during proceedings. As most of the asylum seekers do not know Polish well enough, they are prevented from active participation in administration proceedings. Changing the law is essential here. Proceedings should be executed at least in two languages. There is a need to provide to the RSD interview protocols in a language understandable by an asylum seeker in addition to Polish one, as it is done currently.

During penal proceedings, courts do not provide interpreter's assistance. In addition, they do not fulfil obligations to provide court decisions on placement/ prolongation of stay in the guarded centre or arrest for the purpose of expulsion in a language understandable to the asylum seeker.

A legal assistance system based on NGOs' experience and financed by EU funds and the government budget should be created as a resolution to the mentioned problems.

The obligation for state financed legal assistance comes from the EU Procedures Directive. Appropriate changes were to be implemented until 31 December 2008, however so far there is no state financed system for free legal assistance in Poland. Such a system, which could be based on NGO activities, could guarantee enhancement of the protection of aliens' rights. In Poland currently only NGOs have the essential experience in the field of asylum law and they may add to the system, for example by educating new lawyers.

At the same time it would be important not to forget that asylum seekers often suffer from lack of funds. They do not have enough money for telephone calls or to send correspondence, which may influence their participation in their own RSD procedures. It is vital therefore not to forget securing proper access to communication means for asylum seekers.

Considering the restrictive regulations, which allow extending an asylum seeker's stay in a guarded center, it is essential to provide additional funds for organizing leisure time activities. A lack of activities is the main reason for growing tension and conflicts among aliens. Considering the above, asylum seekers should have broader access to books, magazines or other media and sport facilities.

The presence of interpreters is also very important for the asylum seekers' situation. It would decrease psychological tension connected with imprisonment and allow asylum seekers to better exercise their rights.

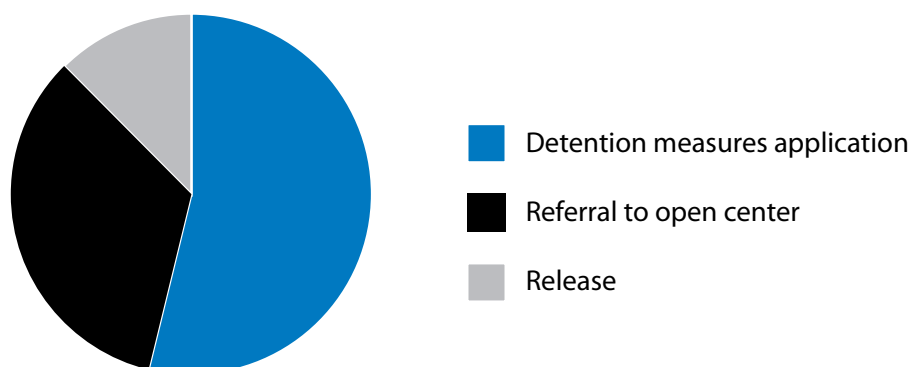
Access to medical services is a separate issue. Asylum seekers, in fact, are a group that requires special medical care. They often come from countries that are considered dangerous in terms of epidemiological risk. They may suffer from tropical diseases or illnesses that demand hospitalization according to Polish law. Furthermore, asylum seekers often come from regions where war or violent conflicts take place. As a consequence, they often come to Poland injured and as a result, require the assistance of a medical specialist.

Solving aliens' medical care issues will positively influence their situation. The present medical care system has to be supplemented with epidemiological, diagnostic and psychological assistance, considering Post Traumatic Stress Disorder. In addition, the nutritional allowance of detainees should be enriched with fruits and vegetables. Because preparing meals is outsourced to special catering companies, ordering food similar to traditional dishes should not be a problem. Religious requirements considering food also have to be taken under consideration.

## Annex 1. Statistical data

The following specification presents legal grounds for the decisions taken under the Dublin II procedure in detail:<sup>20</sup>

Legal basis of the decision	Number of decisions
<b>Article 16</b> – admission or readmission of the applicant	74
<b>Article 15</b> – humanitarian clause	9
<b>Article 8</b> – reunification with family member staying in the territory of Poland, whose application has not yet been the subject of first decision regarding the substance	8
<b>Article 7</b> – reunification with family member staying in the territory of Poland as a refugee	10
<b>Article 9</b> – Possession of a valid residence document or a valid visa	5



Source: data received from Śląski Border Police Division<sup>21</sup>

### Statistics Concerning Application of the Dublin II Regulation in Poland in 2009<sup>22</sup>

**Table I** Applications referred to Poland under the Dublin II Regulation divided by applicant country

State – party	Number of applications filed	Positive decisions	Negative decisions	Number of transferred persons
Austria	1,173	1,108	29	535
Belgium	347	305	28	79
Cyprus	1	1	0	1
Czech Republic	153	141	3	146
Denmark	46	44	0	20
Finland	33	31	2	12
France	1,307	1,232	51	169
Greece	1	0	0	0
Spain	7	6	1	3
Irish Republic	3	3	0	1
Luxembourg	2	2	0	0
The Netherlands	50	40	4	22

<sup>20</sup> Elaborated on the basis of data received from the Office for Foreigners on 24 November 2009. Statistics cover the period from 1 January 2009 to 23 November 2009.

<sup>21</sup> Elaborated on the basis of data received from the Śląski Border Police Division on 1 October 2009. Statistics cover the period from 1 January 2009 to 31 September 2009.

<sup>22</sup> Elaborated on the basis of data received from the Department for Refugee Proceedings of the Office for Foreigners on 24 November 2009. Statistics cover the period from 1 January 2009 to 23 November 2009.



State – party	Number of applications filed	Positive decisions	Negative decisions	Number of transferred persons
Germany	563	521	36	437
Norway	106	94	11	80
Slovak Republic	4	4	1	9
Slovenia	1	1	0	1
Switzerland	225	204	12	76
Sweden	254	231	20	133
Hungary	9	5	2	8
Great Britain	8	4	4	1
Italy	7	6	1	1
<b>Total</b>	<b>4,300</b>	<b>3,983</b>	<b>205</b>	<b>1,734</b>

**Table II** Applications referred from Poland to other states under the Dublin II Regulation

State – party	Number of applications
Austria	34
Belgium	12
Bulgaria	1
Czech Republic	4
Estonia	2
France	9
Greece	2
Spain	1
Lithuania	2
The Netherlands	4
Germany	14
Norway	11
Romania	1
Slovak Republic	3
Sweden	2
Hungary	4
Italy	6
<b>Total</b>	<b>114</b>

**Table III** Applications extended by Poland according to the criteria of the Regulation

Positive	54.39 %
Negative	27.19 %
Without examination	18.42%

### AGREEMENT

concluded  
between

THE UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES REGIONAL  
REPRESENTATIVE FOR CENTRAL EUROPE

and

THE COMMANDER IN CHIEF OF THE BORDER GUARD

**on Modalities of Mutual Cooperation and Coordination of Activities with Respect to  
access of persons to the procedure for Granting International Protection on The  
Territory of The Republic of Poland.**

The United Nations High Commissioner for Refugees Regional Representative for Central Europe and Commander in Chief of the Border Guard (hereinafter referred to as the Cooperating Parties):

**Recognizing** the right of every human being to seek and enjoy international protection in other countries is a basic right enshrined *inter alia* in Article 14(1) of the Universal Declaration of Human Rights of 10 December 1948 proclaimed by UN General Assembly,

**Recalling** the United Nations Convention Relating to the Status of Refugees adopted on 28 July 1951 (hereinafter the Convention) and the New York Protocol Relating to the Status of Refugees adopted on 31 January 1967, in particular Article 1 concerning the description of the term “refugee”, Article 31 concerning refugees’ unlawful presence in the country of refuge and Article 33 concerning the prohibition of expulsion or forced return (“*refoulement*”) of refugees,

**Recalling** Article 35 of the Convention obliging contracting States to cooperate with the Office of the United Nations High Commissioner for Refugees (hereinafter referred to as UNHCR), in particular providing requested information and statistical data concerning the conditions of refugees, the implementation of the Convention, and legal regulations which may relate to refugees,

**Recalling** that the United Nations General Assembly Resolution 428(V) of 14 February 1950, which adopted the Statute of UNHCR that ascribes to the United Nations High Commissioner for Refugees the function of providing international protection to refugees including promoting the admission of refugees, not excluding those without means to survive on the territories of the States Parties to the Convention, and of seeking durable solutions for refugees problems,

**Recalling** Article 56 sec. 2 of the Constitution of the Republic of Poland which provides the right to apply for refugee status,

**Recalling** the provisions of the Act of 13 June 2003 on Granting Protection to Aliens on the territory of the Republic of Poland,

**Considering** that ensuring access to the procedure relating to granting protection on the territory of the Republic of Poland, constitutes the most effective way of providing it to persons seeking international protection as well as Conclusions 22 (Session XXXII), 71 (Session XLIV), 74 (Session XLV), 81 and 82 (Session XLVIII), of the Executive Committee of the High Commissioner's Programme (EXCOM), set out international principles and standards governing the protection of refugees,

**Bearing** in mind the Agreement between United Nations High Commissioner for Refugees and the Government of the Republic of Poland concerning the legal status, immunities and privileges of UNHCR and its personnel in the Republic of Poland done on 27 February 1992,

agreed as follows:

## § 1

1. The Commander in Chief of the Border Guard, within his scope of responsibilities, will enable UNHCR officials or representatives of the non-governmental organization acting on behalf of UNHCR (hereinafter referred to as "UNHCR duly authorized partner"), to monitor the process related to the procedure for granting protection on the territory of the Republic of Poland, and enforcement of the applying persons' right of access to the procedure.
2. UNHCR duly authorized partner referred to in sec. 1, will be designated by the United Nations High Commissioner for Refugees Regional Representative for Central Europe after consultation with the Commander in Chief of the Border Guard.
3. UNHCR officials will share with the Commander in Chief of the Border Guard or with a person assigned by him, personal data of the monitors- representatives of the UNHCR duly authorized partner, such as first and last names, types and numbers of identity documents as well as addresses of stay within the territory of the Republic of Poland.
4. UNHCR officials in cooperation with the Border Guard will facilitate the training of monitors on the rules regarding conduct and presence on the premises of the Border Guard.
5. The monitoring actions referred to in sec. 1, will be carried out in an orderly manner with respect to dignity of persons seeking international protection and preserving

sensitivity as required in proceeding with these persons, as well as these actions will not result in the deliberate impediment of the Border Guard undertaking its statutory obligations.

## § 2

1. The Commander in Chief of Border Guard shall undertake actions to facilitate the activities of the High Commissioner in the discharge of its mandate in particular with regard to the provision of necessary information, including statistical data in order to enable the UNHCR to present reports to the competent organs of the United Nations.
2. The Commander in Chief of the Border Guard shall assign a contact person responsible for liaising with UNHCR officials or representatives of the UNHCR duly authorized partner and transmitting to UNHCR officials, bearing in mind technical capacities, every 6 months, electronically statistical data on the number of persons applying for refugee status, including places where such applications have been lodged.
3. Depending on needs, UNHCR officials will share with the Commander in Chief of Border Guard or assigned person, within the agreed parameters of exchange of information, the statistical data influencing the functioning of the Border Guard with regard to supporting the right of persons to seek protection on the territory of the Republic of Poland.

## § 3

The Commander in Chief of the Border Guard shall undertake measures necessary to provide persons seeking protection on the territory of the Republic of Poland with information, in a language that the persons of concern understand, on the rules and process of the refugee status procedure, their rights and obligations.

## § 4

The Commander in Chief of the Border Guard, shall ensure implementation of right of persons seeking international protection on the territory of the Republic of Poland to freely contact UNHCR officials and, with their consent, free access to representatives of the UNHCR duly authorized partner as well as ensure the possibility to visit places where persons seeking refugee status are located to verify the observance of the standards stipulated in relevant provisions.

## § 5

1. The Commander in Chief of the Border Guard shall facilitate actions and access of UNHCR officials or the UNHCR duly authorized partner to places designated for receiving applications from persons seeking international protection.



2. The Commander in Chief of the Border Guard shall undertake activities to ensure access by the monitors to the information in particular on the number, age, sex and nationality of such persons, the mode of applied procedure as well as the reasons for detention, if applicable, of persons seeking international protection on the territory of the Republic of Poland.

3. In cases in which irregularities are identified, especially within implementation of the agreement, the information will be promptly shared by UNHCR officials or UNHCR duly authorized partner with a person assigned by Commander in Chief of the Border Guard, referred to in § 2 sec. 2.

4. The situation of persons with special needs, especially unaccompanied minors, persons whose psychophysical condition allows to assume that they were subjected to violence or are with disabilities, will receive special attention during the activities described in sec. 1 and 2.

## §6

Personal data of persons seeking international protection on the territory of the Republic of Poland will be processed according to the provisions of the law of 29 of August 1997 on personal data protection.

## §7

UNHCR officials or the UNHCR duly authorized partner, within their capabilities, will organize and provide training on the issues related to granting international protection for the Border Guard as well as provide necessary materials relevant to the training.

## §8

1. United Nations High Commissioner for Refugees Regional Representative for Central Europe shall coordinate the funding of the projects related to the implementation of the present Agreement.

2. The representatives of Cooperating Parties shall hold at least two meetings annually to discuss and appraise the realization of the Agreement.

3. UNHCR officials will undertake all activities necessary to organize and minute the working meetings indicated in section 2.

**§ 9**

The Agreement is concluded for an indefinite period.

**§10**

Any amendments to the text of the Agreement shall be in written under the pain of nullity.

**§11**

The termination of the Agreement can be performed by any of the Cooperating Parties with a 30 days notice period provided in writing. In such a case the Agreement shall cease to an end on the day of receiving the notice.

**§12**

Any dispute arising from the implementation of the Agreement shall be settled by the Cooperating Parties in a friendly manner.

**§13**

The Agreement enters into force on the day of its signing by the Cooperating Parties.

**§14**

Done in Warsaw, on <sup>21.10.</sup>..... 2009, in two original copies, while each of them is in Polish and English languages, both texts being equally authentic. In a case of any interpretation divergences, the Polish version shall be decisive.

  
Commander-in-Chief  
Border Guard  
Republic of Poland

  
Regional Representative  
UNHCR Regional Representation  
for Central Europe





A map of Europe with the borders of countries outlined in white. Romania is highlighted in a dark blue color. A dark blue horizontal bar is positioned across the top left of the map, containing the word "Romania" in white text.

# Romania

Refugees  
at the  
**Border**

# Report on Border Monitoring Activities

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## Introduction

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This report summarises the activities undertaken from July 2008 to December 2009 by UNHCR Representation in Romania, the Romanian National Council for Refugees (CNRR)- a Romanian NGO, implementing partner of the UNHCR in Romania for carrying out activities related to border monitoring- and the Romanian Border Police, represented by the General Inspectorate of Border Police (IGPF)<sup>1</sup> within the framework of the **Tripartite Memorandum of Understanding on modalities of mutual cooperation and coordination to support the access of asylum seekers to the territory of and the asylum procedures in Romania** signed on 22 July 2008 in Bucharest by the heads of these 3 parties. The document created a written framework for the existing cooperation related to border monitoring and training of Border Police staff. (See Annex 1 for the full text of the document, hereinafter the Tripartite Agreement and Annex 2 for a description of the Romanian border police and its structures)

The long standing cooperation between UNHCR and the Romanian authorities responsible for issues related to migration and asylum was the basis for concluding the Tripartite Agreement. Cooperation and sharing of activities and initiatives continued to be the basis of cooperation after July 2008 as well.

After the signing of the Tripartite Agreement, a Tripartite Working Group (TWG) comprised of representatives of the three signatories was established to initiate, discuss, agree and plan the joint activities.

The total length of the Romanian border is 3,149.9 km, out of which 1,085.5 km is green border and 2,064.4 km blue border (on the Danube, Prut and Tisa rivers and on the Black Sea). Romania has the second longest external EU border totalling 2,070.6 km, out of which 681.3 km is shared with the Republic of Moldova, 649.4 km with Ukraine, 546.4 km with Serbia and 193.5 km with the Black Sea. The length of the EU internal border is 1,079.3 km, out of which 631.3 km is shared with Bulgaria and 448.0 km with Hungary.

In Romania, the population of concern to UNHCR originates from various countries in Asia, Africa and the Middle East, and comprises mostly male applicants, aged 18-59, with 2.5% being over 65 and 20% minors. From 1991 to 2009 a total of 18,524 asylum-seekers were registered in Romania, out of which 3,061 were granted international protection (73.5% were granted refugee status and 26.5 % were granted subsidiary protection). At the end of 2009, 1,117 persons with a form of international protection were living in Romania. More than half of them were Iraqi (52.5%).

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<sup>1</sup> The General Inspectorate of Border Police is the central unit of the Romanian Border Police, with juridical entity and territorial competence for the area of responsibility of the Border Police, which conducts the leadership activities and is responsible for the activity of the Border Police, performs investigation and research activities of serious acts of organized crime, illegal migration and cross-border crime committed in the territorial competence area of the Border Police, as well as any other duties assigned by law. The General Inspectorate of Border Police is led by a General Inspector, appointed by the Minister of Interior, and assisted by deputies. The General Inspectorate of Border Police has directorates, services and offices in its organizational structure. (<http://www.politiadefrontiera.ro>).

# 1. Border Monitoring Framework

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## 1.1. Implementation of the Access Management and Support (AMAS) Project

Romania has an interesting history regarding migration and asylum. While before 1989 Romania was a refugee producing country, since 1991, when Romania became a party to the 1951 Geneva Convention relating to the status of refugees (hereinafter The Convention) and its 1967 Protocol, Romania started to transform itself in a refugee receiving country and more recently a resettlement country.

UNHCR was established in Romania in 1992, based on an agreement concluded with the Romanian government and since then it has been fully exercising its mandate by providing assistance to the Romanian government in establishing and continuously improving a viable asylum system.

As access to the asylum procedure and to the territory for persons in need of international protection has not always been a positive practise in Romania, the UNHCR has established cooperation with the appropriate bodies to create the necessary framework for allowing and encouraging the Romanian authorities to fully respect the right to seek asylum, as well as the non-refoulement and the non-penalisation principles.

After becoming party to the Convention, Romania created the first national law on asylum in 1996<sup>2</sup>, which was modified in 2000<sup>3</sup> and 2006<sup>4</sup>. The asylum law which entered into force in 2000 introduced a specific procedure for asylum applications submitted at border crossing points by aliens in need of international protection. In the following two years about 100 persons submitted asylum applications at border crossing points, mainly at Otopeni International Airport and at Constanta harbour.

Since 2000, activities related to border monitoring and interventions in border areas on behalf of persons of concern for UNHCR were conducted jointly by the UNHCR and CNRR. In 2001, CNRR with UNHCR's support and within the UNHCR funded programme, concluded the first Protocol of Cooperation with IGPF aiming at provision of legal counsel for persons in need of international protection in all locations under the responsibility of IGPF (including border points), facilitation of various training activities on asylum/migration and border control issues and the production and distribution of protection information for persons of concern.

Within the framework of the Tripartite Agreement concluded in 2008, the three parties hold regular meetings in the form of the Tripartite Working Group (hosted on a rotation basis by each of the three parties), undertake joint border monitoring missions, organise training sessions and have a regular exchange of data and information on issues of joint interest.

## 1.2 Methodology

According to the Tripartite Agreement, UNHCR and/or CNRR (on behalf of UNHCR) carry out the border monitoring activities and may intervene in certain situations on behalf of individuals who might be in need of international protection, while the Border Police facilitate their unhindered access to the border areas and to persons of concern. CNRR is also responsible for providing legal assistance, counsel and representation free of charge to asylum seekers located in border areas.

Usually, border monitoring activities are carried out jointly by a representative of UNHCR, one CNRR staff responsible for border related activities and a representative of IGPF (in most cases the President of the TWG or his deputy, who is also the designated border official responsible for the implementation of the provisions of the Tripartite Agreement). The border monitoring activities are discussed, agreed upon and planned within the TWG. Until the end of 2009, the focus of the monitoring activities carried out was on the EU external border, (including Otopeni International Airport) and mainly the northern border of Romania with Ukraine, which registered an increased number of third country nationals crossing illegally and subsequently applying for asylum.

The regular border monitoring visits are discussed and agreed upon within the TWG based on a previous assessment in relation to the numbers of foreigners apprehended at the border in the previous period, changes in the staff of the Border Police, and changes in the migratory routes. The head of IGPF is notified through written communication. During the monitoring visits to the sectors of the Border Police and border crossing

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<sup>2</sup> Law no.15

<sup>3</sup> Government Ordinance no. 102

<sup>4</sup> Law 122/2006 regarding asylum in Romania

points, the activities were related to introducing the delegation and the scope of the visits to the local order officials, requesting information from the Border Police regarding their activities pertaining to illegal migration in their area of competence, numbers of asylum applications submitted to the Border Police details regarding the circumstances of the submission of these asylum applications, steps taken by the Border Police in these cases, procedures followed by the Border Police in cases when the aliens do not apply for asylum, constraints faced by the Border Police in their activities related to asylum, cooperation with other relevant institutions, assessment of the training needs of local Border Police in relation to asylum issues, (mainly the identification of asylum seekers within mixed migratory flows, and knowledge of the main principles related to asylum), availability of protection information for persons in need of international protection, respect for the fundamental principles in asylum related cases, knowledge of the working methodology to be followed by the Border Police when an alien applies for asylum, as well as other areas of concern.

As CNRR, within the UNHCR funded project, does not have a regular presence in border areas, regular monitoring of the news published on the web-site of IGPF was a good source of information regarding the groups apprehended by the Border Police, illegally entering or exiting Romania. Cases involving third country nationals who might be in need of international protection were then followed-up with IGPF.

### 1.3 Training for Border Guard Officers

In 2004, UNHCR initiated the establishment of a joint mobile training team comprised of representatives of the IGPF, the Romanian Immigration Office (RIO)<sup>5</sup>, UNHCR and NGOs active in the field of asylum. This joint mobile training team provided training in 2004 and 2005 to border guards across the country on issues related to, inter alia, identification of persons in need of international protection among mixed migratory flows, access to the Refugee Status Determination (RSD) procedure, exemptions from penal sanctions, treatment of vulnerable groups (including victims of trafficking), fundamental principles in the asylum field, etc. These training sessions were also combined with border monitoring activities, promoting unhindered access to the RSD procedure and standards of treatment for asylum seekers kept in transit areas while undergoing border procedures.

In 2004, CNRR also completed activities related to border monitoring in view of unhindered access to the asylum procedure, specialised legal assistance of persons in need of international protection, advocacy and lobbying to implement unified standards and practises at the national level within a project financed by the Norwegian and the UK Governments through the Opportunity Fund in addition to the funds received from UNHCR.

In view of broadening of the channels for disseminating information on asylum-related issues to border guards, CNRR concluded protocols of cooperation with various educational institutions that provide regular courses (both basic and advanced training) for border guards. As a result of the training sessions organised for professors of these educational institutions, CNRR drafted and published in 2007-2008 the following materials, with the contribution of and endorsed by IGPF, RIO and UNHCR:

- Methodology for receiving asylum applications by the Romanian Border Police (this document was also distributed in 2009 with the magazine issued by IGPF titled "Frontiera"<sup>6</sup> thus reaching all the Border Police staff countrywide)
- Identification of the persons in need of international protection – case studies
- Competences of the Border Police in the field of asylum
- Rights and obligations of asylum seekers during the RSD procedure – written/audio version translated into 10 languages
- Asylum application – translated into 10 languages

The above materials were distributed to all the Border Police structures and some are attached in Annex 3.

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<sup>5</sup> In June 2007, the National Refugee Office merged with the Authority for Aliens through Emergency Government Ordinance no. 55/2007 of 20 June 2007 (published in the Official Journal no. 424/26 June 2007 and entered into force on 26 June 2007). The newly created authority, the Romanian Immigration Office (RIO) functions as the central authority for the implementation of Romanian policy in the field of migration, asylum and integration of aliens. RIO has four Directorates, out of which, two - The Directorate for Migration (DM) and the Directorate for Asylum and Integration (DAI) – remain the main interlocutors of the Office for issues related to persons of concern. The organizational structure and tasks of RIO are incorporated in Government Decision no. 639/2007 (published in the Official Journal no. 426/26 June 2007 and entered into force on 26 June 2007).

<sup>6</sup> "Border"



As a result of the activities undertaken by CNRR with UNHCR support, the curricula of the National Border Police Training Schools includes a topic “*Migration nexus asylum*” based on the presentation provided by CNRR and UNHCR during the training sessions.

CNRR also implemented the following cross-border projects financed by the Soros Foundation with special support from UNHCR, IGPF and RIO:

- 2001-2008 - six roundtable discussions on asylum and border control were organised with Moldova, Bulgaria, Ukraine, Serbia, Montenegro and Hungary with the participation of the authorities and relevant NGOs
- 2008 - *Regional trends and approaches to migration and asylum challenges* - a cross-border seminar between Romania, Ukraine and Moldova, with three seminars organised in each participating country

In October 2008, UNHCR organised a Training of Trainers (ToT) involving representatives from all territorial border structures to further disseminate the information received during the ToT to their colleagues within follow up training activities, and to act as focal points on asylum-related issues for UNHCR and its partners. While the dissemination of relevant information was accomplished by the participating border guards, only 2 of the 31 persons trained remained with the Border Police after the restructuring in 2009.

As a result of the above situation, based on the findings in the previous years and in consultation with IGPF, in September 2009, UNHCR organised a roundtable on asylum issues for the leadership of the Border Police, which was attended by heads or deputy heads of county inspectorates of the Border Police. This activity was highly appreciated by the participants and found it useful and instructive.

## 2. Access to Territory and Asylum Procedure

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### 2.1 Legal Framework

Romania is a signatory of the 1948 Universal Declaration of Human Rights (UDHR), and ratified the 1950 European Convention on Human Rights and the 1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Romania is also a signatory of the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and its 14 Protocols, the 1957 European Convention on Extradition, and the European Convention on the Suppression of Terrorism. All international instruments ratified by Romania have the status of national law, pursuant to Articles 18(2), and 20 of the Constitution of Romania, which entered into force in 2003. Romania signed the European Convention on Nationality in 1997 and ratified it by Law 396/2002.

Article 18 of the Romanian Constitution provides that aliens and stateless persons residing in Romania enjoy the general protection of persons and goods guaranteed by the Constitution and other laws. It also stipulates that the right to asylum is granted and withdrawn based on legal provisions as well as International Treaties and Conventions Romania is signatory to.

In 1991 Romania acceded to the 1951 Convention and its 1967 Protocol. In August 2006, the Asylum Law (no 122) aimed at harmonizing the asylum legislation with the EU Directives, including the Dublin II and EURODAC Regulations, entered into force. The Methodological Norms for the implementation of the Asylum Law were issued in October 2006.

The current Romanian Asylum Law transposes the following relevant EU Directives and Regulations:

- Council Directive 2003/9/EC on minimum standards for the reception of asylum-seekers
- Council Directive 2003/86/EC on the right to family reunification
- Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted
- Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof
- Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status<sup>7</sup>
- 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>8</sup>

The Asylum Law contains provisions related to the procedural principles and guarantees such as, *inter alia*, access to the asylum procedure, non-discrimination, non-refoulement, family unity, the best interests of the child, confidentiality, and non-penalisation.

The Asylum Law also provides for a regular procedure, an accelerated procedure (for manifestly unfounded asylum applications, for asylum applications submitted by persons who represent a danger to national security or public order, or for persons who come from safe countries of origin) and a border procedure (for asylum applications submitted at a border crossing point).

Emergency Ordinance No. 194/2002, regarding the regime of aliens in Romania amended in 2003, 2004, 2005, 2007, (hereafter Aliens Law), constitutes the framework for the entry, stay and exit of aliens and their rights and obligations. Article 1341 of the Aliens Law states that provisions of the Asylum Law are applied with priority over

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<sup>7</sup> The Procedure Directive was still a draft at the moment the new Asylum Law was drafted (and therefore it does not appear in the list above); however, most of its provisions were included in the Romanian Asylum Law.

