

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

### **I. LEGISLATIVE FRAMEWORK :**

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. This law is currently under revision in order to bring it in conformity to 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).

Article 48 of the Constitution of the Republic of Slovenia defines that "within such limits as laid down by statute the right to asylum of foreign nationals and of persons without citizenship who are subject to persecution for their stand on human rights and fundamental freedoms shall be guaranteed".

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 (Off. Gazette of the Republic of Slovenia no. 61/1999). 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. The last of the implementation decrees, specifying the rights and benefits accorded to recognised refugees, as well as the related implementation procedures, was adopted in April 2004.

The first amendments to the Law on Asylum (targeting only two provisions: "the safe third country" and "limitation of movement") were made in December 2000 (Off. Gazette of the Republic of Slovenia no. 124/2000). In the summer 2001, some new changes (Off. Gazette of the Republic of Slovenia no. 67/2001) 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 last revision of the law, with purely technical amendments (mainly concerning data collection and their protection), took place in October 2003 (Off. Gazette of the Republic of Slovenia no. 98/2003).

In May 1999, upon the proposal of the Government of the Republic of Slovenia, the Parliament adopted the Resolution on Immigration Policy (Off. Gazette of the Republic of Slovenia no. 40/1999). This resolution, to be updated every two years, defines the economic, social and other measures and activities that Slovenia plans to adopt in the migration field. The resolution also defines Slovenia's co-operation with other countries and international organisations on migration issues. Instead of revising the resolution, in December 2002, Slovenia adopted a new Resolution on Migration Policy (Off. Gazette of the Republic of Slovenia no. 106/2002) that complements the earlier.

### **II. INSTITUTIONAL FRAMEWORK:**

In 2004, within the framework of public administration restructuring, Slovenia to the decision to establish within the Ministry of Interior the Directorate for Migration which has overall responsibility for asylum and migration matters. The same governmental decision included the discontinuation of the independent Governmental Office for Immigration and Refugees (OIR), which had as its the main tasks assistance to persons under temporary protection and the integration of recognised refugees. These tasks were transferred to the Migration Directorate in the newly formed Section for Immigration and Refugees. Two other sections exist within the Directorate: the Asylum Section and the Section for Migration and Naturalisation.

The Asylum Section is the first instance decision making body dealing with asylum applications, and 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.

The police have no formal role in the refugee status determination (RSD) procedure, however as police officers have the first contact at the field level with asylum seekers their role remains crucial as regards access to territory and the asylum procedures. By law the tasks of the police are limited to the registration of asylum seekers and their transfer to the reception centre managed by the Asylum Section - the national RSD authority. Over the course of the past few years UNHCR had received several individual reports from asylum-seekers and NGOs in Slovenia on individuals facing difficulties with access to territory and asylum procedures at the border. UNHCR expressed its concern in this respect to the General Police Directorate, and a constructive dialogue on possible solutions led to an agreement to conduct a joint police/UNHCR border monitoring project (JBMP) in 2004. In view of Slovenia's increased challenges and responsibilities deriving from accession to the EU and preparation for maintaining a Schengen external border, the project's overarching aim is to ensure that border police practice is consistently applied with ample safeguards allowing persons who may be in need of international protection systematic access to both the territory and the national asylum procedures of Slovenia, in line with the countries' national and international obligations. The project is still under implementation and thus the findings are not finalized. It is however important to note that police cooperation in respect of the project has been so far exemplary.

### III. DEVELOPMENTS AND SPECIFIC ISSUES:

- **Former Bosnian refugees with Temporary Protection**

During the early to mid 1990s, Slovenia extended temporary protection to a peak estimate of some 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, for the tenth consecutive year under the temporary protection regime.

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. 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 and other needs in perpetuity, and the one year transition period during which roughly half of the caseload still residing in state-sponsored collective accommodation received assistance to slowly move towards a self-sufficient life in private accommodation.

Some 2,000 Bosnians who remained in the country as of the beginning of 2002 had obtained a permanent residence permit, and some 200 from the caseload opted for repatriation in 2002/03. As of November 2004 the integration process for the vast majority of the 2,000 former refugees has been effectively concluded. There are however 220 persons assessed by a special government panel as vulnerable (handicapped, elderly etc.) who have been granted the right to continue to reside in governmental collective accommodation centres in perpetuity. In 2003 UNHCR assess the living conditions in the existing accommodation centres to be sub-standard (poor hygienic conditions, inadequate number of specialised staff to deal with needs of caseload, small living spaces, inadequate/inappropriate toilet and cooking facilities etc.) and called upon the responsible authorities to address the issue of proper accommodation for the 220 vulnerable persons without further delay. UNHCR further encouraged the responsible authority to consult all stakeholders including, most importantly, the refugees themselves, in the formulation of a facility upgrade plan. As of November 2004 there are informal indications that plans in this regard are under consideration in the Migration Directorate, no such plan has been shared with the NGOs, UNHCR or the refugees.

