

L'UDMILA ELBERT\*

## Irregular Migrants in the Slovak Republic: Return and Readmission

- **ABSTRACT:** *Not long ago, the Slovak Republic was in the position of being a country of origin of irregular and regular migrants seeking opportunities in countries of the Western Hemisphere. After the accession of the Slovak Republic to the European Union (EU), it has mainly become a transit country not only for asylum seekers, but also for irregular migrants trying to reach wealthier countries, such as the USA, Germany, France, or Great Britain. Moreover, as a member of the Schengen area, the Slovak Republic has an obligation to secure its external border with Ukraine. However, border control management within the Schengen area is not leak-proof, and this is not only the case for the Slovak Republic. To address irregular migration, the Slovak Republic cooperates with other EU Member States and third countries. The cooperation is not always smooth and oftentimes fails, as evidenced by readmission agreements. Based on the analysis of the judicial review, we conclude that although Slovakia's procedures of detention, return, or readmission are not perfect, the issues of readmission or return of foreigners do not cause security problems for the Slovak Republic. Rather, it creates legal issues regarding the violation of the national or international law obligations; this is because, in case of an incorrect decision, a migrant may possess various rights at the time of detention according to her/his status. However, the final section of the study analyses statistical numbers that confirm that the Slovak Republic still holds the position of a transit country. Controlling the persons who stay illegally within the territory of the Slovak Republic (after the expiration of the permission to stay) and illegally cross its internal borders to or from other states in the Schengen area remains to be the main focus of the Slovak return and readmission policy.*
- **KEYWORDS:** irregular migrant, expulsion, return, readmission, asylum seeker, detention

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## 1. The Slovak Republic in the world of migration

The Slovak Republic addresses the topic of migration through policies prepared by its government. On 8 September 2021, the government approved the Migration Policy of the Slovak Republic (hereinafter referred to as the ‘Migration Policy’), which is valid until 2025.<sup>1</sup> The policy pays particular attention to the areas of irregular migration and borders, readmission agreements, and returns. Accordingly, the government has expressed its ambition to cooperate with the other EU Member States, countries of transit, and countries of origin in their fight against irregular migration.

In the area of irregular migration and borders, the Migration Policy focuses on activities for securing the external Schengen borders and aims to reduce the potential for the irregular entry of individuals. Secured external borders may eliminate the potential for abuse of the irregular migration issue in the foreign policies of certain transit countries; they may use this method to promote their political or economic position as ‘migration hubs’ on the migration routes to Europe. Therefore, cooperation with transit and origin countries in addressing irregular migration and supporting their capacities to eliminate irregular migration flows to Europe are crucial.

Readmission agreements as well as return and reintegration policies form an inseparable part of the Migration Policy aiming to combat irregular migration. If the nature of the case permits, the Migration Policy prefers voluntary return, including assisted voluntary returns, over enforced return. In the practical implementation of assisted voluntary returns, state organs of the Slovak Republic cooperate with international organisations and non-governmental organisations (NGOs). Repressive measures like forced returns are implemented only in cases where a foreigner does not adhere to the Slovak legal system. Forced returns are implemented only after all means to ensure a foreigner’s compliance with the decision of the administrative or judicial organ about her/his departure from the Slovak territory has been exhausted. The Migration Policy, effective until 2025, defines eight priorities: 1. To establish new or revise current readmission agreements and their implementing protocols; 2. to promote cooperation with the representative bodies of the third countries whose nationals are most often expelled or with whom problems regarding the realisation of expulsion persist; 3. to secure an effective control system for checking the fulfilment of the conditions of assisted returns; 4. to carry out returns in accordance with the legislation and recommendations of the EU, with a preference for voluntary assisted returns;

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1 Ministerstvo vnútra SR: *Migračná politika Slovenskej republiky s výhľadom do roku 2025* [Online]. Available at: <https://www.minv.sk/?zamer-migracnej-politiky-slovenskej-republiky&subor=419162> (Accessed: 30 June 2023).

5. to ensure the proper enforcement of judicial and administrative expulsions; 6. to carry out joint controls of the employment subjects, secure regulation and monitoring of the employment fields, and identify undeclared work and illegal employment; 7. to promote negotiation of the EU readmission agreements; and 8. to sustainably pursue the improvement of readmission cooperation, prioritising the external relations of the EU with the third countries that currently have insufficient cooperation.

Priorities in this field are based on the National Strategy on Integrated Border Management for the years 2019 to 2022 (hereinafter referred to as the 'National Strategy').<sup>2</sup> It was adopted in accordance with the Regulation (EU) No. 2019/1896 of the European Parliament and of the Council.<sup>3</sup> In its fight against irregular migration, the National Strategy covers cooperation policies with third countries to secure Schengen borders and the return of third-country nationals. As the border between the Slovak Republic and Ukraine forms an external border of the Schengen area, the key element to secure its borders is cooperation with the state organs of Ukraine (especially with the Ukraine's state border service). Specific procedures of intensive cooperation were negotiated in the Agreement between the Slovak Republic and Ukraine on the regime on the Slovak-Ukraine state border, considering cooperation and mutual assistance in border matters.<sup>4</sup> Regular meetings of the states' representatives for borders lead to a mutual exchange of information, assessment of the current border situation, and a prompt solution for any incidents and issues. However, the Slovak Republic also cooperates with countries of the Western Balkan route, where Slovak policemen help to secure the borders of Serbia and Macedonia. To solve the problem of irregular migration, the Slovak Republic works with international organisations such as the International Organisation for Migration (IOM)<sup>5</sup> and United Nations High Commissioner for Refugees (UNHCR; humanitarian transfers), International Centre for Migration Policy Development (early warning; fight against the fundamental causes of the migration; harmonisation of the measures for entrance control; and coordination of foreign, asylum, and refugee policies), and the Organization for Security and Co-operation in Europe (security of borders and borders management).

As one of the crucial means of fighting irregular migration, the National Strategy presents a return procedure of irregular migrants, mainly by the institute

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2 Ministerstvo vnútra Slovenskej republiky, 2019. This strategy has been already upgrated for the years 2023 to 2026. See Ministerstvo vnútra Slovenskej republiky, 2022.

3 Regulation (EU) No. 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No. 1052/2013 and (EU) No. 2016/1624 (OJ L 295, 14 November 2019, pp. 1–131).

4 Oznámenie Ministerstva zahraničných vecí Slovenskej republiky č. 2/1995 Z.z. o uzavretí Zmluvy medzi Slovenskou republikou a Ukrajinou o režime na slovensko-ukrajinských štátnych hraniciach, spolupráci a vzájomnej pomoci v hraničných otázkach.

