

## THE REPUBLIC OF SLOVENIA'S RETURN PROCEDURES FOR IRREGULAR MIGRANTS AND ASYLUM APPLICANTS IN THEORY AND PRACTICE

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### ABSTRACT

*This study explores return procedures in Slovenia for irregular migrants and rejected asylum applicants, and how they are interlinked. It outlines the current legal framework in this area and highlights important court decisions that impact the implementation of its provisions.*

*This study examines the international protection procedure and its outcomes including the recognition of international protection, return under the Dublin regulation or negative decision and issuance of the return decision. It further explains the obligations of the government and foreigners, and restriction of movement. Procedures are presented for vulnerable categories, particularly unaccompanied minors. Further, the identity establishment procedures, obtaining travel documents, and monitoring mechanisms, including procedures regarding voluntary or forced return are discussed.*

*The obligation to respect human rights is enshrined in all legal instruments, and the principle of non-refoulement<sup>3</sup> does not allow for any derogations, exceptions, or limitations.*

*Cooperation and collaboration among all stakeholders is essential. Safeguards are crucial in delicate and important procedures. To better regulate migration and related issues, many legal provisions have been changed recently based on court decisions.*

*Voluntary return is considered the most effective and should be sustainable, dignified, and provide appropriate support for the returnees. Every person undergoing return proceedings should be able to make an informed decision about his or her return and is provided the maximum possible support and assistance for reintegration. Slovenia, and other European Union Member States, should adopt*

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3 | Art. 7 of the 1966 International Convention on Civil and Political Rights, Art. 3 of the 1984 United Nations Convention against Torture and Art. 3 of the European Convention of Human Rights (ECHR) – as interpreted by the European Court of Human Rights.



*a coordinated approach to common practices to promote returns and adopt and implement effective return measures.*

## KEYWORDS

*irregular migrants  
rejected asylum seekers  
principle of non-refoulement  
voluntary return  
identity establishment  
vulnerable persons*

## 1. Introduction

Migration has been part of human history since its inception. Many waves of immigration have occurred in human history, such as the discovery of new places on land between the 15th and 17th centuries, labour migration in the 19th century, and the wave of immigration after World War II. Immigration has been crucial to the development of many modern countries, shaped labour dynamics worldwide, and was fundamental to the rise of the global economy.<sup>4</sup> Migration may occur owing to economic, social, climatic, academic, professional, and technological causes, which may be voluntary or forced resulting from war, climate change, or inadequate living conditions. With the emergence of the state, immigration became a security issue, leading to increased surveillance and restrictions. Cross-border regulations require various licences, documentation, and control agencies. With new social developments, different views of immigration have emerged, prompting different control mechanisms.<sup>5</sup> Although migration is a widespread social phenomenon with a long history, the concept of international protection is relatively new, which emerged only at the beginning of the 20th century resulting from the European, Balkan, Middle Eastern wars and World War I. International protection continued to develop after World War II, when the need for more comprehensive protection for those left homeless and without a means of livelihood owing to the effects of the war became even more apparent.<sup>6</sup> Moreover, World War II brought a different view of migration as the world realised that it was necessary to define who needed international protection and the meaning of the word refugee; the Geneva Convention was signed in 1951 and entered into force in 1954.<sup>7</sup>

In September 2015, Europe experienced a sharp increase in migration since World War II, primarily resulting from armed conflicts being fought in the Middle East. This dramatic increase in the number of migrants entering the area, which has been referred to more broadly as the 'European refugee crisis', has

4 | Bučar-Ručman, 2014.

5 | Mackey and Barnes, 2013.

6 | Jaeger, 2001.

7 | UNHCR.

fragmented society. Part of the population saw incoming foreigners as a looming danger, whereas another part argued that Europe should come to aid migrants or refugees. Consequently, migration has become a political and social issue, placing considerable pressure on countries and migration authorities. The pressure stems from the dual nature of the issue – the desire to create an inclusive asylum system that offers effective protection to those in need and the simultaneous desire of countries to stop the mass migration of people coming from safe third countries,<sup>8</sup> as determined pursuant to Art. 61 of the IPA<sup>9</sup> by the Government of the Republic of Slovenia, and in accordance with the common list of third countries<sup>10</sup> adopted by the Council of the European Union based on Art. 36 of Directive 2005/85/EC. Consequently, a divide has been created in the political sphere, society, and media between refugees and (economic) migrants. Migrants represent individuals immigrating to Europe for better economic prospects. Thus, society attempts to distinguish between refugees who actually need protection and migrants who have immigrated for better prospects.<sup>11</sup> Those who manage to obtain legal status in the Republic of Slovenia (hereinafter Slovenia) or in an European Union (EU) Member State and those who are eventually returned to their country of origin, is essential from an immigration perspective.

The return procedure in Slovenia is strongly linked to international protection procedures because the vast majority of foreigners who enter Slovenia illegally, express their intentions to apply for international protection. In 2021, the police dealt with 10,067 illegal crossings, of which 5,561 foreigners expressed their intention to apply for international protection; 3,998 were returned to foreign security authorities based on international return agreements, and 248 were returned to Slovenia. In 2022, the percentage of applications increased significantly, with 31,447 of 32,024 illegal crossings registered with the police because they expressed the intention to apply for international protection. Of these, 5,301 foreigners applied in 2021 and 6,787 in 2022.

These data demonstrate the increasing intertwining of asylum and return procedures for persons illegally present in Slovenia, including rejected applicants, foreigners who have illegally entered Slovenia or are illegally present in Slovenia for other reasons, such as invalid documents. It is possible to apply for international protection whenever a foreigner encounters the police or other state authorities, which is the easiest way to legalise the status of residence in Slovenia temporarily.

Owing to this interconnectedness, this study further describes in detail the asylum procedures, and the procedure for determining the country responsible for processing the application and possible return to the Member State of origin

8 | A safe third country is a country in which the applicant was present prior to his/her arrival in Slovenia and where he/she actually had the possibility to apply for international protection, but failed to do so without a valid reason.

9 | Decree establishing the list of safe countries of origin (Official Journal of the RS, No. 47/22).

10 | Albania, Algeria, Bangladesh, Bosnia and Herzegovina, Egypt, Gambia, Georgia, Ghana, Kosovo, Morocco, Nepal, Senegal, North Macedonia, Serbia, Tunisia, and Turkey.

11 | van Veldhuizen, 2017.

under Regulation (EC) No. 604/2013,<sup>12</sup> and the procedures for returning illegal immigrants.

## 2. Legal framework

In accordance with the Treaty of Amsterdam and the Tampere European Council (1999), the EU committed to establish an Asylum and Migration Policy Group to ensure the effective management of migration flows in EU Member States.<sup>13</sup> This led to the Common European Asylum System (CEAS), which established a series of measures and instruments to introduce and develop a common system for international protection. The Temporary Protection Directive, adopted in 2001, required member states to respond jointly to the influx of refugees into the EU. Additionally, CEAS comprises three other directives and one regulation:<sup>14</sup>

1. The Dublin Regulation (EU Regulation 604/2013) determines which Member State is responsible for examining an asylum application;
2. EC Directive 32/2013 on asylum procedures sets common standards on asylum procedures, recognition, and withdrawal of protection;
3. EC Directive 33/2013 on reception conditions sets minimum common standards for living conditions and the conditions of asylum seekers, and ensures access to accommodation, food, employment, and healthcare;
4. EC Directive 95/2011 sets out the conditions to be met by refugees or beneficiaries of subsidiary protection and offers beneficiary rights, such as residence permits, travel documents, access to employment and education, and social and health care.

The entire legal order regulating the field of international protection in Slovenia and in the EU Member States is brought together in the CEAS, which comprises a number of directives and regulations transposed into the Slovenian legal order. These are transposed into Slovenian legislation, particularly in the IPA,<sup>15</sup> which with the help of some sub-statutory acts regulates international protection in Slovenia. Return is regulated by the Foreigners Act,<sup>16</sup> which lays down the conditions and procedures for the entry, departure, and stay of foreigners in Slovenia. This law also reproduces in substance, *inter alia*:

12 | 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 (recast), *OJ L 180*, 29.6.2013.

13 | Polese and Davanzo, 2010, cited in Houlding, 2017.