<sup>8</sup> The provisions of the Dublin II Regulation were incorporated into the Asylum Law, but they entered into force on 1 January, 2007

the provisions of the Aliens Law, except in situations when rationale related to national security or public order demand the removal of an alien from Romanian territory. Various amendments were made to the Aliens Law in 2007 (published in the Official Journal no. 201 on 26 March 2007 as Law 56/13 March 2007) and provided the transposition of the following Council Directives:

- Council Directive 86/2003 on the right to family reunification;
- Council Directive 109/2003 on long-term resident status for third country nationals;
- Council Directive 110/2003 on assistance in cases of transit for the purposes of removal by air;
- Council Directive 114/2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

The Aliens Law also defines criteria for the following situations: granting of visas, prolonging of temporary right to stay, granting of permanent right to stay, removal of aliens from Romania (including expulsion of aliens, taking of aliens into public custody [administrative detention], and granting toleration on the Romanian territory), issuing documents to aliens, and the use and protection of aliens' personal data.

## 2.2 Protecting Refugees Within Broader Migration Movements

UNHCR and its NGO partners were actively involved in the drafting process of the National Strategy on Migration published as Government Decision no. 616/21.04.2004 on 6 May 2004. This document expresses the general principles for establishing Romania's policy regarding admission of aliens, residence in and exit from Romanian territory, immigration of labour force, granting a form of protection and combating illegal immigration. The sub-chapter concerning the policy on asylum refers to the UNHCR Agenda for Protection and includes principles such as unhindered access to the RSD procedure, respect of the *non-refoulement* and confidentiality principles and finding durable solutions for refugees. The policy in the field of asylum also guarantees transparency and the involvement of UNHCR and refugee assisting NGOs in the asylum system in Romania. Since 2004, the UNHCR Office continues to be actively involved and consulted by the relevant authorities on various aspects of the Romanian migration policy.

The National Strategy on Immigration for 2007-2010, which abrogated the National Strategy on Migration adopted in 2004, was submitted together with the Action Plan for 2007 and was approved by Government Decision no. 1122/2007 under the title: "Migration is a process that must be managed, not a problem that must be resolved." The Strategy reflects Romania's objectives during the above-mentioned period in the field of immigration, including:

- Promoting legal immigration through facilitating the right to freedom of movement and residence for EU citizens; admission of third country nationals for work according to identified needs of the Romanian labour market; encouraging admission for business for certain categories of aliens; promotion of an efficient selection system for studies; design, development and management of efficient information systems for managing immigration
- Preventing and combating illegal migration through efficient information provided to migrants on means of legal migration and measures taken by the Romanian state for combating illegal immigration; intensifying cooperation among Romanian authorities responsible for combating illegal immigration and illegal work; intensifying measures for removal of illegal aliens; preparing for Romania's accession to the Schengen area; intensifying cooperation between the Romanian authorities and similar authorities in other EU Member States, countries of origin and transit
- Asylum: unhindered access to the asylum procedure and respect for the principle of non-refoulement; developing the asylum system based on the criteria of efficiency and quality and adjusting the policies and practice in this field in order to prevent, discourage and sanction abuses of the asylum procedure; assuring and maintaining the capacity of Romania to assume responsibilities and obligations as an EU Member States in the field of asylum (here the UNHCR Agenda for Protection is mentioned); assuming an active role within regional and international co-operation in the field of asylum and contributing to the development of a functional asylum system in South-East Europe; improving reception conditions and research of Country of Origin Information (COI) through identifying funding opportunities from the European Refugee Fund (ERF).

- Social integration of aliens: sustaining the active participation of aliens with legal stay in Romania in economic, social and cultural life while respecting their cultural identity; assuring that relevant categories of aliens take the necessary steps to integrate into Romanian society, including through their participation in the integration programme organised by the government; increasing awareness of all persons in this field regarding the importance of supporting the integration process and identifying funding solutions through European funds.

## 2.3 Asylum Granting Procedure in the Territory of Romania

In 2009 the number of asylum applications was 995 (out of which 160 were repeat applications), representing a slight decrease compared to 2008. During the reporting period, 64 persons were granted refugee status (51 at the administrative level and 13 at the judicial level) and 30 persons were granted subsidiary protection (eight at the administrative level and 22 at the judicial level) which represents a recognition rate of 9.45%, a decrease compared to 2008 (138 persons). A change regarding the main countries of origin of the asylum seekers was noticed, with Republic of Moldova, Pakistan, Iraq, Turkey and Afghanistan being the top five countries of origin for the asylum seekers in Romania and a significant increase of asylum applications of Afghan nationals, including unaccompanied minors.

The border police report mentions that in 2009, the number of Pakistani, Afghani and Bengali illegal migrants increased, as the illegal migration route of Afghans and Bengali reactivated. According to the official statistics, 263 persons submitted their asylum applications the Border Police, compared to 165 persons in 2008.

Depending on the place where the asylum applications are submitted, asylum seekers have their asylum applications registered and/or processed<sup>9</sup> in one of the five open Regional Centres run by the RIO:

- Bucharest Regional centre
- Galați Regional centre (South-East Romania)
- Timișoara Regional centre (West Romania)
- Șomcuta Mare Regional centre (North -West Romania)
- Rădăuți Regional centre ( North-East Romania)

UNHCR and its NGO partners had full access to the Centres for aliens taken into public custody (closed centres) located in Bucharest and Arad.

Aliens over the age of 14 who apply for asylum in Romania are issued IDs once the asylum application is submitted. This ID is periodically renewed during the RSD procedure providing that the asylum seeker fulfils their obligation under the Asylum Law and all appeals are submitted in time. This does not apply to asylum seekers who submit their asylum application in a border crossing point or who are in public custody. However, upon request, asylum seekers in public custody are issued a paper stating their status in Romania. Birth certificates are issued for all children born in Romania, irrespective of the status of their parents. In Romania, the possibility of granting refugee status or subsidiary protection are both considered in a single RSD procedure and all appeals submitted in time have a suspensive effect.

### Regular Procedure

#### *Administrative stage of the procedure*

According to Romanian legislation an alien is considered to be an asylum seeker from the moment s/he expresses his/her will to apply for the protection of the Romanian state, in writing or verbally, on the territory or at the border. The authorities responsible for receiving asylum applications are the regional branches of the RIO, the Border Police and the Romanian Police (including detention facilities for regular criminals). After submitting the asylum application, the asylum seeker fills in a questionnaire related to personal data and family members, the route followed from the country of origin to Romania, other asylum claims submitted in EU Member States or other third countries, and are supposed to hand over the identification, travel and any other relevant documents they might have.

Asylum seekers are entitled to legal assistance and advice from NGO legal counsel, from lawyers hired by themselves (or, for a small number of cases the lawyers may be paid through UNHCR funded programmes) or

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<sup>9</sup> In cases when asylum seekers do not have financial means they can be accommodated in these regional centres, otherwise, they are free to choose their places of residence during the period of the asylum procedure in Romania, but their asylum applications are processed in one of these centres. If/when granted a form of protection, they may continue to live in RIO centres for the duration of the integration programme; therefore they are all reception/accommodation centres.

to be represented by free of charge *ex officio* lawyers, in the judicial stage of the procedure. The courts usually accept requests for free legal assistance and *ex officio* lawyers are appointed by the Bar Associations.

An asylum seeker may be assisted during the interview at the administrative stage by UNHCR staff, an NGO staff member or a lawyer. An interview takes place in the presence of an interpreter with the applicant's consent and is conducted by a RIO interview officer. RIO interview officers should decide on the asylum application within 30 days from the submission of the application, extended by another 30 days if supplementary documentation is necessary. A decision is made in a single procedure, first on the applicant's eligibility for refugee status and, in case of non-eligibility for refugee status, on the applicant's eligibility for subsidiary protection. Both forms of protection provide the beneficiaries with the same rights and obligations. For some languages (e.g. Somali, Aramaic, Singhalese) trained interpreters are difficult to find, posing a challenge to locate two different interpreters for the administrative and the judicial stage of the procedure.

The judicial stage of the procedure entails two tiers: first instance (Judecatorie) and second instance (Tribunal). A negative RIO decision may be appealed within 10 days of RIO's receipt of a document proving that the asylum seeker received a notification, or that the applicant is not present at the declared address. If the appeal is submitted after the legal term, the alien's stay on Romanian territory becomes illegal until the court decides that the reason for the delayed submission of the appeal was well-founded.

The appellant or RIO (represented by legal counsel) may challenge the decision of the first instance court by lodging an appeal before the Tribunal within five days of the decision. When a decision to reject the application is final and irrevocable, the RIO will issue and enforce a decision of return. If the individual cannot leave the territory of Romania before the deadline for practical reasons, the RIO may grant him/her leave to remain in the country by granting tolerated status, under conditions stipulated by the Aliens Law. In practice, RIO grants tolerated status to rejected asylum seekers who, for practical reasons (usually inability to obtain travel documents), cannot return to their countries of origin.

The border procedure is provided in Articles 82-87 of the Asylum Law. According to this procedure the applicant remains in the transit zone in the custody of the Border Police, until the RIO decides either to reject the application, to grant a form of protection, or to grant the applicant access to the territory and to the ordinary procedure. RIO must issue the decision within three days of receipt of the application. The asylum seeker may appeal RIO's negative decision within two days of receipt of the decision, and the court must issue a decision within five days either to sustain RIO's decision or to grant the applicant access to the regular procedure and to the territory. The court decision is irrevocable. If the applicant is rejected by the court, the Border Police have an obligation to remove the alien from Romanian territory.

Under the border procedure, the alien must to remain in the transit zone until s/he is granted access to the territory, however, the period of stay in the transit zone is limited to a maximum of 20 days. If a final decision is not reached within 20 days (both at administrative stage as well as the judicial stage of the procedure), the asylum seeker is granted access to the territory and to the ordinary procedure. Unaccompanied minors are exempt from the border procedure; they are granted access to the territory and to the regular procedure.

There are a number of aliens apprehended by the Border Police in the area of their competence after crossing the border illegally. As a rule, if these persons express a fear of persecution in their countries of origin, they are granted access to the asylum procedure and are transferred to one of the reception centres administered by the RIO. The same principle applies to aliens apprehended at the Western border, trying to leave Romania illegally (including those returned to Romania from Hungary based on the readmission agreement). None of these persons are convicted for illegally crossing the border.

From the statistics provided by the RIO, in 2009, 263 persons applied for asylum with the Border Police, out of which five asylum applications were submitted in Otopeni Airport and one at the border crossing point with Moldova. All six of these asylum seekers were granted access to the territory and to the regular procedure by RIO, this being in fact the practice in recent years.

## 2.4 Implementation of Article 31(1) of the 1951 Geneva Convention

Article 11 of the Asylum Law exempts asylum-seekers from penalties for illegal entry, in conformity with Article 31(1) of the Convention. During the reporting period, there was no report of any asylum-seekers apprehended at the border that were, in spite of his/her asylum application, convicted for crossing the border illegally.

It appears from the information provided by the Border Police during the monitoring missions as well as from the information available to the UNHCR and the results of the observations, that this principle is also respected in practice.

## 2.5 Respect for the Principle of Non-refoulement and Article 33(1) of the 1951 Geneva Convention

Article 4 of the Asylum Law provides that the competent authorities ensure access to the asylum procedure to any alien or stateless person who is on Romanian territory or at the border from the moment such person expresses his/her intent to seek asylum, in writing or verbally, except in situations explicitly provided by the law. There is no time limit for submitting an asylum application, and it must be submitted individually, through a legal representative or guardian. There are no special requirements regarding documents presented together with the asylum application.

Article 6 of the Asylum Law also provides that asylum seekers cannot be expelled, extradited or forced turned away from the border or from the Romanian territory, but at the same time, the wording of Article 6 of the Asylum Law leaves room for exception to the *non-refoulement* principle, regarding asylum seekers suspected of involvement in or support of terrorist activities, allowing for their expulsion, extradition or forced return prior to finalization of the procedure for determination of their need for international protection. The same article incorporates the provisions of Article 33(2) of the Convention, without laying down the procedural safeguards related to the expulsion of refugees, as provided in Article 32 of the Convention. However, in practice, no application of exception from this principle was reported.

## 2.6 Dublin II Regulation- Legislation and Practice

Romania began implementation of the Dublin II Procedure on 1 January 2007. According to the provisions of the Asylum Law, an asylum seeker may be refused access to the RSD procedure in Romania if, according to the Conventions and to EU Regulations another state is responsible for examining the individual's asylum application. However, all asylum applications submitted in Romania are registered and the asylum seekers are issued identification documents. Asylum seekers are not detained until the Dublin II procedure is finalized and the transfer enforced.

If a rejected asylum seeker is transferred to Romania based on the Dublin Procedure, both in cases when the asylum procedure was finalized in Romania and when the applicant left Romania during the procedure, the status of that person will be governed by the provisions of the Aliens Law and he/she may be granted tolerated status, may be taken into public custody pending removal from the Romanian territory or may re-apply for a new asylum procedure (if the legal conditions are met).

From the information available to the UNHCR, the number of incoming requests received by Romania in 2009 from other EU member states was 478, out of which 372 were accepted and 126 persons were transferred to Romania, while the number of outgoing requests was 102, out of which 76 were accepted and 15 persons were transferred out of Romania. According to the information provided by the RIO, 75% of those transferred to Romania were rejected asylum seekers while the rest were still in the RSD procedure, mainly at the court level. The number of persons transferred by Romania represents 19.71% of the total number of the received acceptance ; this modest success rate is due to the fact that most of the asylum seekers disappear from the reception/accommodation centres shortly after they submit an asylum application, as well as the practice regarding the non-transfer of asylum-seekers to Greece.<sup>10</sup>

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<sup>10</sup> Only one person was transferred to Greece at the beginning of the year; the person agreed to be transferred to Greece and Greece accepted in writing to grant the respective person access to the RSD procedure.



## 2.7 Cross-Border Cooperation with Neighbouring Countries

CNRR implemented cross border projects financed by the Soros Foundation, with support from UNHCR, IGPF and RIO, as follows:

- After Romania (representatives of UNHCR, the Border Police, RIO and CNRR) participated in 2008 in a cross-border seminar in Vidin, organised by UNHCR Representation in Bulgaria, a similar seminar was organised in June 2009 in Constanta by UNHCR Representation in Romania. The aim of the two cross-border seminars was to offer a forum for border authorities from both sides of the border to exchange information and share good practices in the field of combating illegal migration while respecting the right to asylum. Both events were highly appreciated by the participants and offered the opportunity for further close cooperation of the NGOs IPs mainly with regards to Dublin cases.
- In August 2009, a cross-border monitoring mission took place at the Romanian-Ukrainian border (but on Romanian territory) involving representatives of UNHCR, the Border Police and NGO partners in the two countries with a view to exchanging experiences, good practices, and information regarding the situation of persons in need of international protection on both sides of the border. This was also an attempt to explore the usefulness of creating a cross-border cooperation mechanism between the NGO partners for cross-border assistance of potential asylum seekers.
- In 2009, the three partners (IGPF, CNRR and UNHCR) participated in a regional cross border meeting organised by UNHCR Regional Representation in Kiev with relevant partners from countries neighbouring Ukraine, as a follow up of a similar meeting held in Uzhgorod, Ukraine in 2008. The meeting, as well as the study visits undertaken during this regional meeting in Ukraine, Hungary and Slovak Republic, offered participants a good opportunity to better understand the situation of migrants in Ukraine but also the practice in Hungary and the Slovak Republic with regards to the treatment of (illegal) migrants, rejected asylum-seekers, returned migrants, and asylum seekers or victims of trafficking and to open the door for further development of cross-border synergies in a region with various and mixed migration flows.
- Due to the long standing good cooperation at various levels between Romania and Moldova, UNHCR Representation in Moldova organised a study visit to Romania in November 2009 for representatives of the border and asylum authorities as well for NGOs IPs. The study visit focused on issues related to access to the RSD procedure and to the territory, RSD procedure, reception and detention conditions as well as integration related issues, and offered the opportunity to the Moldovan delegation to meet relevant staff of IGPF, RIO and Romanian NGOs as well as to have a meeting with border police at Otopeni Airport and to visit the Bucharest reception centre and the detention centre in Otopeni. The visit was considered extremely useful by the Moldovan delegation and further cooperation between the two countries will be further sought and developed.

## 2.8 Exchange of Information within the Cross-border Cooperation

Romania participated in two regional cross-border meetings, both of them organised in Ukraine in 2008 and 2009 respectively. The first joint cross-border mission was organised with Ukraine, which from the perspective of migratory movements has become active in the past few years. However, in spite of frequent contact, the cooperation at the NGO level in both countries has not been very efficient and there is room for improvement. It is hoped that after the most recent visit of a joint Romanian delegation to Ukraine, the situation will change.

## 3. Description of Monitored Locations and Facilities

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### 3.1 Places of Monitoring

#### 1) January 2009 – Joint CNRR/UNHCR mission to Constanta Directorate of Border Police

A joint UNHCR / CNRR border monitoring mission was undertaken in Constanta in order to have a meeting with the management of the Border Police Directorate on issues related to migration, asylum and combating illegal migration, relevant to the position of Constanta Directorate of Border Police (covering land, sea and river borders). Discussion was preceded by an overview of activity and competences of Border Police Directorate Constanta.

During this border monitoring mission the new reception facilities for asylum seekers and the separate facilities for foreigners who entered the country illegally or are awaiting deportation were visited. The facility had recently been finished and had never been used. The mission was also observed how interventions are made by the Border Police on the sea to rescue ships or persons in distress.

The representatives of the Border Police demonstrated knowledge on asylum related issues and mentioned that in recent years no asylum applications were submitted in their area of competence by stowaways or on the green border

#### 2) April 2009 - Joint UNHCR/ Ministry of Foreign Affairs/RIO/CNRR

This ad-hoc mission was initiated by UNHCR in order to assess the emergency response capacity of the border police at the border with the Republic of Moldova, in the event that a larger number of Moldovans would apply for asylum at the border due to the unrest in Moldova caused by the results of the Parliamentary elections there held on 5 April 2009.

The mission visited a total of three border crossing points, namely: Oancea, Falcu and Ungheni, as well as the Galati Asylum Reception and Accommodation Centre.

#### 3) July 2009 - Joint UNHCR/NGOs/border authorities cross Border Monitoring Mission with Ukraine on the Romanian side of the border

Participants:

Romania - UNHCR, IGPF, CNRR

Ukraine - UNHCR, Ukrainian Central Border Police Authority, NGOs (Human Rights Have No Borders and NEEKA, an NGO)

The mission was considered useful as a result of the information made available by the website of IGPF in relation to some groups of illegal migrants who were returned to Ukraine after being apprehended by the border police during illegal entry to Romania. Both UNHCR and CNRR followed up the cases with the Border Police (the Chairperson of the Tripartite Working Group) and the answer was that none of those returned to Ukraine had any intention to apply for asylum. It was considered that a joint Romanian - Ukraine border monitoring mission would benefit both parties and would improve the treatment of third country nationals in need of international protection on both sides of the border and would also serve as a concrete follow-up to the Uzghorod meeting in 2008.

During this mission nine sectors of the Border Police were visited, namely: Dorohoi - Racovat, Siret, Vicovul de sus, Sighetul Marmatiei, Sarasau, Negresti Oas, Halmeu, Tarna Mare, Satu Mare as well as the RIO Regional Reception and Accommodation Centre in Maramures. The two delegations had meetings with the Romanian Border Police and shared information related to legislation and practice in relation to access to the RSD procedure in both countries, the procedure for returning illegal migrants to Ukraine, and treatment of returnees in Ukraine.

Regarding the procedure when returning a group to Ukraine, the Romanian Border Police said that usually there is a person in all groups that speaks English, and initial communication with the group is established through the English speaker in order to identify the country/countries of origin and the language spoken. An adequate interpreter (usually among those on the list provided by RIO and CNRR) is then identified and the migrants are interviewed in order to find out where they crossed the border and see if any smugglers can be identified in the case.

If any of the individuals express the will to apply for asylum, the respective persons would be channelled through the RSD procedure. If there is no impediment and the group can be returned to Ukraine, the aliens are informed in a language they can understand that they will be returned to Ukraine. It was mentioned that none of those to be returned expressed in any way, any fear of being sent back to Ukraine.

Details about the treatment of returned illegal aliens were provided by Ukrainian NGOs and UNHCR Representatives, including the subjects of detention and forced return as well as lack of proper reception centres in Ukraine. During the meetings, asked about any information related to/from groups returned from Romania, NEEKA's representative mentioned that he came across two Afghan nationals who declared that they had wanted to apply for asylum in Romania but they could not as there was no interpreter available; he was not able to provide any other details regarding the two cases. The case was however followed up by both UNHCR and CNRR, but thus far, no further information has been received from Ukraine.

## 4. Findings of the Monitoring, with Special Attention to the Respect of Rights Guaranteed by Legislation

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The findings of border monitoring missions were generally positive regarding the level of knowledge of the border guards on asylum related issues, as well as to the practice in relation to the right to asylum. The procedure as provided by the law is respected by the Border Police with respect to aliens who apply for asylum in the border area; asylum applications are received, registered, forwarded to RIO, the alien is provided with the relevant protection information made available in the border area by CNRR and then s/he is transferred to the closest RIO reception/accommodation centre.

However, in the absence of a permanent presence at the border, it is considered that a short, one page form to be filled in by the Border Police for each and every illegal alien caught at the border would be useful for checking during the monitoring missions, that those returned to the neighbouring countries based on the readmission agreements, indeed did not apply for asylum. It is also considered that UNHCR dispensers containing protection information placed in visible locations in the border areas would be an extra guarantee that persons in need of international protection express their will to apply for asylum fully informed.

Regarding the practice of the last years concerning the persons who submit asylum applications at a border crossing point, they were all granted access to the regular procedure and to the territory by RIO, so they only remain in the transit zone for up to three days while they enjoy all the rights of asylum seekers in Romania, except for those contrary to their situation, as provided by the Asylum law.

For the duration of their stay in the transit zone, the asylum- eekers in the border procedure are accommodated in one of the buildings of the closed centre run by RIO in Otopeni, where they are provided the necessary food and non-food items, may be assisted and visited by lawyers, NGOs, UNHCR, may practise their own religion, and may spend time outdoors and engage in sports.

## 5. Conclusions and Recommendations

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While the border monitoring proved to be a useful instrument for ensuring that border guards respect the right to seek asylum, the *non-refoulement* and the non-penalisation principles, the usefulness of moving towards cross-border monitoring activities was agreed within the TWG as an instrument for further developing cross-border cooperation at all levels.

Finding creative ways to further provide training to the border guards while reducing costs of training activities was also discussed, thus the introduction of the UNHCR manual for EU border guards in the schools of the Border Police as well as an on-line course were discussed as alternatives. Yearly meetings with the management of the Border Police is also considered useful especially in the context of further envisaged restructuring of the Border Police after Romania joins the Schengen area.

The two outstanding issues that are to be further discussed within the TWG are related to:

- 1) placing of UNHCR dispensers in all border areas in visible locations so that the persons in need of international protection have access to timely, handy, easy to understand protection information related to exercising the right to seek asylum in Romania, the asylum procedure, the rights and obligations while in the asylum procedure, etc.
- 2) introducing three additional separate questions<sup>11</sup> in the forms filled in by the Border Police for all illegal aliens apprehended at the border to ensure that persons in need of international protection were given the opportunity to express a fear of persecution in case of returning to their countries of origin or a third country

It was also considered important for the NGO partner to be more pro-active in establishing, maintaining and developing cross-border cooperation at its level so as to have an extra cross-border monitoring mechanism of unhindered access to the asylum procedure (see page 14).

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<sup>11</sup> Why did you leave your country of origin?  
What do you think would happen to you in case of returning to your country of origin?  
What do you think it would happen to you in case of returning to the country you came from?





Today, according to the provisions of the EGO No 104/2001, updated, the Romanian Border Police has the following organizational structure:

- **The General Inspectorate of Border Police;**
- **County Inspectorates of Border Police** (*subordinated to the General Inspectorate of Border Police*);

*The County Inspectorates of the Border Police are distinct units within the General Inspectorate of the Border Police and have a specified territorial competence.*

*They are organized internally, in services, offices and departments, which have specialized fields of activity.*

*Sectors and ship groups function, within the inspectorates, as executive structures with limited territorial competence.*

- **Border Police sectors** (*subordinated to the county inspectorates of Border Police*);
- **Border Police ship groups** (*subordinated to the counties inspectorates of Border Police*);

*The ship groups are executive structures within Border Police county inspectorates having limited competence and they are organized in departments, shifts and crews, according to their specific activities.*

- **Border Police Points** (*subordinated to the sectors of Border Police*);

*The Border Police Points function based on the provisions of the bilateral agreements between Romania and the neighbouring states, and of the national legislation in force, respectively, being subordinate both to the Border Police sectors on the territorial area and under the direct subordination of IGPF (in the inland counties).*

- **Education institutions for personnel training and specialization;**

*These ensure initial and continuous training of Border Police personnel, contributing substantially to the enhancement of the professional training level, based on a high performance system, which corresponds to the security requirements of the Romanian border and to the European practices in this field.*

- **other units.**<sup>12</sup>

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<sup>12</sup> <http://www.politiadefrontiera.ro/>

## Annex 2. Information Material for Asylum Seekers on the Asylum Application

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### INFORMATION LEAFLET ASYLUM APPLICATION



Document created as part of the project „Training for Border Police”

Sponsored by the British Embassy through the Global Opportunities Fund

### ROMANIAN NATIONAL COUNCIL FOR REFUGEES NON-GOVERNMENTAL ORGANISATION OF PUBLIC UTILITY

#### HOW TO COMPLETE AN ASYLUM APPLICATION:

You are considered asylum-seeker from the moment you express your will to be granted a form of protection, either in written or orally, in front of the competent authorities. Starting from that moment you have legal rights and obligations.

The competent authorities to receive your asylum application are the branches of:

- Romanian Immigration Office (RIO);
- Romanian Border Police;
- Romanian Police;
- National Administration of Prisons within Ministry of Justice.

The application is individual and must be submitted personally or, if the case is, by your tutor or legal representative.

The detailed/motivated application must be submitted in writing. A representative of the competent authorities will hand you the form and will explain you how to complete it.

The application is completed in Romanian language or in any other language you know.

You must sign or fingerprint the application. The application must be signed by the representative of the competent authorities and the interpreter if an interpreter is present.

If the application is submitted to a regional branch of the Ministry of Interior and Administrative Reform, you are to be informed that you have to go to the RIO or one of its territorial branches.

#### Useful contacts:

##### **Romanian Immigration Office (RIO), Directorate for Asylum and Integration (DAI)**

Bucureşti, Str. Tudor Gociu, nr. 24A, sector 4  
Tel.: 021 450 17 05; Fax: 021 450 17 29  
Webpage: <http://aps.mai.gov.ro/>

##### **Centre for Reception and Registration of Asylum Applications – Bucharest**

Bucureşti, Str. Tudor Gociu, nr. 24A, sector 4  
Tel.: 021/450.11.34

##### **Regional Centre for Accommodation and Procedures for Asylum Seekers - Bucharest**

Bucharest, Str. Vasile Stolnicul, nr.15, bl.13, sector 2  
Tel.: 021 240 84 27

##### **Regional Centre for Accommodation and Procedures for Asylum Seekers - Galaţi**

Galaţi, Str.Săvineşti, nr.2  
Tel.: 0236 32 38 78

##### **Regional Centre for Accommodation and Procedures for Asylum Seekers - Suceava**

Rădăuţi, Str. Perilor, nr. 2  
Tel.: 0230 564462

##### **Regional Centre for Accommodation and Procedures for Asylum Seekers - Maramureş**

Şomcuta Mare, Str. Cetăţii, nr. 1A  
Tel.: 0262 28 00 04

##### **Regional Centre for Accommodation and Procedures for Asylum Seekers – Timiş**

Timişoara, Str. Armoniei nr. 33  
Tel.: 0256 42 12 40

##### **United Nations High Commissioner for Refugees (UNHCR) – Representation in Romania**

Bucureşti, Str. Armenească, nr. 25, sector 2  
Tel.: 021 210 15 96; 021 211 29 44  
Fax: 021 210 15 94;  
E-mail: [rombu@unhcr.org](mailto:rombu@unhcr.org); Webpage: [www.unhcr.ro](http://www.unhcr.ro)

##### **Romanian National Council for Refugees (CNRR)**

Bucureşti, Str. Mântuleasa, nr. 42, etaj 3, ap. 10, sector 2, cod postal 023962  
Tel/Fax: 021 312 62 10; Tel.: 031 405 02 75  
E-mail: [office@cnrr.ro](mailto:office@cnrr.ro); Webpage: [www.cnrr.ro](http://www.cnrr.ro)

## OFICIUL ROMÂN PENTRU IMIGRĂRI – DIRECȚIA AZIL ȘI INTEGRARE

Centrul .....