5 IOM, 2023.

of readmission, as one of the sanction mechanisms. Readmission agreements cover the conditions of the transfer and admission of persons who enter or are staying within the territory of the Slovak Republic illegally. Readmission agreements create a legal framework for their removal and establish an obligation to readmit a third-country national,<sup>6</sup> as the readmission agreements guarantee the return of irregular migrants to their country of origin or to transit countries.<sup>7</sup>

The readmission policy of the Slovak Republic is in accordance with those of the EU, and the Slovak Republic is bound by the readmission agreements between the EU and third countries. Based on the authorisation contained therein, the Slovak Republic is entitled to negotiate bilateral protocols for the implementation of such agreements between the Slovak Republic and third countries. Eight such bilateral protocols are currently in force. However, the Slovak Republic is also entitled to negotiate its own readmission agreements with third countries. According to the National Strategy for the years 2023 to 2026, the Slovak Republic is a contracting party to fourteen bilateral readmission agreements with other EU member states, two agreements with the states of the European Economic Area, and one agreement with a third country.<sup>8</sup> Bilateral readmission agreements with other third countries do not stay in force after the conclusion of readmission

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6 Giuffré, 2020, p. 186.

7 Velluti, 2016, p. 160.

8 Protocol between the Slovak Republic and Austria: the Notification of the Ministry of Foreign Affairs of the Slovak Republic on conclusion of the Agreement between the Government of the Slovak Republic and the Federal Government of the Republic of Austria on Changes and Amendments to the Protocol on the Implementation of the Agreement between the Government of the Slovak Republic and the Federal Government of the Republic of Austria on the Readmission of Persons Entering the Territory of the State Illegally (Readmission Agreement) of 20 June 2002; published in the Collection of Laws of the Slovak Republic under No. 347/2008.

Protocol between the Slovak Republic and Albania: the Notification of the Ministry of Foreign Affairs of the Slovak Republic on conclusion of the Protocol between the Ministry of Interior of the Slovak Republic and the Ministry of Interior of the Republic of Albania on the Implementation of the Agreement between European Community and the Republic of Albania on the Readmission of Persons Entering the Territory of the State Illegally (Readmission Agreement) of 14 April 2005; published in the Collection of Laws of the Slovak Republic under No. 150/2010.

Protocol between the Slovak Republic and Russia: the Notification of the Ministry of Foreign Affairs of the Slovak Republic on conclusion of the Protocol between the Government of the Slovak Republic and the Government of the Russian Federation on the Implementation of the Agreement between European Community and the Russian Federation on the Readmission of 25 April 2006; published in the Collection of Laws of the Slovak Republic under No. 284/2010.

Protocol between the Slovak Republic and Moldova: the Notification of the Ministry of Foreign Affairs of the Slovak Republic on conclusion of the Protocol between the Government of the Slovak Republic and the Government of the Moldova on the Procedure to Implement the Agreement between European Community and the Moldova on the Readmission of Persons Residing without Authorisation of 10 October 2007; published in the Collection of Laws of the Slovak Republic under No. 354/2010.

agreements at the EU level. Such EU agreements have also replaced the readmission agreement between the Slovak Republic and Ukraine. Based on the National Strategy, the need to negotiate new readmission agreements or protocols depends

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Protocol between the Slovak Republic and Serbia: the Notification of the Ministry of Foreign Affairs of the Slovak Republic on conclusion of the Protocol between the Government of the Slovak Republic and the Government of the Republic of Serbia on the Implementation of the Agreement between European Community and the Republic of Serbia on the Readmission of Persons Residing without Authorisation of 18 September 2007 signed in Brussel; published in the Collection of Laws of the Slovak Republic under No. 76/2011.

Protocol between the Slovak Republic and Switzerland: the Notification of the Ministry of Foreign Affairs of the Slovak Republic on conclusion of the Protocol on the Implementation of the Agreement between the Government of the Slovak Republic and the Swiss Federal Council on the Readmission of Persons Residing without Authorisation; published in the Collection of Laws of the SR under No. 104/2011.

Protocol between the Slovak Republic and Montenegro: the Notification of the Ministry of Foreign and European Affairs of the Slovak Republic on conclusion of the Protocol between the Government of the Slovak Republic and Government of the Montenegro on the Implementation of the Agreement between the European Community and the Republic of Montenegro on the Readmission of Persons Residing without Authorisation; published in the Collection of Laws of the Slovak Republic under No. 107/2013.

Protocol between the Slovak Republic and Hungary: the Notification of the Ministry of Foreign and European Affairs of the Slovak Republic on conclusion of the Protocol between the Ministry of Interior of the Slovak Republic and the Ministry of Interior of the Republic of Hungary on the Implementation of the Agreement between the Government of the Slovak Republic and the Government of the Republic of Hungary on the Readmission of Persons on common border signed in Budapest of 12 September 2002; published in the Collection of Laws of the Slovak Republic under No. 370/2014.

Readmission agreement between the Slovak Republic and Hungary: the Notification of the Ministry of Foreign and European Affairs of the Slovak Republic on conclusion of the Agreement between the Government of the Slovak Republic and the Government of the Republic of Hungary on Changes and Amendments to the Agreement Between the Government of the Slovak republic and the Government of the Republic of Hungary on the Readmission of Persons on common border signed in Budapest of 12 September 2002; published in the Collection of Laws of the Slovak Republic under No. 184/2015.

Protocol between the Slovak Republic and Macedonia: the Notification of the Ministry of Foreign and European Affairs of the Slovak Republic on conclusion of the Protocol between the Government of the Slovak Republic and the Government of the Republic of Macedonia on the Implementation of the Agreement between European Community and the Republic of Macedonia on the Readmission of Persons Residing without Authorisation; published in the Collection of Laws of the Slovak Republic under No. 109/2015.

Protocol between the Slovak Republic and Georgia: the Notification of the Ministry of Foreign and European Affairs of the Slovak Republic on conclusion of the Protocol between the Government of the Slovak Republic and the Government of the Georgia on the Implementation of the Agreement between European Union and the Georgia on the Readmission of Persons Residing without Authorisation; published in the Collection of Laws of the SR under No. 124/2016.