- **Implementation of the Law on Asylum**

### ***Reception Capacity for Asylum Seekers***

In a very positive development, in September 2004, the accommodation centre for asylum seekers was moved to a newly constructed reception facility on the outskirts of Ljubljana. The overall reception capacity (about 200 persons) was not increased, but the new facility provides for much better living conditions for asylum seekers with, inter alia, separate sections for different categories of persons (including vulnerable individuals) and additional space for social activities, including designated workspace for NGOs. The project was co-funded under the EU National Phare Project.

This positive development notwithstanding, in UNHCR's opinion the existing reception capacity for asylum seekers in Slovenia is bordering on insufficient for the present caseload. It must also be noted that the present reception practice implemented by the Asylum Section (an often extended stay for asylum seekers in an open, pre reception holding area where food is not systematically provided and accommodation is sub-standard) has the effect of allowing/encouraging asylum seekers to abscond before the formal lodging of their asylum application and/or registration into Dublinet. Indeed, the vast majority of new arrivals disappear from the open pre-reception area in the asylum centre within 24 hours, likely to proceed toward Western European countries. UNHCR has raised concern on several occasions in respect of this practice and believes that, inter alia, it has created an artificially low caseload in Slovenia, and has allowed for under investment in both reception and refugee status determination (RSD) capacity. UNHCR believes that changes in reception practice and timely further investment in these two key capacities should be viewed as an essential priority if Slovenia is to fully meet its national, international and EU obligations.

Further, UNHCR believes that to ensure the well being of vulnerable asylum seekers, additional capacity and resources should also be invested in the social services operating 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 and specialised NGOs. While it is certainly positive that separated children benefit from special protection within the asylum procedure in Slovenia (a guardian for procedural activities and priority treatment), much more attention should be devoted to adequate accommodation and the development of a system that addresses in a holistic manner the psychosocial and other special needs of separated children, including the timely 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.

### ***Reception Decree***

The Regulations on Manners and Conditions to Guarantee the Rights of Asylum Applicants and Foreigners Who Have Been Granted Special Form of Protection 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. While the decree in deals adequately with some aspects of reception UNHCR is of the view that the provisions governing education and medical care are 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.

### ***Refugee Status Determination Procedures (RSD)***

In the last years the annual number of asylum applications in Slovenia remained stable (1,511 in 2002, 640 in 2003 and 1,100 in 2003).

While considerable progress has been achieved in respect of establishing a functioning first instance, as previously noted, more investment is needed if the system is to reach maturity. 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 yearly statistics, the Administrative Court continues to return 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 within the Ministry of Interior.

### **First Instance**

The number of asylum decisions taken on merits by the first instance remains modest, with a grand total over the past 13 years of 112 recognitions and about 650 rejections (about 200 in the accelerated procedure). In September 2003 the asylum section for the first time began to robustly apply accelerated procedures with circa 2/3 of all rejections established as manifestly unfounded claims. UNHCR has voiced several concerns in relation to this change, most importantly in relation to the fact that the majority of asylum seekers are not assisted by a legal counsellor during the first interview and the first instance authority does not in UNHCR's view systematically apply the necessary safeguards and standards with regard to the implementation of accelerated procedure.

### **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***

Although the belated adoption of the implementing decree on integration of recognised refugees in April 2004 represents an important step forward, the 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 (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.

- **Co-operation with NGOs**

UNHCR regrets that little effort has been made to include NGOs, refugees and other stakeholders in the Government-led strategic planning processes. A recent example of this was the total lack of co-ordination with stakeholders on the needs and priorities in the field of refugee protection in Slovenia for the 2004 submission to the European Refugee Fund. Although at the declarative level there is a growing recognition from the Ministry of Interior on the role and contribution of NGOs to the enhanced protection of asylum seekers and refugees within the national asylum system, the indispensable and concrete financial support to sponsor these activities is not yet foreseen in the state budget. Indeed, refugee-assisting NGOs in Slovenia remain to a large extent dependent on foreign (also UNHCR) funding.

#### **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 now critical that this momentum be maintained to ensure that the infrastructure that so many have worked hard to establish functions to a satisfactorily high standard and reaches a full state of maturity.***

***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.***

***It is essential to establish a concrete and transparent government-led financial and strategic planning process which will foster real NGO/GO partnership and NGO financial sustainability, both of which would contribute considerably to the goal of comprehensive and effective asylum-seeker and refugee protection in Slovenia.***

***Sub-standard initial reception practices, 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 western European EU Member States. Efforts must focus on ensuring swift, fair and effective implementation of the Law on Asylum and, critically, the soonest adoption of a comprehensive strategy for 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 and strengthen the role of the judiciary within asylum procedures.***

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