Identitate declarată (declared identity)

 Da (yes)    Nu (no)CERERE DE AZIL  
(asylum application)

nr. .... /C/..... din .....

1. Numele și prenumele solicitantului  
(Surname, first name) .....
2. Numele părinților  
(Parents' name/father, mother) .....
3. Data și locul nașterii  
(Date and place of birth) .....
4. Stare civilă: necăsătorit, căsătorit, divorțat, văduv  
(Civil status: single, married, divorced, widow) .....
5. Numele, data și locul nașterii soțului/soției  
(Spouse' name, date and place of birth) .....
6. Membrii de familie care vă însoțesc  
(Family members accompanying you) .....
7. Țara de origine/domiciliu  
(Country of origin/residence) .....
8. Document de călătorie  
(Travel document) .....
9. Solicit azil în România, pentru următoarele motive  
(I request asylum in Romania due to the following reasons) .....
10. Data și modul de părăsire a țării de origine  
(Date and way of leaving the country of origin) .....
11. Țările tranzitate până la intrarea în România și perioadele  
de ședere pe teritoriile acestora  
(Transit countries before entering Romania and periods  
of staying on their territories of these countries) .....
12. Data și modul de intrare în România  
(Date and way of entering Romania) .....
13. Reședința în România  
(The residence in Romania) .....
14. Limbile vorbite  
(Spoken languages) .....
15. Data programării la interviu  
(The date of interview) .....

Am luat la cunoștință de procedurile de urmat, de drepturile și obligațiile solicitanților de azil în România, care îmi revin conform art. 17-19 din Legea nr. 122/2006 privind azilul în România. (I was acquainted about the legal procedure that I have to follow, and the rights and obligations of the asylum-seekers in Romania according to art. 17-19 of Law no. 122/2006 regarding asylum in Romania.)

Vă aducem la cunoștință ca la data ..... ora ..... sunteți invitat la sediul Oficiului Român pentru Imigrări în vederea susținerii interviului pentru determinarea unei forme de protecție. (We hereby notify you that on ..... at ..... you are invited at the headquarters of Romanian Immigration Office to uphold your interview for determining a form of protection.)

\* Conform cu Hotărârea Guvernului nr. 1251/2006 pentru aprobarea normelor metodologice de aplicare a legii nr. 122/2006 privind azilul în România, publicată în Monitorul Oficial nr. 805 din 13 septembrie 2006

# Annex 3. Information Material for Asylum Seekers on Rights and Obligations

## ASYLUM SEEKERS IN ROMANIA RIGHTS AND OBLIGATIONS



ROMANIAN NATIONAL  
COUNCIL FOR REFUGEES

Non-governmental organisation,  
specialised in refugee protection  
field

Document created as part of the project „Training for Border Police” Sponsored by the British Embassy through Global Opportunities Fund

### HAVE YOU APPLIED FOR REFUGEE STATUS IN ROMANIA? ARE YOU AWARE OF YOUR RIGHTS?

You have the right to:

#### INFORMATION

- be informed, when applying for asylum, in a language you understand, about your rights and obligations related to the asylum procedure you must follow.

#### CONFIDENTIALITY

- benefit from protection of your personal data and any other personal information related to your application.

#### IDENTITY

- be issued with a temporary identity card which will be periodically prolonged by the Romanian Immigration Office (RIO).

#### RESIDENCE

- be allowed to remain in Romania 15 days after the end of the asylum procedure, except for the situations when your asylum application was processed in an accelerated or border procedure.

#### ACCOMMODATION

- be accommodated in accommodation centres, run by the RIO, until your right to remain in Romania expires, if you do not have the necessary financial resources.

#### SPECIAL NEEDS

- benefit from adequate conditions of accommodation and assistance in accommodation centres if you have any disability.

#### ADVICE

- be assisted and advised by a representative of Romanian or foreign non-governmental organisations;
- be represented by a lawyer;
- be provided with an interpreter, free of charge;
- be assisted by an officer of the UN Agency for Refugees – UNHCR;
- participate in activities for cultural orientation.

#### FINANCIAL

- benefit upon request, of financial assistance necessary for subsistence (food, accommodation and other expenses), if you do not have the necessary financial resources. However, if you'll stay in an accommodation centre you will not receive financial support for accommodation.

#### MEDICAL

- receive free of charge basic medical assistance and necessary medical treatment, urgent medical assistance in a hospital and free treatment for chronic or acute diseases which constitute a threat to your life, through national emergency system of medical assistance and primary qualified medical help.

#### WORK

- be allowed to work under similar legal conditions as Romanian citizens, if one year has expired from the date of asylum application and your application is still on-going.

#### EDUCATION (for minors)

- have access to compulsory education system under similar legal conditions as Romanian children.

### HAVE YOU APPLIED FOR REFUGEE STATUS IN ROMANIA? ARE YOU AWARE OF YOUR OBLIGATIONS?

You are obliged to:

- respect the Romanian laws and measures taken by the Romanian authorities competent in asylum field.
- complete an asylum application, to be photographed and fingerprinted.
- attend the asylum interview.
- provide complete and real information regarding your personal data and asylum application to the competent authorities.

- closely follow the asylum procedure and to promptly answer to the requests made by the competent authorities.
- provide all relevant documents you possess (including the travel document you used to cross the border).
- inform the competent authorities of any change in your address and you must not leave the residence city without prior approval from RIO.
- attend all the medical examinations scheduled for you
- leave the country, if you have not been granted any form of protection.

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## ABOUT RIGHTS AND OBLIGATIONS

All legal rights and obligations remain in force throughout the asylum procedure, that starts once the alien expresses his/her will to apply for asylum and ends 7 days from:

- the date of decision to close the file notification
- the date of the RIO's decision to grant refugee status notification.
- the date the legal term to submit an appeal expired.
- date of the last court decision was taken.

The above-mentioned statements are not applied in cases passed under accelerate procedure.

### Principles and procedural guarantees stipulated by the asylum Law 122/2006 in Romania:

**Unrestricted access to the asylum procedure** from the moment of the expression of willingness to seek protection in Romania, in writing or orally.

**The legal provisions should be applied without any discrimination.**

**Non Refoulement** - an asylum seeker cannot be forcibly extradited, expelled or returned from the border or from the Romanian territory to a territory where he/she could be in danger.

**Confidentiality** - the obligation to respect the confidentiality of personal data or information related to an asylum application must be respected by all authorities, organisations competent in the asylum field, or any third parties involved in asylum procedures that become aware of this information.

**Non penalization** - Romanian authorities shall not apply any penal sanctions for illegal entry or residence to asylum seekers who enter or reside without permission in Romania

**Proactive role** – authorities involved in processing asylum applications may investigate any factual or legal circumstances which may lead to taking a decision, even when these circumstances have not been invoked or mentioned in the asylum application or appeal.

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### Useful contacts:

#### Romanian Immigration Office (RIO), Directorate for Asylum and Integration (DAI)

Bucureşti, Str. Tudor Gociu, nr. 24A, sector 4  
Tel.: 021 450 17 05; Fax: 021 450 17 29  
Webpage: <http://aps.mai.gov.ro/>

#### Centre for Reception and Registration of Asylum Applications – Bucharest

Bucureşti, Str. Tudor Gociu, nr. 24A, sector 4  
Tel.: 021/450.11.34

#### Regional Centre for Accommodation and Procedures for Asylum Seekers - Bucharest

Bucharest, Str. Vasile Stolnicul, nr.15, bl.13, sector 2  
Tel.: 021 240 84 27

#### Regional Centre for Accommodation and Procedures for Asylum Seekers - Galaţi

Galaţi, Str.Săvineşti, nr.2  
Tel.: 0236 32 38 78

#### Regional Centre for Accommodation and Procedures for Asylum Seekers - Suceava

Rădăuţi, Str. Perilor, nr. 2  
Tel.: 0230 564462

#### Regional Centre for Accommodation and Procedures for Asylum Seekers - Maramureş

Şomcuta Mare, Str. Cetăţii, nr. 1A  
Tel.: 0262 28 00 04

#### Regional Centre for Accommodation and Procedures for Asylum Seekers – Timiş

Timişoara, Str. Armoniei nr. 33  
Tel.: 0256 42 12 40

#### United Nations High Commissioner for Refugees (UNHCR) – Representation in Romania

Bucureşti, Str. Armenească, nr. 25, sector 2  
Tel.: 021 210 15 96; 021 211 29 44  
Fax: 021 210 15 94;  
E-mail: [rombu@unhcr.org](mailto:rombu@unhcr.org); Webpage: [www.unhcr.ro](http://www.unhcr.ro)

#### Romanian National Council for Refugees (CNRR)

Bucureşti, Str. Mântuleasa, nr. 42, etaj 3, ap. 10, sector 2, cod postal 023962  
Tel/Fax: 021 312 62 10; Tel.: 031 405 02 75  
E-mail: [office@cnrr.ro](mailto:office@cnrr.ro); Webpage: [www.cnrr.ro](http://www.cnrr.ro)





MINISTRY OF INTERIOR AND ADMINISTRATIVE REFORM  
GENERAL INSPECTORATE OF BORDER POLICE



ROMANIAN NATIONAL COUNCIL FOR REFUGEES  
FOUNDATION OF PUBLIC UTILITY

**TRIPARTITE MEMORADUM OF UNDERSTANDING**  
**ON MODALITIES OF MUTUAL CO-OPERATION AND COORDINATION TO**  
**SUPPORT THE ACCESS OF ASYLUM SEEKERS TO THE TERRITORY OF,**  
**AND THE ASYLUM PROCEDURES IN ROMANIA**

**PREAMBLE**

The General Inspectorate of the Romanian Border Police (IGPF), the UNHCR Representation in Romania (UNHCR) and the Romanian National Council for Refugees (CNRR) - as UNHCR's implementing partner, hereafter referred to as the "Co-operating Parties".

- (a) **Recognizing** that the right of all persons to seek and enjoy in other countries asylum from persecution is a basic right enshrined, *inter alia*, in Article 14(1) of the 1948 Universal Declaration of Human Rights;
- (b) **Recalling** the United Nations Convention Relating to the Status of Refugees adopted on 28 July 1951 (hereinafter the 1951 Geneva Convention) and the Protocol Relating to the Status of Refugees adopted in New York on 31 January 1967, adopted by Romania through Law No. 46 on 17 July 1991; in particular Article 1 of the 1951 Geneva Convention, concerning the definition of the term refugee, Article 31 concerning refugees unlawfully in the country of refuge and Article 33 concerning the prohibition of return ("refoulement") of refugees;
- (c) **Recalling** Article 35 of the 1951 Geneva Convention obliging contracting States to co-operate with the Office of the United Nations High Commissioner for Refugees in the exercise of its functions, in particular providing appropriate information and statistical data concerning the condition of refugees, the implementation of the 1951 Geneva Convention, and related national laws, regulations and decrees which may relate to refugees.



- (d) **Recalling** that the United Nations General Assembly Resolution 428(V) of 14 December 1950, which adopted the Statute of UNHCR, ascribes to the High Commissioner the function of providing international protection to refugees, including promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of States Parties to the Convention, and of seeking durable solutions for the problems of refugees;
- (e) **Recalling** the Constitution of Romania and in particular Article 18 providing the right to seek asylum;
- (f) **Recalling** provisions of Law No. 122/2006 regarding asylum in Romania as well as its methodological norms (Government Decision no. 1251/2006), outlining specifically the rights of persons seeking asylum in Romania;
- (g) **Considering** that ensuring access to the territory and asylum procedures, constitutes the most efficient and effective way to provide protection to refugees, asylum-seekers and others of concern (persons in need of international protection), and that Conclusions 22 (Session XXXII), 81 (Session XLVIII), 82 (Session XLVIII), 71 (Session XLIV), 74 (Session XLV) of the Executive Committee of the High Commissioner's Programme set out internationally accepted principles and standards governing the protection of refugees in this regard;
- (h) **Bearing** in mind the importance of the co-operation Agreement of 12 August 1992 between United Nations High Commissioner for Refugees and Romania, which this memorandum of understanding does not amend;
- (i) **Recognising** the need to remove from the Romania territory those persons found not to be in need of international protection following a fair and efficient asylum procedure, in a humane and dignified manner and in full respect for their human rights, without resorting to excessive force and, in the case of children, always taking due account of their best interests.

Have agreed to carry out a joint activity that will be guided by the following principles and modalities:

## Chapter I

### ESTABLISHMENT OF A BORDER MONITORING FRAMEWORK

#### **Article 1**

With due regard to the principle that the State has the primary responsibility of ensuring that persons in need of international protection have access to the territory and asylum procedures, in accordance with Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code), the provisions of the Law No.122/2006 regarding asylum in Romania and its Methodological Norms, the Co-operating Parties hereby agree to jointly monitor the access of such persons' on the territory and to the asylum procedures in Romania as well as their protection against forced return (*refoulement*) from the border or territory.

#### **Article 2**

The Co-operating Parties will carry out the process of monitoring in an orderly, humane, safe and dignified manner as dictated by the sensitivity necessary to treat persons in need of international protection.

#### **Article 3**

IGPF undertakes to facilitate the monitoring activities of UNHCR and CNRR stipulated in Articles 1 and 2, as well as sharing relevant information, in particular statistical information related to persons of concern, information related to Frontex operations in Romania that may involve asylum related issues, as well as training activities organised by IGPF where UNHCR and/or CNRR may contribute.

#### **Article 4**

In accordance with the principle of family unity, the Co-operating Parties shall make every effort to ensure that asylum seeking families are admitted into the territory and asylum procedure as units.

## Chapter II

### RESPONSIBILITIES OF IGPF

#### **Article 5**

IGPF undertakes to guarantee and facilitate the admission of persons in need of international protection to the asylum procedures in Romania, and, as a co-operating agency in refugee affairs, to take, in consultation with the UNHCR, CNRR and other relevant governmental bodies, all the necessary measures to uphold these fundamental principles of international protection.

**Article 6**

IGPF will take all measures necessary to ensure that persons in need of international protection are in full knowledge of their rights, according to the national relevant legislation, in particular the right to seek asylum and to access legal assistance in Romania. It also undertakes to make available to persons of concern, the publications of UNHCR and CNRR as well as other relevant protection information.

**Article 7**

IGPF, with the consent of the person of concern, shall facilitate unsupervised contact with UNHCR and/or CNRR in order to allow the monitoring forming the subject of this Agreement.

**Article 8**

The staff of the Border Police stationed at the international airports and other entry points into Romanian territory shall facilitate unimpeded access and activities of the duly authorised representatives of UNHCR and/or of CNRR to areas designated for the processing, interviewing and accommodation of persons of concern.

**Article 9**

IGPF undertakes to provide access to copies of files of persons of concern to UNHCR and CNRR. Representatives of UNHCR and CNRR shall respect the confidentiality of data provided in accordance with the provisions of Law No. 677/2001 for data protection.

**Article 10**

IGPF undertakes to provide from its records, upon the request of UNHCR and/or CNRR, accurate statistical data and relevant information regarding the persons of concern.

**Article 11**

IGPF shall without delay inform UNHCR, in an electronic form or by facsimile, the number and nationality of aliens, in particular those apprehended at the border for whom penal files were initiated for illegally crossing the border (to or out of Romania), who are persons of concern and might be in need of specialised assistance and counselling.

**Chapter III****RESPONSIBILITIES OF UNHCR****Article 12**

UNHCR will be granted free and full access by IGPF to persons of concern, who are in the custody of the border police, to ensure that these persons have access to the asylum procedure and to the Romanian territory, as well as to specialised legal assistance/counselling and representation.



**Article 13**

UNHCR will undertake monitoring visits to areas and places defined in Chapter VI where persons in need of international protection may be located, in order to examine and verify the implementation and adherence to international protection standards. In case of identified issues of concern, UNHCR will immediately inform IGPF and communicate the concerns in writing or in a meeting with relevant/designated IGPF staff.

**Article 14**

In its monitoring activity, UNHCR shall focus in particular on the treatment of persons with special needs (including women heads of households, unaccompanied and separated children, persons with disabilities) to ensure that their fundamental rights, in particular the principle of family unity, are respected.

**Article 15**

UNHCR shall co-ordinate the mobilisation of funds for this project from the international community. It will also facilitate the sharing of information in the field of migration and asylum and will organize training sessions for the staff with prerogatives in this area.

## Chapter IV

### RESPONSIBILITIES OF CNRR

**Article 16**

CNRR shall contribute to the implementation of this Agreement with UNHCR approval and in accordance with the implementation Agreement concluded with UNHCR.

**Article 17**

CNRR shall implement activities stipulated in Chapter II, Articles 5-7 on the basis of a UNHCR partnership authorisation letter, containing a summary of specific activities which UNHCR has agreed for CNRR to implement on its behalf in the context of the present Agreement.

**Article 18**

CNRR shall inform aliens regarding their rights and obligations and the applicable asylum procedure and shall provide, upon request, legal assistance to the persons of concern, including legal representation, if necessary.

**Article 19**

The monitoring staff of CNRR shall clearly identify themselves as such to those persons of concern whom they may wish to interview during the course of implementing this Agreement, and shall inform them of the purpose and voluntary nature of the interview and their right to refuse to be interviewed, as well as that the assistance provided by CNRR is free of charge. A note shall be made on the fact that the person of concern was informed as well as the manner of giving his/her consent. The note shall be signed by the person of

concern, the monitor and the interpreter, if applicable, and included in the individual file of the person concerned.

#### **Article 20**

CNRR shall monitor the accessibility and use of UNHCR and CNRR information materials and publications; in case of need it shall replenish the supply.

#### **Article 21**

CNRR shall inform UNHCR and IGPF about the regular monitoring visits, 10 working days before the commencement of the visits, specifying the dates, the locations and the terms of reference of the visits. For ad-hoc visits or urgent interventions on behalf of persons of concern, CNRR will inform UNHCR and IGPF in a shorter timeframe, explaining the emergency.

#### **Article 22**

If immediate intervention for protection of persons of concern is needed, CNRR shall inform the responsible structure of the Border Police as well as IGPF. CNRR will prepare a detailed written report on each monitoring visit in maximum 10 days since the mission was concluded. These reports shall be shared with all Co-operating Parties within 15 days, any of them being entitled to submit comments and observations within 10 days since receipt of the written report.

### **Chapter V**

#### **TRIPARTITE WORKING GROUP**

#### **Article 23**

The Co-operating Parties shall establish a Tripartite Working Group (Working Group) which shall supervise the implementation of this Agreement and analyse the monitoring reports.

#### **Article 24**

The Working Group shall meet at least three times a year, extraordinary sessions may be convened at the express request of one of the Co-operating Parties. It shall adopt its own Internal Rules of Procedure.

#### **Article 25**

IGPF will appoint the Chairperson of the Working Group; UNHCR Representation in Romania shall act as Secretary and may be assisted by a CNRR staff member other than the representative appointed as a member of the Working Group. The Working Group shall be composed of representatives of the Co-operating Parties, accompanied at any meeting by such number of advisors as the represented party may deem necessary. Having signed the Agreement, the Heads of the Co-operating Parties shall forward within 10 days the

names and contact details of representatives appointed to be members of the Working Group.

**Article 26**

At the meetings of the Working Groups may participate, with the consent of the Co-operating Parties, representatives of other relevant institutions active in the field of migration and asylum. Meetings of the Working Group shall be recorded in written minutes. The Co-operating Parties shall receive the minutes within 10 working days and may submit their comments within 5 working days.

**Article 27**

The Working Group may jointly undertake visits or missions to locations relevant to this Agreement.

**Chapter VI**

**SITES COVERED BY THE AGREEMENT, THE RULES OF ENTRANCE AND STAY THERE**

**Article 28**

The geographical scope of the Agreement shall cover all territorial structures subordinated to IGPF, where persons in need of international protection may be located, including the so-called transit zones in the international airports as well as all areas where aliens may enter the Romanian territory.

**Article 29**

When CNRR announces forthcoming monitoring visits, it shall communicate the names and complete details of monitors and interpreters in view of facilitating their entry in the area under the competence of Border Police, based on the authorisation issued by UNHCR and appropriate identity documents, after the necessary information has been shared with IGPF in advance.

**Article 30**

A designated Border Police staff member may accompany the monitor and the interpreter in the area of competence, for well founded reasons, except for the interviews with persons of concern which are confidential.



## **Chapter VII**

### **FINAL PROVISIONS**

#### **Article 31**

The Co-operating Parties undertake to pursue joint training and awareness raising activities within the framework of this Agreement regarding, *inter alia* international principles in the field asylum in order to facilitate access to the Romanian territory as well as to the asylum procedures for persons in need of international protection.

#### **Article 32**

The Co-operating Parties undertake to participate in international, regional and bi-lateral meetings organized by UNHCR in order to share experience with other partners.

#### **Article 33**

The present Agreement is concluded for an indefinite period of time. The review or the amendment of the Agreement as well as the adoptions of addendums may be initiated in writing by any one of the Co-operating Parties at any time.

#### **Article 34**

The termination of this Agreement can be initiated by any of the Co-operating Parties for well justified reasons by submitting a written notice of termination to each of the other parties. The written notice shall be submitted 30 days before the termination date; the term shall start running on the day the notice is received.

#### **Article 35**

Any question or uncertainties arising from the interpretation or implementation of the present Agreement or for which no provision is expressly made herein shall be resolved amicably through consultations between the Co-operating Parties. The date of a proposed working meeting has to be notified in advance, giving each partner time to prepare for the meeting, which shall take place no more than 5 days after such notification.

#### **Article 36**

The present Agreement does not in any way amend previously existing Agreements between the Co-operating Parties without the express and written consent of the parties concerned.

#### **Article 37**

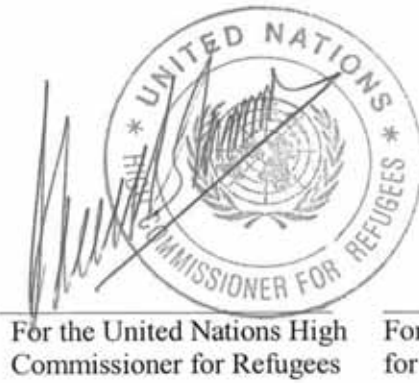
The present Agreement shall enter into force on date of signature by the Co-operating Parties.

The authorized representatives of the Co-operating Parties are hereby signing the present Agreement.

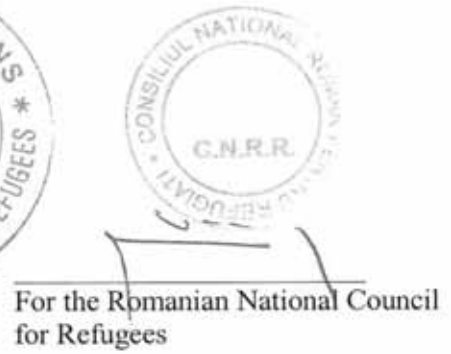
Concluded in Bucharest, on 22 July 2008 in sets of three originals in English and Romanian language, each set being equally authentic.



For the General Inspectorate  
of Border Police



For the United Nations High  
Commissioner for Refugees



For the Romanian National Council  
for Refugees



A map of Europe with the borders of all countries outlined in white. Slovakia is highlighted in a dark blue color. A dark blue rectangular box is overlaid on the top left of the map, containing the word "Slovakia" in white text.

# Slovakia

Refugees  
at the  
**Border**

# Report on Border Monitoring Activities in Slovakia

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## Glossary of Main Terms

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**Act of Personal Data Protection:** Act no. 428/2002 Coll. on personal data protection as amended.

**Act on Residence of Foreign Nationals:** Act no. 48/2002 Coll. on residence of foreign nationals and on amendment and supplementation of certain laws.

**Asylum:** Type of international protection which is granted by the state to a foreigner fleeing persecution in his/her country of origin for reasons set out in the Convention relating to the Status of Refugees of 1951.

**Asylum Act:** Act no. 480/2002 Coll. on asylum and on the amendment of certain acts.

**Asylum seeker:** A person who has applied for asylum until the final decision on his/her decision has been made.

**Border and Foreign Police Office (BFPO):** Directly managing its organizational departments to fulfil activities in the areas of protecting the state border, combating illegal migration and smuggling people across borders, border control, issuance of residence permits to foreign nationals, expulsion of foreign nationals from the territory, visa arrangements and, to a limited extent, the asylum procedure and enforcement of the Dublin II Regulation.<sup>1</sup> The protection and control of the Slovak-Ukrainian border is the responsibility of the Headquarters of Sobrance Border Police (**HSBP**) with 10 Departments of Border Control (**DBC**) under its competence. Different BFPO units mentioned in this Report are also Departments of the Foreign Police (**DFP**) and Sečovce Detention Centre (**DC**). Asylum Police Department (**APD**) is a BFPO unit established specifically at the reception centre to all foreigners to who already entered the territory of the Slovak Republic to submit asylum applications.

**Coll.:** Collection of laws of the SR.

**Convention relating to the Status of Refugees:** Convention (also known as the Geneva Convention) adopted on 28 July 1951 in Geneva which sets out the definition of a refugee, provisions relating to the cancellation of and exclusion from refugee status and the rights of refugees.

**Detention:** Limitation of personal freedom of a third country national in order to enforce his/her administrative expulsion or to enforce expulsion imposed as a penalty in a criminal procedure or to enforce his/her transfer into another country applying the Dublin II Regulation which shall be responsible for examining his/her asylum application or his/her return as per a readmission agreement, if s/he unlawfully entered the territory or unlawfully resides in the territory of the Slovak Republic.

**Document for transportation:** Temporary identity document (24-hour validity) issued by the police officers to a foreign national if s/he applied for asylum in the territory of the SR. It serves as proof of identity of a third country national during his/her journey from the police department to the asylum centre.

**Dublin II Regulation:** 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 nationals.

**EU:** European Union.

**Eurodac:** European system of registration of fingerprints and personal data of third country nationals who apply for asylum in the territory of the European Union or who illegally enter into or reside in the territory of the EU.

**Human Rights League (HRL):** A non-governmental organization established in 2005. Its main activities include providing legal aid to asylum applicants and third country nationals in the territory of the Slovak Republic. Furthermore, it is engaged in social work with asylum applicants, searching for information about their countries of origin and the clinical education of law students in the Trnava Faculty of Law at Trnava University via the Clinic of Asylum Law. Since 2006 it has been monitoring border management practices and the entry of persons in the interest of UNHCR to the territory of the Slovak Republic at the external EU borders (since December 2007 at the Schengen borders).

**International Organisation for Migration (IOM):** The principal intergovernmental organization in the field of migration established in 1951. IOM acts with its partners in the international community to assist in meeting the growing operational challenges of migration management.



**Labour, Social Affairs and Family Office (LSAFO):** and its Department of Social and Legal Protection of Children and Social Guardianship (DSLPC) are responsible for social and legal protection of the unaccompanied minors.

**Memorandum:** Memorandum of Understanding on Modalities of Mutual Cooperation and Coordination to Support the Access of Asylum Applicants to the Territory of the Slovak Republic and the Asylum Procedure signed by the BFPO, UNHCR and the HRL.