Protocol between the Slovak Republic and Bosna and Herzegovina: the Notification of the Ministry of Foreign and European Affairs of the Slovak Republic on conclusion of the Protocol between the Government of the Slovak Republic and the Council of Ministers of Bosnia and Herzegovina on the Implementation of the Agreement between European Community and the Bosnia and Herzegovina on the Readmission of Persons Residing without Authorisation; published in the Collection of Laws of the SR under No. 133/2016.

on the statistical data, monitoring, and assessment of the situation of irregular migration, with a focus on the countries of origin with the highest numbers of irregular migrants coming to the Slovak Republic.

## 2. Irregular migrants

Regarding the return and readmission of irregular migrants, we need to define the terms ‘irregular migrant’ and ‘irregular migration.’ Irregularity refers to the migratory status of individuals at a specific time. This status can be related to changes in the national law and policies of the country of transit or destination, where at one time the migrant is assumed to be documented and the other time she/he is undocumented according to the changes of law. A very good example is the status of a refugee; at the time of crossing the border without documents she/he is an irregular migrant, but when she/he claims for asylum she/he becomes a regular. The term ‘irregular’ is often replaced by the terms ‘undocumented’ and ‘unauthorised’,<sup>9</sup> and also ‘clandestine’, as it captures the diversity of the forms of migration non-compliant with all the municipal legal requirements, while simultaneously avoiding the negative connotations of ‘illegal’. According to Costello,<sup>10</sup> a change in the status of a migrant depends on the range of actors (legislative, executive, or judicial) based on different legal authorities (domestic, EU, or even human rights based).

Even though there is no legally binding definition, the IOM<sup>11</sup> provides its own definition of irregular migration. It refers to the movement of persons that takes place outside the laws, regulations, or international agreements governing the entry into or exit from the state of origin, transit, or destination. This term generally identifies persons moving outside regular migration channels.

The group of irregular migrants may also consist of people with specific rights which the Slovak Republic must observe based on its international obligations, for example, specific rights of refugees or victims of trafficking. According

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Readmission agreement between the Slovak Republic and Croatia: the Notification of the Ministry of Foreign Affairs of the Slovak Republic on conclusion of the Agreement between the Government of the Slovak Republic and the Government of the Republic of Croatia on the Readmission of Persons Residing without Authorisation; published in the Collection of Laws of the SR under No. 393/2009.  
Etc.

<sup>9</sup> Migration Data Portal, 2022.

<sup>10</sup> Costello, 2016, p. 64.

<sup>11</sup> IOM, no date.



to the Convention Relating to the Status of Refugees,<sup>12</sup> the Slovak Republic, as a contracting state, shall not impose penalties on account of the illegal entry or presence of refugees in the Slovak Republic as a country of refugee, on refugees who are coming directly from the territory of the country of origin, enter or are present in its territory without permission, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence (Article 31). Another example can be mentioned in relation to victims of trafficking. The Slovak Republic, as a contracting state of the Council of Europe Convention on Action against Trafficking in Human Beings,<sup>13</sup> shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence has been completed by the competent authorities (Article 10), as well as until the termination of the recovery and reflection period during which it is impossible to enforce any expulsion order against him/her (Article 13).

According to the Migration Data Portal,<sup>14</sup> a migrant can be irregular in three cases. First, the entrance: when she/he enters the country irregularly, for instance, with false documents or without any; next, the residence: when she/he resides in the country irregularly, for example, with cancelled or expired visa/residence permit; and last, the employment: when she/he is employed in the country irregularly, for example, with the right to reside but not to take up paid employment in the country.

Irregular migration in the conditions of the Slovak Republic is also affected by smuggling. According to the report of the Military intelligence of the Slovak Republic, smuggling groups focus on the transit of irregular migrants partly from the Hungary by road and rail modes of transport and partly through the territory of Ukraine, then through Poland or the Slovak Republic further to Western Europe.<sup>15</sup> Military intelligence reported 1,769 cases of irregular migration in 2021, which represented a 36.6% growth compared to 2020, with 1,295 reported cases. The countries of origin of these irregular migrants were Afghanistan, with 470

12 UNHCR (1951) Convention relating to the status of refugees [Online]. Available at: <https://www.unhcr.org/media/convention-and-protocol-relating-status-refugees> (Accessed: 30 June 2023); for the Slovak version see *Oznámenie Ministerstva zahraničných vecí Slovenskej republiky č. 319/1996 Z. z. o pristúpení Českej a Slovenskej Federatívnej Republiky k Dohovoru o právnom postavení utečencov a k Protokolu týkajúcemu sa právneho postavenia utečencov*.

13 Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197) (2005) [Online]. Available at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=197> (Accessed: 30 June 2023); for the Slovak version see *Oznámenie Ministerstva zahraničných vecí Slovenskej republiky č. 487/2008 Z.z. o podpísaní Dohovoru Rady Európy o boji proti obchodovaniu s ľuďmi*.

14 Migration Data Portal, 2022.

15 *Military Intelligence Annual Report 2021* (2022) Military Intelligence, Ministry of Defence of the Slovak Republic [Online]. Available at: [https://vs.mosr.sk/sprava\\_o\\_cinnosti\\_vs\\_2021\\_eng.pdf](https://vs.mosr.sk/sprava_o_cinnosti_vs_2021_eng.pdf) (Accessed: 30 June 2023).

cases, and Morocco, with 285 cases, mainly entering the territory of the Slovak Republic from the Ukraine territory. According to the statistics,<sup>16</sup> we can also add to the countries of origin Ukraine, with 208 cases, and Syria, with 207 cases.

We can compare the statistics of the Military intelligence with numbers of the Bureau of Border and Foreign Police of the Presidium of the Police Force presented in the Statistical Survey of Legal and Illegal Migration in the Slovak Republic,<sup>17</sup> which similarly reports 1,769 cases of irregular migration in 2021 but also reports 11,791 cases in 2022 (with the peak in November 2022), representing a 566% growth. So, the numbers of irregular migrants returned to those at the time of the Slovak Republic's accession to the EU, which the IOM<sup>18</sup> marked as a starting point of the irregular migration downturn. In 2022, the main countries of origin for such irregular migration were Syria with 9,160 cases, Ukraine with 594 cases, Morocco with 560 cases, Tunisia with 418 cases, Turkey with 278 cases, and Afghanistan with 178 cases.

