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DIRECTORATE GENERAL FOR RESEARCH

WORKING PAPER

Migration and Asylum in Central and Eastern Europe

Civil Liberties Series
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Foreword

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At the end of (almost) each country report, you will find a few lines on the main difficulties in the field of asylum and immigration.

SUMMARY

A survey of factual and legal developments in the fields of asylum and migration in the CEECs documents a common trend. All CEECs have made significant efforts to tighten their borders in order to fight illegal immigration; they have restricted their entry conditions and are increasingly consolidating their asylum systems. These measures range from the adoption of legal provisions for the protection of asylum seekers and refugees to the establishment of administrative and judicial procedures for the examination of asylum claims and the organization of the social infrastructure for the admission of these persons and their eventual integration after recognition as refugees.

An important development at the eastern border of the European Union is taking place: **the transformation of the ten associated central and eastern European countries¹ from countries of emigration into transit and immigration countries.** These flows not only include citizens of other central-eastern or south-eastern European countries and the Commonwealth of Independent States but also, to an increasing degree, people from the Middle East and Asia, among whom there are both migrants who leave their home country for economic or cultural reasons and asylum seekers who seek refuge from serious human rights violations.

Transit migration

Transit migrants are a very heterogenous group; country of origin, educational background, age, sex, religion or nationality can be very different. IOM (International Organization for Migration) surveys found various motivations.

Some of the migrants who live and work in a transit region, while preparing for the final part of their journey, decide not to give up a status of relative wealth in exchange for an uncertain future in Western Europe or North America. Others become stranded in these regions due to the increasing difficulty of reaching the country of destination. The tightening of external borders after the entry into force of the Schengen Agreement has aggravated the situation. This seems to have increased demand for the services of professional migrant traffickers who can offer better chances of slipping through West European borders. The Baltic States, for instance, face an enormous increase in illegal migration to Scandinavia, mainly organized by human traffickers from Moscow².

Permanent migration

In some countries, the number of immigrants is increasing and exceeds the number of emigrants. **Bulgaria and Romania remain emigrant countries, while Hungary, the Czech Republic, Poland, Slovenia and the Slovak Republic, where the economy is taking off faster, experience a greater influx of workers who settle down as permanent residents.**

¹Hereafter referred to as 'CEECs'

²Statement of the representative of the Republic of **Lithuania** at the meeting of the Committee on Civil Liberties and Internal Affairs of the European Parliament with corresponding Committees of the Parliaments of the Countries of Central and Eastern Europe, June 1996

To some extent, this is the expression of the successful transition of central and eastern European countries towards democracy, respect for human rights and the positive development of economic and social conditions. Rising standards of living and the openness of the labour market lead increasing numbers of immigrants to settle in these countries.

Stateless persons

Though not directly linked to the question of migration and asylum, the new problem of "statelessness" should be mentioned. It has arisen because several countries have failed to grant citizenship to all the residents within their territory after the change of regime. This creates considerable problems because having no citizenship very often means no right to work, no health insurance, no social benefits, no voting rights etc.

Human rights

The move towards market economies and democracy has been of mixed benefit as far as human rights are concerned. On the one hand, free speech tends to be restored, as well as the right to travel and cultural rights for minority groups. On the other hand, there is growing overt discrimination against minority groups, a rise in right-wing "skinhead" type violence, racism, antisemitism and xenophobia. Moreover, some old practices have not yet been reformed; the police can, in many circumstances, operate in a climate of impunity, with poor safeguards and inadequate prosecution of abuses. These trends do not facilitate the integration of immigrants or refugees and UNHCR and NGOs have been working constantly on these issues during recent years.

The role of the EU and the implementation of the 'acquis communautaire'

With the prospect of an Eastern enlargement of the European Union, the CEECs' adaptation to the EU 'acquis' in the fields of asylum and immigration has become a condition of membership. Accordingly, the implementation of equitable asylum systems and the regulation of migration flows have become an integral part of the EU's pre-accession strategies towards central-eastern Europe.

The CEECs' transformation into destination countries for asylum seekers and voluntary migrants is to a large degree induced by external factors, and in particular Western European policies. With regard to immigration, the EU promotes tightening of borders - which are due to become partly external borders of the Union - to curb illegal immigration. With regard to refugees and asylum seekers, Western European countries promote international humanitarian law and support the accession of the CEECs to the liberal principles and norms of the international regime for the protection of refugees. These aims can be the source of conflict at the implementation stage and such conflicts are not easy to deal with in countries where there is no tradition of human rights' protection.

Another important point which is raised by ECRE (the European Council for Refugees and Exiles) is that, when EU standards fall short of international standards, it is crucial that these failings are not replicated. Where common standards are absent or not yet formalized, models of best practice should be implemented. Otherwise asylum seekers will continue to transit through the region in search of better conditions. This could be the case for the following issues:

- **The definition of 'refugee'**

In March 1996, the Council adopted a joint position on the harmonized application of the term 'refugee' in Article 1 of the Geneva Convention. The European Parliament, UNHCR, ECRE and other NGOs have repeatedly criticized this position because it does not properly take into account persons who are persecuted by agents other than the State.

- **Safe third countries concept and readmission agreements**

The 'safe third country rule' provides that the first 'safe' state which - either de facto through border crossing or de jure through the issue of a visa or entry permit - allows entry of an asylum seeker is responsible for the examination of his or her claim³. While the 'safe third country rule' allows for denial of access to the asylum procedure for an asylum seeker who has transited such a country, readmission agreements provide the legal basis for the return of asylum seekers and irregular migrants to these countries. These agreements, which can apply both to foreign and the third country's own citizens, have become the central instrument in the emergent pan-European asylum and immigration regime.

The main problem in the implementation of these agreements is that they are used both to deport illegal immigrants and to return asylum seekers to a country which should examine their application on its merits. Two consequences appear here. Firstly, confusion very often exists between asylum seekers and illegal migrants, even when the readmission agreement contains a specific provision on asylum. This means that the asylum seeker's application risks not being examined. Secondly, as a consequence, asylum seekers can be deported to their country of origin or to a country where their life could be in danger. This is, for instance, a risk in the case of readmission agreements between Poland and Lithuania bearing in mind that asylum seekers could be deported from Germany to Poland, from Poland to Lithuania and from Lithuania to their country of origin even if the latter is not considered as safe by Germany.

