

NATIONS UNIES
HAUT COMMISSARIAT
POUR LES REFUGIES

*Délégation Régionale
pour le Benelux
et les Institutions Européennes*

Rue Van Eyck 11B
B – 1050 Bruxelles

Téléfax : 627.17.30
Téléphone : 649.01.53
Email : belbr@unhcr.org



UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES
*Regional Office
for the Benelux
and the European
Institutions*

VERENIGDE NATIES
HOOG COMMISSARIAAT
VOOR DE VLUCHTELINGEN

*Regionale Vertegenwoordiging
voor de Benelux en de
Europese Instellingen*

Van Eyckstraat 11B
B – 1050 Brussel

Telefax : 627.17.30
Telefoon : 649.01.53
Email : belbr@unhcr.org

Background Note on the Protection of Asylum Seekers and Refugees in Slovenia

I. General

Slovenia acceded by succession to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol on 6 July 1992. The Slovene authorities formalised a separate regime for war refugees and other groups arriving in large numbers with the passage of the Law on Temporary Refuge on 25 April 1997.

In 1999, the Slovene Parliament passed a “Migration Package” containing the Law on Asylum, the new Aliens Law and the Law on Regularisation of ex-Yugoslav Citizens without Status in Slovenia (Off. Gazette of the Republic of Slovenia no. 61/1999). The Law on Asylum, focusing on a refugee status determination procedure, rights and obligations of asylum-seekers and refugees and subsidiary protection, entered into force on 14 August 1999. The first decree on the procedural aspects of lodging and accepting applications for asylum was adopted in July 2000 while a decree on reception conditions for asylum seekers and persons accorded special form of protection was adopted in September 2002. As per the law, the Government of Slovenia shall adopt the integration decree and thus specify the rights and benefits accorded to recognised refugees as well as the related implementation procedures. The decree is presently under preparation however legislative obstacles have emerged that have slowed its finalisation: in order to enact a comprehensive integration policy for refugees, Slovenia will need to review several laws – especially in the field of public housing, education, medical care and social-welfare – to bring its standards in line with the 1951 Geneva Convention and relevant EU directives. It is hoped that these legislative shortfalls will however not result in a protracted postponement of the adoption of the integration decree. The first amendments to the Law on Asylum (targeting only two provisions: “the safe third country” and “limitation of movement”) were adopted in December 2000. In the summer 2001, some new changes were adopted concerning the introduction of a third instance with suspensive appeal, extension of grounds for the limitation of movement of asylum seekers, shorter appeal deadlines in the accelerated procedure, and a reformulation of the chapter on the rights of recognised refugees.

The Asylum Department within the Ministry of Interior is the first instance decision making body dealing with asylum applications. The Administrative Court is the competent first appeal body. Following the July 2001 revision of the law, a judicial review with suspensive effect can be lodged at the Supreme Court.

Assistance to persons under temporary protection and integration issues are under the responsibility of the Governmental Office for Immigration and Refugees (OIR), which also shares responsibility with the Ministry of Interior on general asylum and migration matters.

II. Developments and Specific Issues

- **Temporary Protection – Integration of Bosnian refugees**

During the early to mid 1990s, Slovenia extended temporary protection to a peak estimate of 70,000 refugees from Bosnia and Herzegovina and Croatia. Later, in 1999, Slovenia also offered temporary protection to some 4,000 persons from Kosovo, FRY. By the end of the decade, the vast majority of these refugees had either returned to their countries of origin or sought solutions elsewhere. At the beginning of 2002, some 2,300 Bosnian refugees remained in Slovenia, under the temporary protection regime for the tenth consecutive year.

In July 2002 parliament passed the Amendments to the Law on Temporary Refuge. The amendments offered the Bosnian caseload the possibility of obtaining permanent residence and set out a further range of rights, including the right to integration assistance. The responsible authority to oversee the implementation of the majority of the aspects of the Amendments to the Law on Temporary Refuge is the OIR.

UNHCR welcomed this development. Particularly noteworthy are the granting of permanent residency with the years spent under temporary protection “counting” toward the time required for the acquisition of Slovene citizenship, the provisions ensuring that vulnerable categories will have access to adequate government assistance for accommodation in perpetuity, and the one year transition period during which roughly half of the caseload still residing in state-sponsored collective accommodation will receive assistance to slowly move towards a self-sufficient life in private accommodation.