The statistical survey also shows that irregular migration based on the illegal crossing of the Slovak border represents only 210 cases in 2021 and 549 in 2022. The illegal crossing of the Slovak border also covers the cases of readmission in which foreigners are detained outside the territory of the Slovak Republic and are returned on a basis of the readmission agreement after they have illegally crossed the borders of the Slovak Republic in a direction away from the Slovak Republic. On the other hand, irregular migration, as a consequence of an unlawful presence within the territory of the Slovak Republic, is represented by 1,559 cases in 2021 and 11,242 cases in 2022. This shows that irregular migration based on unlawful presence is a much bigger issue for the Slovak Republic. One of the reasons of such unlawful presence is a denial of asylum from that moment a person (former asylum applicant) becomes an irregular migrant without the permission to stay in the territory of the Slovak Republic. In 2022, the migration office had to deal with 547 applications mainly by the citizens of Ukraine (154 cases), Turkey (76 cases), Morocco (73 cases), Bangladesh (53 cases), and Russia (40 cases). In 2021, there were 371 applications mainly by the citizens of Morocco (116 cases), Afghanistan (97 cases), Algeria (24 cases), and India (20 cases). The numbers change depending on the international situation, for example, we can see how the armed conflict in Ukraine affected the migration numbers in the Slovak Republic in 2022.

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16 Štatistický prehľad legálnej a nelegálnej migrácie cudzincov na Slovensku (2022) [Online]. Available at: [https://www.minv.sk/swift\\_data/source/policia/hranicna\\_a\\_cudzinecka\\_policia/rocniky/rok\\_2022/2022-rocenka-UHCP-SK.pdf](https://www.minv.sk/swift_data/source/policia/hranicna_a_cudzinecka_policia/rocniky/rok_2022/2022-rocenka-UHCP-SK.pdf) (Accessed: 30 June 2023).

17 Ibidem.

18 *Migrácia na Slovensku* [Online]. IOM, Available at: <https://www.iom.sk/sk/migracia/migracia-na-slovensku.html> (Accessed: 30 June 2023).



### 3. Detention as a precondition of effective return or readmission

Act No. 404 of 21 October 2011 on residence of foreigners<sup>19</sup> covers detention procedure in Sections 88 to 100. These sections define the conditions of the detention of third-country nationals, especially those for asylum seekers, alternatives to the detention, and rights and obligations of the police department as well as third-country nationals.

To focus on the area of return and readmission, the most interesting facet would be provisions dedicated to third-country nationals in the position of asylum seekers and those to whom the return decisions are addressed. As there is no complex national report about the practical application of these provisions, it is not an easy task to fully examine it. However, the national legislation, reports of NGOs operating in the territory of the Slovak Republic, and reports of the European Migration Network may be the useful sources of information.

We can compare conditions for the detention of the ordinary third-country national and those of the asylum seeker according to the Slovak legislation. Based on the Section 88 of the Act on Residence of Foreigners, a police officer is entitled to detain the third-country national: a) during the administrative expulsion proceedings to ensure her/his departure to the particular state (country of origin, country of transit, any country of voluntary return after its acceptance of such a person, an EU Member State of her/his right of residence, or Member State which granted her/him some form of the international protection), but only in case there is a risk of absconding or in case when the third-country national is avoiding or trying to prevent the preparation process of her/his administrative expulsion to be executed;<sup>20</sup> b) for the execution of the administrative expulsion or of the penalty of expulsion; c) for the preparation or execution of her/his Dublin transfer,<sup>21</sup> only in case there is a risk of absconding; or d) for her/his return based on the international (readmission) agreement, if such a person illegally crossed the external border or is staying in the territory of the Slovak Republic illegally. The time of

19 For English version see Act No. 404/2011 of 21 October 2011, on Residence of Foreigners and Amendment and Supplementation of Certain Acts – Time version of the regulations effective from 25 May 2018 [Online]. Available at: <https://www.minv.sk/?residence-of-an-foreigner> (Accessed: 30 June 2023); for current Slovak version see *Zákon č. 404/2011 Z. z. o pobyte cudzincov a o zmene a doplnení niektorých zákonov*.

20 According to the judgment of the Supreme Court of the Slovak Republic of 13 August 2014, No. 1Sža 23/2014, the Court share the position that such avoiding or trying to prevent of the preparation process of her/his administrative expulsion to be executed needs to be assessed individually and it cannot be derived from the generalisation of the previous behaviour of other foreigners.

21 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 (OJ L 180, 29 June 2013, pp. 31–59).

the detention may be up to 6 months, in entirety or divided into several shorter periods, and it may be extended if the third-country national does not cooperate or the representative body of the third countries has not provided replacement of the travel documents within a 6-month period, but may not exceed 12 months. The period of the detention cannot be extended in the case of a family with children or vulnerable persons. This procedure applies in the case of the detention of irregular migrants staying illegally within the territory of the Slovak Republic or irregular migrants found on the borders, as well as the detention of persons to whom the return decision has been passed (administrative expulsion).

The Act on Residence of Foreigners covers the detention of asylum seekers in Article 88a. In relation to asylum seekers, detention is applicable only if minor measures are impossible to apply and: a) if there is a need to collect or verify the identity or nationality of the asylum seeker; b) if there is a need to ascertain the facts of the asylum application, which could not be obtained without detention, for example, in case of the risk of absconding; c) if a detained third-country national applied for the asylum within administrative expulsion proceedings and there is a reasonable suspicion that the application is just a tool to delay or frustrate the administrative expulsion; d) if the detention is necessary because of a threat to national security or public order; and e) if there is a significant risk of absconding during the preparation or execution of a Dublin transfer. During such detention, an asylum seeker who has applied for asylum has a right to communicate with the representatives of the UNHCR, family members, and persons who provide her/him with legal aid, as well as a right for their visits in conditions of privacy. Currently detained persons are placed in the Police Detention Centre for Foreigners Medveďov and the Police Detention Centre for Foreigners Sečovce,<sup>22</sup> which are closed facilities where a detained person is deprived of her/his liberty. This is a huge change for asylum seekers because during the ordinary asylum procedure, where there is no need to detain, they stay in the asylum facilities, Residence camp in Rohovce (for single men) and Residence camp in Opatovská Nová Ves (for vulnerable persons as families, single women, and older persons), with free movement after the health inspection of the asylum seeker.