- **Appeal rights in asylum procedures**

The 1992 EU Resolution on Manifestly Unfounded Applications for Asylum and the 1995 EU Resolution on Minimum Guarantees for Asylum Procedures fail to guarantee the right of appeal in such cases and omit the guarantee of suspensive effect even where a State opts to permit appeal. The absence of suspensive effect amounts to the lack of an effective remedy, making a mockery of the appeal right if refugees are deported back to their persecutors while their case is still pending. Several CEECs have suspensive effect guaranteed in law but not in practice, while other CEECs do not implement removals but their respective laws provide for suspensive effect. As a common standard, the adoption of this EU Resolution's standards would be a significant backward step for the region. It is in clear contradiction to the advice of UNHCR that 'in order to be meaningful ... the

³According to the London Resolution adopted by the EU Ministers of Immigration on 30 November/1 December 1992, the criteria for designating a country as 'safe' are, firstly, that the life or freedom of the asylum applicant is not threatened within the meaning of Article 33 of the Geneva Convention and, secondly, that the asylum applicant is not exposed to torture or inhuman or degrading treatment in the third country.

appeal should have suspensive effect allowing the applicant to remain in the country pending the review of his or her case⁴.

- **The tightening of the borders**

It is now the CEECs' turn to tighten their borders by strict visa requirements for "risk" countries, reinforcement of criminal laws to combat trafficking of human beings and adoption of modern police and border guards techniques. Big efforts have been made, particularly regarding staff training; most of the CEECs' border forces have been demilitarized, working conditions are in the process of being improved, partly to prevent corruption, and new techniques, to detect forged documents for instance, are being implemented.

Major difficulties

1. Trafficking in human beings

The first challenge that can be identified is the growing phenomenon of trafficking in human beings, both in and through the CEECs to Western Europe. This phenomenon is challenging, both because of its potential for illegal immigration and with regard to its often harmful effects on clandestine immigrants. Trafficking in migrants has become a profitable sector, often operating with criminal methods. The IOM notes that organized crime is now involved in the trafficking of human beings in every region of the world, with earnings amounting to some 7 billion dollars a year. With transport, accommodation, local contacts, forged documents, the different mafias are steadily forming transcontinental alliances, as well as ensuring the collaboration of local networks, to develop this traffic. Germany is one of the prime targets for labour traffickers, particularly across the Czech and Polish borders. To give an example of the importance of the phenomenon, in April 1997 a gang appeared in court accused of the trafficking of 90,000 Kurds over the last few years. In October 1997, the Austrian police dismantled an international network suspected of having organized the trafficking of 11,000 migrants over the last 5 years from Kosovo to Germany and Austria.

New routes are continually opening up. An important part of this is the exploitation of migrant women who are forced into prostitution⁵.

When tackling this problem, it is important to note that it is in part supported by measures against illegal immigration: restrictive admission policies increase, rather than reduce, the number of illegal entries and the recourse to traffickers. This concerns both policies of 'non-arrival', such as the strict use of visa requirements and carrier sanctions, and 'non-admission' policies, such as the 'safe third country' rule.

2. Refoulement of asylum seekers

⁴UNHCR position on Manifestly Unfounded Applications for Asylum

⁵On this see the study of the International Organization for Migration (IOM), *Trafficking and Prostitution: The Growing Exploitation of Migrant Women From Central and Eastern Europe*, May 1995.

The second related challenge raised by these developments has normative roots and consists in the need to reconcile the dominant interest in limiting illegal entries with a respect for basic standards of humanitarian law and, in particular, providing asylum to persons in need of international protection. While, in Western Europe, this restrictive trend in asylum and immigration policies is to a certain degree compensated by a liberal tradition and the existence of legal and administrative institutions upholding these values, the CEECs' adaptation to the EU 'acquis' first presupposes the adoption of basic normative safeguards and the existence of working institutions safeguarding the rule of law. This is particularly manifest in the proliferation of the 'safe third country' rule in Central and Eastern Europe, which is often implemented without the necessary safeguards against *refoulement* and often does not conform to the already minimal requirement of the 1992 London Resolution. The same applies to readmission agreements which do not often discriminate between asylum seekers and illegal immigrants and thus do not provide the necessary safeguards for the protection of genuine refugees.

ECRE considers that the most serious gaps between CEEC and EU (and UNHCR) protection standards are those relating to *refoulement* at the border and other facilities permitting access to asylum procedures. The following measures fail to pay sufficient heed to their impact on refugees' access to determination procedures:

(1) Carrier sanctions

Pursuant to Articles 26 and 27 of the Schengen Convention (which under the Treaty of Amsterdam will become part of the EU 'acquis'), all but one of the Member States have introduced sanctions on airlines and other carriers which bring undocumented aliens, including asylum seekers, to their territory. UNHCR, ECRE and other human rights NGOs have opposed these measures, which have the consequence of preventing asylum seekers from fleeing their countries or being forced to resort to clandestine entry.

(2) Visa policy

In combination with carrier sanctions, and pursuant to Article 23 of the Schengen Convention, visa requirements have been used by Member States to deterrent effect. More than any other measure, visa policy has had a major impact on refugees' access to protection in western Europe. In 1995, the Council adopted a Regulation⁶ determining those countries whose nationals are required to possess a visa in order to cross the Community's external frontier. When Associated States become Members, they will have to adhere to that visa list.

(3) Technical measures to assist with border control and deportation

In addition to the above, a wide range of other migration control measures are being exported from western to central and eastern Europe. These are not necessarily part of the 'acquis' but are technical assistance activities intended to secure the eastern border of an enlarged Union. These measures include, for example, funding to assist with the deportation of rejected asylum seekers and information exchange to facilitate such returns and funding for reception/detention facilities and border control equipment in ever increasing quantities, but

⁶Regulation 2317/95 implementing Article 100c

these measures do not contain corresponding provisions for monitoring detention facilities in order to ensure detainees' rights are protected.

3. Creation of buffer zones

The risk of violating basic standards of international law and undermining the international refugee regime is enforced by the redistributive dynamics inherent to restrictive admission policies. This means that tighter asylum and immigration laws in one country or region automatically lead to an increase of asylum seekers and immigrants in neighbouring countries or regions. This difficulty, which has repeatedly been referred to as creating a 'buffer zone' at the Union's borders, is complicated by the prospect of an enlargement in stages. Rigid application of the Schengen rules for the enforcement of external borders would inhibit freedom of movement between CEECs and thus conflict with economic and cultural ties within the region.

