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Policy paper is published within the project Sharing know-how for better management of the Schengen Border between Slovakia and Ukraine as well as Norway and Russia, CBC 01018

studies on international relations a15

Publishers:

SFPA
Slovak Foreign Policy Association

UNIVERSITAS COMENIANA BRATISLAVENSIS
FACULTAS RERUM SOCIALIUM ET OECONOMICARUM
MCMXIX

Co-financing:

norway grants

Published within the project "Sharing know-how for better management of the Schengen Border between Slovakia and Ukraine as well as Norway and Russia," CBC 01018
The amount of the grant: 619 454,- EUR.
www.norwaygrants.org

The project is co-financed by the Norwegian Financial Mechanism and the State budget of the Slovak Republic. Program SK08 – Cross-Border Cooperation:
"Slovakia – Ukraine: Cooperation across the Border."

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Bratislava 2017

Published by:
Research Center of the Slovak Foriegn Policy Association
Staromestská 6/D, 811 03 Bratislava
Prešov-office:
Hlavná 11, 080 01 Prešov, Slovakia
www.sfpa.sk

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Printed by: ADIN s.r.o., Prešov

The policy paper has not been proofread.

ISBN 978-80-89356-64-5

Content

Introduction

Legal regulation of human rights in the Slovak Republic is governed by the Constitution of the Slovak Republic (Constitutional Act No. 460/1992 as amended), but also in the Bill of Rights (1991). This regulation is however not complete, as there are many other legal acts and legal rules governing the protection of individual human rights (political rights, minority rights, social rights etc.).

According to the positive obligation of the Slovak Republic to ratified international human rights treaties, majority of them have character of international treaty as set in article 7 para 5 of the Constitution of the Slovak republic, i.e. they are supreme to legal acts of the country.

In area of the protection of human rights of migrants and refugees, mainly following international treaties are part of the legal order in the Slovak Republic:

- UN Convention on Refugees 1951 and 1967 Optional Protocol relating the status of refugees;
- UN Convention on rights of child and additional protocols (3);
- 1990 International Convention on the protection of the rights of all migrant workers and members of their families;
- 1954 Convention relating to the status of stateless persons and 1961 Convention on the reduction of statelessness.

These international obligations were reflected in the national strategic documents:

1. The new integration policy of the Slovak Republic was approved by Resolution of the Government of the Slovak Republic No. 45 on January 29, 2014.[1]
2. National strategy on protection and promotion of human rights was approved by Resolution of the Government of the Slovak Republic No. 71 on February 18, 2015 (annex 11 – Rights of Migrants).[2]

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[1] Available at the official website of the Ministry of Labour, Social Affairs and Family of the Slovak Republic: https://www.employment.gov.sk/en/integration-foreigners-slovakia/documents/ (accessed on January 20, 2017).

[2] See "Príprava Celoštátnej stratégie ochrany a podpory ľudských práv v Slovenskej republiky," [National strategy on protection and promotion of human rights] Government Council for Human Rights and Gender Equality, 2014. Available online: http://www.radavladylp.gov.sk/celostatna-strategia-ochrany-a-podpory-ludskych-prav-v-sr/ and/or https://www.mzv.sk/ministerstvo/strategia_ludskych_prav (accessed on January 17, 2017).

3. Migration policy of the Slovak Republic until 2020, approved by Resolution of the Government of the Slovak Republic No. 574, August 31, 2011.[3]

In relations to above-mentioned international obligations, the national strategic documents reflect general principles and also the EU law in this area. From the implementation practice, the migration policy until 2020, set the basic obligation to elaborate and implement Action plans. These are strongly recommended also in the National strategy on protection and promotion of human rights. This document identifies problematic provisions of the contemporary legislation and implementation practice in the area of protecting right of migrants and efficient implementation of EU asylum policy and Schengen agreement.

Problem description – analysis of the positive obligation of the state

As written in the annual asylum report in the EU,

> in 2016 the European Commission adopted two packages (one in April and another in July) of legislative proposals to reform the Common European Asylum System (CEAS). The Commission proposed the creation of a common procedure for international protection, uniform standards for the protection and the rights granted to beneficiaries of international protection, as well as the further harmonisation of reception conditions in the EU. The overall aim of the legislative proposals tabled is to simplify the asylum procedure and shorten the time required for decision-making, discourage secondary movements of asylum seekers within the EU and increase the integration prospects of those who are entitled to international protection.[4]

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[3] "Migračná politika Slovenskej republiky s výhľadom do roku 2020," [Migration policy of the Slovak Republic until 2020] Ministry of Labour, Social Affairs and Family of the Slovak Republic, 2011. Available online: https://www.employment.gov.sk/files/slovensky/ministerstvo/integracia-cudzincov/dokumenty/migracna_politika.pdf (accessed on January 17, 2017).