Slovak legislation also recognises alternatives to the detention defined in the Article 89 of the Act on Residence of Foreigners. First alternative is a duty to report the place of residence, while second is a duty to pay warranty deposit. Both alternatives may be imposed only if the procedure of detention has started. The alternatives to the detention cannot be imposed if a deadline for departure had been set within the procedure of the administrative expulsion. In such a case, the procedure of detention does not start, so there is no place for alternatives to detention. Alternatives also cannot be imposed during the procedure of administrative expulsion provided that a third-country national represents a serious threat to

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22 For more EMN, 2021.

national security or public order, or threatens national security, public order, or public health. According to the report of the European Migration Network,<sup>23</sup> in practice, the alternative to detention in a form of a duty to report the place of residence is imposed more often, as it is probably simpler to carry out. The main problem of this alternative to detention is that the so-called third-country nationals often have no identification documents, and therefore, it is impossible for them to obtain accommodation. The police department may impose one of the alternatives to detention only if the detainee provides proof: first, the accommodation for the whole time of the execution of this alternative, second, a financial cover of her/his residence.<sup>24</sup> These conditions are almost impossible to meet. These conditions are not applicable to asylum seekers.<sup>25</sup> However, according to the Article 90 of the Act on Residence of Foreigners, the police department is obliged to examine whether the reasons of detention continue to exist throughout the whole detention time, and also, if there is no possibility of imposing an alternative to detention.

Legal remedies, in relation to detention, are very limited. The Act on Residence of Foreigners does not permit any appeal against detention decision, decision on extending the detention, and decision on extending the detention period in the Article 88. Neither does Article 89 permit any appeal against the decision on the imposition of the alternative to detention. However, a foreigner is allowed to apply an administrative claim to the Administrative Court according to the Act No. 162/2015 Coll. Administrative Procedure Code (Articles 221–238).<sup>26</sup> With this administrative claim, a foreigner may seek annulment of the detention decision, decision on extending the detention, and decision on extending the detention period, as well as determination of such a decision as unlawful, provided the claimant had been released from the detention. The foreigner may also apply for a revision of the decision or measure in relation to administrative expulsion. All foreigners, even asylum seekers and irregular migrants, have access to legal aid provided by, for example, the Centre for Legal Aid<sup>27</sup> or NGOs such as the Human Rights League<sup>28</sup> and Slovak Humanitarian Council.<sup>29</sup>

### ■ 3.1. Detention of asylum seekers in light of the judicial review

It follows from the aforementioned legislation that the detention of an asylum seeker should be a very rare thing. Yet, the police department used to repeatedly re-detain persons with asylum seeker statuses, even after they applied for asylum.

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23 Ibidem.

24 For more HRL, no date.

25 This exemption is defined in the Act on Residence of Foreigners, Art. 88(3), as well as by the judgment of the County Court Bratislava of 5 April 2018, No.7Sa/27/2018.

26 For Slovak version see Zákon č. 162/2015 Z.z. Správny súdny poriadok.

27 Centrum Právnej Pomoci, 2020.

28 *Liga za ľudské práva* [Online]. Available at: <https://www.hrl.sk/en> (Accessed: 30 June 2023).

29 *Slovenská humanitná rada* [Online]. Available at: <https://www.shr.sk/> (Accessed: 30 June 2023).

This practice may be illustrated by two cases, which are chosen to demonstrate the difficult evolution of the police detention practice.

The first analysis assesses the content of the judgment of the County Court Košice of 5 September 2019, No. 2S/19/2019. This case reviewed the detention decision of the police department in relation to WS (hereinafter referred to as the 'claimant') who during the detention procedure applied for asylum. The County Court annulled the detention decision and ordered the immediate release of the claimant from detention. The reason behind the decision of detention of 12 August 2019 was that the detention of the asylum seeker had been deemed necessary at that time (not exceeding the date of 12 October 2019) to execute the decision of administrative expulsion of 30 June 2019 and was based on reasonable suspicion that the applicant applied for asylum only with intention to delay or frustrate her/his administrative expulsion. The decision of administrative expulsion of the claimant, which also imposed an entry ban for a one-year period, was based on the ground of the claimant's illegal stay in the territory of the Slovak Republic. The detention was meant to ensure the execution of the administrative expulsion, as there was a need to obtain the replacement of the travel documents for the legal departure to the state of origin.

The claimant first contested the previous decision of detention of 30 June 2019 by the administrative claim to the County Court Košice. On 25 July 2019, the County Court delivered judgment No. 1Sa/20/2019 by which it annulled the contested detention decision and kept the claimant in detention. According to the new detention decision, the County Court ordered the police department to clarify the base of its legal assessment of the detention and consequently to amend the evidence. In light of the decision of the County Court, the police department started a new detention procedure on 12 August 2019, when the claimant was also checked on and heard. On 25 July 2019, the new detention decision was issued and subsequently contested by this administrative claim. This new detention decision stated that detention was ordered on the grounds of reasonable suspicion that she/he applied for asylum to delay or frustrate her/his administrative expulsion. The claimant and her/his legal representative argued that the detention decision could not be reviewed due to its incomprehensibility, the lack of reasons, as well as an incorrect legal assessment contained therein. They furthermore claimed that the occurrence of infringement of the essential provisions of the administrative procedure during the proceedings constituted unlawfulness of the decision on hand. Moreover, according to them the police department did not consider alternatives to detention and failed to demonstrate the risk of absconding and impossibility to impose minor measures. By the deprivation of liberty for two more months, the police department arbitrarily interfered with the right to personal freedom of the claimant. The legal representative of the claimant also pointed out that as a consequence of the annulment of the first detention decision by the judgment of the County Court of 25 July 2019, which had ordered the release of the claimant

from detention, the claimant was physically taken from the detention facility, where the police officers reversed him and took him back to the detention facility to hear her/him and to impose a new detention decision on her/him. In the time preceding the issue of the new detention decision when the claimant was taken out of the detention facility and released from the detention, the claimant already had not been in the position of a foreigner detained for the purpose of execution of the administrative expulsion or of the order for expulsion.<sup>30</sup> The claimant was in the position of an asylum seeker.

The County Court was reviewing the merits of the contested detention decision of 12 August 2019 by which the police department detained claimant on the same day on the grounds of reasonable suspicion that she/he applied for asylum to delay or frustrate his/her administrative expulsion. The County Court recalled Article 15 of the Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008,<sup>31</sup> according to which Member States may only keep in detention a third-country national who is the subject of return procedures to prepare for the return and/or carry out the removal process, mainly if there is a risk of absconding or when the third-country national avoids or hampers the preparation of return or the removal process. As soon as it is clear that the real precondition for the expulsion or return does not exist anymore, the detention loses its reasons and the detainee must be released immediately. The police department based its second detention decision on the grounds of the first detention, when the claimant was detained as a foreigner without the permission to enter or stay in the territory of the Slovak Republic. Hence, the police department issued the decision on the wrong factual situation. From a legal viewpoint, the judgement highlights why the police department now has to assess the possibility and reasons of the detention at the time of the imposition of the detention, especially in relation to the asylum seeker who is during the asylum procedure, based on her/his application, considered a foreigner with the permitted residence.