The formal integration of Bosnian refugees has been underway since September 2002, but to some extent, Bosnian refugees had slowly begun to integrate by virtue of their ten years residency in the country. In particular, refugee children who were included in the public education system as of 1995. As of the end of March 2003, 1,985 of the some 2,300 Bosnian who remained in the country as of the beginning of 2002 had obtained a permanent residence permit. Some 200 Bosnians opted for repatriation in 2002/03 while 42 persons still remained under temporary protection in March 2003. Some of these are awaiting a MOI decision while others, likely the majority, plan to repatriate to BiH in the near future.

The OIR, in co-operation with other governmental institutions and NGOs, assists individuals in their integration process. However, the still emerging experience and awareness on refugee matters in the State system and responsible social structures has often generated unnecessary bureaucratic complications for refugees during this process, and the responsible authorities have been at times slow to correct such situations. UNHCR continues to monitor implementation and stands ready, when necessary, to intervene and lend assistance on specific issues.

It has to be noted that the present Law on Temporary Refuge accords a very limited array of rights and does not define a maximum length of temporary protection. Hence, Slovene authorities are aware that they must undertake an extensive revision of the law to bring it in line with the EU Council Directive on Minimum Standards for Giving Temporary Protection in the Event of a Mass Influx of Displaced Persons and on Measures Promoting a Balance of Efforts Between Member States in Receiving Such Persons and Bearing the Consequences Thereof (2001/55/EC).

III. Implementation of the Law on Asylum

Reception conditions

Reception Decree

UNHCR welcomes the adoption of the Regulations on Manners and Conditions to Guarantee the Rights of Asylum Applicants and Foreigners Who Have Been Granted Special Form of Protection. This important piece of implementing legislation defines criteria and procedures to access basic assistance, accommodation, education, housing and health services, and thus contributes to a more transparent system of asylum seekers' protection in Slovenia.

It must be noted, however, that UNHCR considers the provisions in this decree related to education and medical care to be excessively restrictive:

- The right to education remains limited to primary education. Taking into account the lengthy asylum procedures and the importance of uninterrupted education for adolescents, UNHCR regrets that the right to secondary education was not included in the regulation. The EU Council Directive Laying Down Minimum Standards for the Reception of Asylum Seekers (2003/9/EC), indeed, adopted the principle that a minor child should access education under similar conditions as nationals of the host State.
- The narrow access to health services granted to asylum seekers in Slovenia also remains a matter of concern. The present assistance available only covers emergency health care (i.e. life sustaining aid) and cannot be considered to be an adequate protection for those who remain in the asylum procedure for an extended period. Of additional concern is the fact that no special provisions exist in respect of the medical care available to vulnerable asylum seekers, including children and victims of violence and/or torture.

Asylum Home

In a very positive development, in September 2002 the Centre for Foreigners (accommodation centre for illegal migrants) and Asylum Home (accommodation centre for asylum seekers) were physically separated. Progress was also made in the preparations for the new reception facility for asylum seekers in Ljubljana, funded under the EU Phare National Project. This new facility, the design of which was carefully considered, will provide much improved living conditions for asylum seekers with, inter alia, separate sections for different categories of persons and additional space for social activities, including designated workspace for NGOs.

The open co-operation of the asylum authorities with refugee assisting NGOs, as well as the formal recognition of the important role that NGOs play in assisting asylum seekers, as set out in the regulations concerning reception adopted in September 2002, is welcomed. It is regrettable, however, that no financial provisions to sponsor the activities of these NGO are yet foreseen by within the Ministry of Interior.

UNHCR believes that to ensure the well being of vulnerable asylum seekers, additional capacity and resources should be granted to the social services in the reception facility, since at present the psychosocial and other specific needs of vulnerable persons often remain unattended, or are dealt with in an ad hoc manner. The development of a flexible system to deal with such recurring needs is essential. Furthermore, to provide appropriate protection to separated children a comprehensive set of actions has to be adopted in co-operation with the national authority for childcare. It is certainly positive that, within the asylum procedure, separated children benefit from special protection in Slovenia (a guardian for procedural activities and priority treatment), but much more attention should be devoted to adequate accommodation and the overall psychosocial situation of separated children – in short, a holistic approach. This also implies that, from the moment a separated child arrives in Slovenia, the focus of the responsible

authorities should be on the identification of the most appropriate durable solution in the best interest of the child, be it reunification with the family, asylum or return to the country of origin.