14 | Gray, 2013, cited in Houlding, 2017.

15 | IPA Official Gazette of the Republic of Slovenia, No. 11/17.

16 | Official Gazette of the Republic of Slovenia, No. 91/21 – officially consolidated text, 95/21 – corrected, 105/22 – ZZNŠPP and 48/23.

1. Council Directive 2008/115/EC<sup>17</sup> of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, including the Common Guidelines on security provisions for collective removals by air, annexed to European Council Decision 2004/573 of 29 April 2004<sup>18</sup>.
2. Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-country nationals<sup>19</sup>.
3. Directive 2011/51/EU of the European Parliament and the Council of 11 May 2011 amending Council Directive 2003/109/EC to extend its scope to beneficiaries of international protection<sup>20</sup>.

Migration and return policymaking considers European guidelines and action planning as defined by the renewed EU action plan against migrant smuggling (2021-2025),<sup>21</sup> communication on a more effective return policy in the EU – a renewed action plan,<sup>22</sup> EU strategy on voluntary return and reintegration,<sup>23</sup> the Pact on Migration and Asylum,<sup>24</sup> and other documents which Slovenia, as a member of the EU and the Schengen area, is obliged to respect.

### 3. Access to the asylum procedure

The EC Directive 32/2013 sets out three stages of access to the asylum procedure, 'expressing an intention' or making, 'registering' and 'lodging'. The three stages are intended to clarify any confusion between the receipt of a complete application (lodging an application) and the basic act of registration (registering), and the fact that a person expresses a wish to lodge an application (expressing an intention or making). Under the IPA, a person who expresses the intention to apply must be registered as an intending applicant and must have an effective opportunity to apply for international protection as soon as possible to obtain the rights that an applicant for international protection enjoys.

All three stages vary across countries; however, some may be combined and performed sequentially by the same authority. In Slovenia, the IPA provides that it is possible to express an intention to any state or local authority, but the police are responsible for registration and the competent authority for the submission of a complete application is the Ministry of Interior (MI), Directorate for Migration.

In practice, the three stages of the access procedure are conducted such that any state or local authority notified of a foreigner's intention to apply for

17 | OJ L 348, 24.12.2008, p. 98.

18 | OJ L 261/5, 6.8.2004, p. 5.

19 | OJ L 149, 2.6.2001, p. 34.

20 | OJ L 132/1, 19.5.2011, p. 1.

21 | COM/2021/591 final.

22 | COM(2017) 200 final.

23 | COM/2021/120 final.

24 | COM(2020) 609 final with annex.

international protection must inform the police. If the police intercept a foreigner before he/she expresses an intention to apply, he/she will only do so with the police. In any case, the police must take foreigners in and conduct the preliminary procedure provided for in Art. 42 of the IPA and inform the competent authority of the expressed intention and registration of the applicant.

An important part of the international protection procedure is the most fundamental procedural guarantee written in the IPA with which every applicant must be provided: procedural information; interpretation and translation of the information; access to the High Commissioner and organisations providing legal counselling; a written decision on the procedure, including a translation of the essential parts in a language that the person understands.

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## 4. Preliminary procedure

Art. 45 of the IPA provides that the Ministry shall prescribe a detailed manner in which the procedures leading up to the acceptance of the application shall be conducted. This is defined in the Rules on the Procedure with Foreigners Expressing the Intention to Apply for International Protection in Slovenia and the Procedure for the Acceptance of an Application for International Protection.<sup>25</sup>

The preliminary procedure is the second stage of the access procedure, in which the police must fill out the registration form, and thus, the foreigners becomes an intending applicant. The registration form contains the applicant's personal data, the reasons for applying for international protection, and the route by which he/she arrived in Slovenia. The police write reports on these actions, which are then handed over to competent authorities.

As provided in the Regulation on the modalities and conditions for guaranteeing the rights of applicants for international protection,<sup>26</sup> the applicants are accommodated according to category: families are in separate rooms, and unaccompanied minors and single women are also in their own rooms or in different facilities to keep them separate from the majority, who are single men. Applicants with mild health problems or infectious diseases are also accommodated in special or isolation rooms. In the reception area, applicants wait for sanitary disinfection and preventive health checks, during which all applicants undergo medical examinations.

The consequences of arbitrary departure before lodging are defined in the regulations and are set out in a declaration signed by each applicant who is accommodated in the reception premises, which means that if the applicant leaves the reception premises before submitting his/her application, he/she will be treated under the Foreigners Act.<sup>27</sup> Accordingly, instead of being accommodated in an

25 | Official Journal of the Republic of Slovenia, No. 173/21 and 131/22.

26 | Official Journal of the Republic of Slovenia, No. 91/21, Regulation on the modalities and conditions for guaranteeing the rights of applicants for international protection.

27 | Official Journal of the Republic of Slovenia, No. 91/21 – Official consolidated text, 95/21 – Amended, 105/22 – ZZNSPP and 48/23.

asylum centre, he/she will be accommodated in the Centre for Foreigners run by the police, which is a closed-type facility, as opposed to an asylum centre.

## 5. Provision of information in asylum and return procedures

After the provision of information and dactyloscopy, the applicant is introduced to the international protection procedure in Slovenia in more detail by official personnel and through a short informative film or brochure in a language that the applicant understands. The informative film and brochures are adapted for minor international protection applicants.

Information provision normally occurs at the MI in the offices of the International Protection Procedures Division. When an applicant cannot be present in the premises of the Ministry or attend the interview online, information provision occurs at the Foreigners' Centre in Postojna (when a person is detained), the Student Hall of Residence in Postojna, or in prisons and other correctional facilities in cases where a person is serving a custodial sentence.

An interpreter is present during such information provision so that the applicant can ask the present official for additional explanation/clarifications or any other question regarding the asylum procedure. They are also informed with videos prepared in different languages. During their stay at the Asylum Centre, applicants have access to informative brochures in the language they understand.

Posters and brochures regarding the procedure for granting international protection in Slovenia are also available in the premises of all police stations where third-country nationals or stateless persons are processed or kept. Brochures are available in languages, which are prepared based on information on the most common citizenship of citizens of third countries processed by the police. In all proceedings with foreigners who do not understand Slovene or cannot understand any other language that police officers speak, police officers always use a contract interpreter for the language the foreigners speak and understand.

The authorities provide the person who expressed intention to apply for international protection – upon arrival to the Asylum Centre – with information on further proceedings of the asylum procedure, including information on the procedures as per IPA, the rights and obligations of applicants, potential consequences of disregarding the obligations and non-cooperation with the competent authority, the time limits for the exercise of legal remedies, and information about refugee counsellors and non-governmental organisations working in the field of international protection.

When a person expresses the intention to file a claim to be an unaccompanied minor, he/she and his/her legal representative also receive, in addition to the information above, information regarding a possible age-determination examination assessment, the manner of examination, the possible consequences of the examination results, and/or an unjustified refusal to undergo such an examination, as

stated in Art. 17 of IPA. Information must be provided in a language that the person understands.

Deaf applicants are informed using sign language with the help of an interpreter. If the person expressing the intention to file is illiterate or does not understand the content of the provided information, additional help from an interpreter must be provided in a language that the person understands.

At the applicant's request, all information concerning the procedure for granting international protection should be provided free of charge. Electronic brochures, information on procedures and other aspects of international protection are available online.

Foreigners who ask for international protection are informed of their rights and duties through leaflets prepared and delivered by non-governmental organisations and United Nations High Commissioner for Refugees (UNHCR). Typically, interpreters are engaged.

Police procedures involving persons who apply for international protection are monitored by the UNHCR based on the monitoring agreement between the police and UNHCR.

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## 6. Lodging the application and personal interview

The application process is described in detail in Art. 45 of the MHC-1, which stipulates that the application must be made by each person individually and in his/her own name; in cases of unaccompanied minors, a legal guardian must be present.

An application for a minor younger than 15 years must be submitted by his/her legal representative in his/her presence. Minors older than 15 years and unaccompanied minors must lodge an application in person in the presence of his/her legal representative.

The application primarily contains information on the personal data of the applicant and his/her relatives, travel countries, reasons for lodging, and special needs.