4. The setting up of asylum policies

While certain CEECs, like the Czech Republic, Poland, Hungary and Romania are becoming increasingly 'safe' for asylum seekers and refugees according to the meaning of the Geneva Refugee Convention and the European Convention on Human Rights, other countries are only just beginning to introduce the legal and administrative framework for providing asylum. In several countries (Bulgaria, Slovenia, the Czech Republic for the amended version...), laws on asylum are still in the process of being adopted. **Only in a few countries is the number of recognized asylum seekers significant.** These are **Hungary** (with 4,300 recognitions from 1988 to 1998), the **Czech Republic** (with 1,600 recognitions from 1990 to 1998), **Romania** (with 855 recognitions from 1991 to 1998) and **Poland** (around 800 recognitions from 1994 to 1998). In most of the other countries the number of refugees is very low, for instance Latvia with 21 refugees, Estonia 21, Lithuania 25, the Slovak Republic 334 (1994-1998) and Bulgaria 372 (1993-1998).

As ECRE points out, other areas of concern in the region include:

- (i) lack of access to independent or free legal advice for asylum seekers;
- (ii) obstacles to registration and provision of documents to asylum seekers and refugees;
- (iii) restrictive access to work permits;
- (iv) data protection failures;
- (v) lack of interpretation facilities;
- (vi) restrictive time limits for submission of asylum applications;
- (vii) lack of public information campaigns on the needs and rights of asylum seekers;
- (viii) lack of State-funded social assistance (such as vocational training, housing, welfare payments, healthcare, psychological counselling);

- (ix) overly wide interpretation or misapplication of the 1951 Convention exclusion clauses (e.g. exclusion of persons persecuted in the context of civil war);
- (x) arbitrary detention of asylum seekers and rejected asylum seekers;
- (xi) inconsistent adjudications in asylum claims.

Conclusion

The task of implementing new policies which respect the basic norms of human rights' protection is complicated by the mainly restrictive nature of the EU 'acquis' in the fields of asylum and immigration. This orientation was criticized by the European Parliament in its resolution of 17 February 1998 in which it 'deplores the exclusively repressive nature of many of the recommendations, declarations and resolutions which have been adopted or are currently being drawn up at the Community level'⁷. This is also true for **the vast majority of cooperation measures between EU Member States and the CEECs which concentrate on restrictive measures for fighting illegal immigration rather than on the promotion of humanitarian standards. These include, for instance, measures aimed at preventing the arrival of asylum seekers and immigrants by the imposition of strict visa requirements and carrier sanctions or policies of 'non-admission', such as the safe third country rule which, under certain conditions, allows the immediate return of asylum seekers at the border.** As noted by the European Parliament in the above-mentioned resolution, 'the notion of "safe third countries" does not always guarantee real protection for asylum seekers who may be sent back to a country in which they were the victims of human rights violations'⁸. In this connection, it is interesting to note that the new draft Bulgarian asylum law includes a provision according to which the police would be in charge of reception of refugees at the border (in principle together with the national bureau for refugees, but UNHCR notes that this bureau is in Sofia) whereas international standards require that only agents from specialized agencies can exercise this function. The same phenomenon occurs in Hungary at Budapest airport. The uncontrolled proliferation of these restrictive instruments in countries which do not share the long Western tradition of human rights' protection and do not dispose of well-established judicial and administrative institutions ensuring their enforcement, runs the risk of weakening the international refugee regime and of violating basic norms of international law.

In conclusion, three issues seem to challenge the future of EU-CEECs' relations in asylum and immigration matters. The first concerns the need to strengthen the importance of humanitarian, liberal values and institutions vis-à-vis the dominant focus on migration control and the importance of human rights. The second is linked to the tightening of borders. Obviously, building barriers will not in itself stop illegal immigration ; the question cannot only be tackled in this way. Growing disparities in levels of economic development between regions and countries should also be questioned. The third issue results from the need to counter the 'burden shifting' effects of restrictive policies through the development of more cooperative procedures which allow for a more equal and just distribution of asylum seekers and refugees in Europe. The extent to which such a truly pan-European refugee regime will develop, however, will not only depend on the CEECs' responsiveness

⁷European Parliament, Resolutions on Respect for Human Rights in the EU 1996, Document A4-0034/98 of 17.2.1998, §9, OJ C 80, 16 March 1998

⁸Ibid., §24

but also on the Member States' willingness to re-evaluate their humanitarian traditions in a spirit of European solidarity and shared responsibility. *'Further development of asylum policy in Western Europe should be part of a comprehensive regional policy for the whole of Europe, which addresses the complex causes of population displacement within the framework of a pro-active and long-term migration management approach, yet which respects the specific nature of the asylum institution, as well as the principles of international refugee protection on which the institution is based'*^{9,10}.

⁹*Refugee protection in Western Europe, a UNHCR perspective*, Van der Klaauw J., Senior Liaison Officer, UNHCR

¹⁰**Author:** Sandra Lavenex, Researcher at the European University Institute in Florence. Relevant publications: 'Safe third countries and the extending European refugee regime. The enlargement of EU asylum and immigration policies to Central and Eastern Europe', Budapest: Central European University Press (forthcoming 1999); 'Transgressing Borders: The emergent European refugee regime and "safe third countries"', in Alun Cafruny and Patrick Peters (eds.), *The Union and the World*, The Hague: Kluwer Law International, pp. 113-132, 1998; 'Asylum, Immigration and Central-Eastern Europe: Challenges to EU Enlargement', in *European Foreign Affairs Review* 3(2), pp. 275-294, 1998.

Country reports

Bulgaria

1. Migration

Due to its geographical situation, Bulgaria is one of the main gateways to Europe and westward migration flows remain steady. Tightened border controls and stricter visa policy, with a computerized system since 1995, have significantly reduced illegal immigration both to Bulgaria and from Bulgaria to the EU Member States, although inward and outward bound human trafficking still constitutes a problem.

Emigration from Bulgaria

The difficult economic situation keeps the immigration pressure of Bulgarian citizens to the West at a considerable level; the major destinations are Germany, Greece and the USA though, according to the Bulgarian Ministry of the Interior, fewer Bulgarian citizens are now leaving the country as the result of a stricter visa system.

During the Nineties, over 500,000 people emigrated from Bulgaria, most of them, being 'ethnic Turks', to Turkey.