**Migration Office:** An administrative body of the MOI that is responsible for the asylum procedure, which decides whether asylum or subsidiary protection is granted to foreigners in the territory of the Slovak Republic.

**Ministry of Interior (MOI):** The central governmental authority in charge of the internal administration including protection and administration of the state's border, the entry to the territory of the Slovak Republic and the stay of foreigners in its territory, travel documents and registration of the population, citizenship, refugees and migrants. Migration office and Border and Foreign Police Office belong under its responsibility.

**NGO:** Non-governmental organization.

**Persons of concern/interest to UNHCR:** A general term which is used to describe persons whose protection and assistance is of interest to UNHCR.

**Project:** "The Access Management and Support Project - AMAS" implemented by the HRL on behalf of UNHCR based on the tripartite agreement between the BFPO, UNHCR Regional Representation for Central Europe and the HRL.

**Readmission Agreement:** Readmission agreements are international agreements concluded between countries (or the EU) regarding the readmission of persons illegally staying in their respective territories. For the purpose of this Report the Readmission Agreement shall be understood as the agreement between the Slovak and Ukrainian governments on return and receipt of persons in the common state borders published under no. 116/1994 Coll.

**Reception centre:** A closed centre of the Migration Office where a foreign national is placed after lodging his/her asylum claim in order to undergo a complex medical examination.

**Report:** Report covering the implementation, findings and recommendations under the Project published in 2010 which covers the monitoring period between 1 January 2008 – 31 August 2009.

**Residential centre:** An open centre of the Migration Office where an asylum seeker is accommodated until s/he receives a final determination of the asylum procedure.

**Schengen Area:** A territory where the free movement of persons is guaranteed founded on Schengen Agreement of 1985. The signatory states to the agreement have abolished all internal borders in lieu of a single external border. Here common rules and procedures are applied with regard to visas for short stays, asylum requests and border controls.

**Schengen Borders Code:** Regulation (EC) No. 562/2006 of the European Parliament and Council establishing a Community Code on the rules governing the movement of persons across borders. It defines the conditions and rules controlling third country nationals at border crossing points on the external Schengen borders.

**Subsidiary protection:** Type of international protection which is granted to a third country national who faces a threat of serious harm in his/her country of origin. Serious harm is understood as the death penalty, torture or inhuman or degrading treatment or penalty, or serious and individual threat to life or integrity of a person by reason of non-discriminatory violence during international or national armed conflicts.

**Third country national/foreign national:** A person who is not the national of any European Union country.

**Unaccompanied minor:** A person under the age of 18 who is a third country national and is present on the Slovak Republic territory without his/her legal representative or person legally responsible for him/her.

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<sup>1</sup> <http://www.minv.sk/?uhcp>.

**UNHCR:** The United Nations agency which is mandated to protect and support refugees and stateless persons.

**UNHCR Regional Representation for the Central Europe:** Regional Office in Budapest covers seven countries: Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovak Republic and Slovenia. The role of UNHCR in Central Europe is to ensure and support efficient access to the territory of states and asylum procedures, to ensure and support reception of asylum seekers, to ensure and support fair asylum procedures and to ensure durable solutions.<sup>2</sup>

**10-Point Plan of Action:** 10-Point Plan of Action for Refugee Protection and Mixed Migration for Countries Along Eastern and South-Eastern Border of European Union Member States.

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<sup>2</sup> [www.unhcr.sk](http://www.unhcr.sk).

## Introduction

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Each year, European Union Member States are target countries for an increasing number of migrants coming from third countries to EU territories in either legal or illegal ways. Despite the fact that the Slovak Republic receives fewer migrants as compared to other European Union Member States, the number of those who are legally residing in its territory slightly increases each year. On the other hand, the number of persons who enter the territory of the Slovak Republic outside the official border crossing points without fulfilling the conditions for entry is not insignificant. Regardless of the legal status of the migrant in the territory of the European Union, each and every Member State, including the Slovak Republic, is obliged to respect the basic human rights and freedoms of all migrants, the Convention relating to the Status of Refugees and its other commitments derived from binding international treaties.

The United Nations High Commissioner for Refugees has defined priorities for refugees in the region of the Central and Eastern Europe in the *10-Point Plan of Action for Refugee Protection and Mixed Migration for Countries Along the Eastern and South-Eastern Border of European Union Member States* (“10-Point Plan of Action”).<sup>3</sup> These priorities include protecting foreign nationals from their return to their countries of origin or previous residence by strengthening border monitoring. With regard to border monitoring the 10-Point Plan of Action emphasizes the cooperation between UNHCR and non-governmental organizations which should monitor the entry of persons of interest to UNHCR to the territory of the European Union Member States and also commence cross-border cooperation with relevant organizations outside the Schengen Area.

Based on these priorities UNHCR is building cooperation and partnerships within Central and Eastern Europe with the state bodies that execute control at the external borders of the European Union Member States and non-governmental organizations which directly monitor the border situations and usual practices for UNHCR.

On 5 September 2007 a trilateral treaty called “*Memorandum of Understanding on Modalities of Mutual Cooperation and Coordination to Support the Access of Asylum Seekers to the Territory of the Slovak Republic and the Asylum Procedure of the Slovak Republic*” was signed by the BFPO, UNHCR and the HRL (“Memorandum”). It was the second treaty of this nature signed in the region of the Central and Eastern Europe after the first signed in Hungary. Other countries in the region<sup>4</sup> viewed this in a positive manner and soon followed entering into similar agreements to monitor their borders.

In July 2009 the BFPO withdrew from implementing the Memorandum by arguing that this type of document could not establish the BFPO’s duties and rights in accordance with international law. It concluded that the competences based on the Memorandum should be vested exclusively in UNHCR and could not be transferred to another legal entity. Since the BFPO and the Migration Office are both internal departments of the MOI, the BFPO suggested concluding a new agreement directly with the MOI as it is the central state body of the SR. It is presumed that the new agreement on border monitoring will be signed in 2010.

This submitted report (the “Report”) describes the process of implementation of the Project by a non-governmental organization, the HRL, on behalf of UNHCR, from 1 January 2008 until 31 August 2009 when the BFPO withdrew from the Memorandum by summarizing all the activities implemented..

The aim of this Report is to describe the HRL’s monitoring of the access of third country nationals to territory of the Slovak Republic This Report also contains the HRL’s findings and recommendations for improving the mechanisms utilized when foreign nationals enter the territory of the SR as well as the asylum procedure. This Report contains information and knowledge obtained by the HRL during the implementation of the Project and, wherever available, reflects the BFPO point of view as well.

This Report is divided into three main chapters. The first chapter describes the Project and its goals, target group, methodology and particular activities. The second chapter deals with the conditions of entry and residence in the territory of the Slovak Republic. At the same time it provides an overview of international treaties which are binding for the Slovak Republic in the areas of asylum and migration. The chapter also comprehensively analyses the individual stages of the procedures with third country nationals at the border and in the detention centres. It specifically deals with foreign nationals’ rights to information and interpretation, with an emphasis placed on the status of unaccompanied minors. In the third chapter the authors of this Report point out the findings identified during the implementation of the Project and related recommendations to the BFPO for procedures relating to foreign nationals at the border or during detention procedures.

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<sup>3</sup> [http://www.unhcr-rrbp.org/images/stories/news/docs/03\\_Access%20to%20territory/3\\_4\\_10%20points%20plan\\_REG/TenPontPlanSVK.pdf](http://www.unhcr-rrbp.org/images/stories/news/docs/03_Access%20to%20territory/3_4_10%20points%20plan_REG/TenPontPlanSVK.pdf).

<sup>4</sup> Romania, Slovenia, Poland and Bulgaria.

# 1. Border Monitoring Project Framework

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## 1.1 Implementation of the Project

One of the most significant documents on human rights, the Universal Declaration of Human Rights provides that *“everyone has the right to seek and enjoy in other countries asylum from persecution.”*<sup>5</sup> Persons may apply for international protection in the territory of the Slovak Republic in the form of either asylum, if fleeing persecution, or subsidiary protection, if facing serious harm upon their return to their country of origin. Such persons are persons of concern to UNHCR and, therefore, UNHCR seeks to guarantee that these persons, provided their applications for these forms of protection are justified, are given the procedure for which the protection they apply. UNHCR supervises the procedures and acts of particular Slovak national authorities to ensure compliance with the law and binding international commitments.

The primary purpose of the Project is to monitor whether the persons of concern to UNHCR are allowed to enter the territory of the Slovak Republic if they want to apply for international protection. Previously, monitoring focused on their access to the asylum procedure and the observance of the international principle of non-refoulement<sup>6</sup> by Slovak authorities.

By adopting the Memorandum the BFPO, UNHCR and the HRL have agreed on mutual cooperation to create conditions for monitoring the entry of persons of concern to the territory of the Slovak Republic at the border crossing points and international airports.<sup>7</sup>

## 1.2 Methodology

The national project coordinator and four HRL lawyers monitored how persons of concern entered the territory and were given access to the asylum procedure. Two lawyers performed activities at the Slovak-Ukrainian border and Sečovce DC and the other two lawyers performed activities in the western part of the Slovak Republic and visited M. R. Stefanik International Airport Bratislava-Ruzinov.

According to the Memorandum, the BFPO allowed HRL lawyers to conduct monitoring activities and provided HRL lawyers with free access to the reserved areas of the BFPO departments designed for interviews and procedures with foreign nationals. The average number of monitoring visits to DBCs at the Slovak-Ukrainian border was two visits per week and, in the case of M. R. Stefanik International Airport and Sečovce DC, two per month.

Each monitoring visit was documented in a mission report by HRL lawyers that included a description of the legal situation of a foreigner present at the respective police department and the activities conducted during the mission. The mission report also contained information about foreign nationals’ access to basic requirements, such as food, health assistance and, if necessary, access to legal aid, etc. If relevant, it also reported problems observed and provided recommendations formulated by the HRL. Each mission report was delivered to UNHCR and the BFPO to provide information and elicit a reaction to the facts therein.

Based on the Memorandum, the BFPO notified UNHCR and the HRL (electronically, by fax or by telephone) about the number and nationality of foreign nationals of concern who crossed state borders illegally or applied for international protection. These notifications usually triggered a monitoring visit by HRL lawyers. The notifications regarding violations at state borders or the interception of foreign nationals in the vicinity of the border were sent via e-mail to UNHCR and the HRL by the Operational Centre of the HSBP. Information in these notifications included the date and time of interception, the number of intercepted persons and information about their nationality. It also referred to possible health or other needs of intercepted persons, whether it was necessary to use coercive measures, and to which DBC the foreigners were taken for procedures.

The table below provides an overview of notifications regarding the interception of foreign nationals at the Slovak-Ukrainian border provided by the BFPO during the implementation period of the Project. The table also contains information on the average time it took from the moment a foreign national was intercepted until the HRL was notified.

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<sup>5</sup> Clause 14 par. 1 Universal Declaration of Human Rights.

<sup>6</sup> Principle of non-refoulement: not returning refugees to the territories where their life or personal freedom would be endangered.

<sup>7</sup> There are currently three international airports in the SR – M. R. Stefanik International Airport Bratislava-Ruzinov, Poprad-Tatry International Airport, and Kosice International Airport.

Year/Month	I.	II.	III.	IV.	V.	VI.	VII.	VIII.	IX.	X.	XI.	XII.
2008												
Number of notifications of interceptions of foreign nationals	9	23	33	21	43	24	18	37	31	54	28	13
Average time between interception of foreign nationals and notification to HRL (in hours)	7	8	10	7	6	6	6	10	12	10	12	10
2009												
Number of notifications of interceptions of foreign nationals	5	13	12	24	21	30	20	12	-	-	-	-
Average time between interception of foreign nationals and notification to HRL (in hours)	9	13	18	10	3	5	4	5	-	-	-	-

Source: HRL

Monitoring visits at the M. R. Stefanik International Airport were similarly organized as the respective DBC customarily provided immediate notification to the HRL via telephone. Starting from 1 January 2009 the HRL was also notified via e-mail of transfers planned in accordance with the Dublin II Regulation.

BFPO notifications also provided the HRL with a complex overview of the migration situation at the Schengen borders which enabled it to compare and evaluate statistical data on the number of persons who illegally crossed the state border, or were readmitted to Ukraine (in accordance with the Readmission Agreement), detained or given access to the asylum procedure. These statistics serve as one of the bases for the conclusions and recommendations presented by the HRL at the end of this Report.

Month	No. of Announcements on Intercepted Foreigners	The Average Time between Interception and Announcement to HRL (rounded to nearest hour)	No. of Monitoring Missions	No. of Intercepted Foreigners	Monitoring in Foreigners Presence	Inspection of Case Documentation
Year 2008						
I.	9	7	8	26	1	7
II.	23	8	8	59	2	7
III.	33	10	10	96	6	5
IV.	21	7	9	65	7	3
V.	43	6	7	133	5	4
VI.	24	6	11	63	9	5
VII.	18	6	12	64	4	8
VIII.	37	10	8	108	4	6
IX.	31	12	12	80	3	11
X.	54	10	13	132	9	6
XI.	28	12	9	79	1	9
XII.	13	10	7	28	0	8
Year 2009						
I.	5	9	6	16	1	5
II.	13	13	7	29	0	9
III.	12	18	9	58	1	10
IV.	24	10	10	60	2	13
V.	21	3	9	59	2	8
VI.	30	5	10	77	7	6
VII.	20	4	8	46	3	5
VIII.	12	5	7	29	3	4
<b>Total:</b>	<b>471</b>	<b>9</b>	<b>180</b>	<b>1307</b>	<b>70</b>	<b>139</b>

Source: HRL

## 1.3 Project Objectives

The main objectives of the Project were:

- Access of persons of concern to UNHCR to the territory,
- Access of persons of concern to UNHCR to the asylum procedure,
- Full compliance with the principle of non-refoulement, and
- Access of persons of concern to UNHCR to free legal advice.

## 1.4 Target Group

The target group of the Project included persons of interest to UNHCR at the DBCs, border crossing points, M. R. Stefanik International Airport, and Sečovce DC as well as other BFPO premises.

The monitoring focused on:

- Persons who explicitly or implicitly applied for international protection and were intercepted at the external border of the European Union,
- Persons placed in detention centres who applied for international protection following their detention, and
- Persons detained pending their return to Ukraine based on the Readmission Agreement.

## 1.5 Project Activities

The Project required implementation of the following activities:

1. Monitoring the entry of foreign nationals to the territory,
2. Monitoring the access of foreign nationals to the asylum procedure,
3. Monitoring the procedure on readmission from the territory of the SR to Ukraine based on the Readmission Agreement,<sup>8</sup>
4. Monitoring transfers in accordance with the Dublin II Regulation,
5. Monitoring conditions of the asylum procedure in Sečovce DC,
6. Interviewing persons of concern to UNHCR in order to provide them with information about their rights and duties based on international as well as national law,
7. Monitoring the availability of information materials of UNHCR and the HRL, as well as other information materials for persons of concern to UNHCR,
8. Reviewing police documentation/files concerning foreign nationals in order to collect information on the number, age, sex and nationality of persons of concern to UNHCR and the circumstances of their interception (in accordance with personal data protection pursuant to the provisions of the Act on Personal Data Protection),
9. Collecting data on the number of persons returned to the Ukraine from the Slovak Republic based on the Readmission Agreement,
10. Collecting data on the number of persons who illegally crossed the state border from the territory of Ukraine, and
11. Collecting data on the number of persons who applied for international protection and the DBC after they were intercepted at the border.

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<sup>8</sup> Notification no. 116/1994 Coll. Agreement concluded between the Government of the Slovak Republic and the Government of Ukraine on return and readmission of persons across common state borders signed on 14 October 1993 in Bratislava.



## 1.6 Sites of Implementation

Project activities were implemented at BFPO departments or in other places where members of the target group were present, such as DBCs at the Slovak-Ukrainian border which operate under the HSBP, including:

- DBC Topola,
- DBC Zboj,
- DBC Ulic,
- DBC Ubla,
- DBC Podhorod,
- DBC Petrovce,
- DBC Vysne Nemecke,
- DBC Matovske Vojkovce,
- DBC Velke Slemence,
- DBC Cierna nad Tisou.
- DBC at the M. R. Stefanik International Airport, and
- Sečovce DC.



## 2. Access to the Territory of the Slovak Republic and Access to the Asylum Procedure

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### 2.1 Entry of Third Country Nationals to the Territory of the Slovak Republic

Conditions for entry of third country nationals to the territory of the Slovak Republic are primarily governed by Regulation (EC) no. 562/2006 of the European Parliament and Council establishing a Community Code on the rules governing the movement of persons across borders (“Schengen Borders Code”). A secondary source of conditions for entry of third country nationals is contained in national legislation through provisions of the Act on Residence of Foreign Nationals.

A third country national entering the territory of the Slovak Republic through its external border must carry a valid passport and valid visa (if so required) or residence permit. The BFPO is the respective state authority competent to decide on the issues of entry and residence of foreign nationals in the Slovak territory.

If a foreign national fails to meet these conditions for entry at the border, s/he shall be denied entry to the territory. However, a foreign national who, at the border, applied for international protection or was granted international protection in the territory of the Slovak Republic, cannot be denied entry to the territory.<sup>9</sup> Similarly, a stateless foreigner with a permanent residence permit in the territory of the Slovak Republic cannot be denied entry.<sup>10</sup>

In the vast majority of cases, persons of concern to UNHCR enter the Slovak Republic illegally, without any valid visa or residence permit and without any identity document.

### 2.2 Asylum Procedure

The asylum procedure, conditions for commencing the procedure and the rights and duties of asylum applicants are all governed by the Asylum Act. The asylum procedure is commenced if a foreign national lodges an application for asylum and/or subsidiary protection on the territory of the Slovak Republic. The asylum application shall be lodged on behalf of a minor foreign national by his/her legal representative or a custodian appointed by court.<sup>11</sup>

According to the Asylum Act, the following police departments of the BFPO are competent to receive asylum applications:<sup>12</sup>

- at the time of entry, the DBC at the border crossing point,
- after entry, the Asylum Police Department in the asylum centre (in Humenne or Adamov-Gbely),
- for an arrival via air, the police department in the transit area of an international airport, or
- the competent department near the specialized centre where a foreigner is placed ( e.g., detention centre, health care institution, prison/custody or the centre of DSLPC.

The respective police department has a duty to record the asylum application and send it immediately to the Migration Office, which is the competent state institution in the asylum procedure.

If a foreign national applies for asylum or subsidiary protection at a police department which is not competent to receive the asylum application (i.e., other than those stated above), that police department shall inform the foreign national which police department is competent. The law provides the police department which is not competent with the following instruction:<sup>13</sup> “If a foreign national is not detained, s/he shall be issued a temporary identity document and so-called document for the purpose of transportation<sup>14</sup> and provided travel directions to the reception centre at the Migration Office.”<sup>15</sup>

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<sup>9</sup> Section 7 par. 1 of Act on Residence of Foreign Nationals.

<sup>10</sup> Section 48 Act on Residence of Foreign Nationals.

<sup>11</sup> Sec. 3 par. 1 of Asylum Act.

<sup>12</sup> Sec. 3 par. 2 of Asylum Act.

<sup>13</sup> Sec. 3 par. 8 of Asylum Act.

<sup>14</sup> A document for the purpose of transportation represents the temporary ID card of the foreign national which contains information about the foreign national's name and surname, date of birth, state citizenship, sex or travel document number or another document by which the foreign national demonstrates his/her identity, validity period of the document and other data identifying the police department which issued the document.

<sup>15</sup> Facility which provides accommodation to applicants prior to their placement in the residential centre; primary medical screening is performed in the reception centre and foreign nationals are quarantined.

The Slovak Republic shall grant asylum to a foreign national who demonstrates a well founded fear of persecution for reasons of race, nationality, religion, membership of a particular social group or his/her political opinion. Similarly, asylum shall be granted to a foreign national who is persecuted for exercising political rights and freedoms in the country of origin, possibly for humanitarian reasons or for the purpose of family reunification.<sup>16</sup> If the Migration Office decides not to grant asylum, it must examine whether a foreign national meets the conditions for subsidiary protection.<sup>17</sup> Subsidiary protection shall be provided to a third country national if s/he would be exposed to a real risk of serious harm if returned to the country of origin. Serious harm is understood as the death penalty, torture or inhuman or degrading treatment or penalty, or serious and individual threat to life or integrity of a person by reason of non-discriminatory violence during international or national armed conflicts.<sup>18</sup>

The Migration Office shall decide on the asylum application within 90 days from the commencement of the procedure. The decision of the Migration Office shall be subject to review by the independent and impartial courts (Regional Court in Bratislava and Kosice, and in appeal proceedings to the Supreme Court).

## 2.3 Legal Framework

Pursuant to Article 7 par. 5 of the Constitution of the Slovak Republic (Act no. 460/1992 Coll.), international treaties on human rights and fundamental freedoms, international treaties applicable without the need for separate legislation and international treaties directly establishing rights and duties which have been ratified and declared in a manner required by law, have priority over domestic legislation.

The most important international treaties that accord all human beings, including foreign nationals, with human rights and freedoms which the Slovak Republic has ratified include:

- International Covenant on Civil and Political Rights (1966),<sup>19</sup>
- International Covenant on Economic, Social and Cultural Rights (1966),<sup>20</sup>
- Convention on the Rights of the Child (1989),<sup>21</sup>
- Convention relating to the Status of Refugees (1951) and its Protocol relating to the Status of Refugees (1967),<sup>22</sup>
- International Convention on the Elimination of All Forms of Racial Discrimination (1965),<sup>23</sup>
- Convention on the Elimination of All Forms of Discrimination against Women (1979),<sup>24</sup>
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984),<sup>25</sup>
- European Convention on the Protection of Human Rights and Fundamental Freedoms (1950),<sup>26</sup> and
- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987).<sup>27</sup>

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<sup>16</sup> Sec. 8, 9 and 10 of Asylum Act.

<sup>17</sup> Pursuant to Sec.13a of Asylum Act the “Ministry shall grant subsidiary protection to an applicant to whom it did not grant asylum, provided that there are good reasons to consider that the applicant would face a real risk of serious harm if returned to his/her country of origin.”

<sup>18</sup> Sec. 2 let. f) of Asylum Act.

<sup>19</sup> Decree of Minister of Foreign Affairs no. 120/1976 Coll.

<sup>20</sup> Decree of Minister of Foreign Affairs no. 120/1976 Coll.

<sup>21</sup> Notification of Federal Ministry of Foreign Affairs no. 104/1991 Coll.

<sup>22</sup> Notification of Federal Ministry of Foreign Affairs no. 319/1996 Coll.

<sup>23</sup> Decree of Minister of Foreign Affairs no. 95/1974 Coll.

<sup>24</sup> Decree of Minister of Foreign Affairs no. 62/1987 Coll.

<sup>25</sup> Decree of Minister of Foreign Affairs no. 143/1988 Coll.

<sup>26</sup> Notification of Federal Ministry of Foreign Affairs no. 209/ 1992 Coll.; following to the adoption of Protocol no.11 notification of Ministry of Foreign Affairs no. 102/1999 Coll.

<sup>27</sup> Notification of Ministry of Foreign Affairs no. 26/1995 Coll.

In order to harmonize Slovak legislation with the legislation of the European Union in the area of asylum and migration policy which supports the establishment of the common European asylum system, the Slovak Republic transposed the following secondary EU legislation:

- Council Directive 2001/55/EC of 20 July 2001 on the minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof,
- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers,
- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long-term residents,
- Council Directive 2004/83/EC of 29 April 2004 on the minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted,
- Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, and
- Council Directive 2005/85/EC of 1 December 2005 on the minimum standards on procedures in Member States for granting and withdrawing refugee status.

In addition, the Slovak Republic applies directly applicable secondary EU legislation, such as:

- 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 (the “Dublin II Regulation”),<sup>28</sup>
- 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, and
- European Parliament and Council Regulation 562/2006 of 15 March 2006 regulating the code of Communities on rules of free movement of persons across the borders (Code of Schengen borders).

## 2.4 The Slovak-Ukrainian Border

Third country nationals most frequently enter the territory of the Slovak Republic illegally through the Slovak-Ukrainian border which became a Schengen border in December 2007. It is 98 kilometers long and there are 10 DBCs which operate under the HSBP.

Unauthorized entry and unauthorized stay in the territory of the Slovak Republic are considered offences according to the Act of Residence of Foreign Nationals.<sup>29</sup> If a foreign national is intercepted in the area around the border, it is suspected s/he has illegally crossed the state border as quite often s/he cannot demonstrate the legal nature of his/her residence and/or his/her identity. S/he is requested to immediately travel to the competent DBC in order to explain the offence and his/her identity. These steps are documented in writing. If the person cannot sufficiently provide an immediate explanation as requested, s/he can be brought in to the DBC to explain.<sup>30</sup> Security and health inspection of a foreign national are performed at the DBC; such inspections can only be performed by a police officer of the same sex as the foreign national. DBC officers then interview the foreign national and prepare formal written documentation regarding his/her reason for the unauthorized entry or stay, his/her route, the way in which s/he crossed the border and the persons associated with his/her journey.

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<sup>28</sup> Council Regulation (EC) no. 343/2003 of 18 February 2003 which replaced Dublin Regulation of 1990.

<sup>29</sup> Sec. 76 par. 1 let. a) of the Act on the Residence of Foreign Nationals on the Territory of the SR.

<sup>30</sup> Sec. 17 par. 2 of Act on Police Forces.

After the written record regarding the third country national is finalized, the following legal situations can occur:

### 1. Filing an application for international protection

According to the international commitments of the Slovak Republic, a foreign national cannot be refused entry into the asylum procedure. At the time the foreign national enters the territory, the DBC at the border crossing point is the competent authority to record his/her application for asylum or subsidiary protection.<sup>31</sup> This DBC records the application, his/her reasons to apply for international protection and sends it by fax to the Asylum Police Department.

On the other hand, if a foreign national enters the territory of the Slovak republic in an illegal manner, the DBC which intercepted him/her is not considered competent to receive the asylum application. Therefore, the DBC that intercepts such foreign national applies provision Sec. 3 par.8 of the Asylum Act and refers the foreign national to the competent BFPO department. If the DBC does not decide to detain the foreign national, it shall provide him/her with directions for travel to the Asylum Police Department at the Reception Centre of the Migration Office in Humenne. The DBC shall issue a document for transportation to a foreign national to this centre (a so-called “credit travel ticket”) or escort him/her in person (if required due to the state of health or safety situation of the foreign national or unfavorable weather conditions).

### 2. Transfer to another Member State which is responsible for examining a foreign national's application for asylum in accordance with the Dublin II Regulation

A foreigner with a positive record in the Eurodac information system, who already applied for asylum in another Member State, could be detained and placed in the detention centre in order to execute his/her transport to the country which is responsible for considering his/her application for asylum in accordance with the Dublin II Regulation.

### 3. Readmission/return of persons to the territory of Ukraine

On 14 October 1993 the Slovak Republic and Ukraine signed the Readmission Agreement. Based on this agreement Ukraine shall accept and readmit third country nationals that illegally crossed the common state borders from Ukrainian territory. If it is proved that a foreign national illegally crossed the border from the territory of Ukraine (e.g., video record, detainee's testimony, footprints and other tracks in the snow, written documents, etc.) and did not apply for international protection at the respective Slovak DBC, police officers are authorized to detain him/her until s/he is returned to the territory of Ukraine. If the Slovak Republic requests the return of the foreign national within 48 hours from the illegal border crossing, Ukrainian authorities must receive a person without delay. If such return cannot take place within 48 hours, a foreign national may be detained and placed in the DBC for a maximum period of seven days.<sup>32</sup> The Readmission Agreement enables Slovak authorities to request readmission within a maximum period of 90 days after the illegal border crossing.<sup>33</sup>

A foreign national readmitted to Ukraine shall receive a decision on administrative expulsion from the Slovak territory issued by the competent DBC which will include a period of prohibition of re-entry.<sup>34</sup> If a foreign national was detained in order to be returned to Ukraine, s/he shall receive also a decision about his/her detention. A foreign national can file an appeal against both decisions, but the filing of such appeal has no suspensive effect.