The competent authority, *ex officio*, establishes the applicant's personal number and temporary residence address and issues him/her with an international protection card, which in many cases is then the applicant's only identification document and allows applicants to move around Slovenia. The accepted application must be entered into registers, as provided in Art. 114 of the IPA.

Upon applying for international protection or lodging, the official provides the applicant an invitation for a personal interview, depending on the availability of officials and the category of the applicant. Vulnerable groups are given priority, as applicants are subject to an accelerated procedure for personal interviews. Art. 37 of the IPA stipulates that the official shall conduct personal interviews in a manner that enables the person to comprehensively present the reasons or personal circumstances in proceedings under this Act. In doing so, it shall consider the personal and other circumstances of the individual, including his/her cultural



background, gender, sexual orientation, identity, and vulnerability. The applicant is required to indicate all facts and circumstances which substantiate his/her fear of persecution or serious harm.

In practice, personal interviews vary widely, and for applicants with economic reasons, they are conducted promptly, as the applicants do not state much and the reasons are such that do not need detailed explanation. However, interviews with some applicants may take more than one day because they have complex stories that need to be further investigated by officials. In personal interviews, the importance of the attached documentation should also be explained, and the applicant should be encouraged to present his/her story in a manner that will enable a decision to be made in the procedure.

## 7. Eurodac and the Dublin procedure

The EU aims to serve as a unified international protection area. Therefore, the Dublin rules should clearly define the allocation of responsibilities between Member States to process applications for international protection.<sup>28</sup> The Dublin Regulation is transposed in some parts of the IPA, but as it is a Regulation, it is legally binding and must be applied in full by all countries without the need for transposition into national law, contrary to the directives, which must first be transposed into national law. This legislation sets out various grounds on which another Member State may be responsible for processing an application. Relevant grounds include whether the applicant has a family member in the other country, whether he/she has a visa or residence permit, and whether he/she has travelled legally or illegally through the other country or applied for asylum there. Under the Dublin Regulations, countries should reach an agreement on which country is responsible for examining the application, and the applicant must then continue his/her international protection procedures in that country. However, no one should be sent to a country with evidence of human rights violations. The applicant may appeal to an administrative court against the decision of the competent authority to transfer him/her to the Member State responsible. The applicant has the right to await a final decision in the country in which his/her case is pending.

Before accepting an application for international protection, applicants are photographed and dactyloscoped on the premises of the competent authority to implement Regulation 604/2013, which provides for the determination of the competent country for the examination of an individual application for international protection. Fingerprints are sent after the application is lodged to the Eurodac database, where the fingerprints of all applicants for international protection in the EU Member States are stored.

Fingerprints sent to the Eurodac database following an accepted application are stored for 10 years. The Eurodac database stores the fingerprints of all applicants who were 14 years or older on the date of their application and who

28 | Mozetic, 2016.

applied for international protection in the EU Member States and Norway, Iceland, Switzerland, and Liechtenstein. By sending the fingerprints to the database, the competent authority determines whether an applicant has already applied for international protection in another country. If an application has already been made, the process of establishing the Member State responsible for examining the application, known as the Dublin procedure, begins.

Each Member State may decide to process an application lodged by a third-country national or stateless person, even if such processing is not their responsibility, according to the criteria of the Regulation.<sup>29</sup>

By 2022, Slovenia had confirmed responsibility for handling requests in 1,693 cases, representing 65% of all requests for the assumption of responsibility. However, 257 applicants returned to Slovenia, representing 15% of all confirmed cases. However, the implementation of transfers was worse in cases in which Slovenia requested that other Member States assume responsibility for examining an application for international protection. Of the 1,401 requests, only 20 transfers were conducted, as the majority of applicants voluntarily left their accommodation prior to transfer, thus preventing their transfer to the responsible Member State or home country.

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## 8. Restriction of movement of asylum applicants and foreigners with issued return decision

### | 8.1. Asylum applicants

A competent authority may, by a decision based on Art. 84 of the IPA, restrict the movement of an applicant for international protection to the premises of an asylum home. If it is decided that it will not be possible to implement the restriction, the applicant's movement will be restricted to the area of the Centre for Foreigners, which is a closed police facility for foreigners awaiting removal from Slovenia.

This law lists the grounds for restricting movement: to verify or establish the applicant's identity or nationality in cases of manifest doubt; to establish certain facts on which the application for international protection is based, which could not be obtained without the measure imposed, and there is a well-founded risk that the applicant will abscond; where the applicant's movement is restricted because of return proceedings under the Act on the Entry, Stay, and Departure of Foreigners in Slovenia, it may be presumed that the applicant has applied solely to delay or obstruct the execution of the removal; when a threat to the security of the State or the constitutional order of Slovenia is being prevented, or when it is strictly necessary for the protection of personal safety, the security of property or

29 | Art. 17/1 of Regulation 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 (recast), *OJL 180*.

other comparable reasons of public order; in accordance with Art. 28 of Regulation 604/2013/EU.

Restriction of movement is a sensitive administrative action and requires fast and precise work by the officials of the competent authority and courts, as these procedures are urgent; therefore, the time limits for appeals and decisions are shorter. The measures referred to in paras. 1 and 2 of this Art. Shall be imposed orally on the applicant based on a record, in which the official shall inform the applicant of the reasons for the restriction, and the applicant shall be given the opportunity to comment on these allegations. The applicant shall immediately receive a record of the measure imposed, including the reasons for the measure. The record should be read to the applicant in a language which he/she understands. A written extract of the decision, that is, the decision to restrict movement, shall be issued by the competent authority within 48 hours of the oral pronouncement of the decision at the latest and shall be delivered to the applicant within three working days of the decision being issued, within which time the competent authority shall provide a translation into a language which the applicant understands. The applicant shall have the right to bring an action before an administrative court against the decision within three days of notification. After hearing the applicant verbally, the court decides on the action within three working days.

The new IPA added Art. 84a to Art. 84, which *inter alia* defines the risk of absconding as circumstances from which it may be reasonably assumed that the applicant will abscond if he/she has previously lodged an application in Slovenia or another EU Member State and has subsequently left it.

In many cases, the restriction of movement is also the only tool available to the Office for Migrant Care and Integration, which is responsible for the accommodation of applicants in the asylum centre and its branches when the police are unable to remove applicants for international protection for safety reasons, as defined in Art. 84(4)(1) of the IPA.

The implementation of the movement restriction was influenced by the decision of the Administrative Court of Slovenia,<sup>30</sup> in which the Court stated that the legislature of Slovenia has not transposed the provision of Art. 8(4) of the Reception Directive 2013/33/EU into the IPA-1, although it has recently intervened in this law and this systemic problem has been evident from the administrative and judicial practice for a long time, and owing to the non-fulfilment of the obligation laid down in the provision of Art. 2(n) of the EU Regulation No. 604/2013, the competent authority has been unable to conduct the detention for a long period of time in accordance with the provisions of Art. 2(n) of the EU Regulation No. 604/2013. However, this does not mean that the provision of Art. 8(4) of Reception Directive 2013/33/EU cannot be applied to detention procedures for applicants for international protection under Regulation (EU) No. 604/2013. Recital 20<sup>31</sup> of the said Regulation provides Member States a certain discretion, which is essentially

30 | Administrative Court of the Republic of Slovenia, Case I U 1731/2021-15.

31 | Which provides, *inter alia*, that, as regards general guarantees and conditions of detention, where applicable, the provisions of Directive 2013/33/EU should also apply to persons detained under the Regulation.

a responsibility in the sense that it is necessary to consider in each individual case whether a certain guarantee provided for in the provisions of the Reception Directive 2013/33/EU should also be considered in the case of detention under Regulation (EU) No. 604/2004. The Court further explains that the provision of Art. 8(4) of the Reception Directive 2013/33/EU is such a relevant case, since the 'condition' for detention under Art. 28(2) of EU Regulation No. 604/2013 is that the detention measure is proportionate and that 'other less coercive measures' cannot be effectively applied. The judgement explains that the concepts of 'alternatives to detention' and 'less coercive measures' are related but not identical. For example, detention in an Asylum Centre is less coercive than detention in a Foreigners Centre because of the different regimes, although it constitutes deprivation of liberty, whereas alternatives to detention must and, in terms of Art. 8(4) of the Reception Directive 2013/33/EU, constitute restrictions on liberties which do not amount to deprivation of liberty. The Court added that there is also no objective and justifiable basis for the proportionality of the interference with the right to liberty or freedom of the person under Regulation (EU) No. 604/2013 to have substantially different criteria for its application than the proportionality of such interference under Reception Directive 2013/33/EU, since in both cases, the applicant is an applicant for international protection. Moreover, in both cases, the detention may be of the shortest possible duration.<sup>32</sup> The alternatives to the detention regime provided in Art. 8(4) of the Reception Directive 2013/33/EU can undoubtedly serve the objective of the effective implementation of the EU Regulation No. 604/2013 and simultaneously serve to restrict the right to personal liberty in accordance with the principle of proportionality, which is enshrined in primary EU law (Art. 52(1)) of the Charter of Fundamental Rights of the EU in relation to the right enshrined in Art. 6 of the Charter of Fundamental Rights of the EU.