Transit migration and settlement

The immigration pressure on Bulgaria as a transit country for migration remains. The main regions of origin are Turkey, Romania, Iraq, Iran, the CIS and the African countries. The bulk of migrants want to go to Western Europe but many immigrants settle in the country; liberal immigration legislation allows easy access to the labour and investment markets, thus providing a variety of grounds to regularize the alien's residence permit.

Immigrants who have settled in the country

1993	1994	1995	1996	1997
4,418	7,418	11,840	18,804	20,403

Source: Ministry of the Interior, January 1998

Illegal immigration

The authorities estimate the number of clandestine residents at 5,000-10,000. According to John SALT, statistics vastly underestimate the number of foreign workers in Bulgaria, where the law has allowed them easy access to the job market. Most foreigners are therefore working without a permit; approximately 75% have unskilled jobs in trade and services, 6% work in the building trade and 7% in the entertainments industry¹¹.

¹¹Salt J., 'Current Developments in Eastern European International Migration', 6th Conference of European Ministers responsible for migration affairs, Council of Europe, June 1996, in *IOM Review*, October 1996

A growing number of immigrants irregularly staying in Bulgaria are sanctioned. Most of the foreigners staying irregularly come from the Middle East, Iran and the Indian subcontinent. Illegal entry is criminalized in Article 279 of the Penal Code which can entail up to 6 years' imprisonment for aggravated offences, plus fine or forfeiture¹².

A National Programme for Combating Illegal Migration and Illegal Residence of Foreigners involves all ministries concerned; a new Aliens law was adopted at the end of 1998.

Persons sanctioned as irregularly staying in Bulgaria

1993	1994	1995	1996	1997
14,654	12,537	11,920	16,222	16,916

Source: Ministry of the Interior, January 1998

Visa regime and readmission agreements

A restricted visa regime for citizens of countries representing an immigration risk has been established. Entry visas are only issued in cases of proved necessity and if guarantees are provided that the immigrant will be financially independent while in Bulgaria. 83 countries are considered as being high risk.

Readmission agreements have been signed with Poland, Switzerland, Germany, Slovakia, Greece, France, Spain, Portugal, Denmark, Lithuania, Finland and are in preparation for signature with the Benelux, Italy, Austria, the United Kingdom, Norway, the Republic of Ireland, the Czech Republic, Croatia, Slovenia and Romania. The Bulgarian government has adopted the standard draft recommended by the European Commission as a basis for negotiation. Each contracting party undertakes to take back any person who, coming from its territory, is found to be irregularly within the borders of the other contracting party.

2. Trafficking in Human Beings

Migrant smuggling is criminalized in Article 280 of the Penal Code, which was adopted in 1997. It envisages up to 10 years' imprisonment for aggravated offences plus fine and forfeiture. The provisions of Article 409 of the Penal and Procedural Code concerning accelerated procedure are successfully used in migrant smuggling cases. Sanctions for employers of illegal immigrants are envisaged in Article 37(a) of the Law on the Stay of Foreigners¹³.

The Ministry of the Interior relates that preventive campaigns have been organized in the media aimed at increasing public awareness of problems related to illegal migration. Bilateral and multilateral agreements are the means used for improving border controls, providing for the exchange of information on flows of illegal migrants and entry methods used. Among the neighbouring countries, cooperation has been achieved with Romania and Greece. The exchange of information with Germany and Hungary through concrete channels and specific persons has

¹²Ministry of the Interior, January 1998

¹³Ministry of the Interior, Bulgaria, January 1998

provided good results¹⁴. In practice, all international cooperation agreements concluded by the Ministry of the Interior include provisions concerning the fight against illegal migration.

Bulgaria participates in the Budapest process and takes action to implement recommendations and measures agreed upon within its framework.

3. Border control

1997 marked the start of a radical reform of border controls. The responsibilities for controlling border crossings of Bulgarian and foreign citizens were transferred from the National Security Service to the National Border Guard Service and then to the border police¹⁵. An integrated system for border protection and passport and visa control at the state border was created. Most border posts now have an electronic link to Sofia. Despite these efforts, the European Commission, in its report on progress towards accession of November 1998, considers that the infrastructure needs improvement, particularly at Sofia airport.

4. Asylum

Since the creation of the National Bureau for Territorial Asylum of Refugees at the Council of Ministers in 1993, and as of November 1998, 2,721 applications have been received. **The main countries of origin, according to NBTAR statistics, are Afghanistan (801), Iraq (414), former Yugoslavia (284), stateless persons (176), Iran (138) and Turkey and Armenia (92)**¹⁶. Refugee status was granted to 444 persons (including 120 children), humanitarian status to 44 persons (including 6 children). **The average percentage of approvals is 17.9%.**

Voluntary repatriation of most of the Bosnians was carried out in 1996 and 1997, mainly by UNHCR Sofia in cooperation with IOM¹⁷.

A significant number of asylum seekers prefer to go to Western Europe, despite the fact that they could be recognized as Convention refugees in Bulgaria. There are cases which only contact UNHCR, the NBTAR or NGOs in order to avoid expulsion from Bulgaria¹⁸.

⁹Ministry of the Interior, January 1998

¹⁵End 1997 (19.12.97) a law created a national 'border police' in order to curb the immigration pressure towards Western Europe both from nationals of 'risk' countries and from Bulgarian nationals, as well as the replacement of all identity documents by new ones with a high degree of protection against falsification: Antoinette Primatova, Deputy Minister of Foreign Affairs of Bulgaria, seminar on illegal immigration, Sofia, 8-10 April 1998.

¹⁶NBTAR, October 1998; statistics to 30 September 1998

¹⁷UNHCR Sofia, Caroline Spannuth, Protection Officer, December 1998

¹⁸UNHCR Sofia, Caroline Spannuth, December 1998

Legal basis

Bulgaria ratified the 1951 Geneva Convention and its Protocol of 1967 on 12 May 1993 without reservations. Both entered into force in 1993. The country still has to adopt a refugee law. Under the constitution, it is the President of the Republic who has the right to grant asylum^{19,20}. A specialized government refugee bureau, the National Bureau for Territorial Asylum and Refugees (NBTAR) was established and the asylum and determination procedure is regulated by an administrative order of 1994²¹.

A draft Refugee Law has been drawn up since 1994 and the improved version of 12 March 1998 is pending approval, after first reading, by Parliament²². **UNHCR expressed great concern about this project because the border procedure does not respect EU minimum guarantees: in cases of accelerated procedures at the borders, the draft law stipulates that border police forces should take the decision and not specialized agency members.**

The European Commission states, in its November 1998 Progress towards Accession report, that 'the asylum bill currently before the parliament is a first step in this direction (of starting a long-term plan to align its domestic legislation) but does not fully conform to the *acquis* as regards transparency and access to the asylum procedure. Further measures are needed to link this law up with the legislation on foreigners and nationality.'