The second analysis is dedicated to the judgment of the Supreme Court of the Slovak Republic of 27 April 2021, No. 10Szak/12/2020, as it discontinues the practice of detention of asylum seekers. This case reviewed the detention decision of the police department in relation to the asylum seeker WA (hereinafter referred to as the 'claimant' or 'complainant') of 20 February 2020, as well as the cassation complaint in relation to this detention decision against the judgment of the County Court Košice of 19 March 2020.

According to the information provided by the Slovak Information Service (SIS), the police detention department decided to detain the asylum seeker WA on

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30 Art. 88(1) (b) of the Act on Residence of Foreigners.

31 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (OJ L 348, 24 December 2008).

the grounds of necessity, due to threat to national security or public order.<sup>32</sup> The asylum seeker WA filed an administrative claim against this decision at the County Court Košice. WA pointed out that although it might appear from the operative part of the decision that the detention was imposed on the grounds of necessity due to threat to national security or public order, it was a rough quotation of the Act on Residence of Foreigners without any consideration of alternatives of the reasons for detention. In her/ his view, this decision in its operative part is characterised by a lack clarity and is vague, which constitutes the reason for the annulment of the decision. Therefore, WA sought the annulment of the detention decision and immediate release from the detention. The County Court Košice indeed annulled the decision of detention and referred the case back to the police department for a further proceeding based on the objection of WA regarding the lack of clarity and vagueness of the decision. In the view of the County Court Košice, the decision did not assess detention reasons properly and the brief reference to the nature of classified information with the level 'restricted' obtained by the SIS as unacceptable. The Court surmised that if the person was detained on the grounds of threat to national security or public order, or both, this fact must be clearly identified in the operative part of the decision with reasoning. Although the County Court annulled the detention decision, the Court kept WA in detention, suggesting that the issue of clarification of the operative part should be considered as a rectifiable procedural defect, which would allow a further proceeding of the validity of re-detention of WA as an asylum seeker once all procedural defects were eliminated.

WA filed a cassation complaint against this County Court Košice decision at the Supreme Court of the Slovak Republic. In WA's opinion, the County Court inadequately determined the factual circumstantial evidence of the case, when the court considered the lack of reasoning of the decision as rectifiable procedural defects and did not order the police department to immediately release WA from detention. WA supported these claims with Article 9 Paragraph 3 of the Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013,<sup>33</sup> according to which, in a case where, as a result of the judicial review, detention is held to be unlawful, the applicant concerned shall be released immediately. WA therefore suggested to the Cassation Court to alter the judgment of the County Court Košice in the form of annulment of the detention decision and order the immediate release of WA from detention. The Supreme Court of the Slovak Republic rejected this complaint in its judgment of 18 May 2020, No. 10Szak/2/2020.

WA consequently filed the constitutional complaint at the Constitutional Court of the Slovak Republic, which annulled the contested decision of the Supreme

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32 Art. 88a (1d) of the Act on the Residence of Foreigners.

33 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (OJ L 180, 29 June 2013, pp. 96–116).



Court by its ruling of 10 November 2020, No. IV.ÚS 398/2020,<sup>34</sup> and referred the case back to the Supreme Court for further proceedings. The Constitutional Court of the Slovak Republic concluded that the contested decision of the Supreme Court of the Slovak Republic violated WA's basic rights, granted to her/him by Article 17(2) and 46(1) of the Constitution of the Slovak Republic,<sup>35</sup> as well as by Article 5(1) (f) and 5(4) of the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>36</sup> In its opinion, the procedural defects of the reasoning of the police department's decision of detention identified by the County Court Košice might not be considered as formal and rectifiable, as these defects seriously violated the right to proper reasoning of the decision. The decision at hand did not contain any assessment and determination of reasons justifying the need of detention of the complainant, and a simple reference to the SIS report was insufficient. Before the detention decision, the police department was supposed to examine if the purpose of the detention could not be fulfilled by minor measures, but the decision absolutely resigned on such a procedure. Defects of the decision affected the fundamental and most essential core of the institute of detention (existence of the reasons laid down by a law), and it followed from the arbitrary action of the police department, which did not fulfil the adversarial principle (*audi alteram partem*) and the principle of equality of arms. Moreover, the Constitutional Court pointed out that after the annulment of the decision of detention by the judgment of the County Court Košice of 19 March 2020, the police department once again decided about the detention of WA. Consequently, the asylum procedure was completed, and the police department decided about the administrative expulsion on

34 Ruling of the Constitutional Court of the Slovak Republic No. IV.ÚS 398/2020.

35 Constitution of the Slovak republic [Online]. Available at: <https://www.prezident.sk/upload-files/46422.pdf> (Accessed: 30 June 2023); for Slovak version see *Ústava Slovenskej republiky* č. 460/1992 Zb.

Art. 17(2) 'No one shall be prosecuted or deprived of liberty save for reasons and by means laid down by a law. No one shall be deprived of liberty merely for his or her inability to fulfil a contractual obligation.'

Art. 46(1) 'Everyone may claim his or her right by procedures laid down by a law at an independent and impartial court or, in cases provided by a law, at other public authority of the Slovak Republic.'

36 Convention for the Protection of Human Rights and Fundamental Freedoms (1950) [Online]. Available at: [https://www.echr.coe.int/documents/d/echr/Convention\\_ENG](https://www.echr.coe.int/documents/d/echr/Convention_ENG) (Accessed: 30 June 2023); for the Slovak version see *Oznámenie Federálneho ministerstva zahraničných vecí č. 209/1992 Zb. o dojednani Dohovoru o ochrane ľudských práv a základných slobôd a Protokolov na tento Dohovor nadväzujúcich*.

Art. 5(1)(f): 'Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: ... f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.'

Art. 5(4) 'Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.'

13 August 2020, with the consequent realisation of the expulsion from the territory of the Slovak Republic on 3 September 2020. Despite these facts, the Constitutional Court considered annulment of the contested judgment of the Supreme Court necessary, as it might have had real impact on the legal status of the complainant. Based on the opinion of the Constitutional Court, the Supreme Court once again reviewed the contested judgment of the County Court, consequently annulled it, and referred the case back to the County Court for further proceedings and a new decision which would be adopted in accordance with the opinion of the Constitutional Court.