The Court concluded that the primary relevant criteria in the present case are the second<sup>33</sup> and third<sup>34</sup> criteria of refugee status in Art. 84a of the IPA-1 (and, to a limited extent, the criterion of the fifth<sup>35</sup> indent of the same provision. It found that the defendant had correctly applied the 'substantial risk of absconding' standard, since it had reached the conclusion that the applicant was absconding based on the individual statutory criteria and on an individual assessment of all the circumstances taken together.

Based on these and similar judgements, the practice has developed that the applicant must be a flight risk in Slovenia and that it is insufficient that he/she has not waited for the end of the procedure in other EU Member States, which is why

32 | Art. 9(1) Reception Directive 2013/33/EU; Art. 28(3) EU Regulation 604/2013.

33 | 'Circumstances which give rise to the presumption that a person will abscond if he has previously attempted to leave or has left the Republic of Slovenia arbitrarily'.

34 | 'Circumstances which give rise to the presumption that a person will abscond if he has previously lodged an application in another Member State of the European Union and has subsequently left it'.

35 | 'Circumstances giving rise to the conclusion that a person will abscond in a particular case shall be deemed to exist if he/she has given false information in the proceedings or has not cooperated in the proceedings'.

the restriction of movement in the implementation of Dublin procedures is rarely enforced in Slovenia.

### | **8.2. Foreigners with issued return decision**

The police<sup>36</sup> are responsible for imposing restrictions on movement to prepare for or conduct removal, surrender, or extradition proceedings; the police order foreigners to be restrained and accommodated in the centre, who are to be removed in accordance with the legal provisions, or returned, surrendered, or extradited to the competent authorities in accordance with an international treaty. For the person to be returned, a procedure must be conducted, as in the case of a return decision based on the Foreigners Act and the General Administrative Procedure Act. The police order the placement of foreigners in or outside the centre and his/her stay under strict police supervision by decision. Foreigners shall have the right to lodge an action against the decision on accommodation and the decision to order a stay under strict police control with the administrative court within three days of the notification of the decision. This action does not ensure enforcement of the decision. The Administrative Court must decide on an action within six days.<sup>37</sup>

Based on the Foreigners Act, the police issue decisions ordering foreigners who are in the process of being removed from the country to be restricted in their movements and accommodated in the Foreigners Centre when they consider that it is not possible to apply more lenient measures (to allow them to reside outside the Centre). An important aspect of the application of foreigner detention is that if the application of less lenient measures is insufficient, then the police are obliged to assess the proportionality of the detention measure in each specific case and are obliged to explain their assessment in a statement of reasons for the decision. The statement of reasons for the decision must include an explanation of the parties' claims and their submissions on the facts, the facts established and the evidence on which they are based, the reasons which were decisive for the assessment of each piece of evidence, a statement of the provisions of the legislation on which the decision is based, the reasons which, considering the facts established, make such a decision necessary, and the reasons why any of the parties' claims have not been upheld. By decision, the police may authorise foreigners to impose an alternative to detention and impose one or more obligations on him/her, the establishment

36 | Fundamental rights are an important topic included in the curricula of basic training for police officers. Simultaneously, regular case studies and refreshment trainings related to fundamental rights are performed at all levels (state, regional, and local). This is necessary because police have the right to intervene in fundamental rights secured by the law. Therefore, appeal, and efficient and credible monitoring of police activities are foreseen in the legal acts and simultaneously implemented through activities of various governmental and non-governmental agencies. Office of the Republic of Slovenia Ombudsman regularly supervises all measures related to rule of law and particularly police measures related to fundamental rights.

37 | Art. 78/3 of the Foreigners Act.

of a place of residence at a specific address, an obligation to report regularly to a police station, and the production of identity documents.<sup>38</sup>

In practice, police decisions are often flawed without a reason for the measure and assessment of the proportionality of the measure imposed. Police often do not indicate their decisions regarding the specific circumstances that make placement measures necessary. The Administrative Court has indicated these shortcomings in its judgements<sup>39</sup> for several years, drawing on the fact that lack of reasoning makes decisions unreviewable. Such unreviewable decisions constitute an absolute fundamental breach of the provisions of the procedure under the General Administrative Procedure Act,<sup>40</sup> that is, that the procedure prior to the administrative act was not in accordance with the rules of the procedure, and that this affected or could have affected the legality or correctness of the decision.

Restrictions on the movement of women, families, children, unaccompanied minors, the elderly, the seriously ill, and other vulnerable persons shall be provided separately in the centre to ensure adequate privacy. The restriction of movement may last only as long as it is necessary to achieve its purpose, but not longer than six months.

As provided for in the Foreigners Act,<sup>41</sup> if foreigners cannot be removed from the country for objective reasons after six months, the police can decide, owing to foreigners' non-cooperation in the removal procedure or delay in obtaining the necessary documentation from third countries, or if the identification procedure is ongoing, to extend the restriction of movement and accommodation in the centre or stay under stricter police supervision for a maximum of six months, provided that the conditions laid down in the law are fulfilled and there are reasonable grounds to expect that foreigners can be removed within that period. The other possibility is that the police impose on the foreigners permission to stay or an alternative to detention, whereby the foreigners shall be obliged to observe the rules of movement outside the area of the centre; otherwise, he/she may be reinstated in the centre. An action against the decision to extend the restriction of movement may be brought before the administrative court, which must decide on an action within eight days. The action shall not remain in the execution of the decision, extending the restriction of movement. In each case, the competent authority shall check every three months whether there remains grounds for restricting movement in the detention centre.

38 | Foreigners Act, Arts. 76/3, 81/2 and 85, Administrative Court Cases I U 1159/2019-12 and I U 459/2018-7.

39 | Administrative Court Cases I U 1159/2019-12, I U 392/2015, I U 151/2015 and I U 459/2018-7.

40 | General Administrative Procedure Act (Official Gazette of the Republic of Slovenia, No. 24/06 – official consolidated text, 105/06 – ZUS-1, 126/07, 65/08, 8/10, 82/13, 175/20 – ZIUOPDVE and 3/22 – ZDeb); ZIUOPDVE stands for Act on intervention measures to mitigate the effects of the second wave of the COVID-19 pandemic (Official Gazette of the Republic of Slovenia No. 175/20, 203/20 – ZIUOPDVE, 15/21 – ZDUOP, 51/21 – ZZVZZ-O, 57/2) and ZDeb stands for Law on de-bureaucratisation (Official Gazette of the Republic of Slovenia, No. 3/22).

41 | Foreigners Act, Arts. 81, 83, 73, 78, 79, 79a.

## 9. Decision-making in the asylum procedure

In the procedure for recognition of international protection, the competent authority assesses whether the applicant meets the conditions for recognition of international protection in Slovenia, relying on Art. 23 of the IPA, which requires that the information contained in the application, personal interview, the attached documentation, general and specific information on the country of origin, and documentation obtained by the competent authority be verified.

The conditions for granting international protection are decided in a single procedure, as set out in Art. 49 of the IPA, whereby the competent authority first assesses the conditions for granting refugee status and, only if they are not met, the conditions for granting subsidiary protection status. International protection in Slovenia refers to refugee and subsidiary protection status. Refugee status shall be granted to a third-country national who, owing to a well-founded fear of being persecuted for reasons of membership of a particular racial or ethnic group, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his/her nationality and is unable or, owing to such fear, is unwilling to avail himself or herself of the protection of that country, or to a stateless person who, owing to a well-founded fear of being persecuted for reasons other than those of his/her country of habitual residence, is outside the State of his/her nationality and is unable or, owing to such fear, is unwilling to return to that State.