### 4. Administrative expulsion

If a foreign national has not applied for international protection and his/her return to Ukraine has not been decided based on the Readmission Agreement, the DBC will consider the possibility of his/her return (administrative expulsion) to his/her country of origin. According to the relevant provisions of the Act on Residence of Foreign Nationals, the police department shall issue a decision on administrative expulsion and specify the duration of the prohibition of re-entry. While awaiting this decision, a foreign national can be detained and placed in the detention centre.

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<sup>31</sup> Sec. 3 ods.2 let. a) Asylum Act.

<sup>32</sup> Sec. 62 par. 5 of Act on Residence of Foreign Nationals.

<sup>33</sup> Art. 6 of the Readmission Agreement.

<sup>34</sup> The police shall decide on administrative expulsion of a foreign national and on the length of the prohibition of his/her re-entry to the SR for up to five years. However, the length of prohibition of re-entry is at least one year if the foreign national illegally entered or resided in the territory of the Slovak Republic, or if s/he refused to demonstrate his/her identity in a credible way. Prohibition of re-entry for five years shall apply if s/he submitted counterfeit or modified document at the border checkpoint, or a document belonging to another person (Sec. 57 par. 1 of Act on Residence of Foreign Nationals).

Prior to the issuance of the decision on administrative expulsion of a foreign national, the DBC must examine any obstacles to administrative expulsion in accordance with the law and international obligations. Police officers review the applicability of Section 58 of the Act on Residence of Foreign Nationals,<sup>35</sup> in other words, whether there are any facts in the individual case that raise concerns over refoulement.

Foreign nationals present at the DBC must be duly informed about their legal situation and their rights and duties during the procedure with state authorities. They must be made aware of the possibility of filing an appeal against a decision on administrative expulsion and the time limits for filing this appeal. During the administrative procedure foreign nationals have the right to use a language that they understand. Therefore, it is necessary that in all legal steps during the procedure, a foreign national is provided with an interpreter in a language which s/he understands.

#### Case no. 1

Based on the notification from BFPO, the HRL lawyers visited one of the DBCs at the Slovak Ukrainian border. At the time of the HRL visit, police officers were preparing the record from an interview with Georgian nationals providing an explanation for their unauthorized entry onto the territory. The Georgian language interpreter was also present.

Subsequently, the HRL lawyers interviewed foreign nationals who provided the same facts as those stated in the record prepared at DBC. At the behest of DBC officers detainees were informed by the HRL lawyer about further procedure and the responsibility of the Slovak Republic for the examination of the asylum application according to the provisions of the Dublin II Regulation. They were also informed about HRL information leaflets available at DBC in the Russian language. Because the foreign nationals applied for asylum during the procedure at DBC, they were transferred to the Humenne reception centre of the Migration Office.

**Police procedure was in accordance with the law in this case. The content of the records was identical with the statements of the foreign nationals and the presence of an independent interpreter was ensured. The HRL lawyers had full access to the case file documentation and were able to interview foreign nationals.**

#### Case no. 2

A group of seven Pakistani males, two of them minors, were taken to the DBC and interviewed following their illegal crossing of the Slovak-Ukrainian border. As the HRL found from inspection of the case file documentation, during the interview all the foreigners requested subsidiary protection. The reasons for their applications were religious persecution and persecution for political grounds in their country of origin. The foreign nationals stated that they hoped to return to Pakistan when conditions in their country change and they are not in danger there any more.

All of them were returned to the territory of Ukraine on the same day after four hours of detention and they were prohibited from re-entering the territory of the Slovak Republic.

The HRL lawyer, following inspection of the police documentation in these cases, consulted with the DBC director and pointed out that these foreign nationals were deported in conflict with the international obligations of the Slovak Republic as well as its legal order. The DBC director justified the police action in this particular case claiming that the content of the records in the case documentation was not the result of the foreign nationals' testimonies but the result of interpretation which did not accurately capture the content of the foreigners' statements.

**The HRL is of opinion that the foreign nationals' testimonies were subjectively evaluated by the police as untrustworthy, which resulted in deportation to Ukraine of persons who requested subsidiary protection, including two minors. This happened despite the fact that they had expressly applied for international protection, which is also documented in the police files. DBC officers later acknowledged this erroneous police action and a similar situation has never occurred again.**

<sup>35</sup> A foreign national cannot be administratively expelled to the state in which his/her life would be endangered for the reasons of his/her race, religion, membership in a particular social group or for his/her political conviction, or in which s/he would be threatened by torture, cruel or degrading treatment or penalty. Similarly, a foreign national cannot be administratively expelled to the state in which s/he was charged with death penalty or it is assumed that such penalty can be imposed on him/her in the currently ongoing criminal proceeding.



## **BFPO Comments**

This was a case of seven illegal migrants. The police officers at the DBC evaluated their statements as false, since they claimed that they had arrived on the territory of the Slovak Republic from Hungary. On the contrary, the camera system detected and proved that their real route led them to the Slovak territory through the border from Ukraine and that they were accompanied by a smuggler.

HRL lawyers objected to the fact that these migrants were not allowed to apply for international protection in the SR. During investigation of the case, the illegal migrants were informed about the possibility of lodging a request for international protection, which they were given information about (written information is contained in the record of their explanation). Despite this fact, they did not express their right to apply for international protection at the DBC.

There were 185 monitoring missions conducted within the period from 1 January 2008 to 31 August 2009.

### **Monitoring visits at DBC at the Slovak-Ukrainian border within monitoring period**

- 64 cases monitored in the presence of foreign nationals - 35%
- 121 cases monitored by means of inspection of case file documentation - 65%

Based on the analysis of statistical data the number of cases of illegal crossings of the state borders decreased in 2009. There were 978 illegal crossings of the external border recorded in 2008, whereas only 375 illegal crossings were recorded as of the end of August 2009.

The length of the state border from DBC Vysne Nemecke to DBC Cierna nad Tisou is completely monitored by a camera system. An assumption can be made that this fact caused the change in the migratory routes of foreign nationals who now cross this part of the border considerably less frequently than in the past. The state border most frequently illegally crossed is in the northern part between DBC Vysne Nemecke to DBC Zboj. During the implementation of the Project, illegal crossings at state borders were most frequently dealt with by DBC Petrovce, Podhorod, Ubla, Ulic and Zboj.

### **Monitoring visits at particular DBC BFPO at the Slovak – Ukrainian border within monitoring period (1.1.2008 – 31.8.2008)**

- OHK Zboj - 15 monitoring visits
- OHK Ulič - 17 monitoring visits
- OHK Ubľa - 28 monitoring visits
- OHK Podhorod' - 28 monitoring visits
- OHK Petrovce - 42 monitoring visits
- OHK Vyšné Nemecké - 24 monitoring visits
- OHK Veľké Slemence - 11 monitoring visits
- OHK Maťovské Vojkovce - 11 monitoring visits
- OHK Čierne nad Tisou - 6 monitoring visits
- RHP Sobrance - 3 monitoring visits

## 2.5 M. R. Stefanik International Airport in Bratislava

M. R. Stefanik International Airport in Bratislava is situated in the capital of the Slovak Republic, Bratislava. Compared with other airports in the EU Member State capitals, the M. R. Stefanik International Airport is smaller in terms of its area as well as the numbers of transported passengers. The total number of transported passengers travelling internationally in 2008 was 2,015,310 whereas as of September 2009 it was 1,299,320.<sup>36</sup>

The HRL started implementing the Project at the M. R. Stefanik International Airport in August 2007, when the Slovak Republic was working towards meeting the criteria for the Schengen air border. During this time a transit centre of the Migration Office was built on the airport premises and officially opened on 6 February 2008. As of the end of August 2009, the HRL had not recorded any case in which a foreign national had been placed in the transit centre of the Migration Office at M. R. Stefanik International Airport following his/her asylum application at the DBC.

A foreign national who arrives at the M. R. Stefanik International Airport by air and fails to comply with the conditions for entry to the territory shall be denied entry to the territory. S/he will remain within the transit zone of the airport until the moment of his/her departure. In this case the travel agent who transported a foreign national to the border checkpoint shall be obliged to transport him/her back to the state from which s/he had arrived or to the state which issued his/her travel document or to any other state where his/her reception is ensured.<sup>37</sup> Should a travel agent not be able to transport a foreign national, they shall be obliged to immediately ensure substitute transportation of a foreign national and bear the costs for such substitution or the costs of his/her stay and return.<sup>38</sup>

The DBC can detain a foreign national at the airport for a maximum period of seven days. If his/her expulsion or return from the territory is impossible within seven days, the DBC shall issue a decision on detention and place him/her in a detention centre in order to execute his/her administrative expulsion or return based on the Readmission Agreement.

In the case of foreign nationals the following legal situations can occur at the M. R. Stefanik International Airport:

1. A foreign national arrives to the territory of the Slovak Republic lawfully by air and applies for international protection. In this case a DBC officer prepares an asylum application with him/her in the presence of an interpreter and the asylum procedure is officially commenced. A document for transportation is then issued to him/her along with a so-called "credit travel ticket", a map and the address of the Humenne reception centre. A foreign national can be placed in the transit centre of the Migration Office situated directly at the M. R. Stefanik International Airport instead of being sent to the reception centre.
2. A foreign national arrives to the territory of the Slovak Republic by air; however, s/he does not comply with the conditions for entry to the territory of the Slovak Republic. In this case the DBC shall prepare a record of the foreign national's explanation and begin the procedure for refusal of entry to the territory, unless a foreign national can be allowed entry to the territory of the SR by issuing a visa directly at a border check point.<sup>39</sup> If a foreign national applies for international protection during such procedure, the DBC shall prepare an asylum application and the asylum procedure is commenced.
3. A foreign national is transferred to the territory pursuant to the Dublin II Regulation as the Slovak Republic was found to be responsible for his/her asylum application. If the asylum procedure is still pending, the DBC shall inform the asylum seeker of the Eurodac system, in particular that whenever s/he leaves the Slovak Republic during the asylum procedure and applies for asylum in another Member State, s/he will be returned to the territory of the Slovak Republic. The DBC shall issue a document for transportation to the applicant to the Migration Office facility (the residential centre of the Migration Office in Rohovce or Opatovska Nova Ves) based on his/her last registration.
4. A foreign national is returned to the territory based on the Dublin II Regulation; however, the final decision in his/her asylum case in the Slovak Republic was negative. In this case, s/he can re-apply for asylum directly at the airport. If s/he is not interested in filing another application for asylum s/he can apply for voluntary return to his/her country of origin. In this case the DBC officer contacts the International Organization for Migration which implements projects for voluntary returns of foreign nationals.

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<sup>36</sup> Source: <http://www.airportbratislava.sk/31.html>.

<sup>37</sup> Sec. 51 par. 2 of Act on Residence of Foreign Nationals.

<sup>38</sup> Sec. 51 of Act on Residence of Foreign Nationals.

<sup>39</sup> Council Regulation (EC) no. 415/2003 of 27 February 2003 on the issue of visas at the border, including the issue of such visas to seamen in transit.

### CASE no. 3

A female Iraqi national was transferred back to the territory by air because the Slovak Republic was found to be responsible for examination of her application for asylum according to the Dublin II Regulation. Due to her advanced age, health problems and illiteracy she was identified by the HRL lawyer as a vulnerable person. Following submission of her asylum application she was given temporary identity documents and informed about her obligation to travel to the Humenne asylum centre. Although she did not have any financial resources the DBC personnel claimed that there was no reason for the issuance of a credit travel ticket for her transportation to the reception centre. Only upon the HRL lawyer's intervention who pointed out her vulnerability was she transported to the reception centre by DBC personnel.

**The issuance of so-called credit travel tickets for the transportation to the Migration Office facilities serving as a form of payment for transportation by the state was discussed at several meetings between the Memorandum cooperating parties. At the time of the monitoring visit, the practice was that asylum seekers who returned after they had left the Slovak Republic, were not provided with this ticket as a form of penalty for their absconding from asylum procedure. At the moment, the practice is to issue the credit travel ticket to every foreign national who applies for asylum and also to applicants returned on the basis of the Dublin II Regulation.**

### BFPO comments

We assume that the problem with the credit travel ticket referred to in this case is from the year 2007, when issuance of credit travel tickets was strictly regulated by the Migration Office. The BFPO had to respect the regulations of the Migration Office because financial funding of the credit travel tickets was provided by Migration Office only under specific conditions. Based on these regulations, a person returned because the Slovak Republic was found to be responsible under the Dublin II Regulation for examining his/her asylum application was not entitled to a credit travel ticket. These problems were resolved after mutual consultations. In this case, after the mutual review of the case, DFP ensured the higher standard and transported a foreign woman to the asylum centre.

BFPO Bratislava does not have information that any similar case has been repeated recently. Each case of implementation of the Dublin II Regulation is treated individually in accordance with the applicable law.

During the period from 1 January 2008 to 31 August 2009, 32 monitoring visits were made to the premises of the airport. Altogether, the HRL lawyers monitored 55 cases, 24 of which were monitored in the presence of foreign nationals, and 15 case files were inspected. In nine cases the presence of the HRL lawyer at the airport was not necessary and communication with airport DBC personnel by means of telephone was sufficient.

### Monitoring visits at M. R. Stefanik Airport in Bratislava (1.1.2008 -31.8.2009)

- 24 cases monitored in the presence of foreign nationals - 50%
- 15 cases monitored by inspection of case file documentation - 31%
- 9 cases monitored via telephone - 19%

### Overview of procedures with foreign nationals at M. R. Stefanik Airport in Bratislava 1.1.2008 – 31.8.2009

1.1.2008 - 31.12.2008	
number of asylum applications	22
number of refusals of entry to the territory	32
number of foreign nationals returned according to the Dublin II Regulation	22
1.1.2009 - 31.8.2009	
number of asylum applications	10
number of refusals of entry to the territory	28
number of foreign nationals returned according to the Dublin II Regulation	11

<sup>40</sup> Decision of judicial authority of the SR on expulsion penalty in criminal proceeding.

## 2.6 Sečovce Detention Centre

Sečovce DC for foreign nationals is situated in the district of Michalovce in the Kosice region. It has a capacity to hold 178 foreign nationals, including both males and females as well as families with children. Unaccompanied minors are not placed there because, according to Act on Residence of Foreign Nationals, they cannot be detained at all.<sup>40</sup>

### Overview of monitoring HRL visits in in Secovce Detention Centre

- 26 cases of asylum applications in detention centre – 55 per cent
- 21 other cases – 45 per cent

Activities of the Project in Sečovce DC can be divided into three areas:

#### 1. Monitoring reasons for detention and the length of detention:

Foreign nationals are placed in Sečovce DC while awaiting execution of their decision on administrative expulsion or expulsion imposed by criminal proceedings,<sup>41</sup> their transfer according to the Dublin II Regulation or their return to another country based on a readmission agreement.<sup>42</sup>

Immediately after detaining a foreign national the police department shall inform him/her of the reasons for their detention and the possibility of challenging the lawfulness of the decision to detain. This information shall be provided in a language which the foreign national understands. The law also allows the foreign national to inform some of his/her relatives and legal representative of his/her detention.

Detention shall be legitimate for the time period necessary to prepare expulsion/transfer/return of the foreign national. Detention is no longer legitimate if an asylum seeker receives a positive decision regarding his/her asylum application. On the other hand, this period cannot exceed 180 days.<sup>43</sup> Throughout the course of the foreign national's detention, the department of foreign police (DFP) in the detention centre examines whether the reasons for detention still exist. As soon as the reasons no longer exist, a detained foreign national is released from the facility.

According to law, filing an asylum application is not a reason for releasing a foreign national from detention.<sup>44</sup> A foreign national seeking asylum while in detention will be release only if s/he receives a positive decision from the Migration Office. It is good established practice that if it is assumed that the duration of the asylum procedure will be longer than the maximum possible period of detention (180 days), a detained asylum seeker is released from detention and placed into the asylum facility of the Migration Office.

#### Overview of number of placed foreign nationals in Sečovce DC for the period from 1.1.2008 to 31.8.2009

- 1.1.2008 - 31.12.2008 - 231 foreign nationals
- 1.1.2009 -31.8.2009 - 133 foreign nationals

#### 2. Monitoring access of detained foreign nationals to the asylum procedure:

The HRL monitored the access of detainees in Sečovce DC to the asylum procedure. In particular monitoring focused on the process of how the intention of a detainee to apply for asylum reaches the competent authority, how the application is registered and how language interpretation enables the submission of the asylum application and commencement of the asylum procedure. HRL lawyers further focused on the content of information given by DFP officers, the quality of interpretation services and the time period which elapsed from the expression of a foreign national's intention to seek asylum until the moment DFP personnel receive the asylum application, which is formally understood to be the moment the asylum procedure commences.

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<sup>41</sup> Decision of judicial authority of the SR about imposing the penalty of expulsion in criminal procedure.

<sup>42</sup> For example, the Readmission Agreement with Ukraine.

<sup>43</sup> According to a change in the law in force since 15 January 2010, the maximum duration of detention is six months, which can be prolonged by an additional 12 months for a maximum total duration of detention of 18 months.

<sup>44</sup> Sec. 62 par. 2 of Act on Residence of Foreign Nationals; according to the BFPO this provision is the reason for the decrease in asylum applications submitted in detention centres; [http://www.minv.sk/swift\\_data/source/policia/hranicna\\_a\\_cudzinecka\\_policia/rocenky/rok\\_2006/2006-rocenka-uhcp-sk.pdf](http://www.minv.sk/swift_data/source/policia/hranicna_a_cudzinecka_policia/rocenky/rok_2006/2006-rocenka-uhcp-sk.pdf) (source: BFPO yearbook for 2006).

A detained foreign national can express his/her will to apply for asylum either verbally or in writing in the presence of Sečovce DC officers, such as social worker or officers in service (at nights, weekends). These persons immediately notify the DFP located in Sečovce DC that a foreign national wishes to apply for asylum. The DFP ensures the presence of an interpreter in order to enable a foreign national to submit his/her application for asylum. The Migration Office is informed immediately upon the receipt of an application. The mere desire of a foreigner to seek asylum before it is recorded by the DFP in an application does not amount to his/her application being lodged.

- The law does not provide for any time limit in which the DFP should record an asylum application and, in reality, it is often handled with delay. The DFP has adopted the good practice of informing the Migration Office of objective reasons for a delay in the submission of individual asylum applications. This prevents the Migration Office from attributing the delay to abuse or improper procedure. The average time period from the moment when a foreign national expresses his/her will to seek asylum until the application for asylum is recorded is approximately 10 days. In one case, however, the DFP held a foreign national for more than one month due to the lack of available interpreters of a particular language. The DFP informed the foreign national about the reasons for the delay.

### 3. Monitoring conditions in Sečovce DC

In monitoring the conditions of detention at Sečovce DC HRL lawyers focused in particular on the access to free legal and social advice, provision of health care, respect of cultural and religious differences, provision of meals, mechanisms for lodging complaints, and access to education and free time activities.

Access to free legal advice for detainees during the Project implementation period was provided by the Goodwill Society, a non-governmental organization based in Kosice. The Goodwill Society personnel regularly visited the facility once a week. The International Organization for Migration (“IOM”) provided support to the foreign nationals who applied for voluntary return to their countries of origin. The IOM visited Sečovce DC once it was notified that a foreign national in Sečovce DC had applied for voluntary return. If the HRL lawyers recorded a request for certain legal or social aid from detained foreign nationals they informed either the particular NGO or management of the Sečovce DC.

Access to health care for detained foreigners is guaranteed by law under the same conditions as Slovak nationals. According to the law,<sup>45</sup> a detained foreign national is provided health care under the system of mandatory public health insurance which is paid for by the state. First, Sečovce DC medical personnel conduct an entry medical examination immediately after a foreign national is placed in detention. Before released from Sečovce DC a foreign national undergoes an exit medical examination. The medical personnel in Sečovce DC, a nurse and a doctor, provide health care to all detainees during their detention. If a health condition requires care which cannot be provided in Sečovce DC (e.g., a psychiatrist or other specialist or in cases where surgery is required), Sečovce DC provides the foreign national with transportation to an appropriate health care facility.

Preventive and curative pediatric care (e.g., vaccination and screening the overall development and behavior of a child) is provided to pre-school and school-age children who are placed in detention.

The HRL also monitored conditions relating to the provision of meals to detained foreign nationals. Meals are provided at specified hours and with the recommended nutrition values. For one day a month, only non-cooked meals are provided due to a “sanitation day”. Age, health conditions and the religion of foreign nationals are taken into consideration when planning meals. Sečovce DC pays particular attention to respecting the religious differences of detainees. The social worker in Sečovce DC has adopted the good practice of identifying differences in foreign nationals’ eating habits during the admission process. Since September 2008, alternative food reflecting foreign nationals’ special requests based on religious beliefs has been offered as part of the everyday menu and its selection is discussed with the social worker.

The role of the social worker in communicating with Sečovce DC detainees is crucial. The staff social worker acts as a mediator between detainees and police officers in Sečovce DC. The principal role of the social worker is to explain to foreign nationals the reasons behind their continuous detention, to inform them of the internal rules of the facility and to help them in various situations. Any cases of asylum requests are recorded and referred by the social worker directly to the DFP. In order to enable communication with detainees, social worker also utilises interpreting services. Internal rules for Sečovce DC are made available to detainees in common rooms and in

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<sup>45</sup> Sec. 3 par. 3 let.f) of Act no. 580/2004 Coll. on health insurance and on amendment and supplementation of certain acts.

the corridor in English, Arabic, Chinese, Indian and Russian. Foreign nationals in Sečovce DC have the right to demand protection of their rights that are guaranteed by law or point out certain deficiencies by submitting written complaints to the complaints book. Simple complaints are recorded by the social worker and resolved directly on the spot (e.g., with a doctor, Sečovce DC officer, etc.) or communicated to the lawyers of the Goodwill Society. If HRL lawyers discovered certain deficiencies in conditions at the centre during their interviews with detainees, they discussed them directly with management. The concerns of foreign nationals most frequently relate to different food habits based on their religious beliefs, the provision of food for children<sup>46</sup> and the quality of health care provided at Sečovce DC. The HRL donated a collection of foreign language literature (newspapers in Russian and English and 32 books in Russian received from the local library in Svidnik). The HRL also contributed to free time activities by purchasing new footballs.

The HRL made 48 monitoring visits between 1 January 2008 to 31 August 2009 to Sečovce DC. For 26 visits, HRL lawyers were present when DFP officers in the detention centre recorded asylum applications. The HRL lawyers had access to all detained foreign nationals during these monitoring visits unless prevented by unexpected causes (e.g., quarantine in the facility, condition of the detained foreign national's health, etc.).

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<sup>46</sup> Provision of food to children was later organized by the NGO Goodwill Society.



## 3. Findings of the Border Monitoring Project

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### 3.1 Right to Interpretation

The right to interpretation in a language which a foreign national understands is one of his/her basic rights in proceedings with state authorities guaranteed by the Constitution of the Slovak Republic. In procedures regarding offences by foreign nationals who have entered or stayed in the territory without authorization the main objective of the police is to investigate and impartially ascertain the facts. In order to be able to ascertain the facts of the case in an adequate manner and also enable the foreigner to apply his/her rights in the procedure. The facilitation of communication between an officer and a foreign national by means of interpretation can be of crucial importance.

In proceedings regarding such offences, the police officers shall first proceed according to Act No. 372/1990 Coll. on offences and police internal standards "Regulation of the President of Police Forces on Examination and Handling of Offences in Police Forces."<sup>47</sup> Clause 19 par. 1 states that if a police officer requires an explanation from a foreign national who cannot adequately speak the state language, an interpreter<sup>48</sup> from a list of experts and interpreters is appointed upon written request. Prior to the interview, DBC personnel shall verify understanding between the interpreter and the foreigner. If the list of experts and interpreters does not contain an interpreter who speaks the language of the foreign national, DBC personnel shall appoint a person who is able to interpret in the relevant language. In such cases, the person who will interpret takes the oath of an interpreter. This fact is also included in the brochure "Information for Persons in the case of limitation of their freedom", which is an information aid for police officers that is available at each DBC. According to this material, before an interview, BFPO personnel should inform a person s/he is required to provide an explanation for his/her unauthorized entry or stay and that if s/he does not speak the language of the proceedings s/he has the right to an interpreter or translator.<sup>49</sup>

If interpretation cannot be arranged within a foreseeable period of time, the police internal standard permits a DBC officer to act in the role of an interpreter, provided s/he has sufficiently mastered the language of the foreigner and s/he is not in charge of conducting the procedure with the detained foreign national. In this case, the DBC officer will take the oath of the interpreter.

Based on the HRL's monitoring it can be concluded that during the monitoring period the interpretation in several cases was ensured only by the DBC officer or a combination of interpretation by the DBC officer and one of the foreign nationals from the group of intercepted individuals. DBCs have not been primarily using the services of impartial professional interpretation. For the purpose of effective cooperation between the contracting parties of the Memorandum, the HRL and UNHCR have offered to ensure interpretation in the required language and/or for transportation of an interpreter to the particular DBC if needed.

### 3.2 Right to Information

Based on its legal obligations the BFPO shall allow foreign nationals who apply for international protection to enter the territory and access the asylum procedure in the Slovak Republic. According to the Memorandum, all persons intercepted by the BFPO should immediately be duly informed about their rights and duties in their situation, regardless of the type of procedure (i.e., administrative expulsion, detention, or administrative offence). In each of these procedures the police department acts as an administrative body and therefore has the information to provide a foreign national with assistance and information in a manner in which the foreign national's rights are preserved.<sup>50</sup>

Deriving their duty from the provisions of the Memorandum, HRL lawyers informed foreign nationals of their rights and duties during interviews and made sure that the information provided was effective. Effective provision of information requires a foreign national's full acknowledgement of the content of information on rights and obligations in a language s/he understands. In addition, the administrative body provides him/her with the possibility of seeking clarification and explanation of issues not fully understood.

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<sup>47</sup> The purpose of this internal police standard is to regulate details and unify the process of various police departments for examinations and the handling of offences (complete wording Regulation of Police Forces President no. 16/2004 and Regulation of Police Forces President 7/2007 and Regulation of Police Forces President 9/2007).

<sup>48</sup> Conditions for an interpreter's performance are governed by Act no. 382/2004 Coll. on experts, interpreters and translators and amendment and supplementation of certain acts.

<sup>49</sup> Sec. 17 of Act no. 171/1993 Coll. on Police Forces.

<sup>50</sup> Sec. 3 par. 2 of the Act no. 71/1967 Coll. on administrative procedures (Administrative Procedures Code).

Information leaflets in nine languages were produced by the HRL for this purpose and distributed to each DBC at the Slovak-Ukrainian border and the M. R. Stefanik International Airport. The leaflets were designed specifically for foreign nationals intercepted due to an unauthorized entry or stay in the territory. They contain information about the legal situation of foreign nationals, their rights and duties in the procedure, the right to apply for asylum or subsidiary protection, information on the Eurodac database, the application of the Dublin II Regulation and contact data of the HRL and UNHCR.

In 2009 a new joint information leaflet regarding international protection in the Slovak Republic was produced in cooperation with all three contracting parties of the Memorandum. Upon approval of BFPO management, the leaflet was distributed to all DBCs on the Slovak-Ukrainian border, detention centres and international airports.

### 3.3 Protection of Unaccompanied Minors

An unaccompanied minor is a third country national under the age of 18 who is in the territory of the Slovak Republic without his/her legal representative or without a person responsible for him/her according to law or custom.

The DBC considers a foreign national to be a minor on the basis of his/her allegation on age under 18 until it is otherwise demonstrated that s/he is not a minor. If there are doubts an unaccompanied minor will undergo a medical examination in order to determine his/her age. If a foreign national refuses to undergo such medical examination s/he shall be considered as adult.<sup>51</sup> The HRL did not observe any case during the monitoring period in which an unaccompanied minor had to undergo a medical examination in order to find out his/her age.