Procedure

Applications for granting refugee status are examined by the NBTAR. The procedure for granting refugee status begins with the registering of the foreigner in Sofia, although there are still many cases refused registration and thus access to the asylum procedure. A proposal for granting or refusing refugee status, as well as for the suspension of the procedure, is made on the basis of interviews with the applicant, examination of the material gathered on the case and coordination with the institution concerned. A temporary refugee certificate is issued to the asylum seeker with a procedure under way. A first registration/reception centre was set up in the village of Banya near the town of Nova Zagora in 1997²³. In three cities at the Romanian, Turkish and Greek borders, small transit centres have been opened by UNHCR through an NGO. The idea was to assist the border police who very often do not know how to deal with asylum seekers. These centres give the border police the possibility of finding a place where initial help (shelter, food and transport to NBTAR in Sofia) can be provided. This experience has proved to be both very successful and to facilitate access to territory and eventually procedure.

During the procedure, the applicant has the right to accommodation and food, social and medical care, including examination and treatment in medical institutions under the same conditions as Bulgarian citizens. If refugee status is refused or the procedure is suspended, the provisions of the

¹⁹UNHCR Sofia, note to DG IV, December 1997

²⁰By Decree No. 207 of the Council of Ministers of 23 October 1992

²¹In order to implement the 1951 Convention and regulate national procedure for determining and granting refugee status until the adoption of a refugee law, an Ordinance on the Determining and Granting of Refugee status was adopted by Decree No. 208 of the Council of Ministers of 4 October 1994.

²²UNHCR Sofia, Caroline Spannuth, Protection Officer, October 1998

²³By Decree No. 199 of 9 May 1997

Law on the Stay of Foreigners are applied. Where the foreigner has no other reason for his stay according to this law, he is considered illegally resident and is subject to deportation²⁴.

Although in theory the determination procedure should last no longer than 3 months, there are cases which have been pending for more than 4 years. On average, some 30 to 40 cases are decided every month²⁵.

Legal status for refugees

After being granted refugee status, the foreigner has the same rights and obligations as Bulgarian citizens (except for rights linked to nationality). He is issued with a refugee identity certificate guaranteeing rights of residence, employment, health care, social insurance and assistance under the same conditions as for Bulgarian citizens. With the permission of the NBTAR's Director, he has the right of family reunion.

The role of UNHCR

UNHCR established an office in Sofia in 1992 and granted refugee status under UNHCR's mandate until Bulgaria signed the 1951 Convention a year later. By 1994, the government's specialized refugee bureau had gradually taken over the refugee status determination procedure from UNHCR. Since then UNHCR has been involved in the capacity building of the government (NBTAR - First instance, Supreme Administrative Court - Second Instance) and the refugee-assisting NGO's.

The NBTAR also cooperates with UNHCR's non-governmental implementing partners, such as the Bulgarian Red Cross (for medical help), the Bulgarian Helsinki Committee (for legal counselling and lodging appeals to the Supreme Administrative Court), 'Help the Needy' and 'Future'. The government has now (in 1998) taken over some of the assistance to asylum seekers while UNHCR is concentrating on the integration of refugees.

Main difficulties

In 1995/96 asylum seekers complained of police harassment, notwithstanding the presentation of their NBTAR document identifying them as asylum seekers. During 1997/98, up to 40 seminars were conducted by UNHCR within the police academy in Sofia and the situation has improved.

The adoption of the Refugee Law has been delayed due to the low priority given to refugee problems. The lack of a legal framework and an appropriate infrastructure, bad coordination structures between different ministries and, above all, the economic situation have led to serious problems in the field of asylum. It happens that potential asylum seekers are denied entry at border stations. UNHCR has finally been given access to the airport at Sofia but this still remains conditional, requiring advance notice. There is only one refugee reception/registration centre in the country and there are no reception facilities at Sofia airport, which is a big problem because people remain in the transit zone in semi-detention. UNHCR Sofia has come across cases where asylum seekers were returned to Bulgaria on the

²⁴Ministry of the Interior, Bulgaria, note to DG IV, January 1998

²⁵UNHCR, information bulletin, September 1998

basis of the 'safe third country' rule and from where they were then deported, sometimes despite UNHCR intervention²⁶.

- **Another source of concern is that some of the provisions adopted at first level in the new asylum law allow the border police to be in charge of making decisions in cases of accelerated procedures, even for exclusion clause cases, safe country of origin and safe third country cases. Thus there is not ONE central authority specialized in refugee matters.**
- **The Exclusion Clauses go far beyond what the 1951 Convention allows for.**
- **There is a time-limit of 72 hours for applying for refugee status (for those who enter legally).**

²⁶UNHCR Sofia, note to DG IV, December 1997

Czech Republic

1. Migration

In the past the Czech Lands were one of the major sources of emigration in Europe²⁷. Today, the Czech Republic has become a **transit country** for migration into Western European countries (in particular Germany). Nevertheless, **foreigners increasingly stay** in the country with a residence permit either for an extended period or **permanently** due to the good economic situation: 50,000 in 1992, 160,000 in 1995 and 206,577 up to June 1997. Since 1990, international migration has begun to play a significant role in population growth, due both to the positive net migration balance and the decline in natural growth. The largest group with permanent residence permits are Poles and Slovaks and with long-term residence permits Ukrainians (40,772), Slovaks (40,102), Vietnamese (15,314), Poles (12,889), Russians and Chinese²⁸. The increase of the Asian community is very evident since 1995 (25,000 persons as of 30 June 1997)²⁹. Residence and work permits are required for employment, with special rules for Slovaks.

The Czech Republic has not yet adopted either a new law on aliens or any concrete measures which would bring border management in line with EU rules, though this was one of the short-term priorities. However, an interdepartmental committee has been set up under the Minister of Home Affairs to begin this work; two strategic documents on measures to improve border control have been drafted³⁰, a draft asylum and a draft aliens law were submitted by the Minister of the Interior to the government in December 1998 for consideration³¹.