Subsidiary protection status shall be granted to a third-country national or stateless person who does not qualify for refugee status if there are substantial grounds for believing that he/she would, on return to the country of origin or, if stateless, to the country of last habitual residence, face a well-founded risk of suffering serious harm, as defined in Art. 28 of the IPA.

In this procedure, the competent authority assesses the existence of any possible grounds for exclusion. If they are present, international protection is not granted to otherwise eligible persons. The grounds for exclusion are set out in Art. 31 of the IPA and are primarily related to the fact that the applicant is a security risk because of the commission of serious crimes or a danger to the security of the state.

The competent authority may either grant the application for international protection and grant refugee or subsidiary protection status or reject the application as unfounded in ordinary proceedings or as manifestly unfounded in accelerated proceedings, according to Art. 49 of the IPA, which regulates the decision-making of the competent authority.

In the decision-making process of granting international protection, the asylum seeker is the primary source of information on the situation in his/her country, forcing him/her to leave. In this procedure, he/she must credibly demonstrate and explain the circumstances which could be decisive in the substantiation of his/her application. However, sometimes, the applicant's story can be unbelievable for those living in a different world. By collecting information on the country of origin of the applicant for protection, we obtain a clearer picture of the reality

of the situation in his/her country. This information can help to better understand the circumstances surrounding the applicant's departure and the policies, socio-economic conditions, and practices of the authorities.

## 10. Vulnerable categories in asylum and return procedure

### | 10.1. Unaccompanied minors

According to Art. 16 of the IPA, unaccompanied minors have a legal representative in the procedure for obtaining international protection, who is also representative in the areas of health protection, education, and protection of property rights and benefits and in relation to the exercise of rights in the field of reception, until the enforceability of the decision issued in the international protection procedure.

Art. 18 of the IPA provides that in the case where, when examining an application for international protection, based on the opinion of official persons or persons involved in work with the unaccompanied minor, the age of the unaccompanied minor is in doubt, the competent authority may order an expert opinion for an age assessment.

The expert opinion referred to in the preceding para. shall be prepared by a medical expert who shall, if necessary, consult other relevant experts. In Slovenia, expert opinions are currently issued for the competent authority by the Institute of Forensic Medicine at the Faculty of Medicine in Ljubljana. To issue an expert opinion on the actual age of applicants for international protection, experts require dental X-rays of the individual applicant and X-ray images of both wrists and collarbones, which are obtained by an X-ray or magnetic resonance imaging.

Before the age assessment, each applicant has an interview where he/she can explain his/her age and medical examination before being referred for imaging. The IPA provides that, in case of doubt, the applicant should be considered a minor.

An examination to assess the age of an unaccompanied minor may be conducted only if he/she and his/her legal representative provide written consent. However, the following point of this Art. is relevant: if the unaccompanied minor and his/her legal representative do not consent to the examination for age assessment without a valid reason, the applicant will be considered an adult.

The unaccompanied minor and the family with the minor should be placed in a suitable accommodation for minors in agreement with the guardian of the unaccompanied minor. If this is not possible, the unaccompanied minor and the family with the minor should be placed in a centre. A minor accommodated in a centre shall be given the opportunity to engage in age-appropriate activities, including games and recreational activities, during his/her free time. Nevertheless, it must always be kept in mind that detention must be a measure of last resort and for the shortest appropriate period of time, for separated children and children with their parents or primary caregivers.



In Slovenia, a (pilot) project to accommodate unaccompanied minors was launched in 2016. The MI coordinates the project, and the Ministry of Education, Science, the Ministry of Labour, Family, Social Affairs and Equal Opportunities, and the MI determine the forms and content of professional work with unaccompanied minors. In principle, all unaccompanied minors are accommodated in suitable accommodations, and not in the detention centre.

Unaccompanied minors are the most vulnerable group of migrants and are provided with adequate accommodation, including 24-hour care, as required by their vulnerability. They should also be provided with round-the-clock professional treatment and separate and secure accommodation, which consequently means that the principle of the child's best interests should also be ensured and respected. This increases the adolescent's competence in selecting life options, lifestyles, and a value and normative system that enables him/her to integrate into society, and improves his/her guidance towards taking responsibility for his/her own life.

The Foreigners Act provides special arrangements for victims of human trafficking, illegal employment, and domestic violence residing illegally in Slovenia. The police, at the victim's request or ex officio, issue him/her permission to stay for 90 days to decide whether to participate as a witness in criminal proceedings for the offence of human trafficking. The same arrangement is possible for victims of illegal employment and domestic violence.

During their permitted stay, victims of human trafficking, illegal employment, and domestic violence have the rights guaranteed to foreigners with an authorised temporary stay under the law, and the right to free translation and interpretation. Police and NGOs must inform them of the possibilities and conditions for obtaining a residence permit and, in the case of victims of trafficking, illegal employment, and domestic violence who are unaccompanied minors, make every effort to contact their families at the earliest.

Permission to stay may be refused if the residence in Slovenia of a victim of human trafficking, illegal employment, or domestic violence would pose a threat to public order, security, or the international relations of Slovenia, or if there is suspicion that the victim's residence in the country will be connected with terrorism or other violent acts, illegal intelligence activities, the production of or narcotics trafficking, or the commission of other criminal offences.

## **11. Voluntary return and reintegration assistance**

The Commission adopted the EU Strategy on voluntary return and reintegration<sup>42</sup> in April 2021. This Strategy enhances voluntary returns and reintegration as fundamental instruments of the common EU system. An essential part of this Strategy is working towards an increase in the effectiveness and quality of return counselling. The process to achieve successful voluntary return begins

42 | COM/2021/120 final.

with customised outreach measures and consultation between counsellors and migrants. During the counselling session, the migrant receives timely, up-to-date, and relevant information on their status and the offer to receive voluntary return support. Voluntary return is a more cost-effective process, less problematic when it comes to readmission, and is also preferred by third countries. Moreover, it enables a more dignified return and, when coupled with appropriate support for returnees, may contribute to the development of the country of origin. Migrants, including asylum seekers, must be informed of the option of assisted voluntary return at an early stage and throughout the immigration procedures. Including information on assisted voluntary return in the asylum process was identified as a clear mid-term action in the EU Action Plans on return<sup>43</sup> that call on Member States, with the support of the Commission, to adopt a coherent approach to general practices to incentivise return.<sup>44</sup>

The four stages of return counselling are information and outreach, decision-making, pre-departure preparation, and post-arrival support. Return counsellors in Slovenia play a role in the first three stages, and post-arrival support is provided by reintegration partners in the country of origin. They provide migrants with general information about the options to stay in or be assisted in returning voluntarily to their home countries. They explain the conditions of eligibility and the assistance and benefits available under assisted voluntary return and reintegration programmes. They also focus on identifying and responding appropriately to any vulnerabilities and assessing whether the migrant is able to make an informed decision. When the decision is made to return, counselling becomes specifically tailored to an individual's situation. They organise returns and inform migrants prior to their departure about possible reintegration assistance and how to access it upon arrival in the country of return.

Slovenia is at the beginning of setting up return counselling, as described in the framework. Until April 2022, only one organisation provided return counselling in Slovenia – International Organisation for Migration (IOM). They provided this service for irregular migrants with issued return decisions, and asylum seekers. The cooperation stopped as MI and IOM had not prolonged the agreement and new solution had to be found. Slovenia joined the European Return and Reintegration Network (ERRIN)<sup>45</sup> programme, which was taken over by Frontex. From April 2022, the police, and Centre for Foreigners have been taking an active role in the Frontex Joint Reintegration Services programme and are using the data management system 'RIAT' – Reintegration Assistance Tool.<sup>46</sup>

The possibility of participating in the aforementioned assisted voluntary return programme is promoted to all foreigners in the return procedure accommodated in the Centre for Foreigners. Return counselling is available from June 2023, for persons with issued return decisions in the detention centre, and in

43 | COM(2015) 453 final, COM(2017) 200 final.

44 | COM/2021/120 final.

45 | European Return and Reintegration Network.