[4] "European Migration Network 2016 annual report on migration and asylum policies," EMN, 2016, p. 2. Available online: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_apr2016_synthesis_report_final_en.pdf (accessed on January 17, 2017).

All the legislative steps of the European Commission in recent years in area of asylum law, react to the migration crisis and current migration flows from the North African countries, Middle East and also from Turkey. The idea firstly presented in the Amsterdam treaty requested immediate response, to secure the area of freedom, security and justice, as initially build.

> Title IV of the Amsterdam Treaty calls for the progressive establishment of an "area of freedom, security and justice." Within five years, the Council should unanimously adopt measures on asylum, refugees and displaced persons, on the absence of any controls on persons crossing internal borders (both EU citizens and third country nationals), on the crossing of external borders (including rules on visas for intended stays of no more than three months), and on the freedom of movement of third country nationals within the EU, conditional upon the duration of their stay being shorter than three months. This five-year deadline does not apply to refugee 'burden-sharing', and the harmonization of the conditions of entry and residence, standards for the issue of long-term visas and residence permits, or the right of residence in other states of the Union for third country nationals.[5]

While in years after Amsterdam efficiency, the asylum framework law was step-by-step developed, current situation with almost millions of refugees and migrants coming to Europe in 2015–2016, needs immediate action. The situation is harder not only regarding to time, but also in relation to the status of refugees and reasons of their arrival to Europe. As King wrote already at beginning of millennium,

> One of the main features of the global and European map of migration since the mid-1980s has been the strong growth in refugee migrations, especially in respect of people who do not satisfy the 1951 UN convention definition of a "well-founded fear of persecution on account of race, religion, nationality, membership of a particular social group, or political opinion," and who are thus condemned to remain asylum-seekers or displaced persons. The UN definition of refugees is being rendered out-of-date by political, religious, ethnic and environmental crises. At the same time, there has been a sharp increase in the phenomenon of "illegal" or irregular migration.[6]

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[5] V. Guiraudon, "European integration and migration policy: vertical policy-making as venue Shopping," *Journal of Common Market Studies* Vol. 38, No. 2, pp. 251–71 (p. 253). Available online: https://www.researchgate.net/profile/Virginie_Guiraudon/publication/4727897_European_Integration_and_Migration_Policy_Vertical_Policy-Making_as_Venue_Shopping/links/55ed43fa08ae21d099c749f7.pdf (accessed on January 17, 2017).

[6] R. King, "Towards a new map of European migration," *International Journal of Population Geography*, No. 8, 2002, pp. 89–106 (p. 96). Available online: http://sociologyofeurope.

Today we can confirm, that there are millions of forcibly displaced people in the world. However, their situation is not covered by the UN definition set in 1951. And the UN, EU and also concrete states are facing problems with their status, international protection, human dignity guarantee on one side and the social inclusion, integration and security on the other side.

> More than 51 million people worldwide are forcibly displaced today as refugees, asylum seekers, or internally displaced persons. According to the 1951 Geneva Convention Relating to the Status of Refugees, to be recognized legally as a refugee, an individual must be fleeing persecution on the basis of religion, race, political opinion, nationality, or membership in a particular social group, and must be outside the country of nationality. However, the contemporary drivers of displacement are complex and multilayered, making protection based on a strict definition of persecution increasingly problematic and challenging to implement. Many forced migrants now fall outside the recognized refugee and asylum apparatus. Much displacement today is driven by a combination of intrastate conflict, poor governance and political instability, environmental change, and resource scarcity. These conditions, while falling outside traditionally defined persecution, leave individuals highly vulnerable to danger and uncertain of the future, compelling them to leave their homes in search of greater security. In addition, the blurring of lines between voluntary and forced migration, as seen in mixed migration flows, together with the expansion of irregular migration, further complicates today's global displacement picture.[7]

Recent development of the increased migration flow to Europe was reflected in the arising number of the EU legislation. The rights and duties of applicants for asylum are regulated by wide acquis:

1. Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code)
2. Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code)

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unifi.it/upload/sub/Altri%20documenti/King_New_migration_in_Europe_article[1].pdf (accessed on January 17, 2017).