DBC personnel must act in the best interest of an unaccompanied minor. An unaccompanied minor cannot be detained or administratively expelled.<sup>52</sup> The DBC shall immediately notify the nearest LSAFO of the presence of an unaccompanied minor to ensure his/her placement in the Children's Home for Foreign Nationals in Horne Orechove. DBC personnel cannot conduct an official proceeding with a minor without the presence of an employee of the LSAFO or a custodian appointed by the court for the proceeding.

Further proceedings with an unaccompanied minor are dependent on the assessment and decisions of the appointed custodian. If an unaccompanied minor cannot be re-united with his/her family members in the country of origin or another European Union Member State, the custodian shall either apply for tolerated residence or asylum, based on an evaluation of the case. The procedure is similar to one with an adult, with the exception that the court mandates a custodian to represent a minor for the duration of the asylum procedure. Following the submission of the asylum application, an unaccompanied minor is located in the reception centre of the Migration Office in Humenne and after a medical screening, s/he is relocated to one of the residential centres where s/he will remain until the asylum procedure concludes.

### 3.4 Cooperation of Parties to the Memorandum

In the Memorandum, the parties undertook to address any confusion or disputable issues concerning the implementation of the Memorandum by means of consultation which will be held on a motion of any cooperating party and at least twice a year. During the Project implementation period several working meetings of representatives of the cooperating parties of the Memorandum took place (April and July 2008, and January 2009) in addition to a two-day working trip to the Slovak-Ukrainian border.

The meetings provided an opportunity for the parties to evaluate the Project, its objectives and reports from individual monitoring visits, but also to discuss some of the findings identified during the Project. Recurring themes at these meetings included the form and content of information provided to foreigners by officers of various DFPs, the content of information provided by the HRL lawyers in their interviews with foreign nationals as well as the presence of a professional interpreter. Some of the issues which were on the agenda also included resolving technical problems related to the implementation of the Project, e.g., delays in transmitting notifications by the BFPO regarding the interception of foreign nationals who were suspected of illegally crossing the border.

The organization and agendas for the seminars for BFPO employees were also negotiated and agreed upon by the parties.

Procedures agreed between the parties were presented during a joint working trip to the HSBP and individual DBCs on the Slovakia-Ukrainian border, which was held on 21 -22 May 2008. The working trip also provided the opportunity to solve disputes regarding the implementation of the Project directly in the field.

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<sup>51</sup> Sec. 49 par. 5 of Act on Residence of Foreign Nationals.

<sup>52</sup> Sec. 62 par 7 of Act on Foreign Nationals; Sec. 57 par. 10 (b) of Act on Residence of Foreign Nationals.

### 3.5 Training for BFPO Employees

One of the goals of the Project was to improve and increase efficiency of the system of applying for international protection in the Slovak Republic by persons of concern to UNHCR. Joint efforts were directed towards eliminating deficiencies that were identified by the HRL, preventing possible human errors and fully respecting the non-refoulement principle, i.e., not returning refugees to territories where their life or personal freedom would be endangered. For this reason one of the Project's activities was to organize working seminars for BFPO personnel. Participants from the BFPO represented not only the management of various DBCs but also police officers who have the first contact with foreign nationals. The seminars also provided a place to share opinions and experiences regarding the implementation of the Memorandum and related individual Project activities. Apart from BFPO personnel, representatives of UNHCR and the HRL who implemented Project activities also participated, which offered an important opportunity to mutually evaluate cooperation and create a dialogue on ways to address deficiencies identified.

The first of the seminars took place at the end of 2007 in Lipovce and it was here where representatives of the cooperating parties met for the first time after signing the Memorandum.

The second seminar took place in October 2008 at Sninske Rybniky. The seminar included presentations on topics which were directly related to implementing Project activities. The head of the UNHCR office in the Slovak Republic explained the restrictions on personal freedoms of refugees/asylum seekers from the point of view of international documents on human rights protection. HRL lawyers elaborated on fulfilling tasks of asylum policy derived from the Dublin II Regulation and current asylum and migration legislation. Socio-psychological and communication training focused on the awareness of cultural differences in the thinking and behaviour of people coming from different cultural backgrounds, the importance of professional attitudes of police officers and the elimination of their subjective attitudes towards migrants. Techniques for conducting interviews with more challenging foreign nationals were presented by professional trainers - psychologists.

Individuals from Bangladesh, Afghanistan and Georgia with long-term residence in the territory of the Slovak Republic were invited to introduce their cultures, traditions and specificities of their nations. Their presentations and the discussions that followed introduced their countries of origin, cultures, customs, traditions and their personal experiences to everyday life in the Slovak Republic.

The third seminar took place at the end of 2009 in Liptovský Ján and it again focused on asylum and migration law as well as administration law. There was a presentation on unaccompanied minors for police officers. The seminar also included socio-psychological training and a presentation on Iraq and its specificities.

### 3.6 Cross-Border Cooperation with Ukraine

Cross-border cooperation with the Ukrainian partners of the HRL and UNHCR is understood to be an important element in monitoring the Slovak-Ukrainian border, in particular in the overall evaluation of cases of persons returned on the basis of the Readmission Agreement with Ukraine. In 2008 the HRL initiated cooperation with the NEEKA organization and in 2009 with the Foundation Caritas of Mukachevo Greek - Catholic Diocese and CAMZ organization in Ukraine. Both organizations have access to foreign nationals detained in the facilities in Chop and Mukachevo or to foreign nationals in the region of the city of Uzhgorod in the Carpathian part of Ukraine after their return from the territory of the Slovak Republic.

In the past, various media outlets also provided information about the alleged forced return of foreign nationals to the territory of Ukraine even though they applied for international protection in the territory of the Slovak Republic. Bearing in mind one of the Project goals, which is monitoring the access of foreign nationals to the asylum procedure, any information obtained from foreign nationals who were returned to Ukraine from the Slovak Republic triggers further monitoring and can confirm or reject conclusions that the actions of the police were or were not in breach of law or international obligations.

The HRL participated in two cross-border monitoring meetings organized by UNHCR in October 2008 and October 2009 in Uzhgorod, Ukraine, which aimed at fostering the cooperation between the parties who signed the Memorandum. A representative of the BFPO, UNHCR and non-governmental organizations from each country was present.

The aim of the meetings was to evaluate existing mechanisms of border monitoring and tools used in the particular countries in which the border monitoring projects were implemented in order to identify and agree on good practices for further cooperation between the partners on the either side of the border.

## 4. Recommendations of the Border Monitoring Project

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### Findings and Recommendations

In evaluating the results of monitoring visits performed during the Project, it can be concluded that in most cases, the DBC police officers act in compliance with valid domestic legislation and international commitments of the SR. However, the HRL also recorded problematic cases in which foreign nationals who, due to incorrect actions of the police, were expelled from the territory of the SR despite the fact that they explicitly requested subsidiary protection, as documented in their individual police files. Their expulsion resulted in the fact that they were denied their right to apply for some form of international protection in the SR and could have led to breach of principle of non-refoulement (see case no.2).

According to individual case monitoring through interviews as well as reviewing police files, the HRL has identified discrepancies between the facts documented in the files by the police and later claims of the migrants. It is indeed necessary to take into consideration the fact that the later claims of the migrants could have been influenced by their placement into detention whether in the Slovak Republic or upon their return to Ukraine. Monitoring revealed in some cases serious gaps identified in the procedural actions of the police officers. For example, illegal migrants who were intercepted at the border were not provided with adequate or appropriate language interpretation. There were also cases when interpretation was provided by one of the intercepted migrants who was established as an ad hoc interpreter for the rest of the group. Another significant gap influencing the proper procedure of intercepting migrants at the border is insufficient provision of information to migrants of their rights and obligations, avoiding direct provision of information of their right to apply for international protection. Deficiencies in interpretation and provision of information can have a negative influence on the real possibilities of migrants of clearly understanding their situation, and their ability to react to this situation in an informed manner and express their will accordingly.

While implementing the Project, the HRL identified problematic areas for which the HRL suggests the following recommendations:

### Recommendation I: Improving the Quality of Interpretation

Interpreters are supposed to act professionally and independently and must respect the principle that the interview is conducted and lead by the BFPO offices and s/he must strictly interpret what is being said by the interviewer or interviewee.

In several monitored cases the HRL noted an unprofessional attitude, occasionally even indecent behaviour, on the part of some interpreters towards intercepted foreign nationals. Some interpreters expressed their assumptions while interpreting or provided police officers with their comments to the foreign nationals' statements. Some intercepted migrants also reported to the HRL that they were told by interpreters that Slovak authorities only grant asylum protection to a very limited number of foreigners, which these persons understood to mean that they had a minimal chance of receiving a positive outcome of their individual asylum procedure in the Slovak Republic.<sup>53</sup>

In the HRL's opinion, another deficiency is the interpreters' lack of knowledge of asylum terminology, which can cause various misunderstandings and misapprehension on the part of the foreign nationals. HRL lawyers often explained the procedural processes and terms related to the asylum procedure to the interpreters.

The first recommendation of the HRL is to ensure and provide for high-quality and professional interpreting which, on the one hand, guarantees the full respect of a foreign national's rights and, on the other hand, facilitates the work of BFPO personnel. It is essential to appoint interpreters who perform their duties in compliance with the law, independently, impartially and with emphasis towards respecting cultural differences. The HRL is of the opinion that interpretation by police officers should be eliminated [or further minimized] and a professional interpreter should be appointed according to the law, provided that circumstances allow. The HRL further recommends that the BFPO abandons the practice of establishing one of the intercepted migrants as an ad hoc interpreter for procedures at the border.

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<sup>53</sup> For example, the mission report from a monitoring visit dated 28.6.2008.

It is necessary to improve the cooperation between BFPO personnel, non-governmental organizations and interpreters who participate in procedures with foreign nationals. This aim can be achieved by creating a system of trainings prepared in cooperation with the BFPO, UNHCR and NGOs for interpreters active in the field of asylum and migration.

### BFPO Comments

The BFPO agrees that professional interpreters should be used to the greatest extent possible. However, sometimes due to the specific nature of a case this is simply not realistic nor possible for the DBCs. Most of the DBCs are located directly along the border, which makes access to them more difficult due to road conditions. In practice, it is often necessary to immediately reduce trauma to foreigners that results from the physically challenging journey. It is also essential to provide for their basic living needs (e.g., hygiene, clothing, etc.). A longer wait (e.g., five - seven days) can in certain circumstances result in a threat to the life or health of a foreign national. A longer waiting period due to a delay in the arrival of a “professional interpreter” would be inhumane. Also, if the interpretation had to be arranged only by professional interpreter in accordance with HRL recommendations, police officers would have to detain a foreign national according to Sec. 62 of Act No. 48/2002 Coll. if a professional interpreter was not provided within 24 hours.

## Recommendation II: Improving Provision of Information to Foreign Nationals

The insufficient level of information provided to foreign nationals can be partially attributed to the lack of content of the written information given to foreign nationals. This information primarily states that the police have the right to request an explanation from foreign nationals regarding the offence committed, i.e., an unauthorized entry or stay on the territory. Further, the written information states that the police have a right to ask a foreign national to come to the police department and provide an explanation, and everyone has a right to deny providing testimony if this would put him/her or his/her relative in danger of criminal prosecution, or would be in breach of his/her lawful obligation of secrecy. Finally, there is information on the right to compensation for necessary costs and lost earnings.

However, the written information lacks any explicit remarks about the right of a foreign national to seek international protection in the territory of the Slovak Republic. The written information should contain detailed list of information about rights and obligations in accordance with valid domestic legislation as well as international commitments. From the point of view of the HRL the duty of the police to inform a foreign national of his/her right to apply for asylum is derived from the international commitments of the Slovak Republic.

An insufficient level of information of foreign nationals can also arise from their limited access to information leaflets. Information leaflets are placed in UNHCR dispensers which in almost all of the DBCs are installed in the room where interviews or fingerprinting is conducted. Foreigners thus have access to the leaflets only while they are present in this room. In some DBCs the UNHCR dispensers are installed in the entry vestibule across the corridor from the reception where foreign nationals have no access at all. According to BFPO representatives, the location of the dispensers was chosen to prevent any intentional physical injury of foreign nationals.

Providing foreign nationals who are present at the DBC with thorough information about their legal status and rights and duties in the ongoing procedure is one of the main joint goals of UNHCR, the HRL and, in particular, the BFPO. If a foreign national is sufficiently informed, s/he can make informed choices about his/her further actions and decisions, which can prevent communication misunderstandings with DBC officers.

The HRL further recommends harmonizing the practice of distributing information leaflets entitled “International Protection in the Slovak Republic“ automatically to foreign nationals taken to all DBCs. This practice is already being implemented at some DBCs with this leaflet jointly produced by cooperating parties of the Memorandum. It is recommended that this practice is adopted as an internal norm in future for all DBCs in such a way that the joint HRL, BFPO and UNHCR leaflet on international protection be mandatorily handed to each intercepted migrant in an appropriate language.



## BFPO Comments

Informing illegal migrants of the possibility of applying for international protection on the territory of the SR is ensured in all DBCs above the recommended standard. Each foreigner has unlimited possibilities to become acquainted with the content of this information.

The BFPO can declare that, within the V-4<sup>54</sup> countries, the Slovak Republic has implemented the best procedure for providing written information to migrants of their rights and obligations on the external Schengen borders. According to BFPO opinion, this is also one of the positive results of the long term cooperation in particular with UNHCR and other NGOs. In particular, the BFPO has ensured that information dispensers are installed so they can be made available to foreigners at all DBCs. The dispensers are, as the Report mentions, installed in a way to secure the safety of migrants.

Since the joint monitoring mission of UNHCR, the HRL, representatives of the BFPO and HSBP in May 2008, all of the discrepancies resulting from the monitoring on the external Schengen borders have been practically eliminated. With regards to the provision of information to foreign nationals, HRL lawyers' access to intercepted foreigners and availability of necessary information to intercepted foreigners, UNHCR has concluded it is satisfied with the significant improvements achieved as compared to previous years. From 2008 to the beginning of 2010, UNHCR has submitted only two problematic cases. These cases have been submitted to the control and inspection service of the MOI and based on their conclusions, the BFPO has not received any information that DBC police officers were involved in any harsh breach of the international law.

The BFPO agrees that during an interview with a migrant, information containing the inclusive and detailed list of the rights and obligations of foreign nationals must be provided in accordance with national and international obligations of the SR.

## Recommendation III: Seminars for Employees of the DSLPC and Professional Dialogues Between Central Office for LSAFOS and BFPO

Employees of the LSAFO often do not possess basic knowledge about the asylum procedure and possibilities of obtaining the various types of international protection. They are not aware of what is required from a foreign national and his/her representative during the asylum procedure in order to demonstrate that the foreign national's asylum application for protection is justified. The relevance of the obligatory presence of LSAFO employees for the benefit of intercepted minors is thus significantly decreased, since they are often unable to act based on the determination of the best interest of a child while taking into account all existing cultural and social differences.

It is possible for LSAFO employees to achieve the necessary level of awareness by making information on the forms of international protection and related procedures available to them and initiating multicultural dialogues within relevant institutions.

## Recommendation IV: Conducting Seminars for DBC Staff

According to the HRL it is apparent that, at least in several cases, intercepted migrants may have been interviewed as a group as the content of the written records on the migrants' explanations were almost the same. The HRL recommends that the BFPO fully observes the principle of ensuring an individual procedure in each individual case.

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<sup>54</sup> Visegrad Group Countries are Czech Republic, Hungary, Poland and Slovak Republic



## BFPO Comments

The BFPO disagrees with the above-mentioned conclusions as they offer no concrete facts and are general in nature. The cases most probably reflect a situation in which a massive number of migrants were intercepted at the border. In these cases, the claims of the interviewed migrants are similar in content, because they have common routes, goals, plans and interests.

Some file documentation contained written recordings of migrants' explanations with formal deficiencies such as missing signatures of persons present at the interview.

In some cases disputed by the HRL, the responsibility of the police as administrative body in the procedure to duly gather all the facts of the case<sup>55</sup> was not fully observed, nor was the presence of the interpreter ensured. In some cases, the migrants refused to sign the written records. Other disputed cases include those in which migrants have later claimed that parts of their testimonies, eg. requests for asylum, were not recorded in the police documentation at all despite the fact that they had submitted them to the police officers during the interview. The HRL findings are based on the cases monitored and the many mission reports from monitoring visits that drew attention to the differences between the testimonies as they were recorded in the written police documentation and as they were reported in the interview of HRL with a foreigner.<sup>56</sup>

The Slovak Republic has many commitments arising out of international treaties which must be observed. From the point of view of protecting foreign nationals and their rights, it is obvious that the BFPO officers are those who should be the first to respect the rights of persons as provided in the international treaties. With regard to the frequent changes in asylum and migration policy due to harmonization at the EU level, further continuous education of BFPO personnel is necessary in order to facilitate training possibilities which are provided by professionals in this area.

Working Seminars for BFPO personnel organized within the Project not only provide an opportunity for the cooperating parties to openly discuss the issues relevant to Project activities, but also to share experiences and practices among all DBCs.

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<sup>55</sup> The principle of material truth – Slovak Law on administrative procedures No. 71/1967 Coll. regulates this obligation in the provision of Section 3 sub.4 and Section 32.

<sup>56</sup> For example, in the mission report from a monitoring visit dated 19.6.2009 and a monitoring visit dated 25.6.2008, etc.

## Conclusion

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As mentioned above the BFPO signed the Memorandum with UNHCR and the HRL in 2007 which enabled the impartial monitoring and observation of the process of the entry of persons in need of international protection to the territory of the Slovak Republic. In the Central European region the Slovak Republic became the second country to monitor its official practices involving foreign nationals arriving in the territory. Other countries in the region viewed this in a positive manner and soon followed suit, entering into similar agreements to monitor their borders.

On 30 July 2009 the BFPO withdrew from implementing the Memorandum by arguing that this type of document could not establish the BFPO's duties and rights in accordance with international law. It concluded that the competences based on the Memorandum should be vested exclusively in UNHCR and could not be transferred to another legal entity. Since the BFPO and the Migration Office are both internal departments of the MOI, the BFPO suggested concluding a new agreement directly with the MOI as it is the central state body of the SR. It is presumed that the new agreement on border monitoring will be signed in 2010.

The HRL believes that an independent non-governmental organization is essential to provide the continuity in monitoring procedures for the external border of the European Union on the territory of the Slovak Republic. The results of the Project contribute to improvements in procedures for dealing with foreign nationals at the external border of the European Union, and make it more efficient by means of mutual cooperation. In addition, they provide BFPO management with information about these procedures from the point of view of a different, independent entity. The role of the HRL is to monitor the procedure and, if necessary, provide its legal opinion related to resolving the situation. On the border, however, DBC personnel hold the only decision-making authority. The HRL mission reports provide the BFPO with possibilities of finding out if the steps chosen to enforce the procedure with intercepted foreign nationals are in accordance with the law. The HRL is of opinion that the feedback provided by the BFPO to individual mission reports would in future improve cooperation and procedures with foreign nationals.

Bearing in mind that protecting the external border of the European Union is often physically and mentally very challenging, it is an undeniable fact that, apart from protecting the border and detaining persons who illegally cross it, DBC personnel also decide on the legally important facts that further relate to the status of foreign nationals. In this regard, it is essential to identify a group of foreign nationals who are in exigent situations and require international protection. It is therefore necessary that DBC personnel receive and register a foreign national's application for international protection, while the assessment of such application in establishing whether the information is well founded is vested in the competence of another state body, i.e., the Migration Office.

The HRL has also identified that some DBCs have adopted the very good practice of accepting asylum applications even when the migrant demonstrates the slightest desire to apply for international protection, e.g., when they describe a disgraceful situation in their country of origin at the time of departure. It would be appropriate to establish this practice in other DBCs as well, for example, in the form of an internal BFPO instruction. The HRL believes this aim can be defined as a future benchmark in further implementation of the Project.

## Annex 1. – Statistical data (source: OABP)

This annex presents statistical data related to the implementation of the Project. The presented data were collected by the HRL during the performance of the individual Project activities. Some of them were provided by the Centre of Analysis and Cooperation of the BFPO based on the Memorandum.

### 1. Review of cases of unauthorized external border crossing according to individual DBC PF in competence of HSBP Sobrance from 01. 01. 2008 to 31. 12. 2008

Citizenship	Total	Individual DBC PF									
		Zboj	Topoľa od 1.3.08	Ulič	Ubľa	Podhorod'	Petrovce	Vyšné Nemecké	Maťovské Vojkovce	Veľké Slemence	Čierna nad Tisou
Moldova	350	3	0	34	27	57	90	114	18	0	7
Georgia	203	16	0	19	23	47	53	19	11	15	0
Pakistan	102	38	2	10	15	10	11	7	0	9	0
Afghanistan	71	16	0	9	24	8	4	4	0	0	6
Russia	60	3	0	5	3	8	20	8	2	9	2
India	39	14	0	2	20	3	0	0	0	0	0
Bangladesh	41	9	0	2	17	9	0	4	0	0	0
China	38	15	0	5	1	17	0	0	0	0	0
Ukraine	32	0	0	0	7	0	5	14	2	1	3
Armenia	17	0	0	0	0	0	9	7	0	1	0
Zimbabwe	5	0	0	0	0	5	0	0	0	0	0
Uzbekistan	4	0	0	0	0	0	4	0	0	0	0
Somalia	3	0	0	0	0	0	0	1	2	0	0
Azerbaijan	2	0	0	0	0	0	0	0	0	2	0
Iraq	2	0	0	0	0	0	1	0	0	0	1
Kyrgyzstan	2	1	0	0	0	0	0	1	0	0	0
Turkey	1	0	0	0	0	0	0	0	0	0	1
Albania	1	0	0	0	0	0	0	0	0	0	1
Cuba	1	0	0	0	0	0	0	0	0	0	1
Lebanon	1	0	0	0	0	1	0	0	0	0	0
Poland	1	0	0	0	0	0	0	1	0	0	0
Palestine	1	0	0	0	0	1	0	0	0	0	0
Tunisia	1	0	0	0	0	0	0	0	0	1	0
<b>Total</b>	<b>978</b>	<b>115</b>	<b>2</b>	<b>86</b>	<b>137</b>	<b>166</b>	<b>197</b>	<b>180</b>	<b>35</b>	<b>38</b>	<b>22</b>

### 2 Review of cases of unauthorized external border crossing according to individual DBC PF in competence of HSBP Sobrance from 01. 01. 2009 to 31. 08. 2009

Citizenship	Total	Individual DBC PF									
		Zboj	Topoľa od 1.3.08	Ulič	Ubľa	Podhorod'	Petrovce	Vyšné Nemecké	Maťovské Vojkovce	Veľké Slemence	Čierna nad Tisou
Moldova	110	5	7	19	11	8	38	19	2	0	1
Georgia	72	1	0	22	7	6	25	4	0	6	1
Afghanistan	37	0	0	0	13	17	0	2	0	5	0
Ukraine	35	0	0	1	6	7	6	12	2	0	1
Pakistan	29	0	0	0	14	0	0	0	15	0	0
Russia	26	9	0	3	0	5	5	4	0	0	0
Armenia	23	0	0	1	0	0	18	2	2	0	0
Sri Lanka	7	0	0	0	0	0	0	0	7	0	0
India	6	0	0	0	3	0	0	0	3	0	0

Citizenship	Total	Individual DBC PF									
		Zboj	Topoľa od 1.3.08	Ulič	Ubľa	Podhorod'	Petrovce	Vyšné Nemecké	Maťovské Vojkovce	Veľké Slemence	Čierna nad Tisou
Bangladesh	6	0	0	0	0	0	0	0	6	0	0
Somalia	4	0	0	0	3	0	0	1	0	0	0
Turkey	4	0	0	0	0	2	0	0	2	0	0
Iraq	3	0	0	0	0	3	0	0	0	0	0
Mongolia	3	0	0	0	0	0	0	0	3	0	0
Palestine	3	0	0	0	0	0	0	3	0	0	0
Azerbaijan	2	0	0	0	0	0	2	0	0	0	0
Belarus	1	0	0	0	1	0	0	0	0	0	0
Turkmenistan	1	0	0	0	0	0	1	0	0	0	0
Algeria	1	0	0	0	0	0	0	1	0	0	0
United States of America	1	0	0	0	0	0	0	1	0	0	0
Slovakia	1	0	0	0	0	0	0	0	0	1	0
<b>Total</b>	<b>375</b>	<b>15</b>	<b>7</b>	<b>46</b>	<b>58</b>	<b>48</b>	<b>95</b>	<b>49</b>	<b>42</b>	<b>12</b>	<b>3</b>

3. Review of persons returned to Ukraine according to readmission treaty after their unauthorized external border crossing according to individual DBC PF in competence of HSBP Sobrance from 01. 2008 to 31. 12. 2008

Citizenship	Total	Individual DBC PF									
		Zboj	Topoľa od 1.3.08	Ulič	Ubľa	Podhorod'	Petrovce	Vyšné Nemecké	Maťovské Vojkovce	Veľké Slemence	Čierna nad Tisou
Moldova	243	1	0	33	24	55	52	58	15	0	5
Georgia	136	14	0	15	22	38	24	17	3	3	0
Pakistan	79	20	2	10	10	10	11	7	0	9	0
Afghanistan	66	11	0	9	24	8	4	4	0	0	6
Bangladesh	36	6	0	2	17	9	0	2	0	0	0
Russia	35	2	0	4	3	5	14	6	0	1	0
India	34	11	0	2	20	1	0	0	0	0	0
China	28	5	0	5	1	17	0	0	0	0	0
Ukraine	10	0	0	0	2	0	3	2	1	0	2
Armenia	7	0	0	0	0	0	5	2	0	0	0
Zimbabwe	5	0	0	0	0	5	0	0	0	0	0
Somalia	3	0	0	0	0	0	0	1	2	0	0
Uzbekistan	2	0	0	0	0	0	2	0	0	0	0
Iraq	1	0	0	0	0	0	1	0	0	0	0
Kyrgyzstan	1	0	0	0	0	0	0	1	0	0	0
Lebanon	1	0	0	0	0	1	0	0	0	0	0
Palestine	1	0	0	0	0	1	0	0	0	0	0
Tunisia	1	0	0	0	0	0	0	0	0	1	0
<b>Total</b>	<b>689</b>	<b>70</b>	<b>2</b>	<b>80</b>	<b>123</b>	<b>150</b>	<b>116</b>	<b>100</b>	<b>21</b>	<b>14</b>	<b>13</b>

4. Review of persons returned to Ukraine according to readmission treaty after their unauthorized external border crossing according to individual DBC PF in competence of HSBP Sobrance from 01. 2009 to 31. 08. 2009

Citizenship	Total	Individual DBC PF									
		Zboj	Topoľa od 1.3.08	Ulič	Ubľa	Podhorod'	Petrovce	Vyšné Nemecké	Maťovské Vojkovce	Veľké Slemence	Čierna nad Tisou
Moldova	86	3	3	17	11	6	27	17	2	0	0
Georgia	48	1	0	16	7	4	19	0	0	1	0
Afghanistan	31	0	0	0	12	17	0	2	0	0	0
Pakistan	24	0	0	0	14	0	0	0	10	0	0
Armenia	23	0	0	1	0	0	18	2	2	0	0
Russia	19	4	0	3	0	4	5	3	0	0	0
Ukraine	15	0	0	1	3	2	5	1	2	0	1
Sri Lanka	7	0	0	0	0	0	0	0	7	0	0
India	6	0	0	0	3	0	0	0	3	0	0
Bangladesh	5	0	0	0	0	0	0	0	5	0	0
Iraq	3	0	0	0	0	3	0	0	0	0	0
Mongolia	3	0	0	0	0	0	0	0	3	0	0
Turkey	2	0	0	0	0	2	0	0	0	0	0
Azerbaijan	2	0	0	0	0	0	2	0	0	0	0
Palestine	2	0	0	0	0	0	0	2	0	0	0
Belarus	1	0	0	0	1	0	0	0	0	0	0
Turkmenistan	1	0	0	0	0	0	1	0	0	0	0
<b>Total</b>	<b>278</b>	<b>8</b>	<b>3</b>	<b>38</b>	<b>51</b>	<b>38</b>	<b>77</b>	<b>27</b>	<b>34</b>	<b>1</b>	<b>1</b>

5. Review of persons placed in DC upon their unauthorized external border crossing according to individual DBC PF in competence of HSBP Sobrance from 2008 to 31. 12. 2008

Citizenship	Total	Individual DBC PF									
		Zboj	Topoľa od 1.3.08	Ulič	Ubľa	Podhorod'	Petrovce	Vyšné Nemecké	Maťovské Vojkovce	Veľké Slemence	Čierna nad Tisou
Pakistan	15	15	0	0	0	0	0	0	0	0	0
Ukraine	5	0	0	0	3	0	1	0	0	0	1
China	4	4	0	0	0	0	0	0	0	0	0
Moldova	3	0	0	0	0	0	1	0	2	0	0
Afghanistan	2	2	0	0	0	0	0	0	0	0	0
Uzbekistan	2	0	0	0	0	0	2	0	0	0	0
Russia	2	0	0	0	0	0	0	1	0	0	1
Georgia	1	0	0	0	0	0	1	0	0	0	0
<b>Total</b>	<b>34</b>	<b>21</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>5</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>2</b>

6. Review of persons placed in DC upon their unauthorized external border crossing according to individual DBC PF in competence of HSBP Sobrance from 01. 01. 2009 to 31. 08. 2009

Citizenship	Total	Individual DBC PF									
		Zboj	Topoľa od 1.3.08	Ulič	Ubľa	Podhorod'	Petrovce	Vyšné Nemecké	Maťovské Vojkovce	Veľké Slemence	Čierna nad Tisou
Georgia	6	0	0	3	0	0	2	0	0	1	0
Ukraine	5	0	0	0	1	4	0	0	0	0	0
Moldova	4	0	0	2	0	0	2	0	0	0	0
Bangladesh	1	0	0	0	0	0	0	0	1	0	0
Pakistan	1	0	0	0	0	0	0	0	1	0	0
Russia	1	0	0	0	0	1	0	0	0	0	0
<b>Total</b>	<b>18</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>1</b>	<b>5</b>	<b>4</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>0</b>

7. Review of asylum seekers after their unauthorized external border crossing according to individual DBC PF in competence of HSBP Sobrance from 01. 01. 2008 to 31. 12. 2008

Citizenship	Total	Individual DBC PF									
		Zboj	Topoľa od 1.3.08	Ulič	Ubľa	Podhorod'	Petrovce	Vyšné Nemecké	Maťovské Vojkovce	Veľké Slemence	Čierna nad Tisou
Georgia	64	1	0	4	1	9	28	2	8	11	0
Russia	23	1	0	1	0	3	6	1	2	8	1
Moldova	18	0	0	0	2	0	11	5	0	0	0
Armenia	9	0	0	0	0	0	4	4	0	1	0
Pakistan	5	0	0	0	5	0	0	0	0	0	0
Bangladesh	3	2	0	0	0	0	0	1	0	0	0
Afghanistan	3	3	0	0	0	0	0	0	0	0	0
Azerbaijan	2	0	0	0	0	0	0	0	0	2	0
India	2	0	0	0	0	2	0	0	0	0	0
Ukraine	1	0	0	0	0	0	0	0	0	1	0
Iraq	1	0	0	0	0	0	0	0	0	0	1
<b>Total</b>	<b>131</b>	<b>7</b>	<b>0</b>	<b>5</b>	<b>8</b>	<b>14</b>	<b>49</b>	<b>13</b>	<b>10</b>	<b>23</b>	<b>2</b>

8. Review of asylum seekers after their unauthorized external border crossing according to individual DBC PF in competence of HSBP Sobrance from 01. 01. 2009 to 31. 08. 2009.