This case may be interesting as since the ruling of the Supreme Court differs accordingly to the specific conditions of the case. The Supreme Court already in 2017 filed an application (No. PL. ÚS 8/2016) at the Constitutional Court,<sup>37</sup> in which the Supreme Court questioned the application practice of administrative bodies as well as the judicial decision-making practice, based only on the reasoning of the national security interest of the Slovak Republic. Such limited justification goes against the imperative of a democratic state and the rule of law, and basic human rights guaranteed by the Constitution of the Slovak Republic. While the administrative body has evidence at its disposal, such evidence is not made part of the case file and is not at the disposal of the foreigner in any form. Aláč<sup>38</sup> argues that based on the Article 23 of the Asylum Procedures Directive,<sup>39</sup> it suffices if complete factual information is at the disposal of the court reviewing the administrative decision of the Migration Office and the court may therefore examine the arbitrariness of the administrative decision and the justification of the SIS's reasoning. However, based on this decision of the Constitutional Court of the Slovak Republic the bare stating of the national security interest of the Slovak Republic as a reason to decide about asylum and subsidiary protection is no longer acceptable. However, the practice of the Migration office continues to be based on the reasoning of the SIS, only without any justification due to classified information.

According to this analysis, one can conclude that the police department strongly relies on the information of state organs, even though they are insufficient for the justification of detention decisions. Its decisions also confirm the police department's reliance on its well-tested practices, even though they can be contrary to the legislation in force. The bright point is that the police department altered its practice according to the judicial review of its decisions as soon as the judgment of the County Court or Supreme Court entered into force.

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37 Ruling of the Constitutional Court of the Slovak Republic No. PL. ÚS 8/2016.

38 Aláč, 2020, pp. 26 and 29.

39 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 (recast) (*OJ L 180, 29 June 2013, pp. 60–95*).

#### **4. Return and readmission of irregular migrants in conditions of the Slovak Republic**

Act No. 404 of 21 October 2011 on Residence of Foreigners is a legal basis for the realisation of the return procedure of third-country nationals—irregular migrants to whom the decision of the return has been passed, in conditions of the Slovak Republic. This Act stipulates reasons, forms, and means of the realisation of the return. The form of the return depends on the assessment of the particular situation and the status of the third-country national at a given time. To identify the best form of return, state organs may have the person checked by the SIS, use the testimony of the person, the legal assessment, and cooperation with the EU Member States concerned, or NGOs.

The whole return process depends on the development of the EU's security situation, migration flows, as well as the situation in the country of intended return (country of origin of third-country nationals); therefore, it must be comprehensively adapted to such developments. Return policies of the Slovak Republic are more effective due to operating activities of FRONTEX,<sup>40</sup> as Slovak Republic has been participating in its activities since 2019. FRONTEX supports organising, carrying out, as well as financing of return processes organised by one of the EU Member States.

According to the National Strategy, how return is carried out depends on the country of intended return, even by plane or land transit. It may take the form of administrative expulsion, voluntary return, and Dublin return.

The Act on Residence of Foreigners of the Slovak Republic defines administrative expulsion as a decision of the police department that the foreigner does not have or has lost the entitlement to stay in the territory of the Slovak Republic and is obliged to leave the territory with the option of determining the time by when she/he has to depart for her/his country of origin, country of transit, or any third country which the third-country national voluntarily decides to return to and which would accept her/him, or to the territory of a Member State in which she/he has been granted the right of residence or provided with international protection.<sup>41</sup> Slovak legislation (the Act on Residence of Foreigners) also defines the reimbursement of costs of administrative expulsion (Article 80) as well as the obstacles for administrative expulsion which are in correlation with the international obligations of the Slovak Republic in the field of asylum law (principle of non-refoulement) or human rights law (Article 81). Provisions of administrative expulsion of the third-country national (Articles 82–86) differ

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40 For the mandate and activities of FRONTEX in 2022 see Frontex – European Border and Coast Guard Agency, 2023.

41 Art. 77 of the Act on Residence of Foreigners.

from those relating to the citizen of the EU and her/his family member (Article 87). The police department executes the administrative expulsion decision if, a) the third-country national failed to depart within the period imposed in the decision on administrative expulsion, b) in the decision on administrative expulsion police department did not impose the period for departure, c) the third-country national should be returned to the territory of the contractual state according to an international agreement (e.g. readmission agreement), d) the third-country national cannot leave the country because she/he does not have any valid travel document or resources to exit the country, or e) the third-country national failed to leave the country under the assisted voluntary return within the period specified in the decision on administrative expulsion or upon notification of the organisation that runs the assisted voluntary return programme that the third-country national intentionally avoided the implementation of the assisted voluntary return (Article 84).

If the administrative expulsion of the third-country national should be carried out only to a neighbouring state, the police department will transport the third-country national to the border crossing. In case the administrative expulsion of the third-country national should be done by air transit or through the territory of a third state, based on the international treaty, the police department may transfer the third-country national to the territory of the state that decided to admit her/his. Air transit may be carried out by an ordinary commercial flight or by operation of the removal by air which is coordinated by two or more EU Member States according to the EU Council decision of 29 April 2004 (2004/573/EC).<sup>42</sup> Both may be carried out with or without police escort, depending on the seriousness of reasons to believe that the third-country national may threaten the safety of the plane, persons or property in the plane, or the order and discipline aboard the plane. Both procedures are based on very similar conditions, but the coordinated removal by air may be considered safer for the public as well as for transferred persons, as they are gathered on the airport and transferred separately from other travellers. The method of the air transit depends on many factors, for example, health conditions of third-country national, safety conditions, number of the third-country nationals who need to be transferred.<sup>43</sup>

Another form of foreigners' transfer is the return procedure based on the voluntary and Dublin returns. Voluntary returns cover returns of foreigners from police detention centres, asylum facilities, or irregular migrants present in the territory of the Slovak Republic outside of the facilities of the Ministry of Interior of the Slovak Republic. In 2022, 81 voluntary returns were carried out (e.g. to Turkey-56, Tunis-10, Uzbekistan-5), and in 2021, there were only 9 cases of

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42 2004/573/EC: Council Decision of 29 April 2004 on the organisation of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjects of individual removal orders (OJ L261, 6 August 2004, pp. 28–35).