[7] R. Zetter, "Protection in crisis: forced migration and protection in a global era," Migration Policy Institute, March 2015. Available online: http://www.migrationpolicy.org/research/protection-crisis-forced-migration-and-protection-global-era (accessed on January 17, 2017).

3. Council Regulation (EC) No 539/2001 of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement
4. Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals as amended by Council regulation No. 380/2008 of 18 April 2008
5. Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person = Dublin Regulation
6. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (so-called procedural directive)
7. Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of "Eurodac" for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (so-called Eurodac regulation amended)

The national legal framework in the Slovakia, in area of asylum is mainly stated in the Act No. 480/2002 Coll. of laws on asylum as amended, including transposed EU directives:

a. Council Directive 2001/55/EC of 20 July 2001 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;
b. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers;
c. Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status;

d. Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, efficient from 1 January 2014.

The "basic" law in this area setting the principles of EU asylum law, is the Dublin Regulation. Its importance should be underlined regarding to following rules set:

- It establishes criteria and mechanisms to setting EU member state responsible for the decision on the application for international protection.
- It provides space for cooperation of EU member states when deciding on international protection (cooperation mechanism) regulates competences of national centers.
- It provides space for cooperation of national resources (police corps, immigration offices, etc.).
- It establishes return system to the country of "first entrance."
- It refers EU common system of decisions on admission/refusal of international protection based on **international standards.**

The Dublin Regulation also set the most important **PRINCIPLES** guiding the EU asylum law:

a. mutual trust
b. human rights protection
c. systematic deficiences
d. principle of non-refoulement
e. exclusion clause
f. sovereignty clause (Dublin Regulation II)
g. conformity with EU criminal law.

These are reflected in the current decision-making practice on EU level as well on national level, giving the interpretation boundaries to the implementation practice of member states and its authorities.

State of art and decision-making practice

As stated in the previous text, the EU is reflecting in last period the development and migration flows by the amendment of its asylum law (regulations and directives), which have to be implemented or transposed and then implemented by the member states. The complicated network of legislation and the hard field-work conditions led to many situations, where the EU law, its principles and set rules are under the need of revision. The concrete situations, where the international obligations, EU law, national regulation and the principle of human rights protection are suffered, led to the preliminary references to the Court of Justice of the European Union. Its judgements provide in the moment most important source of guidance in implementation of asylum law in the European Union member states.

Current case law in the European Union

I. ECJ judgement C.K. and other, C-78/16 PPU (delivered on February 16, 2017)

In this judgement the ECJ decided within the preliminary proceeding on request of the Supreme Court of Slovenia, while answering the reference:

> *Whether the risk faced by an asylum seeker of being a victim of inhuman and degrading treatment because of his/her individual situation, shall prevent his/her transfer to another Member State to consider his/her asylum claim on the basis of the Dublin system.?*

The ECJ in its decision refers to previous case-law, especially **M.S.S vs Belgium and Greece** (Application No. 30696/09), when setting that "if the dignity is under threat, it is not possible to enforce duty to transfer individual human being to another member state." It supports the constant way of interpretation by another judgement N.S. case (C-411/10), while referring that justification by the principle of "mutual trust" is needed and all member states are obliged to respect and observe principle of human rights protection and are liable for human rights violation. The Court also underline necessity to get back to the systematic implementation of "systematic deficiences test," which was confirmed also in another decisions C-4/11 Puid and C-394/12 Abdullah.

In the opinion of the Advocate General Tanchev to the case C-78/16, he argued that only systematic flaws in the responsible State could require the prevention of a Dublin transfer. He acknowledges that his position did not meet ECtHR standards but stressed that the EU was not bound by it. It means, that regarding to his opinion EU fundamental rights Charter may be interpreted contrary to the European Convention on protection of human rights and fundamental freedoms.

Fortunately, ECJ did not refer to Advocate General opinion and had decided, that

> *besides situations where systemic deficiencies exist in the responsible state, any transfer of asylum-seekers shall be excluded if it gives rise to a real risk for the individual concerned to suffer inhuman and degrading treatment (as stated in the Article 4 of the Charter).*

The ECJ made and reference link to ECtHR decision in case *Paposhvili v Belgium* (application No 41738/10), stating that *"illness may be covered by Article 3 of ECHR, where it is, or risks beings, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible."* Also in judgement *Aranyosi,* the Court confirmed, that national courts have to consider and evaluate the risk of HR violation in individual case:

> The EU member state, under the Dublin system" has a sovereign right to decide to examine the application itself as it so which (article 17, Dublin III Regulation) to prevent transfer of the asylum seeker which may led to violation of his/her fundamental right

– sovereignty clause (which presents exceptions from obligation of the first country competence to decide on asylum application).