46 | Frontex 'Reintegration assistance' [Online]. Available at: <https://frontex.europa.eu/return-and-reintegration/reintegration-assistance/> (Accessed: 7 November 2023).

Slovenia. The group of third-country nationals that can benefit from assisted voluntary return and reintegration programmes should be widened, as stated in the EU Strategy, and should cover at least any illegally staying third-country national subject to a return decision, notably those subject to a return decision issued by the Administrative Units. Moreover, measures should be taken to further inform all target groups about the existence and possibility of using such programmes, including illegally staying third-country nationals not yet subject to a return decision and those undergoing procedures to obtain a permit or right to stay.

## 12. Issuance of return decisions and return procedures

### 12.1. Issuance of return decisions

The competent authority<sup>47</sup> which issues a decision regarding residence permits and refuses, rejects, or discontinues the procedure sets a deadline of 10 days for voluntary departures, and the same deadline is given to rejected asylum seekers. Other authorities which issue return decisions are the police, in case of an illegal stay, and the MI, after the asylum procedure is completed. The manner in which these procedures are conducted is laid down in the General Administrative Procedure Act<sup>48</sup> and special laws.

A return decision is issued to all foreigners who are illegally staying in Slovenia with the following exceptions: (a) if foreigners are apprehended or intercepted in connection with the irregular crossing of the border and have not subsequently obtained authorisation to stay; (b) if a foreigner is in the process of return or extradition under international treaties; and (c) if a foreigner has been subjected to a minor penalty or a minor sanction of expulsion from the country. If a foreign national is not admitted to the requested country based on an international agreement, a return decision is issued. A return decision shall not be issued even in case of refusal of entry at a border-crossing point.

The return decision imposes an obligation on illegally staying third-country nationals to leave Slovenia, the territory of the Member States of the EU, and the territory of the non-EU Member States which fully apply the Schengen rules. When such a decision is issued, it is accompanied by a pre-prepared translation. The chief elements of return decisions are translated into nine languages: Albanian, English, Arabic, French, Croatian, Chinese, Russian, Serbian, and Turkish. If foreigners do not understand any of the listed languages, written or oral translation is provided.

47 | The administrative unit in whose territory the foreigner resides (Foreigners Act, Art. 54, 55/6).

48 | General Administrative Procedure Act (Official Gazette of the Republic of Slovenia, No. 24/06 – official consolidated text, 105/06 – ZUS-1, 126/07, 65/08, 8/10, 82/13, 175/20 – ZIUOPDVE and 3/22 – Zdeb).

With the latest amendments to the Foreigners Act in 2021,<sup>49</sup> Slovenia has edited its chief solutions related to the complex migration crisis, Slovenian language skills, family reunification, sufficient means of subsistence, and Brexit. It has considered the recommendations of the European Commission<sup>50</sup> and regulated a uniform procedure regarding the time limits for voluntary departure and periods of entry bans. Slovenia transposed the provisions of Directive 2008/115/EC into its national legislation in 2011; however, since then, individual shortcomings have emerged in practice, which have been addressed by this amendment. The illegal residence of foreigners in Slovenia has been regulated and clearly defined, and has moved from a two-phase system of issuing acts to a one-phase system under which the police can directly enforce decisions of administrative authority if foreigners do not comply with them. Thus, the return decision sets the time limit for voluntary departure and removal measure. The latter shall be enforced in the event that foreigners fail to comply with the deadline for voluntary departures. As a result of the introduction of the one-step return decision system, the return decision also imposes a measure prohibiting entry, which is not enforced if foreigners have left the territory of the EU Member States or the territory of the state parties to the Convention on the implementation of the Schengen Agreement of 14 June 1985. Uniform action has also been regulated regarding the time limits for voluntary departure and entry bans.

In the process of issuing a return decision, foreigners are entitled to translation assistance when necessary. If a return decision is issued, they have the right to free legal advice, and in proceedings before the courts concerning the decision of the MI, they have the right to free legal aid. The law also provides for cases where foreigners are prohibited from entering the country through a return decision. It defines absurdity, introduces a longer time limit for appeals, and exempts foreigners from paying fees to lodge an appeal or administrative dispute against a return decision issued by the police, or a decision refusing to extend the time limit for voluntary departure. The return decision should be issued in writing on a form which follows the provisions of the General Administrative Procedure Act regarding its form and constituent parts. It shall be served to foreigners personally and a written or oral translation of the chief elements of the return decision shall be provided. As the police no longer issue a specific decision prohibiting the entry of an alien into the country, the data from the final return decision have already been entered into the Schengen Information System – SIS II.

The law introduced a fixed period of 10 days for voluntary departure, which may be extended on request or on the court's own motion for justified reasons, and the burden of proof of the obligation to leave is on foreigners. There are also consequences in the event of non-compliance with the deadline for voluntary

49 | Act on Amendments and Additions to the Foreigners Act (ZTuj-2F), adopted by the National Assembly of the Republic of Slovenia at its session on 30 March 2021, published in the Official Gazette of the Republic of Slovenia No. 57/21.

50 | Council Implementing Decision setting out a recommendation on addressing the deficiencies identified in the 2019 evaluation of Slovenia on the application of the Schengen acquis in the field of the management of the external borders, No. ST 97692020 INIT.

departure.<sup>51</sup> These provisions were introduced to encourage foreigners to leave Slovenia or the territory of the EU Member States or the Contracting States to the Convention of 14 June 1985 implementing the Schengen Agreement. The proposal regulates the removal of a third-country national who has been subjected to an expulsion measure imposed by another EU Member State, and is present in Slovenia.

Regarding the issuance of return decisions in relation to the principle of non-refoulement, the European Court of Justice on 6 July 2023, issued a preliminary ruling<sup>52</sup> on the question whether the provisions of Directive 2008/115, and in particular Arts. 5, 6, 8 and 9 thereof, preclude a national legal situation under which a third-country national is to be subject to, a return decision must be issued against a third-country national whose right to reside as a refugee, which he/she had until that time, is withdrawn by the revocation of his/her asylum status even if it is clear at the time when the return decision is issued that removal is not permanently permissible on grounds of the principle of non-refoulement and that is established in a manner which makes it possible for that decision to become final and enforceable. The Court of Justice held that Art. 5 of Directive 2008/115/EC must be interpreted as precluding the adoption of a return decision with respect to a third-country national, where it is established that his/her removal of the country of intended return is precluded based on the principle of non-refoulement for an indefinite period.

This judgement underlines the importance of the principle of non-refoulement, which is absolute and must be respected by Slovenian decision makers. However, that judgement, which states, in para. 52, that Art. 5 of the Directive must be interpreted as precluding the adoption of a return decision against a third-country national if it is established that his removal to the intended country of return is precluded based on the principle of non-refoulement for an indefinite period of time, raises the question of the correct implementation of the provision in Art. 73(1)(2) of the Foreigners Act relating to the permission to stay. The first para. of Art. 73 of the Foreigners Act provides that foreigners must first be issued with a return decision imposing an obligation to leave the EU Member States and the Schengen area, and only then may foreigners be issued with a decision which allows him/her to stay in Slovenia, as set out in Art. 72 of the Foreigners Act.<sup>53</sup>

51 | One can be refused a visa and a residence permit not issued for family reunification for a period of three years. The issue of a visa and a residence permit not issued for family reunification for a period of three years shall also be refused to an alien who enters Slovenia despite a valid entry ban.

52 | Case C-663/21, OJ C 73/10.

53 | The principle of non-refoulement under this act and in accordance with the principles of customary international law implies the obligation of Slovenia not to remove a foreigner to a country where his/her life or freedom would be threatened because of his/her race, religion, nationality, membership of a particular social group or political opinion, or to a country where he/she would be likely to be subjected to torture or other cruel, inhuman or degrading punishment or treatment.

### | **12.2. Return procedures with unaccompanied minors**

When an unaccompanied minor is undergoing a police procedure, the police act in accordance with the provisions of the Protocol on cooperation between social work centres and the Police in providing assistance to unaccompanied foreign minors. In proceedings involving unaccompanied foreign minors, the police immediately inform the competent social work centre, which appoints a guardian for the minor. The guardian shall look after the minor's best interests throughout the procedure. If the minor's best interest is to return to his/her country of origin, a return decision must be issued, as provided for in the Foreigners Act.