Illegal immigration

From 1993 to 1995, a total number of 77,729 aliens were discovered illegally crossing the state borders of the Czech Republic, in 1997 24,000, according to the Ministry of the Interior, in 1998 (until October) 32,250³². In most cases aliens enter Czech territory from the Slovak Republic, stay in the Czech Republic for only a short period and then illegally cross the state borders to the West, especially into Germany. In 1997 the main countries of origin were Romania, Yugoslavia, Iraq, Afghanistan, Bulgaria, Macedonia, Poland and Ukraine³³; in 1998 Kosovo (32%), Afghanistan, Romania and Bulgaria³⁴.

²⁷The Czech Republic is geographically close to Germany, a country towards which emigration of Czechs had already started before 1880, together with emigration to Ireland, the United Kingdom, the Netherlands, Belgium, France and the Scandinavian countries.

²⁸Ministry of the Interior, Directorate of the Aliens and Border Police Service, at the Police Presidium, note to DG IV, January 1998

²⁹Ministry of the Interior, Directorate of the Aliens and Border Police Service, at the Police Presidium, note to DG IV, January 1998

³⁰Commission Opinion on the Czech Republic's application for membership of the EU, 'Progress towards Accession', November 1998

³¹UNHCR, Lawrence Bottinick, December 1998

³²BBC Worldwide Monitoring, 16 October 1998; source: Jiri Kolar, Police President of the Czech Republic

³³Ministry of the Interior, Directorate of the Aliens and Border Police Service, at the Police Presidium, note to DG IV, January 1998

³⁴BBC Worldwide Monitoring, 16 October 1998; source: Jiri Kolar, Police President of the Czech Republic

The Czech Republic is involved in multilateral structures dealing with migration problems, evaluation of migratory movement trends, regulations for the management of migratory flows and prevention of uncontrolled migration, such as for example with committees of the Council of Europe, or the International Organization for Migration³⁵. The Czech Republic participates in the **Berlin-Budapest Group**³⁶ and provides information on illegal migration through the International Centre for Migration Policies Development. In order to secure the border and to facilitate border clearance, agreements have been concluded with the neighbouring countries of Germany, Austria and the Slovak Republic. Such agreements are, inter alia, a basis for the exchange of information on illegal migration.

Trafficking in human beings

Under the Penal Code of the Czech Republic, crossing borders and organizing border crossing illegally are criminal offences. Checks on persons and transport at border crossings and airports with international traffic are carried out by the Aliens Police of the Czech Republic³⁷.

In 1994, measures were adopted to strengthen border crossing controls (visa policy in line with EU Council Regulations of September 1995, agreement with Slovakia, etc.). **Individual illegal immigration seems to have decreased, but trafficking in human beings has not.** The activities of organized gangs, operating at the international level, has become more secretive and better organized. The use of forged, tampered and stolen travel documents for illegally crossing state borders is continuously on the rise. As the Czech Republic has concluded visa-free agreements with many developed countries, the demand for Czech Republic passports has risen³⁸. The Aliens Police of the Czech Republic concludes that illegal migration of aliens is connected with internationally organized crime, such as smuggling people, dealing in forged documents, car thefts, stolen antiques, arms, drugs, trade in women, money laundering, etc. In 1997, traffickers arrested came mainly from the Czech Republic (74%) and Slovakia (12%)³⁹.

2. Asylum

From 1990 to the end of June 1998 the Czech Republic received a total number of 14,686 applications for refugee status with an average of around 2,000 per year. The last months of 1998 have seen a sudden increase in the number of asylum seekers with 790 applicants between 1 and 31 October, among whom were 106 citizens of Afghanistan coming through Moldova on one single flight.

³⁵an intergovernmental body composed of 60 Member States and 49 Observer States; its objective is to ensure the orderly migration of persons in need of international assistance

³⁶The **Budapest Group** deals with uncontrolled migration issues. 36 countries (including Canada, USA, Australia, Russia, Moldova, Ukraine), as well as several international organizations, are members of this group. It seems to be the only forum where specialists on immigration issues gather from EU countries, the associated countries and the CIS countries.

³⁷Act no. 123/1992 Coll. on the Residence of Aliens as amended by other laws and Act no. 216/1992 Coll. on Travel Documents and Travelling Abroad stipulates the conditions of entry and residence in the territory of the Czech Republic

³⁸This can be deduced from the rising amount of lost documents - about 10,000 passports a year. The price of a passport ranges from 500 to 1,000 DEM (1 DEM=1.97 ECU), 15,000 DEM with a visa for the USA.

³⁹Council of Europe, CDMG, 'Evolution récente des politiques relatives aux migrations et aux migrants', 28 August 1998, p.21

Number of asylum applications

1990	1991	1992	1993	1994	1995	1996	1997	1998 (Oct)	TOTAL
1,837	1,992	841	2,207	1,187	1,419	2,212	2,109	2,334	16,138

Source: Statistics of the Ministry of the Interior, June 1998

Main countries of origin 1990 - October 1998

Bulgaria	4,478
Romania	3,299
Armenia	1,274
Afghanistan	1,290
Iraq	779*
Yugoslavia	547
ex-Soviet Union	401
Russia	376
Sri Lanka	352**
Ukraine	325
Angola	269
Vietnam	264
Others	3,016

*all in 1998

**of which 200 in 1998

Source: Ministry of the Interior, June 1998

The main countries of origin, Bulgaria, Romania and Armenia, have, from 1998 onwards, been replaced by **Afghanistan as first country of origin**, and also Kosovo.

Percentage of approvals of asylum applications

1990	1991	1992	1993	1994	1995	1996	1997	1998 (June)
1.6 %	39.0 %	29.7 %	11.3 %	9.8 %	4.2 %	7.3 %	4.6 %	5.2%

Source: Ministry of the Interior, June 1998

From the total number of 14,686 applications in the period from 1990 to the end of June 1998, approximately **12.2 % (± 1,700 persons)** were, on average, granted refugee status annually, but if we look at recent years (1994-1998), the rate is approximately halved (**6.2%**).

Legal basis⁴⁰

The Federal Republic of Czechoslovakia, to which the Czech Republic is a successor, ratified without reservations the 1951 Convention, and its Protocol of 1967, on 26 November 1991⁴¹.

Until July 1996, refugee status was limited to five years, but the Czech Parliament approved an amendment to the Law on Refugees lifting this limitation and, after a period of 5 years' residence in the country as a recognized refugee, it is possible to apply for citizenship. Since October 1998, it is the Ministry of the Interior's Department for Refugees which deals with applications and not the border police.