II. ECJ judgement C-560/14 M v Minister for Justice and Equality and Anor (delivered on February 9, 2017)

The ECJ was focusing on the subsidiary protection implementation in Ireland, in relation to the specific conditions in Ireland, regarding to transposition of the Qualification Directive (D 2004/83, now D 2011/95) and UN Convention on Refugees of 1951. Set preliminary reference was:

> *In a case where an applicant seeks subsidiary protection status following a refusal to grant refugee status and it is proposed that such an application should be refused, dose the requirement to cooperate with an applicant imposed on a Member State in Article 4 (1) of … Directive 2004/83 ... require the administrative authorities of the Member State in question to supply such applicant with the results of such an assessment before a decision is finally made so as to enable him or her*

> *to address those aspects of the proposed decision which suggest a negative result?*

This one was later expanded by another reference:

> *Does the right to be heard in EU law require that an applicant for subsidiary protection, made pursuant to Council Directive 2004/83/EC, be accorded an oral hearing of that application, including the right to call or cross-examine witnesses, when the application is made in circumstances where the Member State concerned operates two separate procedures, one after the other, for examining applications for refugee status and applications for subsidiary protection, respectively?*

Within the preliminary proceeding the Ireland had adopted International Protection Act 2015. It simplifies process, when decision of asylum or subsidiary protection is connected and it is possible to appeal against it before the court. This fully approximates national legislation to the EU law. The ECJ then strengthen, that right to be heard has to be guaranteed in each individual case and may be done in writing or by personal interview.

III. ECJ proceeding No. C-391/16 (focused on the non-refoulement principle interpretation)

ECJ in this case tries to answer the request of the Supreme Administrative Court of the Czech Republic to the preliminary reference:

> *how to decide whether someone is entitled to achieve asylum status or subsidiary protection within the EU to guarantee the conformity with international law and principle of non-refoulment in cases, when the applicant in case of re-application is considered as threat to security or is under the criminal proceeding threat.*

In the previous Court's judgement H.T. (C-373/13) there is explicitly stated reference to absolute character of non-refoulement principle in international law. Court provides reference to ECtHR judgement in cases *Chahal* and *Aranyosi* saying, that if the principle of non-refoulement is universal principle in refugee law, which has the absolute character, then it is necessary to provide such interpretation and application also in EU law, which in its Qualification Directive grants stronger protection to refugees than the Refugee Convention alone does.

The Court should also provide answer to the question: *What is the relation between residence permission and refugee status or subsidiary protection?* In relation to Article 14, para. 4 of the Qualification Directive, it establishes possibility for revoking, ending or refusing to renew refugee status for rea-

sons of criminal behavior or a security risk, while it is not explicitly stated it is conform to international obligations and especially to the principle of non-refoulement.

The Czech Supreme Administrative Court than has to in its decision in merit justify particularly regarding to Qualifications Directive and Returns Directive. Exceptions are possible only in case the Article 12 and 17 of Qualifications Directive are applied. However, the Returns Directive provides possibility to appeal against the decision on revoking, ending or refusing to renew refugee status, referencing to the principle of non-refoulement.

The expected judgement of the Court of Justice is crucial for the future development of the EU law. *If the absolute character of the principle of non-refoulement is not clearly upheld now, we might be witnessing a gradual process of interpreting away the absolute character of non-refoulement.* The EU law and its asylum law particularly then will follow individual line in development.

IV. ECJ judgement in Lounani case – C-573/14 (delivered on January 31, 2017)

The ECJ was dealing with the interlink of the EU criminal law provisions with the refugee status and asylum law. As stated in the UN Convention on refugees, article 1.F., there are exceptions from the refugee status and persons connected to organized crime, migration trafficking and international terrorist acts are excluded from the international protection regarding to refugee law. Such exceptions are defined as:

a. he has committed crimes against peace, war crime, crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crime
b. he has committed a serious non-political crime outside the country of refugee prior to admission of that country as a refugee
c. he has been guilty of acts contrary to the purposes and principles of UN.