Citizenship	Total	Individual DBC PF									
		Zboj	Topoľa od 1.3.08	Ulič	Ubľa	Podhorod'	Petrovce	Vyšné Nemecké	Maťovské Vojkovce	Veľké Slemence	Čierna nad Tisou
Georgia	15	0	0	5	0	2	3	0	0	5	0
Moldova	6	2	0	1	0	0	3	0	0	0	0
Afghanistan	5	0	0	0	0	0	0	0	0	5	0
Pakistan	5	0	0	0	0	0	0	0	5	0	0
Turkey	2	0	0	0	0	0	0	0	2	0	0
Palestine	1	0	0	0	0	0	0	1	0	0	0
Ukraine	1	0	0	0	0	1	0	0	0	0	0
Bangladesh	1	0	0	0	0	0	0	0	1	0	0
<b>Total</b>	<b>36</b>	<b>2</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>3</b>	<b>6</b>	<b>1</b>	<b>8</b>	<b>10</b>	<b>0</b>



9. Review of unaccompanied minors placed in foster homes of DSLPSG after their unauthorized external border crossing according to individual DBC PF in competence of HSBP Sobrance from 01. 01. 2008 to 31. 12. 2008.

Citizenship	Total	Individual DBC PF									
		Zboj	Topoľa od 1.3.08	Ulič	Ubľa	Podhorod'	Petrovce	Vyšné Nemecké	Maťovské Vojkovce	Veľké Slemence	Čierna nad Tisou
Moldova	51	2	0	0	1	0	17	31	0	0	0
Georgia	2	0	0	0	0	0	0	2	0	0	0
Kyrgyzstan	1	1	0	0	0	0	0	0	0	0	0
Bangladesh	1	1	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>55</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>17</b>	<b>33</b>	<b>0</b>	<b>0</b>	<b>0</b>

10. Review of unaccompanied minors placed in foster homes of DSLPSG after their unauthorized external border crossing according to individual DBC PF in competence of HSBP Sobrance from 01. 01. 2009 to 31. 08. 2009.

Citizenship	Total	Individual DBC PF									
		Zboj	Topoľa od 1.3.08	Ulič	Ubľa	Podhorod'	Petrovce	Vyšné Nemecké	Maťovské Vojkovce	Veľké Slemence	Čierna nad Tisou
Moldova	7	0	4	0	0	0	3	0	0	0	0
Somali	3	0	0	0	3	0	0	0	0	0	0
Russia	3	3	0	0	0	0	0	0	0	0	0
Georgia	2	0	0	0	0	0	0	0	0	2	0
Afghanistan	1	0	0	0	1	0	0	0	0	0	0
<b>Total</b>	<b>16</b>	<b>3</b>	<b>4</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>

Note: The figures on the number of unaccompanied minors placed in foster homes of DSLPSG are from unofficial database of the BFPO of the Ministry of Interior; LSAFO is entitled to provide official figures.

11. Denial of entry of citizens of third countries after their unauthorized external border crossing according to individual DBC PF in competence of HSBP Sobrance from 01. 01. 2008 to 31. 12. 2008

Citizenship	Total	Individual DBC PF									
		Zboj	Topoľa od 1.3.08	Ulič	Ubľa	Podhorod'	Petrovce	Vyšné Nemecké	Maťovské Vojkovce	Veľké Slemence	Čierna nad Tisou
Ukraine	1505	0	0	0	252	0	0	1183	0	38	32
Russia	33	0	0	0	1	0	0	30	0	0	2
Moldova	30	0	0	0	0	0	0	29	0	0	1
Belarus	3	0	0	0	0	0	0	2	0	0	1
Cuba	2	0	0	0	0	0	0	0	0	0	2
Armenia	1	0	0	0	0	0	0	1	0	0	0
Israel	1	0	0	0	0	0	0	1	0	0	0
Senegal	1	0	0	0	0	0	0	0	0	0	1
Turkey	1	0	0	0	0	0	0	0	0	0	1
Libya	1	0	0	0	0	0	0	1	0	0	0
Uganda	1	0	0	0	0	0	0	1	0	0	0
<b>Total</b>	<b>1579</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>253</b>	<b>0</b>	<b>0</b>	<b>1248</b>	<b>0</b>	<b>38</b>	<b>40</b>

12. Denial of entry of citizens of third countries after their unauthorized external border crossing according to individual DBC PF in competence of HSBP Sobrance from 01. 01. 2009 to 31. 8. 2009.

Citizenship	Total	Individual DBC PF									
		Zboj	Topofa od 1.3.08	Ulič	Ubľa	Podhorod'	Petrovce	Vyšné Nemecké	Maťovské Vojkovce	Veľké Slemence	Čierna nad Tisou
Ukraine	580	0	0	0	116	0	0	427	0	26	11
Moldova	14	0	0	0	0	0	0	13	0	0	1
Russia	14	0	0	0	1	0	0	13	0	0	0
Georgia	5	0	0	0	0	0	0	4	0	0	1
Stateless	2	0	0	0	0	0	0	0	0	0	2
Albania	1	0	0	0	0	0	0	1	0	0	0
Belarus	1	0	0	0	0	0	0	1	0	0	0
Somalia	1	0	0	0	0	0	0	1	0	0	0
United States of America	1	0	0	0	0	0	0	1	0	0	0
Turkey	1	0	0	0	0	0	0	0	0	0	1
<b>Total</b>	<b>620</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>117</b>	<b>0</b>	<b>0</b>	<b>461</b>	<b>0</b>	<b>26</b>	<b>16</b>



### INFORMATION LEAFLET FOR FOREIGNERS in transit zone of international airport Bratislava - Ružinov

#### **Are you a foreigner staying in the transit zone of Bratislava - Ružinov International Airport because you were denied entry to the Slovak Republic?**

Conditions to be met for entry of the territory of the Slovak Republic. According to the Slovak law conditions to be met for entering the territory of the Slovak Republic are:

- Having a valid travel document (passport);
- Having a valid visa and
- Proving the purpose of your visit which is stated in your visa.

Furthermore, you are obliged to prove that you possess enough financial sources to cover all the expenses of your stay in the Slovak Republic. The minimum amount of money is 1 700,- Slovak crowns (about 60 Euro) per person per each day of your stay on the territory of the Slovak Republic.

The Police Department inspects your personal data reliability in order to verify if you have any possible liabilities towards any of the member states of EU.

Police officer has a right to perform a search of your person and of your luggage. You are obliged to undergo the search which will be conducted by a police officer of the same sex as you.

#### **Denial of entry to the territory of the Slovak Republic**

If police officer considers that you do not meet all the conditions to be met for entering the Slovak Republic, you will be denied entry. The reasons for denial of entry shall be announced to you. Provided that you had been denied entry to the Slovak Republic, police department shall do all necessary steps for arranging your return to the country which you arrived from or to the country of your origin.

If Police officer discovers you have been using a forged or modified travel document, he is authorised to confiscate it from you. If you are using a travel document issued for another person or a travel document which had been proclaimed invalid or stolen, it will be confiscated as well. In this case you can also be charged with committing a crime of forging or modification of travel documents.

**You have right to be informed on your rights and obligations during your stay in the transit zone.**

#### **WHAT IS TRANSIT ZONE?**

Transit zone is a restricted and closed area of an international airport in which you shall undergo examination of the police officers. You are allowed to leave the transit area and enter the territory of the Slovak Republic with the police officer's approval only.

**AS FOREIGNER YOU HAVE RIGHT TO APPLY FOR ASYLUM OR SUBSIDIARY PROTECTION ON THE TERRITORY OF THE SLOVAK REPUBLIC.**

#### **Asylum**

Asylum is a form of international protection, which will be provided to you by the Slovak Republic, if you can in plausible way establish that you have well-founded fear of persecution on grounds of

- race
- religion
- nationality
- political opinion or
- membership of a particular social group and because of such fear you are unable or unwilling to return to the country of origin.

#### **Subsidiary protection**

Subsidiary protection is protection in a form of temporary residence permit, which will be granted to you for one year, if there are good reasons to believe that you will face a real risk of serious harm if returned to country of your origin.

Serious harm means:

- imposition of a death penalty or its execution,
- torture or inhuman or degrading treatment or punishment, or
- serious and individual threat to life or inviolability of a person by reason of indiscriminate violence in situation of international or internal armed conflict.

**If you have applied for asylum or for subsidiary protection in the Slovak Republic, you cannot be denied entry to the territory of the Slovak Republic.**

The police officer records your application for asylum in writing. He shall also make a record of your interview which will contain your personal data, data on your travel documents, description of your journey from country of your origin and reasons for which you apply for asylum or subsidiary protection in the Slovak Republic.

**In case you do not understand Slovak language, you have right for interpretation into language you understand. Interpreter shall be present while you are interviewed. Feel free to ask for interpreter.**

During your interviewing by police officer, it is important to honestly state all the reasons for which you left or cannot return to country of your origin. The entire decision making process of your asylum application derives from these interview records.

**You have right for translation of these interview records into language that you understand before signing them.**

The police officer will confiscate your travel document or another document of your identity and he will issue you a written confirmation about it. Your documents together with interview records will be sent to the Migration Office of the Ministry of the Interior which will be responsible for making decision on your application for asylum or for subsidiary protection in the Slovak Republic.

Afterwards, Police officer will take your fingerprints and add them into the EURODAC database. EURODAC database is a European system of registration of foreigners who have been recognized as asylum seekers in one of the EU member states. If you had applied for asylum in one of the member states of the EU, later leaving this country before receiving final decision in asylum procedure and subsequently you have applied for asylum in another member state, you will be returned to the country where your first application for asylum has been made. These rules apply according to Dublin Regulation implemented by all member states of the EU. Fingerprints are taken and added to the EURODAC database also from minors older than 14 years of age.

After your application for asylum has been recorded, you will be issued a temporary document of identity and a document for your transport to a facility of the Migration Office, where you shall undergo medical examination in order to establish your current health state. The document for transport allows you for free bus/train transportation to the given address of the Migration Office facility and is valid for 24 hours from the moment of issuance. This means, you are given exactly 24 hours to get to the Migration Office facility. Feel free to ask the Police Station for detailed directions or a map to help you out on your journey to the Migration Office facility.

**If you do not arrive to the Migration Office facility within 3 days, the Migration Office will consider your asylum application discontinued.**

### **What to do in case you have been returned to the Slovak Republic according to the Dublin Regulation?**

If you have been returned from another member state of the European Union due to the fact that you had applied for asylum for the first time in the Slovak Republic, you are still considered an asylum seeker. In this case, a document called LAISSEZ-PASSER issued by a member state from which you are returned, will allow you to enter the territory of the Slovak Republic.

Police officer will provide you with a temporary document of identity. However, you will not be issued a document for transport to a facility of the

Migration Office, since you had left your previous asylum procedure in the Slovak Republic before.

However, you still have obligation to arrive to the given address of the facility of Migration Office within 24 hours. Feel free to ask the Police Station for the exact directions or a map to help you out on your journey to the Migration Office facility.

If you do not arrive to the Migration Office facility within 3 days, the Migration Office will consider your asylum application discontinued.

### **What to do in case your asylum procedure in the Slovak Republic had been finished in your absence?**

It is possible that while you were absent from Slovak Republic, your asylum procedure had been finished by a final decision. In this case you have right to apply for asylum in the Slovak Republic repeatedly.

If you decide to apply repeatedly for asylum in the Slovak Republic, the steps that will follow will be the same as when you submitted your first asylum application. Police officer will also ask you on reasons for which you had left the territory and asylum procedure in the Slovak Republic before.

**For more details on following steps, see the section on asylum of this leaflet.**

### **YOU CAN CONTACT**

The Human Rights League - a non-governmental organization (NGO), providing legal aid for asylum seekers and persons being granted asylum in the Slovak Republic.

#### **HRL**

Hurbanovo nám. 5  
811 03 Bratislava  
tel./fax: 02 / 544 35 437  
mobil. tel. Ā. 0918 682 457  
www.hrl.sk  
www.utecenci.sk



National Office of United Nations High Commissioner for Refugees in the Slovak republic:

#### **UNHCR**

Štúrova ul. 6  
811 02 Bratislava  
tel. Ā. 02 / 529 27 876  
fax: 02 / 529 27 871  
www.unhcr.sk

If you do not understand some of your rights or obligations or you need legal counsel or advice, ask police officer to contact the Human Rights League or UNHCR Office.

## INFORMATION LEAFLET FOR FOREIGNERS in the department of the alien police or the border police control

### Conditions to be met for entry of the territory of the Slovak Republic

According to the Slovak law, conditions to be met for entering the territory of the Slovak Republic are:

- Having a valid travel document (passport);
- Having a valid visa and
- Proving the purpose of your visit which is stated in your visa.

Furthermore, you are obliged to prove that you possess enough financial sources to cover all the expenses of your stay in the Slovak Republic. The minimum amount of money is 1 700,- Slovak crowns (about 60 Euro) per person per each day of your stay on the territory of the Slovak Republic.

Other conditions for the entry to the territory of the Slovak Republic are to pass through an official border point and undergo the search of the Border Control.

**Upon entering the territory of the Slovak Republic illegally you have committed a legal offence (meaning you had acted against the law, however not committed a crime). Due to these reasons you are held by the officers of Police Forces and situated to the Department of a Border Control of the Police Force.**

Police officer has a right to perform a search of your person and of your luggage. You are obliged to undergo the search which will be conducted by a police officer of the same sex as you.

The police officer will confiscate your travel document or another document of your identity and he will issue you a written confirmation about it.

Afterwards, the Police officer will question you in order to explain your illegal entry. During the interview the Police officer is finding out the facts about

- your identity, in the case the identity of your family members;
- the road you used to enter the territory of SR;
- reasons why you left your country of origin;

**In case you do not understand Slovak language, you have right for interpretation into language you understand. You have right for translation of these interview records into language that you understand before signing them. Ask for that.**

### Expulsion from the territory of the Slovak Republic

If a police officer discovers you entered the territory of the Slovak Republic illegally, you will be expelled. It means you will be **returned (readmitted) back to the country from which you illegally crossed state borders** (eg. to Ukraine). The Alien Police must act within 48 hours (in some situation within

7 days) from your entrance to Slovakia. Until your expulsion will be executed you will be situated to the Department of a Border Control. In the case the Slovak Authorities will not be able to demonstrate from which country you crossed the Slovak borders illegally **you can be returned (expulsed) to the country of your origin or to a country in which you had stayed before you had come to Slovakia.**

If further procedure is needed or it is not possible to return you back to Ukraine your expulsion can take a longer time. In such a case you can be detained and situated in the Detention Centre for aliens (Seäovce, Medveiov) until you would be expelled (maximum for 180 days). During your stay in this centre the police would contact the Embassy of your country of origin to provide you with the substitute travel document (passport) if you do not have it to execute your return to this country.

It will be issued a **decision on an administrative expulsion** by the Alien Police, pointing out the country you would be expelled to and also posing a **time period for the denial of the entry the territory of the Slovak republic**. On the bases of this decision you must leave SR and throughout the stated time period you are not allowed to enter the territory of SR (otherwise you will be prosecuted for committing the crime of not respecting the decision of Slovak State Authorities - during the procedure you will be imprisoned).

If your personal freedom should be restricted for more than 48 hours the Police department must issue a decision upon your detention. The decision must contain the reason of your detention, the maximum length of the detention time and name of the centre in which you will be placed.

**Both of the decisions must be translated to a language you do understand** as well as an instruction stating you can put an appeal against both these decisions within a 15 days period from the day it was delivered to you.

**You have right to be informed on your rights and obligations during your detention.**

**AS MIGRANT YOU HAVE RIGHT TO APPLY FOR ASYLUM OR SUBSIDIARY PROTECTION ON THE TERRITORY OF THE SLOVAK REPUBLIC.**

### Asylum

Asylum is a form of international protection, which will be provided to you by the Slovak Republic, if you can prove that you have well-founded fear of persecution for the reasons of

- race
- religion
- nationality
- political opinion or
- membership of a particular social group



and because of such fear you are unable or unwilling to return to the country of origin.

### Subsidiary protection

Subsidiary protection is a protection in a form of temporary residence permit, which will be granted to you for one year, if there are good reasons to believe that you will face a real risk of serious harm if returned to country of your origin.

#### Serious harm means

- imposition of a death penalty or its execution;
- torture or inhuman or degrading treatment or punishment; or
- serious and individual threat to life or inviolability of a person by reason of indiscriminate violence in situation of international or internal armed conflict.

#### If you have applied for asylum or for subsidiary protection in the Slovak Republic, your entry to the territory of the Slovak Republic can not be denied

In the case you applied for asylum or subsidiary protection in Slovakia the police officer must instruct you that you must go to the Asylum Department of Police Force nearby the Reception Centre Humenné, where the police officer records your application for asylum. You will be issued a document for free bus/train transport to this facility. This document is valid for 24 hours from the moment of issuance. This means, you are given exactly 24 hours to get to the Migration Office facility. Feel free to ask the Police Station for detailed directions or a map to help you out on your journey to the Migration Office facility.

During your interviewing by police officer, it is important to honestly state all the reasons for which you left or cannot return to country of your origin. The entire decision making process of your asylum application derives from these interview records.

In the Reception Centre the police officer takes your application for asylum and records it officially. Herewith he makes a record of your interview which will contain the explanation of your acting; in particular your personal data, data on your travel documents, description of your journey from country of your origin and reasons for which you apply for asylum or subsidiary protection in the Slovak Republic.

The police officer will confiscate your travel document or another document of your identity for the time of asylum procedure and he will issue you a written confirmation about it. The copy of these documents together with interview records will be sent to the Migration Office of the Ministry of the Interior which will be responsible for making decision on your application for asylum or for subsidiary protection in the Slovak Republic. Afterwards, the Police officer will take your fingerprints and add them into the EURODAC Database. EURODAC Database is

a European system of registration of aliens who have applied for asylum in one of the EU member states. If you had applied for asylum in one of the member states of the EU, later leaving this country before receiving final decision in asylum procedure and subsequently you have applied for asylum in another member state, you will be returned to the country where your first application for asylum has been made. These rules apply according to Dublin Regulation implemented by all member states of the EU. Fingerprints are taken and added to the EURODAC database also from minors older than 14 years of age.

#### What to do in case you have previously applied for an asylum in some other state of European Union?

If you had applied for an asylum previously in another member state of the European Union (eg. Poland) and only subsequently in the Slovak republic, the state of your first asylum application is responsible for making a decision in an asylum case. It means if you decide upon leaving the state for another state of the EU you will be automatically returned to a state where you had applied primarily. This is stated by Dublin Regulation valid in all countries of EU.

Which state is responsible of your case is based on the EURODAC system fingerprints data.

#### YOU CAN CONTACT

The Human Rights League - a non-governmental organization (NGO), providing legal aid for asylum seekers, persons granted subsidiary protection and persons being granted asylum in the Slovak Republic.

#### Liga za ľudské práva

Hlavná ul. ě. 68, 040 01 Košice  
mobile: +421 (0) 918 366 968

HRL Office in Bratislava  
Hurbanovo nám. 5,  
811 03 Bratislava  
Tel/Fax: +421 (0)2 544 35 437  
mobile: +421 (0) 918 682 457  
e-mail: hrl@hrl.sk

More information you can find on [www.hrl.sk](http://www.hrl.sk).

National Office of United Nations High  
Commissionaire for Refugees in the Slovak republic:

UNHCR  
Štúrova ul. 6, 811 02 Bratislava  
Tel: +421 (0)2 529 27 876  
Fax: +421 (0)2 529 27 871

More information you find on [www.unhcr.sk](http://www.unhcr.sk)

If you do not understand some of your rights or obligations or you need legal counsel or advice, ask police officer to contact the Human Rights League or UNHCR Office.



## Annex 3. Joint Information Leaflet of the BFPO, HRL and UNHCR for Foreign Nationals “International Protection in the Slovak Republic”.

### Right to International protection

The right to international protection in the Slovak Republic is derived from:

- The 1948 Universal Declaration of Human Rights ;
- The 1951 Convention Relating to the Status of Refugees;
- The 1967 Protocol Relating to the Status of Refugees;
- European Council Directive 2004/83/EC: Qualification Directive;
- The Constitution of the Slovak Republic and;
- Act on Asylum.

### Can I ask for International protection?

**Yes, you like everyone else has the right to apply for international protection in the Slovak Republic.**

**You may also apply for international protection even if you entered the Slovak Republic in an illegal manner, provided you are in need of it for the reasons set out below.**

### Who may be accorded International Protection?

You will be granted asylum (refugee status) if you have a well-founded fear of persecution due to your:

- Race;
- Religion;
- Nationality;
- Political opinion;
- Membership of a particular social group (that is persecuted)

and because of such fear, you are unable or unwilling to return to your country of origin and/or habitual residence.

You will be accorded subsidiary protection, if you do not qualify for asylum, but your return to your country of origin and/or habitual residence may lead to serious harm such as:

- Imposition of a death penalty or execution; or,
- Torture or inhuman or degrading treatment or punishment; or
- a serious threat to your life due to indiscriminate violence in situations of armed conflicts.

**Subsidiary protection status is granted temporarily and will be reviewed after every year.**

### How do I apply for International Protection?

You apply for international protection:

- When entering the Slovak Republic, you should apply to the police officer at the point of entry, for example at the airport or border post;
- After you have already entered the Slovak Republic you may turn to any State authority whose staff will direct you to the police authority;

- At the asylum police department of the asylum facility in Humenné or Adamov-Gbely;
- If you are placed in a detention facility, at the police department of the facility;
- If you are in a hospital, prison or centre for unaccompanied minors, you should communicate your application for international protection to the nearest police station and the staff at these institutions will assist you;

**It is important to apply for international protection as soon as you enter the Slovak Republic.**

After submitting your application for international protection, you will be asked to go to the Asylum Centre in Humenné. You will be provided with directions and issued a free bus/train transport pass valid for 24 hours.

You have to report at the asylum department in Humenné within the next 24 hours following the issuance of the transport pass.

During your first contact with the Border Police, your fingerprints and a photograph of you will be taken. (To be recorded on a database called EURODAC.)

### What is EURODAC and Dublin II?

EURODAC is a database containing the fingerprints of all asylum seekers who lodge an application for international protection in any one of the countries that apply the Dublin II Regulation in Europe (all member states of the EU, Norway and Sweden). The fingerprints of all asylum seekers over 14 years of age are saved on this database.

According to the rules under the Dublin II Regulation you can only apply for international protection in one member state. After you have done so and decide to leave that country and try to apply in another country in Europe that applies the Dublin II Regulation, your fingerprints will show a EURODAC “hit”. So you will always be returned to the country where you first applied.

### What is the International Protection procedure?

After your arrival at the asylum department in Humenné your application will be recorded in writing. Your personal details will also be recorded. These details will include:

- your personal data;
- details of your documents;
- information on your journey to the Slovak Republic.

Any documentation you have with you will be taken away by the authorities and documentation certifying this will be issued to you.

You will also be informed of your rights and obligations during the procedure and an identification card will be issued to you.

Your application for an asylum will be forwarded to the Migration Office which will fully review your claim to determine whether you qualify to be accorded international protection. For this purpose a detailed interview will be conducted.

Please note that before your application for international protection is reviewed in full the Migration Office will first determine if another country in Europe which is party to the Dublin II Regulation, other than the Slovak Republic, is responsible for considering your application.

If it is determined that another country is responsible for considering your claim and/or that you applied for international protection in another country party to the Dublin II Regulation, then you will be returned to that country.

It is very important that you explain truthfully all the reasons why you are applying for international protection. The decision on your application will be based on the record of the interview with the Migration Office.

### Decision

Provided that the Slovak Republic is responsible for determining your claim for international protection, after reviewing your application, the Migration Office may make the following decisions:

- Grant you asylum (refugee status) ;
- Not grant you asylum (refugee status), but instead provide you with subsidiary protection or;
- Reject your application.

### Appeal

If the Migration Office rejects your application for international protection, you may appeal against such refusal. In case of provision of subsidiary protection, you may also appeal against the decision not to grant you asylum (refugee status).

### How will I understand all this?

All interviews conducted and any documents that you receive from the authorities must be in a language that you understand or must be translated for you.

In case the officer does not speak a language that you understand, he/she provides you with free services of an interpreter/translator at the expense of the state.