The Foreigners Act stipulates that minor foreigners who are not accompanied by parents or legal representatives may not be deported to their country of origin or to a third country which is willing to accept them until reception is ensured. Prior to deporting a foreign minor, it must be ascertained whether the minor will be returned to a family member, nominated guardian, or adequate reception facilities in the country of return. The police may only deport an unaccompanied minor after the special-case guardian, carefully considering all circumstances, has established that this is in the best interest of the unaccompanied minor. In the past two years, no unaccompanied minor has returned to his/her country of origin or to a neighbouring country based on bilateral agreements.

### | **12.3. Establishing identity and obtaining travel documents**

Establishing identification and obtaining travel documents are essential steps in the return process. If a person does not possess a valid travel document, it must be obtained through a competent representative of his/her country. In certain cases, a European Return Document (*laissez-passer*) under Regulation (EU) 2016/1953 can be issued.

The identity is sought and confirmed with the help of foreign diplomatic and consular missions in Slovenia and abroad. In cooperation with countries that do not have their own missions in Slovenia, most cooperation occurs through Slovenian missions in Austria, Hungary, Italy, and Germany. An increasing number of third countries are introducing Return Case Management System (RCMS) identification systems. Slovenia uses RCMS Bangladesh and Pakistan, both of which are actively used and have proven to be useful and effective.

The Police actively use liaison officers, for example, to obtain transit consent, identification documents for foreigners in return procedures, and information on the status of foreigners in EU and third countries. Slovenia has liaison officers in Italy, Austria, Croatia, Bosnia and Herzegovina, Montenegro, North Macedonia, and Serbia. For third countries, European Return Liaison Officers<sup>54</sup> are used.

54 | A specialised liaison officer deployed to third countries for representing European Union return interests by verifying the identity of irregularly staying third-country nationals, capacity building in the field of return, supporting the organisation of joint return operations under coordination of the European Border and Coast Guard Agency (Frontex) and to facilitate the implementation of reintegration and post-arrival assistance. [Online] Available at: [https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/european-return-liaison-officer-eur-lo\\_en](https://home-affairs.ec.europa.eu/networks/european-migration-network-emn/emn-asylum-and-migration-glossary/glossary/european-return-liaison-officer-eur-lo_en) (Accessed: 7 November 2023).

The pre-return stage varies in length depending on the individual circumstances of the persons concerned and depends on whether they are in possession of an identification document, a copy of a document, or other documents that can help to speed up the issue of a travel document; whether or not they are participating in the return procedure; which country they come from, as third countries are differently responsive; and so on. These procedures are also conducted for foreigners who have been issued a return decision without a time limit, but whose movement is not restricted for various reasons.

| **12.4. Return**

For foreigners whose identity is known, who are in possession of a valid travel document, and are issued with the return decision, the return operation is organised. Return operations are performed with or without escorts (there are several of the latter) on scheduled flights or as part of joint return operations. Police, Foreigners Centre, which is one of the sectors within the Uniformed Police Directorate of the General Police Directorate, is responsible for organisation of return operations via air and land; in some cases, particularly the simpler ones, return operations by land are also organised by police stations. Returns via the sea are not conducted.

Each case is treated individually. Once all the information about the previous procedures has been gathered and the person has been interviewed, a decision is made on what type of return operation will be organised. Foreigners can decide at any time and, despite having been issued a return decision with an entry ban, can be included in a voluntary return and reintegration programme.

The bilateral or multilateral cooperation agreements Slovenia has with EU Member States, Schengen associated countries and third countries in the field of return and readmission are the following: Austria, Belgium, Luxembourg, the Netherlands, Bulgaria, Croatia, Denmark, Estonia, France, Greece, Italy, Latvia, Lithuania, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia, and Serbia. The Slovenian police also agreed with the UNHCR on monitoring border procedures, including access to international protection and respect for fundamental rights.

For return and readmission, Slovenia also applies the readmission agreements concluded by the EU to the following third countries: Hong Kong, Macao, Sri Lanka, Albania, Russia,<sup>55</sup> Ukraine, North Macedonia, Bosnia and Herzegovina, Montenegro, Serbia, Moldova, Pakistan, Georgia, Armenia, Azerbaijan, Turkey, Cape Verde, and Belarus, and legally non-binding readmission agreements with Afghanistan, Guinea, Bangladesh, Ethiopia, Gambia, and Ivory Coast.

The agreements most commonly used are those concluded with neighbouring countries to surrender persons for whom a return decision has not yet

been issued (exception to Art. 2(2)).<sup>56</sup> There has been a case in 2020<sup>57</sup> in which the Administrative Court found a violation of the return of a person under an agreement between Slovenia and the Republic of Croatia,<sup>58</sup> when the person was returned to Croatia. The police violated the applicant's right to the prohibition of refoulement under the Charter of Fundamental Rights of the EU regarding protection in the event of removal, expulsion, or extradition, and the right of access to the asylum procedure under Art. 18 of the EU Charter of Fundamental Rights. It was obliged to allow the applicant to enter Slovenia and lodge an application for international protection without delay after the judgement had become final. The acts or omissions which followed in the police proceedings were the manner in which the interview with the applicant was conducted at the time of the imposition of the offence, when the applicant was not dealt with individually in accordance with the prohibition of collective expulsion, so as to enable the police to verify and assess the personal circumstances of the foreigner in a valid and objective manner, or to enable the foreigner to defend himself with arguments against the measure of return or removal from the country; the applicant was not provided the opportunity in the course of those proceedings to be accompanied by an interpreter, to have access to legal assistance in connection with the conduct of the return proceedings and to be informed of the return proceedings in Croatia or of the consequences of those proceedings, and was handed over to Croatia at the end of the proceedings. Ombudsman, as the National Human Rights Institution in Slovenia (NHRI), also intervened in this case with the *amicus curiae* opinion to the Administrative Court of Slovenia regarding a case of chain returns from Slovenia through Croatia to Bosnia and Herzegovina, which he criticised.<sup>59</sup>

Forced removal of foreigners is a repressive measure taken by a State to assert its sovereignty over its territory, ensure respect for its borders, and prevent and sanction illegal immigration and residence, and is therefore in the public interest. The removal of foreigners from a country is an enforcement action resulting from an issued and enforceable decision<sup>60</sup> which means that the police bring such foreigners to the state border and send him/her across the

56 | Member States may decide not to apply this Directive to third-country nationals who: (a) are subject to a refusal of entry following Art. 13 of the Schengen Borders Code, or who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea, or air of the external border of a Member State and who have not subsequently obtained authorisation or a right to stay in that Member State.

57 | Administrative Court Case I U 1686/2020-126.

58 | Act on the Ratification of the Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia on the Extradition and Receipt of Persons whose Entry or Residence is Illegal (Official Gazette of the Republic of Slovenia – International Treaties, No. 8/06).

59 | Human rights ombudsman (2021) 'In the context of the ENNHRI project, the ombudsman draws up a national report on the human rights situation of migrants at the borders' *Human rights ombudsman*, 31 August [Online]. Available at: <https://www.varuh-rs.si/en/news/news/in-the-context-of-the-ennhri-project-the-ombudsman-draws-up-a-national-report-on-the-human-rights-s/> (Accessed: 7 November 2023).

60 | In accordance with para. 3 of Art. 69, Foreigners Act.



border or hand him/her over to the authorities of a third country. Only foreigners who have not left the country within the time limit set for their voluntary return, foreigners who have not been granted an extension of the time limit for their voluntary return, foreigners who have been subject to an entry ban, and foreigners who have been subjected to a secondary sanction of expulsion from the country may be removed<sup>61</sup> from the country. The principle of non-refoulement<sup>62</sup> should be respected.

The top three reasons for failed returns are last-minute asylum application, non-cooperation in identification procedures and lack of personal/travel documents, and poor or close to existing practical cooperation in the framework of non-voluntary returns with some third countries (lack of bilateral agreements). The three most common reasons for conducting forced returns are the risk of absconding, failed handover in accordance with bilateral readmission agreements, and non-compliance with the deadline for voluntary return.