These international law provisions were transposed to the EU Qualification Directive, however the ECJ focus on the reference, whether:

> *The person concerned was convicted of participating in a terrorist group, but not of carrying out any terrorist acts as such. So is a such conviction sufficient to trigger the exclusion clause?*

ECJ refer to UN SC Resolution on financing, planning and inciting terrorism and conform to article 12, para 3 of the Qualification directive confirms, that any membership to terrorist group identified by the UN regarding to this resolution is relevant reason for exclusion from the asylum pro-

cess. However, exclusion must be assessed in each individual case, meaning that membership of a group listed as "terrorist" in EU foreign policy sanctions against terrorists does not automatically trigger the exclusion clause, although it is factor to consider.

The Court had provided such wide interpretation and discretion of member stated while considering international protection, but still left there at least two non-answered questions:

1. What if there is criminal conviction for terrorism from another country – particularly in the asylum-seeker's country of origin, which might define criticism of the government as "terrorism"?
2. What about "provocation" to terrorism, which might include "glorification" of terrorist acts?

Current case law in the Slovakia

There are several judgments adopted by the Supreme Court of the Slovakia, as the final distance judicial authority in case of revision of administrative law decisions, including asylum cases. The most important delivered are shortly explained there:

File No. 1Sža/32/2015[8]

Supreme Court of the Slovak Republic in the case of claimant: N.J., citizen of Palestine, last registered address abroad, city Y., city part C., Turkey, in present the Camp Rohovce, represented by the Center of legal advice, Nám. slobody 12, Bratislava, against the Ministry of Interior of the Slovak Republic – Migration office, Pivonkova 6, Bratislava, focused on the review of decision of Migration office No. MU-368-15/PO-Ž-2014 of February 11, 2015 and the Regional Court in Bratislava Judgement No. Isaz/5/2015-35 of May 13, 2015 had decided in a way of confirming the Regional Court in Bratislava judgement as the court of appeal's decision.

Regional Court in Bratislava in its judgement had confirmed decision of the Migration office of February 11, 2015, when refusing the claimant's application on asylum regarding to the Act No. 480/2002 on asylum and on changes and amendments of other acts as amended as the non-admissible. The Regional Court in Bratislava had concluded, that claimant's objection on non-sufficient determination of the state-of-art is invalid and confirmed that Migration office dismissal of the application on asylum was conform the law.

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8 "Rozsudok v mene Slovenskej republiky," [Judgement of the Supreme Court of the Slovak Republic], Supreme Court of the Slovak Republic, 2015. Available online: http://www.nssr.gov.sk/data/att/46440_subor.pdf (accessed on January 17, 2017).

The possibility to work, earn money and of better life in Slovakia, which were presented as reasons for the asylum granting within the entrance interview of claimant at Migration office, are not conform to reasons stated in §8, §10, §13a or §13b of the Act No. 480/2002 Coll. of laws on asylum and on changes and amendments of other acts as amended. Above-mentioned reasons are of *economic character*, which are explicitly stated as reasons for dismissal of asylum application in the §12 para 1 letter a) of the Act on asylum.

The claimant himself stated within the asylum proceeding, that if he is not detained in the Slovak Republic territory, he would never apply for asylum there. If the Migration office dismiss his application, the process was correct, the decision is valid and based on the justified evidence.

The claimant argued, that there were another reasons for asylum application stated in his declaration of December 14, 2014 as the threat to life, will to live and work in Slovakia. The Migration office considered them as very general, not explicitly as there were stated in written form in the same wording as the claimant said. His declaration presented orally the same day before the police officers, that in case of his return to the country he will be punished, does not fulfilled signs of persecution (§8 of the Act on asylum) or the serious unlawfulness (§2 letter f/ of the Act on asylum). The claimant did not within the asylum proceeding specified additional reasons and to the clear question on reasons for asylum application he confirmed that the work and chance for better life are those leading his application. Claimant nor did not claim the application for the asylum by some threat of persecution due the race, nationality, religion or affiliation to some social group or due his political thoughts (as stated in §8 of the Act on asylum). He did not reason the application by setting or enforcement of the death penalty, inhuman or degrading treatment or punishment, nor by serious and individual threat to his life or by inviolability of his person due violence with international or national armed conflict (§13a of the Act on asylum). He did not ask for asylum due reunification of the family.

As mentioned in the application by claimant himself, he left Palestine in 2004 with the whole family, while legally moved the residence to Istanbul in Turkey. He legally lived there up 2014, when he decided to move due work to Europe, where he was detained at the territory of Slovakia. He foresees as final destination Germany, France or United Kingdom. In Turkey he worked as the assistant in restaurants, bakery and he also work as the person sorting the waste. He asked for the asylum in Slovakia due his detention by the Slovak police officers and he was afraid of his life due the possibility of return to Palestine, where he definitely do not want to go. He did not have any problems in Palestine, which he left as a child. He did not have any problems also in Turkey where living with family. He was not member of any political party or any organization considered as the threat

to public order or public policy. His main objective of the moving to Europe was better work and better life.