43 The section is processed according to Semjan, 2017.

voluntary returns (e.g. to Serbia-3, Turkey-2). Dublin returns based on the Dublin Regulation<sup>44</sup> represent 39 admitted persons in 2021 and 28 persons in 2022 (into the territory of the Slovak Republic) and 107 transferred persons in 2021 and 44 persons in 2022 (outside the territory of the Slovak Republic). By transferring foreigners to and outside of the Slovak Republic, the EU Member States (including the Slovak Republic) respect the provisions of the Dublin Regulation, which covers the conditions for determination of the responsible state for the decision about the asylum application. Therefore, Dublin transfers deals with foreigners in the position of asylum seekers (admitted persons to the Slovak Republic within the Dublin transfer in 2021 were mainly citizens of Morocco-12, Afghanistan-5, Algeria-4, India-3, and Syria-3; in 2022, they were mainly citizens of Morocco-10, Algeria-3, Libya-3, Pakistan-3, and Syria-3. Regarding transfers from the Slovak Republic to other states, in 2021, there were mainly citizens of Afghanistan-1 to Bulgaria, 69 to Romania, of Pakistan-1 to Austria, 9 to Romania, of Syria-10 to Romania, of Algeria-1 to Austria, 1 to Bulgaria, 1 to Italy, 2 to Romania, of Morocco-2 to Bulgaria, 1 to Germany, and 2 to Romania; in 2022, there were mainly citizens of Afghanistan-8 to Romania, of Pakistan-8 to Romania, of Syria-2 to Bulgaria, 3 to Austria, 2 to Germany, and 1 to the Netherlands).

In 2022, 1,665 decisions on the expulsion were adopted, from which there were 1,605 in relation to irregular migrants, and 1,100 decisions on expulsion were adopted in 2021, with 1,027 in relation to irregular migration. Considering executed expulsions, in 2021, there were 432 cases in relation to irregular migration, 345 to third countries, and 31 to other EU Member States, while in 2022, there were 317 reported cases, with 233 to third countries and 28 to other EU Member States. These numbers cover all cases of the execution of expulsion, including the voluntary return.

Based on the readmission agreements of the Slovak Republic and third states or EU Member States, the Slovak Republic transferred 194 persons in 2021 and 175 persons in 2022. On the other hand, the Slovak Republic had to admit to its territory 29 persons in 2021 and 148 persons in 2022. In 2021, cases of transfer were in relation to Ukraine (172) and Hungary (22), while in 2022, they were in relation to Ukraine (15), Hungary (159), and Czech Republic (1), typifying no significant difference. Cases of transfer in 2022 mainly concern citizens of Syria (127) and Afghanistan (30). Cases of readmission to the Slovak Republic were in 2021 in relation to Ukraine (5), Hungary (1), Czech Republic (12), and Poland (11), whereas in 2022, they were in relation to Ukraine (6), Hungary (1), Czech Republic (95), Poland (30), and Austria (16). It shows us that the cases of readmission to the Slovak Republic in 2022 were 410% higher than that of the year before. Cases of readmission to

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44 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 (OJ L 180, 29 June 2013, pp. 31–59).

the Slovak Republic concerns, in 2021, mainly nationals of India (11), Afghanistan (7), Pakistan (5), and Czech Republic (3), while in 2022, they were mainly nationals of Syria (118) and Turkey (15). Readmission agreements and protocols for its execution are not publicly available, thus constituting the weakening of the principle of legal certainty and transparency of the readmission procedure.

## 5. Conclusion

Irregular migration refers to the unauthorised or undocumented crossing of borders or staying within the territory of a particular state. It depends on national laws, subjected to change; consequently, the status of a person may change from one day to another. Irregularity can relate to entry, residence, or employment. As statistics show, the highest number of cases of irregular migration in relation to the Slovak Republic is not represented by individuals' illegal crossing of its external/internal borders but indicated by his/her unlawful presence in its territory.

The procedure of detention may help achieve a successful completion of the return procedure, voluntary or forced, based on readmission. Conditions for detention may be influenced by the status of a person, that is, whether the detention should be related to the ordinary third-country national or asylum seeker. The Slovak Act on Residence of Foreigners makes such a distinction, as irregular migrants may possess specific rights based on the international obligations of the Slovak Republic, which may be difficult to be followed by the state organs. In that case, judicial review plays a crucial role. As the analysis in Section 3.1 concludes, in some cases, the practice of the police department during the detention procedure need to be corrected by County Courts and the Supreme Court of the Slovak Republic.

One of the priorities of the Slovak Republic in the area of irregular migration is to enhance cooperation with countries whose nationals are frequently expelled from its territory. The fact remains that migration issues play a very sensitive role in maintaining relations between countries, as well as individual states and their nationals; this is because migration is very closely related to cultural differences, security issues, while acknowledging the possibility of the economic abuse of social systems by the incoming migrants of any group. Furthermore, the Slovak Republic prefers voluntary returns over forced ones. Readmission is one of the effective measures of return, based on the readmission agreements of the EU with third countries. To implement them, the Slovak Republic is entitled to not only negotiate bilateral protocols with these third countries, but also negotiate its own readmission agreements with them. The form of the return depends on specific conditions of the particular case and status of the third-country national at the time of decision. Return may be carried out in the form of administrative expulsion, Dublin return, and readmission return, either voluntary or forced.



The then Minister of Interior of the Slovak Republic, Roman Mikulec,<sup>45</sup> argues that countries that do not cooperate sufficiently during the return or readmission process must bear consequences manifesting in the field of visa, development, and trade policies. These measures could help with enforcement of return and readmission activities. However, the readmission agreement between the Slovak and Czech Republic was put to test in 2022 due to the illegal transit of irregular migrants through the mutual border to the Czech Republic. As a consequence of the uncontrolled transit of these irregular migrants, the Czech Republic reintroduced control at their internal borders, which was not received with enthusiasm by the Slovak Republic.<sup>46</sup> The then Slovak Head of Police, Štefan Hamran,<sup>47</sup> considers the readmission agreements ineffective because the Slovak Republic would not be able to handle high numbers of irregular migrants from a capacity perspective. Moreover, Hungary is not accepting irregular migrants from the Slovak Republic as well, although the readmission agreement between the Slovak Republic and Hungary is still active. Reasons behind the ineffectiveness of readmission agreements include the time and conditions of their adoption. These agreements were adopted mainly before the accession of the Slovak Republic into the Schengen area, although they are not designed for the management of its internal borders. Finally, based on statistical data, this study shows that the Slovak Republic still holds the position of a transit country. The control of persons illegally staying in its territory (after the expiration of their permission to stay) and illegally crossing internal borders to or from other states of the Schengen area remains a major issue of the Slovak return and readmission policy.

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45 Európske Noviny, 2023.

46 TASR, 2022.

47 *Policajný prezident Hamran: Na migrantov nemáme kapacitu*, 28 September 2022 [Online]. Available at: <https://vredakcii.podbean.com/e/policajny-prezident-hamran-na-migrantov-nemame-kapacity/> (Accessed: 30 June 2023).

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