**| 12.5. Monitoring mechanism of forced returns**

In Slovenia, monitoring is conducted pursuant to the provisions of Directive 2008/115/EC and the Foreigners Act. The obligation to monitor the removal of foreigners is conducted by a selected NGO or other independent institution during all police activities aimed at removing foreigners from the country, including the pre-departure period, the period of flight or other modes of travel, the transit stops, and the arrival and reception of foreigners in the country of return. The police inform the selected monitoring contractor of the planned removal and decide whether and to what extent to monitor a specific removal. The police shall consider the findings of the selected organisation or institution referred to in the preceding para., which would demonstrate violations of human rights or fundamental freedoms, in the complaints procedure laid down in the law governing the tasks and powers of the police.

Fundamental rights monitoring is an essential tool for fundamental rights protection. Thus, an effective and independent fundamental rights monitoring system has a preventive effect. This reduces the risk of fundamental rights violations and enhances victims' protection. Moreover, it protects the State and its institutions against false accusations of breach of fundamental rights obligations. Monitoring must serve its purpose and provide the basis for action in certain situations. This includes the findings of shortcomings and recommendations for the better implementation of fundamental rights provisions.

61 | In accordance with para. 1 of Art. 69, Foreigners Act.

62 | Not to remove a foreigner to a country where his/her life or freedom would be threatened on account of his/her race, religion, nationality, membership of a particular social group or political opinion, or to a country where he/she would be likely to be subjected to torture or other cruel, inhuman, or degrading punishment or treatment.

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## 13. Conclusion

This study presented the complexity of migration that needs to be regulated, along with return procedures in Slovenia for irregular migrants and rejected asylum applicants, and explained how they are interlinked. Further, all relevant regulations and procedures and case laws, which have an important influence on the development of legislation and area mandatory component of Slovenian law, were presented.

Slovenia has abolished controls on its internal land, sea, and air borders with EU Member States since joining the Schengen area in 2007. The country has internal Schengen borders with all four<sup>63</sup> neighbouring countries since 1 January 2023, when Croatia, as the last EU Member State, joined the Schengen area. Slovenia is bound by common European law, but it is also at the mercy of its own decisions, those of its neighbours, and those of the countries along the Balkan migration route. All these decisions create an area that is increasingly in the public eye and the subject of political struggles, while simultaneously dealing with people who want to create better opportunities in life for themselves and their families.

During the period of mass arrival of migrants in Slovenia from 16 October 2015 to 9 March 2016, a total of 477,791 migrants crossed the country,<sup>64</sup> representing 23% of the total population of Slovenia. Countries to the north of Slovenia also introduced controls at the internal borders of the Schengen area with the aim of restricting the entry of migrants seeking international protection, and certain internal controls introduced at that time remain in place today, such as controls at the border between Austria and Slovenia.

Instability in the countries along the Balkan route and uncertainty about the implementation of the EU-Turkey deal, which prevents many migrants from continuing their journey to Europe, and political developments in the Middle East and Africa, have led to constant concerns regarding international protection in the future.

Since 2015, the EU has been working towards a sufficient migration and asylum policy. These include improving the control of external borders and migration flows; developing an effective, humanitarian, and safe migration policy; negotiating with third countries; reforming the asylum system; saving lives; reducing incentives for irregular migration; providing more legal channels for asylum seekers; providing more effective legal options for legal migrants; and dismantling human smuggling and trafficking networks.

The return procedure in Slovenia is strongly linked to international protection procedures because the vast majority of foreigners who enter Slovenia illegally, express their intentions to apply for international protection. Therefore, this study discussed the procedures for persons who express their intention to apply for international protection in Slovenia and the procedures laid down by foreign legislation. The institution of international protection is often abused, as most

63 | Austria, Italy, Hungary, Croatia.

64 | Sardelić, 2017.

people do not wait for a decision on their application but continue their journey to other Member States.

Slovenian legislation considers and regulates migration-related issues in accordance with the EU standards. Compliance with these standards is reflected in their implementation and, ultimately, judicial tests. One example is that notwithstanding the fact that the provisions of the Return Directive were (imperfectly) transposed into Slovenian national law as early as 2011, the courts, when deciding cases in this area, have directly referred to it and the Return Manual<sup>65</sup> and have considered the relevant case law.

The procedures for the extradition of an applicant for international protection who has already applied for such protection in another EU Member State and is in the process of being transferred under the Dublin Regulation, and the procedures for returning an illegally staying alien who has been issued with a return decision, are described in detail, and the relevant case laws are highlighted. The latest amendments to the law are recent and consider the recommendations made by the European Commission in the last Schengen evaluation and address the shortcomings identified together with Slovenian case law.

Special attention is given to vulnerable categories, particularly unaccompanied minors, whose best interests must always be at the forefront and whose rights are, therefore, specifically defined and protected in Slovenian legislation, both in the International Protection Act and in the Foreigners Act. The latter continues to allow for accommodation in the Centre for Foreigners under specific conditions, however, as an exception and not a normal procedure.

The provisions of the Foreigners Act that voluntary return takes precedence over forced return and that each person is provided the opportunity to make an informed decision on their return to the country of origin are in accordance with EU strategies and guidelines. It is essential that as many people as possible are informed about these options; assistance, financial and in kind, can be decisive for a person's return. Sustained return and reintegration support are of utmost importance.

The most effective return is sustainable, and dignified, and provides appropriate support for the returnees. Every person issued with the return decision should be able to make an informed decision about the return and should get the maximum possible support and assistance for reintegration. A coordinated approach to common practices for promoting voluntary returns and implementing effective return measures should be adopted among all EU Member States.

Cooperation and collaboration among all stakeholders, is essential. Safeguards are crucial in delicate and important procedures. To better regulate migration and related issues, many legal provisions have been changed recently based on court decisions.

The State is obliged to ensure that individuals who are subject to a return decision, leave the territory of the EU countries and the Schengen area or are returned to another Member State under the Dublin Regulation, and therefore have various

65 | European Commission Recommendation No. 2017/2338 of 16 November 2017, OJ 2017 L 339/83.

measures at its disposal. It is realistic to expect that individuals will refuse to return, regardless of the options offered. In these cases, the State may resort to extreme measures such as detention for removal and identification, and persons may be accompanied by staff trained for this purpose when organising return operations. All escorted-return operations are subject to monitoring.

However, not all third countries cooperate in readmitting their nationals, and the procedures for establishing identity and issuing the necessary travel documents can be lengthy. This constitutes an external dimension that must be considered in the implementation and design of migration policies or the concept of integrated border management.

The obligation to respect human rights is enshrined in all legal instruments, and the principle of non-refoulement<sup>66</sup> is a fundamental component of the prohibition of torture and cruel, inhuman, or degrading treatment or punishment, and applies to all persons, regardless of their legal status. These provisions do not allow for any derogations, exceptions, or limitations.

Although Slovenia has defined respect in its legislation, such as the International Protection Act and the Foreigners Act, its implementation has been deficient, as illustrated in the case law art. This principle is absolute and must be respected in all cases. Member States (Case C-633/21) cannot remove, expel, or extradite an alien or an applicant for international protection where there are reasonable grounds for believing that, if returned to the country of origin, he/she would face a well-founded risk of being subjected to torture and inhuman or degrading punishment or treatment, irrespective of the behaviour of the person concerned. The aforementioned judgement raises the question of the correct implementation of the provision in Arts. 73(1) and (2) of the Foreigners Act relating to permission to stay. The first para. of Art. 73 of the Foreigners Act provides that foreigners must first be issued with a return decision imposing an obligation to leave the EU Member States and the Schengen area, and only then may foreigners be issued with a decision which allows him/her to stay in Slovenia, as set out in Art. 72 of the Foreigners Act.

There must be agreement on mechanisms for all these procedures, avenues of redress, and effective protection and return systems. It is essential to preserve accessibility to asylum procedures, dignity, rights, and equality before applying for international protection. The return of those who have been issued with a return decision is linked to the external dimension because these procedures require the cooperation of third countries. Here, it is necessary to continue investing in their development in various areas with the aim of improving the standard of living in the countries of origin.

66 | Art. 7 of the 1966 International Convention on Civil and Political Rights, Art. 3 of the 1984 United Nations Convention against Torture and Art. 3 of the European Convention of Human Rights (ECHR) – as interpreted by the European Court of Human Rights.

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