The Supreme Court of the Slovakia stated, that regarding to the Act on asylum, the asylum proceeding beings by submission of the declaration (§3 Asylum law) and due this the relevant information are those presented by the applicant within the asylum proceeding. Claimant's objection, that in the country of origin as well as in the country of last residence he does not possess family or any other ties and due this his return may threat his life, are not of logic substance in relation to dismissal of his application for asylum.

The Migration office justified finally its decision by fact, that reasons stated in the applications and those added within asylum proceedings cannot be considered as those, which are explicitly stated for asylum granting or additional protection granting at the territory of the Slovak Republic. Such decision is over the asylum proceeding framework as well as the Asylum law purpose. Granting asylum based on the claimant's reasons would be contrary to Asylum law, against its purpose and also not conform to international regulation.

Based on the above-mentioned facts, the Supreme Court of the Slovak Republic as the court of appeal (§10 para 2 of the Code of Civil Procedure) reviewed Regional Court's judgement, as well as the previous procedure and conclude unanimously (§3 para 9 of the Act No. 757/2004) that there is necessary to confirm Regional court's judgement as the legal one.

File No. 1SZa/7/2015[9]

Supreme Court of the Slovak Republic in the case of V.S.S.T.Č., without the travel documents, citizenship Indian Republic, resided temporary in the Police camp for foreigners in Sečovce against the Ministry of Interior of the Slovak Republic, Office of Border and Alien Police, Prešov, branch office Michalovce, in case of the review of the assurance of the claimant, confirmed decision of the Regional Court in Košice of June 4, 2015, file ref. No. 10Sp/44/2015-40.

Regional Court in Košice in its first instance judgement in relation to §250q of the Code of Civil Procedure confirmed decision of the foreign office No. PPZ-HCP-PO7-ZVC-12-032/2015 of May 6, 2015 on assurance of the claimant as issued upon the §88 para 1 letter b) of the Act No. 404/2011 on foreigners and changes and amendments of other acts as amended, upon which the claimant was sent to the Police camp for foreigners in Sečovce for the period necessary for the execution of the administrative exportation, i.e. up to November 6, 2015.

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9 "Rozsudok v mene Slovenskej republiky," [Judgement of the Supreme Court of the Slovak Republic], Supreme Court of the Slovak Republic, 2015. Available online: http://www.nssr.gov.sk/data/att/44741_subor.pdf (accessed on January 17, 2017).

In relation to §88 para 1 letter b) of the Act No. 404/2011 as amended, the police officer is entitled to assure the foreign national of third country for the purpose of the administrative exportation or the execution of the expatriation punishment.

In the appeal the police office claims the following facts upon which they issued the decision were considered of the decisive character:

- in 2006 the claimant illegally cross the external border of the EU member states out of the demarked border, without travel document with the purpose to get to Europe;
- in 2010 he got travelled out of the Slovak Republic to Italy, from which he illegally travelled to the United Kingdom, had living there by 2014 and then he was sent back to the Slovak Republic territory;
- on July 3, 2014 he was sent to the Slovak Republic from the UK regarding to Regulation (EU) No. 604/2013 of the European Parliament and of the Council of June 26, 2013 establishing the criteria and mechanisms for determining the member state responsible for examining an application for international protection lodged in one of the member states by a third-country national or a stateless person (recast);
- identity of the claimant has to be confirmed on the basis of the documents the Slovak Republic possess, while the claimant was known in Belgium as the R.S. (born X.), India; B.B. (born X) with the criminal record regarding the Belgian law on foreigners – human trafficking twice in 2010, illegal migration twice in 2010; Interpol Manchester had in evidence the same person with identity B.S. (born X.) sentenced for the traffic minors; and there are known situations when using alias /identity as V.G. (born X.) and B.J.S. (born X.);
- on July 3, 2014 there was repeatedly initiated proceeding on asylum granting in the Slovakia upon the claimants proposal, while it was dismissed as the unjustified on August 27, 2014;
- legality of the decision on dismissal of claimant application issued by the Foreign Police Office was confirmed by the judgement of the Supreme Court of the Slovak Republic, file ref. No. 1Sža/2/2015 of March 10, 2015 in connection of the Regional Court in Košice judgement, file ref. No. 5Saz/44/2014 of November 18, 2014;
- the claimant does not possess travel documents nor the sources for the safeguard of travelling back.