Refugee Status Determination Procedures (RSD)

In 2000, Slovenia's asylum system verged on collapse under the pressure of 9,244 asylum applications (as against 744 in 1999), most of which were lodged by Iranian nationals. The vast majority of these applicants disappeared within a few days of lodging an asylum claim, presumably moving onwards to EU Member States. In 2001, the numbers dropped significantly – a total of 1,511 applications – and this trend has continued through 2002, with 640 persons applying for asylum in Slovenia. One can also note in the 2001 and 2002 figures a decrease in the number of illegal entries into Slovenia, a pattern which can most certainly be attributed to better border control and changes in the immigration regime practice in neighbouring countries.

These same factors have to some extent also resulted in the reduced number of asylum requests lodged in Slovenia, but it must also be noted that there is a growing body of evidence that points towards an occasionally excessively restrictive approach on the part of border police with respect to the granting of access to both territory and asylum procedures. UNHCR has expressed its concerns to the appropriate authorities in this regard and continues to monitor developments.

First Instance

The number of asylum decisions taken on merits by the first instance remains modest, with a grand total over the past 12 years of 43 recognitions and about 400 rejections. In 2001, considerable progress was made in addressing the *virtual backlog* from previous years (i.e. interrupted procedures due to applicants' departure) which decreased the number of pending cases from 8,781 at the beginning of 2001 to 184 as of March 2003.

While considerable progress has been achieved in respect of establishing a functioning first instance, further attention, training and development would need to be focused in a number of different areas including, inter alia, the timely processing of individual claims (the time that elapses before the first interview is in some cases inordinately long, as is the time from the interview to the issuance of a decision) and the quality of decisions (legal assessment of the reasons to recognise, or not recognise, refugee status and the evaluation of country of origin information. This latter observation is borne out by the fact that, according to 2002 yearly statistics, the Administrative Court returned back to the first instance almost half of all appealed decisions). It should be taken into account that to some extent the lengthy processing of individual claims also derive from difficulties that the Asylum Section faces with the management of procedures and the governmental human resource policy. Particularly challenging are the high turnover of staff and prolonged staff absences, both of which are important issues that would require additional attention and support from the ministry.

In order to assist the government to address the range of outstanding issues in the RSD procedure, UNHCR brought an RSD expert on mission to Slovenia during the last three months of 2002. The essential aims of the mission were to identify gaps, provide tools and training (such as limited time would allow), and provide the government with a "road map" to address outstanding medium to long range gaps.

Court Procedures

The Administrative Court, the second instance in asylum procedures, continues to limit its involvement to judicial review rather than using its powers to hear case *de novo*. This practice results in the unnecessary prolongation of the decision making process, with cases frequently sent back to the first instance for a renewed fact finding. UNHCR would therefore recommend that the overall capacity of the second instance be increased in order to allow judges to hold hearings and take decisions on substantive issues. Particular attention must be given to adequate training of judges at the Administrative and, also, the Supreme Court (third instance in asylum procedures). Finally, it is of great importance to ensure that

judges are provided with updated and objective country of origin information as well as European and other relevant international jurisprudence.

Integration of Refugees

Integration of recognised refugees remains one of the main issues of concern for UNHCR. The Government has still not adopted an integration policy and committed the necessary resources to the responsible authorities (OIR and relevant ministries) to carry out such tasks. More needs to be done in the promotion of the concept of integration: co-ordination mechanisms need to be developed at the horizontal (between responsible ministries and their implementing agencies) and vertical (relation between responsibilities given to state and local authorities) levels, and awareness has to be raised in the government institutions and among the general public.

IV. Conclusion

Since independence, the Republic of Slovenia has made considerable progress in establishing a functioning asylum system, and indeed the majority of the essential elements of such a system are now in place. It is critical, at this juncture, that this momentum be maintained to ensure that the infrastructure that so many have worked hard to establish functions to a satisfactorily high standard.

With the growing challenges Slovenia faces with respect to border management, more emphasis must be placed on ensuring that border police procedures and practice allow systematic access for those in need of international protection.

Lengthy asylum procedures and an ongoing lack of the complete set of legislation making it possible for recognised refugees to fully realise their rights, inter alia, act as prime incentives for asylum seekers to continue to transit through Slovenia toward EU Member States. Efforts must focus on ensuring swift, fair and effective implementation of the Law on Asylum and, critically, the soonest adoption of the necessary implementing regulations on the integration of refugees. Further, efforts must focus on clarifying the division of responsibilities between, and strengthening the capacity of, the governmental institutions dealing with asylum matters, in particular those responsible for the implementation of legislation.

There is also a necessity to redefine the role of the judiciary in asylum procedures.

UNHCR
June 2003