A new asylum law is under preparation with the objective of meeting international and EU standards, especially as far as the 'safe country' principle, accelerated procedures, status for humanitarian reasons and the status of the appeal authority are concerned.

The question of temporary protection is included in the draft aliens law instead of the asylum law, contrary to UNHCR's suggestions. The draft aliens law also includes a provision for a new 'Toleration' status for those who are not refugees but cannot be returned; the question remains of what rights will accompany this status.

Definition

The Refugee Act follows the provisions of Article 1 of the Geneva Convention. Refugee status may be granted to the spouse and minor children of an alien who has been granted Convention status.

Before the 1993 amendment, refugee status had also been granted for humanitarian reasons. This status has been suppressed and there is now only one possibility - Convention status.

Admissibility procedures

There are no specific admissibility procedures either at the airport or at land borders. Asylum seekers may enter the Czech Republic without a valid travel document, providing they announce their intentions to apply for refugee status when crossing the frontier. In most cases interpretation into Czech, German, Russian, French and English is provided⁴². **Language** can be a barrier for access to the procedure.

⁴⁰.1951 Convention and 1967 Protocol

.European Convention on Human Rights and Fundamental Freedoms

.Art. 43 of the Charter of Fundamental Rights and Liberties on Right of Asylum (part of the Constitution)

.Refugee status: Law no. 498/1990, amended 317/1993 and 150/1996 (Refugee Act)

.Aliens Act (Law 123/1992) and Law 261/1991 (Travel documents and travel abroad)

⁴¹National legislation: Refugee Act 498/90 (16/11/90) amended by Law no. 317/93 (8/12/93) and Law no. 150/96 (31/5/96), Aliens Act 123/92 (4/3/92)

⁴²UNHCR Prague, Radhouane Nouicer, Head of Liaison Office, 'Asylum procedure in the Czech Republic', note to the European Parliament, DG IV, June 1996

A foreigner who wants to apply for asylum has to inform passport control officials of his intention without delay. After the application is received, the asylum seeker can travel to a reception centre and, after one month, to a refugee camp. A later application from a refugee camp is possible if the asylum seeker was unable to express his intention when entering the country for 'objective reasons' (Art. 20 of Law no. 498/1990).

In practice, failure to appear at the refugee camp 'without delay' and to file an asylum application within 24 hours (Article 5 (5) of Law no. 498/1990) does not lead to denial of access to the asylum procedure.

UNHCR and NGOs which could give legal advice are allowed to be present in border areas but they cannot maintain a systematic presence due to insufficient resources.

Duration of the procedure

The decision shall be made within 90 days of the submission of the initial application. If the decision cannot be issued within this term, the Minister of the Interior may extend the term; the applicant must be notified in writing of such an extension. The average duration of the normal procedure is 73 days⁴³.

The duration of a procedure, including one level of appeal, is 293 days. The average duration, not including the possible judicial review by the Second Instance (High Court) has been 15 months for acceptances and 8 months for refusals⁴⁴.

If the asylum application is granted, the decision normally enters into effect within 15 days of its delivery.

Role of the UNHCR

The UNHCR may attend the proceedings at any stage and all decisions are delivered to it. UNHCR's Prague office was established in 1992. It has focused on supporting the government's efforts to set up a fair and efficient asylum system. Currently it also supports five NGOs which provide legal, social and psychological counselling to asylum seekers and support the integration of refugees into Czech society⁴⁵.

Appeal and judicial review

The Department for Refugees within the Ministry of the Interior is responsible for asylum policy. Decisions are in the first instance taken by the Directorate of Aliens and Border Police Services at the Police Presidium of the Czech Republic. In the event of a negative decision, an appeal has to be submitted to the Minister of the Interior. The Ministry of the Interior is supposed to receive a recommendation from committees composed of NGOs, various Ministries, the Bar Association and

⁴³UNHCR, Regional Bureau for Europe, Report and Proceedings of the 3rd International Symposium on the Protection of Refugees in Central Europe, 23-25 April 1997, Budapest, p. 242

⁴⁴UNHCR, *op cit.* p. 245

⁴⁵UNHCR Information Bulletin, September 1998

an academic, but the committees have not yet been formed⁴⁶. The unsuccessful applicant, whose appeal has been rejected by the Minister of the Interior, can, within 30 days, ask the High Court for a review of the negative decision⁴⁷. A motion made to the High Court has no suspensive effect, although in practice the asylum seeker is usually allowed to stay in the country with an extended visa issued with the support of UNHCR. The judicial review procedure usually takes more than a year but is not limited: all who wish can apply and will be heard.

Under certain circumstances, the asylum seeker whose case was rejected by the High Court can lodge a constitutional complaint with the Constitutional Court. So far, no case has been decided at this level.

The fact that an applicant has already been rejected in a Member State of the EU does not in itself constitute a reason for the rejection of their asylum application if they comply with procedural requirements. In practice, an asylum seeker whose application has already been rejected on substantial grounds in a Member State of the EU has only a slight chance of obtaining refugee status in the Czech Republic.

The problem lies in the fact that, without government assistance, it is difficult for persons now considered as foreigners under the Aliens Act to pay for food, shelter, visa fees etc. UNHCR is limited in the number of persons it can assist and has for year asked for this problem to be resolved.

Accelerated procedure for manifestly unfounded claims

The 1993 amendment to the 1990 Refugee Act established an accelerated procedure for manifestly unfounded claims: if the applicant is a citizen of a state where, on the basis of generally known facts, he is not threatened with persecution, if he does not cooperate in reliably ascertaining his identity or if he justifies his application solely on the basis of economic needs. In these cases, the application can be rejected within 7 days of submission.

The applicant has 3 days to appeal. In practice, the accelerated procedure has so far been rarely applied⁴⁸. The percentage of applications qualified as manifestly unfounded is very low (4.35% in 1995; 2.18% in 1996 and 2% in 1997)⁴⁹.

Housing

Asylum seekers are accommodated in refugee centres. The Ministry of the Interior provides four refugee centres for standard asylum seekers and nine residence centres for persons with refugee status. Asylum seekers receive free food, accommodation, basic health and mental health care and

⁴⁶UNHCR, Lawrence Bottinick, December 1998

⁴⁷Ministry of the Interior, Department for Refugees and the Integration of Foreigners, A. Barsova, note to DG IV, January 1998

⁴⁸UNHCR, Regional Bureau for Europe, Report and Proceedings of the 3rd International Symposium on the Protection of Refugees in Central Europe, 23-25 April 1997, Budapest, p. 244

⁴⁹Ministry of the Interior, Directorate of the Aliens and Border Police of the Police Presidium, August 1998

pocket money. Primary school education is free for the children of asylum seekers. There were 910 asylum seekers in October 1998⁵⁰.