Length of the assurance was reasoned by the Foreign Police office regarding to §88 para 4 of the Act No. 404/2011 and the statement of the Police Camp for Foreigners in Sečovce, where stated that the claimant refuse the cooperation in confirmation of his identity, which led to prolongation of the length of his stay in the camp. In this relation, the Indian Republic embassy had not confirmed the identity of the claimant as stated in his primary application for asylum of November 14, 2014. The Foreign Police

Office confirmed, that the length of the assurance may be shorten (as stated in §90 para 1 letter d) of the Act No. 404/2011), but from the previous practice the shorten period is not effective in relation to the smooth and non-problematic process.

Conclusions and recommendations

As written in EMN report (2015), in Slovakia the main agenda in the year 2015 focused on fight against human trafficking.

> The Slovak Republic continued to conduct humanitarian transfers through its territory as part of the resettlement process to other countries – providing temporary shelter to 98 refugees and resettling 146 refugees to the USA. Many of these refugees were Somali families with children. Humanitarian transfers are carried out based on the trilateral agreement between the Slovak Government, UNHCR and the International Organisation for Migration (IOM), whose current version from 2015 increased the maximum capacity of the Emergency Transit Centre from 150 to 250 persons who can be present in Slovakia at the same time.[10]

However, the agenda of migration is wider and it covers also other policies. Especially in relation to proper implementation of the EU law, there were adopted some recommendations in area of approximation and efficient implementation of obligation to EU.

The existing recommendations from 2015, mainly in relation to detention of minor migrants were successfully applied in Slovakia:

> In the Slovak Republic, finally, a suggested amendment to the Act on Residence of Aliens sets out specific conditions regarding the detention of minors who are detained with their parents (e.g. number of meals, daily leaves within the facility, access to education etc.).[11]

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[10] "European Migration Network 2015 annual report on migration and asylum policies," EMN, 2015, p. 26. Available online: https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/networks/european_migration_network/reports/docs/annual-policy/annual-policy-emn_apr_synthesis_report__2015.pdf (accessed on January 17, 2017).

[11] "European Migration Network 2016 annual report on migration and asylum policies," op. cit., p. 20.

The report explicitly notified fulfilment of this obligation to implement EU law in relation to unaccompanied minors:

> Other member states, such as Luxembourg and the Slovak Republic have not recorded a significant increase in the number of UAMs in 2016, and both reported that the absconding of UAMs remains a persistent issue in the provision of care for UAMs. The number of absconding UAMs in Luxembourg until September 2016 was 37 minors (out of 83 UAMs applying for international protection), whilst in Slovakia there were 19 cases of UAMs who left their foster home without permission following a court decision in 2016, compared to 33 cases of UAMs accommodated in the foster home in Medzilaborce.[12]

The another area of proper migration policy implementation in Slovakia focused on the procedural rights of migrants. As there were majority of application for asylum refused and those granted were facing several administrative obstacles and procedural problems, the EU Commission recommendations focused on the appellate procedure. This task was also fulfilled in 2016:

> A few member states reformed their procedures for the appeal and/or judicial review of first instance decisions. Legal revisions in the Slovak Republic allowed applicants to request a suspensive effect in the case of appeals which did not automatically include this.[13]

The next successful policy implementation was the application of so-called intra-EU solidarity:

> Member states showed solidarity with those Member States under pressure by contributing to and participating in several support activities organised by EASO. Some Member States also reported on the support provided to their counterparts on the basis of bilateral or multilateral initiatives. For example, the Slovak Republic continued to accommodate asylum seekers from Austria in the Gabčíkovo camp on the basis of a 2015 Memorandum of understanding between both countries.[14]

Majority of resettled refugees came from the third countries and their stay in Slovakia was temporary limited. We have to underline, that this resettlement activities contributes to the fulfilment of the obligation of the country in relation to the principle of solidarity set in the Article 2 of the Treaty on the European Union.

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12 Ibid, p. 30.