### May I have legal counselling?

Yes, you may contact NGOs which provide free legal counselling and/or hire a private legal representative at your own expense during the procedure to determine your need for international protection before the Migration Office.

On appeal you have the right to free legal representation and the information will be provided to you by the authorities.

## UNHCR

The United Nations High Commissioner for Refugees (UNHCR) is an international organisation established by the United Nations and given the world-wide responsibility to safeguard your rights and well-being as a person who is in need of international protection. If you want UNHCR to monitor your application during the procedure in detail you are required to give your written approval on the form of the Migration Office giving information on the procedure for determining your need for international protection.

TO PROTECT YOUR RIGHTS, REMEMBER TO ALWAYS GIVE UNHCR YOUR CONSENT.

### Where can I get assistance?

#### Košice

Liga za ľudské práva / Human Rights League (HRL)  
Hlavná ul. č. 68  
040 01 Košice

Mobile: +421 (0) 918 366 968

#### More information

#### Bratislava

United Nations High Commissioner for Refugees (UNHCR)

Štúrova ul. 6  
811 02 Bratislava

Tel: +421 (0)2 529 27 876

Fax: +421 (0)2 529 27 871

Liga za ľudské práva / Human Rights League (HRL)

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811 03 Bratislava

Tel: +421 (0)2 544 35 437, +421 (0)2 546 42 438

Fax.+421 (0)2 546 42 439

Mobile: +421 (0) 918 682 457, +421 (0)918 857 715

E-mail: hrl@hrl.sk

#### Internet

[www.unhcr.sk](http://www.unhcr.sk)

[www.hrl.sk](http://www.hrl.sk)

[www.utecenci.sk](http://www.utecenci.sk)

**Annex 4. – Record of Information Provided on the Interception of Persons who Illegally Crossed the State Border from the Territory of Ukraine.**

Border and Foreign Police Office  
 Directorate of the Border Police  
 Sobrance

No.....

**Record**

of information provided to UNHCR and HRL on interception of persons on the territory of the Slovak Republic who had most probably violated the state border from the territory of Ukraine in the competence of the DBP Sobrance

Interception		1. Place of interception	Number of persons	Citizenship
Date	Time	2. Place of violation of the state border 3. Competent DBC		

Notes relevant for the case:

.....  
 .....

Sent by email to: svkbr@unhcr.org, hrl@hrl.sk,

Annex 5. – Planned Transfers of Asylum Seekers According to 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.

Ministry of Interior of the SR  
 Border and Foreign Police Office  
 Department of Foreign Police  
 812 72 Bratislava

Bratislava .....(date)

Transfer of asylum seekers from ..... (country) to the SR with the place of admission at .....

At.....(time) .....(date)

Gender	Date of Birth	State Citizenship	No. under Dublin Procedure

Notes relevant for the case:

.....  
 .....





**TRIPARTITE MEMORANDUM OF UNDERSTANDING ON MODALITIES OF  
MUTUAL COOPERATION AND COORDINATION TO SUPPORT THE ACCESS  
OF ASYLUM SEEKERS TO THE TERRITORY OF, AND THE ASYLUM  
PROCEDURES OF THE SLOVAK REPUBLIC**

**PREAMBLE**

**The Office of the Aliens and Border Police of the Ministry of Interior of the Slovak Republic** (hereinafter referred to as the “OABP”), **the Regional Representation of the United Nations High Commissioner for Refugees for Hungary, Poland Slovakia and Slovenia (UNHCR)**, and **the Human Rights League (HRL)**, as UNHCR’s duly authorised implementing partner (hereinafter referred to as the “Co-operating Parties”),

**Recognising** that the right of all persons to seek and enjoy in other countries asylum from persecution is a basic right enshrined, *inter alia*, in Article 14(1) of the 1948 Universal Declaration of Human Rights,

**Recalling** the United Nations Convention Relating to the Status of Refugees adopted on 28 July 1951 (Convention) and the Protocol Relating to the Status of Refugees adopted on 31 January 1967, which entered into force in the Slovak Republic on 1 January 1993; in particular Article 1 concerning the definition of the term refugee and Article 31 concerning refugees unlawfully in the country of refuge and Article 33 concerning the prohibition of expulsion or forced return (“*refoulement*”) of refugees,

**Recalling** Article 35 of the Convention obliging contracting States to co-operate with the Office of the United Nations High Commissioner for Refugees in the exercise of its functions, in particular providing in appropriate form information and statistical data requested concerning the conditions of refugees, the implementation of this Convention, and law, regulations and decrees which may relate to refugees,

**Recalling** that the United Nations General Assembly Resolution 428(V) of 14 December 1950, which adopted the Statute of UNHCR, ascribes to the High Commissioner the function of providing international protection to refugees, including promoting the admission of refugees, not excluding those in the most destitute categories, to the territories of State Parties to the Convention, and of seeking permanent solutions for the problems of refugees,



**Recalling** the Constitution of the Slovak Republic and in particular Article 53 thereof which provides the right to seek asylum,

**Recalling** Act No.480/2002 Coll. on asylum and on amending certain related acts, as later amended, and the Act No.48/2002 Coll. on the stay of aliens and on amending certain related acts, as later amended, as well as regulations, implementing these acts,

**Considering** that ensuring access to the territory and asylum procedures constitutes the most effective way to provide protection to refugees, asylum-seekers and others of concern in need of protection (**hereinafter referred to as “persons of concern”**), and Conclusions 22 (Session XXXII), 71 (Session XLIV), 74 (Session XLV), 81 (Session XLVIII) and 82 (Session XLVIII), of the Executive Committee of the High Commissioner's Programme (EXCOM), set out internationally accepted principles and standards governing the protection of refugees,

**Bearing in mind** the importance of the co-operation agreement of 1 March 1994 between the Government of the Slovak Republic and the United Nations High Commissioner for Refugees relating to the legal status, immunities and privileges of the United Nations High Commissioner for Refugees Branch Office and its staff in the Slovak Republic (Communication by the Ministry of Foreign Affairs of the SR No. 219/1994 Coll.) and which this memorandum of understanding does not in any way amend,

**Recognising** the need to return to the countries of their origin persons found not to be in need of international protection, in a humane manner and in full respect for their human rights and dignity, and, in the case of children, taking due account of their best interests,

Have agreed to carry out a joint activity that will be guided by the following provisions:

### Article I

#### **ESTABLISHMENT OF A MONITORING FRAMEWORK**

1. With due regard to the principle that the Slovak Republic has the primary responsibility of ensuring that persons of concern in need of protection have access to the territory and asylum procedures, in accordance with the Regulation (EC) No. 562/2006 of the European Parliament and of the Council of the European Union of 15 March 2006- Establishing a Community Code on the Rules Governing the Movement of Persons Across Borders, Act No. 48/20002 Coll. of Acts on the Stay of Aliens and on change and amendments of certain acts, and Act No. 480/20002 Coll. of Acts on Asylum and on change and amendments of certain acts, the Co-operating Parties agree that the United Nations High Commissioner for Refugees (UNHCR) and Human Rights League (HRL) will monitor the entry of such persons to the territory of the Slovak Republic and access to the asylum procedure in the Slovak Republic as well as their protection against expulsion or forced return (*“refoulement”*).

2. The Co-operating Parties agree that UNHCR and HRL will carry out the process of monitoring in an orderly, humane, safe and dignified manner, as dictated by the sensitivities needed to assist persons of concern in need of international protection.
3. The OABP undertakes to facilitate the monitoring activities of UNHCR and HRL stipulated in sub Articles 1 and 2.
4. In accordance with the principle of family unity, the Co-operating Parties shall make every effort to ensure that asylum seeking families are admitted into the asylum procedure as units.

## Article II

### **RESPONSIBILITIES OF THE OFFICE OF THE ALIENS AND BORDER POLICE**

1. The OABP undertakes to ensure that aliens who during the border inspection upon entry to the territory of the Slovak Republic seek international protection will be allowed access to the territory and the asylum procedure.
2. The OABP shall take all measures necessary to ensure that asylum seekers are in full knowledge of their rights as well as their right to access legal assistance in the Slovak Republic, in a language that the persons of concern understand. It also undertakes to make available to persons of concern the publications of UNHCR, HRL or its own printed protection information for such persons of concern.
3. The OABP stationed at the International Airports and other entry points into the Slovak Republic shall facilitate the unimpeded access and activities of the duly authorised representatives of HRL to areas designated for the processing and interview of persons of concern by the Director of the Department of Border Control of the Police Corp (OHK) of the relevant Airport and other entry points into the Slovak Republic.
4. The OABP shall assign a contact person whose responsibility will be to liaise with UNHCR and HRL and transmit at regular three month intervals (quarterly) statistical information to the UNHCR and HRL Focal Point representatives on the number of persons who have been denied admission into the territory of the Slovak Republic and reasons thereof. The information will be communicated by electronic mail to the offices of UNHCR and HRL.
5. The OABP, undertakes, in accordance with its technical means, to ensure that the monitors examine file documentation regarding aliens, containing the information on the number, age, sex and nationality of persons of concern, as well as the circumstances of their detention if detained. The examination of files shall be undertaken under conditions which comply with the protection of personal data of aliens within the meaning of the Act No. 428/2002 Coll. on personal data, as amended.

6. The OABP shall without delay inform UNHCR in electronic form (or by facsimile) the number and nationality of aliens who are persons of concern in particular:
- a) aliens who are detained under Section 5
  - b) aliens who were granted permission for tolerated stay in accordance with Section 43 (1) of the Act No. 48/2002 Coll. on the stay of aliens in the territory of the Slovak Republic;
  - c) aliens to whom Section 62 and Section 63 shall be applicable of the Act No. 48/2002 Coll. on the stay of aliens in the territory of the Slovak Republic.

### Article III

#### RESPONSIBILITIES OF UNHCR

1. UNHCR having free and unimpeded access to all persons of concern will undertake monitoring visits to places defined in Article V where persons of UNHCR concern may be located, to examine and verify the implementation of, and adherence to international protection standards. In case of identified issues of concern, UNHCR will immediately inform the OABP and communicate the concerns in writings transmitted by facsimile or any other appropriate mode of communication.
2. In its monitoring activity, UNHCR shall focus, in particular, on the treatment of persons with special needs, (e.g. persons with disabilities, separated families members, and unaccompanied children) and on the respect for the principle of family unity.
3. UNHCR shall coordinate the mobilisation of funds for this project implementation from the international community.

### Article IV

#### RESPONSIBILITIES OF THE HRL

1. HRL shall undertake the implementation of this Memorandum on behalf of UNHCR and as specified in the partnership agreement of UNHCR and the implementing partner.
2. HRL shall inform aliens not only of their rights and obligations but also of the international obligations of the Slovak Republic with regard to the provision of international protection to persons of concern.
3. HRL shall implement activities stipulated in Article III (1 – 3) on the basis of authorisation that will form part of its partnership agreement with UNHCR. A copy of this authorisation shall be forwarded to the Director of the OABP.



4. The monitoring staff of HRL shall identify themselves as such to those persons of concern whom they may wish to interview during the course of implementing this agreement, and shall inform them of the purpose and voluntary nature of the interview and their right to refuse to be interviewed.

5. HRL shall monitor at the relevant OABP units the ease of accessibility to persons of concern of UNHCR, HRL and other information materials and, in case of need, it shall replenish the supply of protection information.

6. HRL shall make a written report on each monitoring visit within 10 working days that shall be shared with the other Co-operating Parties. The other Co-operating Parties are entitled within 30 days upon receipt of the written report to submit comments and observations. The HRL, after consultation and agreement with UNHCR, may publish reports on the activities related to the implementation of the provisions of this memorandum of understanding. The OABP will be notified of the contents of any such report in advance and will have the right to have its comments and observations reflected in the report.

#### Article V

### **SITES COVERED BY THIS MEMORANDUM**

This memorandum shall apply to OABP units where persons of concern may from time to time be located.

#### Article VI

### **FINAL PROVISIONS**

1. This Memorandum of Understanding is concluded for an indefinite period. The amendment of the text of the Memorandum of Understanding or the adoption of addendums may be initiated in written form by either of the Co-operating Parties. The text of this Memorandum of Understanding can only be amended in written or by addendum agreed upon by all Co-operating parties.

2. The termination of this Memorandum of Understanding can be initiated by any of the Co-operating Parties by submitting a written notice of termination to each of party. The notice of termination shall be 30 days and shall start running on the day of the delivery of the written notice of the termination of the Memorandum of Understanding to all Co-operating Parties.

3. The Co-operating Parties undertake to resolve any potential uncertainties or questions regarding the implementation of the present Memorandum of Understanding amicably through mutual consultations on working-meetings called by anyone of the Co-operating Parties, at least twice a year. The date of a proposed working meeting has to be notified in advance giving

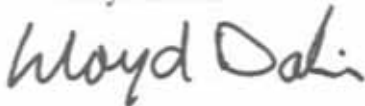
each partner sufficient time to prepare for the meeting which shall take place not more than 10 days after such notification to all Co-operating Parties.

4. The present Memorandum of Understanding shall be concluded in the Slovak and English languages, each being equally authentic. In case of divergence in interpretation the Slovak language version of the Memorandum of Understanding shall be used as the authoritative and decisive text.

5. The present Memorandum of Understanding shall enter into force on the date of signature by the Contracting Parties.

Done at Bratislava this 05 day of 09, 2007 in sets of three originals, in the English and Slovak language.

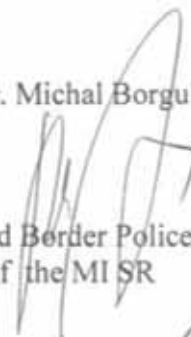
Lloyd Dakin



UNHCR Regional Representative  
for Hungary, Poland, Slovakia and Slovenia



JUDr. Michal Borgula



Aliens and Border Police Office  
of the MI SR



Ing. Lucia Demeterová

Human Rights League

HRL Liga za ľudské práva  
občianske združenie  
Hurbanovo nám. 5  
811 03 Bratislava  
IČO:31807968,DIČ:2022095471

A map of Europe with the borders of all countries outlined in white. Slovenia is highlighted in a dark blue color. A dark blue rectangular box is positioned over the top left of the map, containing the word "Slovenia" in white text.

# Slovenia

Refugees  
at the  
**Border**



## Summary of Border Monitoring Activities in Slovenia

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Slovenia maintains and guards 670 km of external EU borders with Croatia. In 2008 and 2009 the number of asylum applications dropped drastically with only 254 applications in 2008 and 112 in 2009, which is approximately only 15 per cent or less than the number in 2005). This change in migration flows can be attributed to the reinforcement of security at the borders in conjunction with the Schengen Agreement entering into force in Slovenia. However, increased concerns about security and the need for enhanced border controls to combat illegal migration and entry into the Schengen Area have led to more restrictive asylum measures which were introduced, inter alia, in the context of the transposition of EU asylum directives.

With the new government, which won elections in November 2008, some positive changes in terms of respect for human rights have been introduced that might also eventually influence some positive changes with respect to restrictive asylum measures.

Since Slovenia entered the Schengen Area the following gaps in protection and assistance have been observed including:

- The need to strengthen border monitoring mechanisms to ascertain that asylum seekers reaching the external EU borders of Slovenia are granted access to the territory and to the Refugee Status Determination (“RSD”) procedure;
- The need to raise awareness among police officers at the border on asylum-related issues;
- A restrictive International Protection Act which is characterized by broad and numerous grounds for declaring applications manifestly unfounded, accelerating the asylum procedure and employing detention measures;
- Practical difficulties related to the provision of free legal advice to and representation of asylum seekers and refugees;
- The lack of a defined integration strategy and structured integration services functioning in a coordinated and multi-disciplinary manner;
- The need to review important elements of the reception conditions for asylum seekers, including the provision of adequate medical services; and
- The lack of a defined resettlement strategy and structured resettlement services functioning in a coordinated and multi-disciplinary manner.

In 2009 UNHCR in Slovenia significantly strengthened and sharpened its advocacy efforts, in particular with a view to ensure that the government more comprehensively assumes its responsibilities regarding asylum seekers, refugees and other persons of concern. A critical part of this advocacy strategy was to ensure that the Slovene government comprehensively meets its obligations for the provision of essential services and rights.

In 2009 the Legal Information Centre for NGOs (“PIC”) primarily worked with UNHCR to implement border monitoring activities under a bi-lateral agreement between UNHCR and the Slovene Ministry of Interior called the Access, Management and Support Project (“AMAS” or the “Project”). The aim of AMAS was to verify that asylum seekers are able to access the territory of Slovenia and exercise their right to seek asylum. The project was implemented as a result of objectives set throughout the region in Poland, Slovakia, Hungary and Slovenia as well as a continuance of a project from 2004, which was implemented by UNHCR Slovenia and the Slovene Border Police (“SBP”).

Border procedures in Slovenia are carried out by the SBP at the Croatian-Slovene border, at the Jože Pučnik International Airport in Ljubljana, at the international port in Koper and in the Centre for Foreigners in Postojna.

Furthermore, PIC was also responsible for monitoring reception conditions and changes in asylum legislation particularly in light of the concluded EU transposition process as well as providing timely reports and updates to the UNHCR Regional Representation.

## Monitoring Access to the Territory and the RSD Procedure

In addition to verifying asylum seekers' access to Slovenia and exercising their right to seek asylum, AMAS also received information on the measures that facilitate access to the RSD procedure. This is with a view to ensure that the principle of non-refoulement is respected.

The Project was designed to benefit asylum seekers and others seeking international protection in accordance with the International Protection Act. In addition, those individuals must have shown the intent to apply for international protection and must have already been granted access to the territory by the Slovenian Police or apprehended by the Slovenian Police on the territory of Slovenia and sent to a police station or the Centre for Foreigners in Postojna (CF). Further, the Slovenian Police must have accepted their intent to apply for international protection either in writing or oral form.

In order to accomplish AMAS goals, PIC (1) regularly visited pre-reception areas to provide initial information to asylum seekers, (2) visited the Centre for Foreigners twice per week or upon a request from an asylum seeker if necessary, (3) monitored border entry points, airports or ports but only if the police notified PIC after asylum seekers arrived who expressly requested to formally apply for asylum, and (4) strove to disseminate information on acquiring international protection in the Centre for Foreigners, but was not allowed to (the authorities of CF refused the access).

Monitoring was limited only to procedures in which asylum seekers were already on the territory and had been given the opportunity to exercise their right to seek asylum. PIC's presence at these procedures did not enable PIC to verify whether this opportunity arises in all cases when one seeks access and demands to exercise one's right to seek asylum. As per the Project, only persons in need of international protection who either legally crossed the border or legally entered the territory were monitored. The rationale of the Project was to monitor both access to the territory of Slovenia and an asylum seeker's exercise of their right to seek asylum.

PIC used the following methods to verify those in need of monitoring pursuant to the Project's goals:

- Slovenian police shared data regarding persons crossing the border or legally entering the territory, and
- UNHCR Croatia and Croatian NGOs shared data regarding persons who were returned, rejected and otherwise prohibited from crossing the border/entering the Slovene territory.

## Monitoring Returns under the Dublin II Regulation

During the course of 2009, PIC aimed to conduct short monitoring missions to gain information on the practice of returns taking place under the Dublin II Regulation. PIC sought permission from authorities to be allowed to monitor a limited number of Dublin II returns, and to receive advance information on the exact date and place of such transfers, but the permission was refused.

## Cross-border Cooperation and Fact-finding Missions to Croatia

The importance of the different forms of regional cooperation in the area of asylum have increased. PIC will therefore in the future continue strengthening cooperation with NGOs in the neighbouring countries to create more regular working relations and legal consultation on certain cases. Such cooperation will also create an opportunity to discuss specific conditions that transferred persons face in these countries.

## Monitoring Reception Conditions and Detention Conditions

PIC has had access to the Centre for Foreigners twice per week to contact asylum seekers. Although monitoring reception conditions were much more limited since visits are limited to a special area, the presence of the PIC representative was necessary in order to receive information on the access to the asylum procedure, to monitor the asylum procedure through decisions issued to asylum seekers and to monitor the work of other refugee counsellors and reception conditions through conversations with asylum seekers.

## Providing Information on RSD Procedures

Based on the long-standing partnership between PIC and UNHCR and in addition to PIC's reporting obligations under the AMAS agreement, PIC supplied UNHCR with reports on legal services for asylum seekers and regular missions to asylum centres covered by European Refugee Fund.

## Annex 1. Cooperation Agreement Between UNHCR and the Ministry of Interior

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**AGREEMENT ON COOPERATION  
BETWEEN  
THE REGIONAL REPRESENTATION OF THE UNITED NATIONS HIGH  
COMMISSIONER FOR REFUGEES FOR CENTRAL EUROPE  
AND  
THE MINISTRY OF THE INTERIOR OF THE REPUBLIC OF SLOVENIA, THE POLICE,  
ON ENSURING ACCESS OF APPLICANTS FOR INTERNATIONAL PROTECTION TO  
THE TERRITORY OF THE REPUBLIC OF SLOVENIA AND THE ENFORCEMENT OF  
THEIR RIGHT TO INTERNATIONAL PROTECTION**

The Regional Representation of the United Nations High Commissioner for Refugees for Central Europe (hereinafter referred to as UNHCR) and the Ministry of Interior of the Republic of Slovenia, the Police (hereinafter referred to as the Police):

- taking into account the provisions of applicable international law in the field of human rights and refugee protection, particularly the United Nations Convention Relating to the Status of Refugees of 28 July 1951 and the Protocol Relating to the Status of Refugees of 31 January 1967 as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and its protocols,
- taking into account the mandate of UNHCR as stipulated in the Statute of the Office of the United Nations High Commissioner for Refugees;
- taking into account the Constitution of the Republic of Slovenia and its national legislation on international protection and foreigners;
- aware of the responsibility of the Republic of Slovenia for the implementation of applicable international provisions and standards in the field of refugee protection;
- taking into account the positive experience gained during joint projects of monitoring police procedures concerning persons who wish to apply for international protection;

agreed as follows:

## I.

1. The co-operation between UNHCR and the Police pursuant to this agreement will be undertaken particularly through the exchange of information on illegal migration in the country, region and the world; exchange of information on the situation in areas or regions where applicants for international protection originate; working meetings; training of police officers and monitors; and monitoring of police procedures concerning persons wishing to apply for international protection.
2. UNHCR will monitor police procedures concerning persons wishing to apply for international protection, entry of these persons into the Republic of Slovenia and enforcement of their rights of access to the procedure for the granting of international protection. UNHCR and the Police may agree that a designated partner shall carry out the monitoring on behalf of UNHCR.
3. UNHCR and its designated partner will carry out the monitoring of police procedures in an orderly, humane, safe and dignified manner as is necessary to assist persons in need of international protection.
4. On behalf of the Police the tasks under this agreement, including the coordination of methods of work, shall be performed by the Border Police Division of the Uniformed Police Directorate of the General Police Directorate (hereinafter referred to as the Border Police Division).
5. The Contracting Parties shall exchange contact information to facilitate cooperation.

## II.

1. The Border Police Division will facilitate access to information to persons seeking international protection, including printed materials on international protection provided by UNHCR and its designated partner.
2. Monitors will have access to premises where police procedures with persons wishing to apply for international protection are undertaken. Monitors can move and be present on police premises subject to the objectives of this agreement and house rules of the Police.

3. The Police shall inform UNHCR and its designated partners promptly and in an agreed manner on police procedures concerning persons wishing to apply for international protection.
4. The Police shall also share information on the procedures concerning applicants for international protection that monitors were informed about but did not attend. Such information will only comprise the number of persons, age, sex, citizenship, reasons for detention if applicable and information on further procedures taken by relevant authorities of the Republic of Slovenia.
5. The Border Police Division will ensure that Police Units are informed of this agreement and the monitoring procedures stipulated herein.

### III.

1. Monitoring shall be performed with the monitor attending the informative interview phase of the procedure with a person wishing to apply for international protection. The monitor shall initially only observe the procedure and not engage in it with any questions, opinions, suggestions or in any other way. After the procedure the monitor may engage in a discussion with the responsible police officer in order to obtain additional information.
2. After the informative interview the monitor may engage in a discussion with the foreigner if the latter agrees, this may be undertaken in the presence of the responsible police officer. The monitor may collect the foreigner's personal data according to the legislation governing personal data protection in the Republic of Slovenia.
3. The monitors shall perform their activities at their own risk and UNHCR shall meet the costs of the monitoring activities. The Police shall afford the same level of physical security to the monitors as it provides to its own personnel.



#### IV.

1. UNHCR and the Police shall agree on the monitoring of the police procedures concerning persons wishing to apply for international protection and its duration in advance and on a case-by-case basis. They shall also agree on the locations or areas of monitoring and exchange contact addresses.
2. UNHCR and the Border Police Division shall draw up a joint annual report on the monitoring of police procedures concerning persons wishing to apply for international protection.
3. UNHCR and its designated partner will immediately and in an agreed manner inform the Border Police Division of issues of concern identified during the monitoring of police procedures.

#### V.

1. UNHCR shall share with the Border Police Division the names and particulars of the monitors, which will also serve as authorisation to undertake the monitoring activities on behalf of UNHCR.
2. UNHCR shall ensure that the monitors have a suitable university qualification in the field of law or related subject.
3. UNHCR shall ensure that monitors attend an introductory training performed by the Police to acquaint them with the rules on the movement and conduct in Police facilities, the procedures concerning persons wishing to apply for international protection and personal data protection.

#### VI.

UNHCR shall engage in the training of police officers on agreed issues of common interest and based on identified needs.

VII.

UNHCR and the Police shall meet to discuss individual projects and their implementation and to exchange information as deemed necessary by the parties, but as a rule on an annual basis.

VIII.

1. This Agreement is concluded for an indefinite period of time and either party may terminate it in writing.
2. The Agreement shall enter into force on the day of its signing.

Done at Ljubljana on 1<sup>st</sup> October 2008 in two original copies in the English and Slovene languages, both texts being equally authentic.



On behalf of the United Nations  
High Commissioner for Refugees:



On behalf of the Ministry of Interior,  
Police:





# UNHCR Offices in Central Europe

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**Regional office**  
(directly covering  
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[www.unhcr.sk](http://www.unhcr.sk)

# UNHCR Implementing Partners for Border Monitoring in Central Europe

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te.: (359 2) 980 20 29  
e-mail: [refunit@bghelsinki.org](mailto:refunit@bghelsinki.org)  
[www.bghelsinki.org](http://www.bghelsinki.org)

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e-mail: [opu@opu.cz](mailto:opu@opu.cz)  
[www.opu.cz](http://www.opu.cz)

**Hungary** Hungarian Helsinki Committee  
1054 Budapest, Bajcsy-Zsilinszky út 36-38.  
tel.: (36 1) 321 4323, 321 4327, 321 4141  
e-mail: [helsinki@helsinki.hu](mailto:helsinki@helsinki.hu)  
[www.helsinki.hu](http://www.helsinki.hu)

**Poland** Halina Niec Legal Aid Centre  
ul. Krowoderska 11/7, 31-141 Krakow  
tel.: +421 12 633 72 23  
e-mail: [biuro@pomocprawna.org](mailto:biuro@pomocprawna.org)  
[www.pomocprawna.org](http://www.pomocprawna.org)

**Romania** Romanian National Council for Refugees (CNRR)  
42 Mantuleasa Street, 3rd floor, ap.10, sector 2, Bucharest; Postal Code 023962  
tel.: +40 21 312 62 10  
[www.cnrr.ro](http://www.cnrr.ro)

**Slovakia** The Human Rights League (Liga za ľudské práva)  
Hurbanovo námestie 5, 811 03 Bratislava  
tel.: +421 2 5443 5437  
e-mail: [hrl@hrl.sk](mailto:hrl@hrl.sk)  
[www.hrl.sk](http://www.hrl.sk)

**Slovenia** Pravno-informacijski center nevladnih organizacij - PIC  
Metelkova 6 - nasproti hostla Celica, 1000 Ljubljana  
tel.: +386 1 521 18 88  
e-mail: [pic@pic.si](mailto:pic@pic.si)  
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