13 Ibid, p. 21.

14 Ibid, p. 26.

> With regard to resettlement activities under national schemes, most of the resettled refugees arrived from third countries to the EU as part of general resettlement schemes, where the transfer of a third- country national from a third country is made at the request of UNHCR based on the need of international protection. However, some Member States (e.g. AT, DE, IT, SK, UK) also increasingly resettled refugees under various humanitarian resettlement schemes, which are similar to resettlement but do not fully match the characteristics of general resettlement programs, e.g.: The Slovak Republic continued humanitarian transfers through the Emergency Transit Centre (ETC) in Humenné in cooperation with the UNHCR and IOM. In 2016, 156 refugees were transported into the ETC in Humenné, and 196 refugees who came to ETC in 2015 were resettled to the USA in 2016. Resettled persons were mostly Somali nationals and the rest were Sudanese and Ethiopian nationals. The majority of cases concerned families with children.[15]

However above-mentioned examples confirm the Slovakia's positive obligation to EU in relation to rights of refugees and asylum regulations, current migration flows establish new challenges to country's policies in different areas. Migration is the integral part of our daily life, it may increase without specific contribution of mankind and if there will be no systematic work with it (in legal area, in the field work, in area of education and social inclusion etc.), it may not contribute to successful elimination of migration flows. On the other side, continuous work may contribute to the society development and also to implementation of basic principles of the EU, as the principle of solidarity and principle of human rights protection. If we will underestimate the current migration flows, it may cause difficulties in political, economic and social life.

Existence of migration has to be accented by all stakeholders and political subjects and has to become integral part of the individual resorts agenda. It means, that the migration policy as the regulatory mechanism should be elaborated to concrete action plans and should be modified and amended in relation to the migration flows and coordinated together with the EU policy and its European Commission decisions, including recommendations of the research and advisory bodies and agencies.

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15 Ibid, p. 27.

What concrete steps should be implemented in area of migration, illegal migration, refugees rights protection, resettlement, fight against human trafficking and other related partial policies?

a) as set in the annual report of 2016: "In the Slovak Republic, The National Unit for Combating Illegal Migration (NUCIM) started the creation of the Immigration Liaison Officer institute at the Border and Aliens Police. The United Kingdom has been proposed as country post in the first half of 2017."[16]
   The recommendation goes to the proper implementation of the new National Unit, including the training of the staff, allocation of the budget and incorporating of its competences crossing existing legislation of the foreign police, administrative authorities and judicial (including investigation) bodies.

b) The cooperation of the relevant state authorities based on the principle "best practices" or "lesson-learned" with other EU countries (mainly another Schengen border countries), countries of origin and transit countries.
   The recommendation goes to the implementation of another cross-border cooperative projects, focused on the training of the foreign police staff, administrative and judicial authorities and other relevant positions (social affairs staff, translators and interpreters, health service staff etc.). It should include also specific budget lines, from national resources and bilateral/multilateral resources.

c) The modification of existing or prepared documents – resort's Action plans, including following amendments to the legislation.
   Recommendation goes mainly to the area of social policy (social inclusion, social accommodation, system of social aid and social assistance) and area of education and training (education of minors, re-qualification of the people with international protection, recognition of non-formal and informal education in the system). The Action plan for education and the law on education (on primary and secondary schools) should be amended also cross-disciplinary, by involvement of the obligatory Slovak language course for minors and then by providing teaching assistants for the first year of study, similarly to those provided to students with disabilities, on the state expenses.

16 Ibid, p. 77.

d) In area of employment of foreigners there should be more efficiently implemented sanction mechanism in case of illegal employment. Illegal employment of foreigners should involve also administrative mechanism, which will be operated more efficiently, including the electronization of this agenda.
Recommendation goes to the amendment of the foreign police competence, which should have competences over the residence, however the permission prolongation in case of legal migrants should be transferred into the employment authorities (office for the employment, social and family affairs) with the notification between state authorities after prolongation of the residence and work permission.

e) Particular agenda in case of foreigners (migrants, refugees and applicants for international protection) is connected with the amendment of the Law on state language. Current legislation governs the competence of all state authorities to work in state language. In case of foreigners it is much complicated and may be discriminatory especially in relation to their judicial rights (when they apply to the court for revision of the administrative authority decision) and also in relation to the right for fair trial (to understand their rights and obligations). The right for fair trial was interpreted in the favor of individual, especially the provision of Article 6 of the European Convention on protection of human rights and fundamental freedoms was interpreted broadly, on the grounds that it is of fundamental importance to the operation of democracy. In the case of Delcourt v. Belgium (Judgment of January 17, 1970, para 25), the Court stated that: "In a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of Article 6 (1) would not correspond to the aim and the purpose of that provision." The amendment respecting the same level of foreigner rights' protection as in the judicial codes (rights to interpretation to the language s/he understands) should be elaborated as prevention to sanction in case of especially European Court for Human Rights against Slovakia.

ISBN 978-80-89356-64-5