Recognized refugees can benefit, for a maximum period of one year, from accommodation in an integration centre run by the Refugee Department. As soon as they find houses accepted into the housing programme, they can be integrated into Czech communities with the assistance of the local authorities, through a project funded by the Refugee Department of the Ministry of the Interior. The project started in 1994 and the pre-1994 group are now entitled to benefit from the housing programme. As of the end of September 1997, 98 families comprising 302 persons had found accommodation under this programme⁵¹.

The government provides funding to an NGO to assist in finding housing, providing counselling, orientation and other help to newly recognized refugees⁵².

Rejected asylum seekers waiting for the decision of the High Court are treated like foreigners and are allowed by the Alien Police to stay in the country and wait for the decision. For those without a valid document, accommodation, work, medical care, etc. are very problematic. UNHCR provides funds, through NGO's, to pay for accommodation for them in refugee camps⁵³, a stay usually limited to two months⁵⁴.

Safe country rule

Safe country of origin and safe third country rules are not applied but should be integrated into the new law on asylum. This means that all applications for asylum are eligible. In practice, some airport cases are returned to transit states such as Abu Dhabi, such returns being apparently justified by the Aliens and Border Police on the basis that the applicant did not request protection on arrival⁵⁵. The First Instance decision is issued on the basis of different facts and evidence: the evidence submitted by the applicant, interviews, the credibility and coherence of the applicant's statements, the country of origin information provided by UNHCR through its database REWORLD, by Czech diplomatic missions and other sources⁵⁶.

Readmission agreements

Readmission agreements with neighbouring countries have been concluded as follows:

with the Slovak Republic (signed on 25 October 1996), Austria (1 November 1992), Poland (30 October 1993), Romania (26 May 1994), Germany (1 January 1995), Hungary (5 August 1995),

⁵⁰BBC Worldwide Monitoring, October 1998; source: Jiri Kolar, Police President of the Czech Republic

⁵¹UNHCR Prague, Lawrence Bottinick, September 1998

⁵²UNHCR Prague, Lawrence Bottinick, September 1998

⁵³ECRE, biannual meeting, Lausanne, October 1996

⁵⁴UNHCR Prague, Lawrence Bottinick, September 1998

⁵⁵Danish Refugee Council, "Safe third country" Policies in European Countries', 1997, p. 48

⁵⁶UNHCR, *op. cit.* p.242

France (1997). An Agreement with Canada was signed on 8 March 1997 and entered into force on 7 October 1997⁵⁷.

Negotiations with Slovenia are being conducted, draft proposals have been sent to Ukraine, Belarus, Bulgaria and Russia and expert talks with the Netherlands are being prepared. Readmission arrangements signed at government level are supplemented by more detailed arrangements (protocols) agreed between the ministries responsible.

In practice, problems occur especially when asylum seekers are returned to the Czech Republic under readmission agreements. The Czech authorities are not informed of the fact that a returned person has applied for asylum in another country and that the asylum application was not examined on its merits.

Temporary protection

Organized voluntary repatriation ended in 1997 with six flights (190 persons). Temporary protection ended for Bosnians on 30 September 1997 and for other former Yugoslavs on 31 December 1996. The Czech government, in projects with Czech NGO's, provided housing in Bosnia for those unable to find other housing. Those remaining in the Czech Republic adjusted their status either to long-term stay for work or study (about 410 Bosnians by the end of 1997), permanent residence for humanitarian reasons (about 180 by the end of 1997), or involved the 118 persons with permanent residence in a special humanitarian programme. This last group is eligible for the same integration programme as recognized refugees⁵⁸. Others (50-100) resettled, mostly to the US, usually without UNHCR involvement⁵⁹.

Integration measures

The first integration project for recognized refugees dates back to 1991. Since 1994, a more comprehensive governmental programme aimed at the integration of recognized refugees has been carried out by the Ministry of the Interior in cooperation with other governmental agencies, local authorities, communities, the UNHCR and NGOs⁶⁰. It includes Czech language courses, providing for housing and employment and integration into the new community.

Main difficulties

Illegal immigration and trafficking in human beings seem to be increasing but the law on aliens has not been changed and border management has not improved enough to reduce this trend.

⁵⁷In October 1997, in an effort to curb the inflow of Roma asylum seekers with Czech citizenship, Canada reimposed entry visas on Czech visitors after a visa-free trial system.

⁵⁸This permanent resident status was granted on the basis of Executive Decree no. 580/1996 concerning the project of durable solutions for vulnerable cases of temporarily protected persons. The decree provided for an inter-ministerial committee to favourably consider vulnerable cases which might not otherwise meet the criteria for refugee status or permanent residence status. The programme aimed at securing adequate health care and social assistance for these handicapped persons, as well as adequate housing for them and members of their families: Ministry of the Interior, A. Barsova, Department for Refugees and the Integration of Foreigners, August 1998

⁵⁹UNHCR Prague, Lawrence Bottinick, September 1998

⁶⁰Similar programmes are implemented for immigrants of Czech origin for instance.

Asylum seekers are granted access if they specifically ask for asylum in the Czech Republic - they must understand this. In practice, many seem not to be interested and, upon release, attempt to cross the western border again⁶¹.

Asylum seekers returned to the Czech Republic under readmission agreements face the risk of being refused access to the procedure at the border because of the Czech authorities' not being informed that the application had not yet been examined on its merits.

Language can also be a problem, both for access to the procedure and for integration in the country.

⁶¹UNHCR, Lawrence Bottinick, December 1998

Estonia

1. Migration

Estonia has become a multi-ethnic country where the nature of migration is influenced by events following the rise and collapse of the former Soviet Union. Immigration has strained Estonian society considerably as almost 1.4 million of mostly Soviet Union citizens have passed through the country in the last 45 years⁶², not including Soviet military personnel. The result was a radical change in the composition of the population after World War II.

In fact, occupation by the former USSR in 1940 opened the floodgates for Russians to pour into Estonia. From 1945 to 1989 the proportion of Estonians in the population fell from 95% to 61.5%. The proportion of Russians rose from less than 5% to 30.3%. The problem of statelessness is resolving itself as those eligible for naturalization take up Estonian citizenship and those who opt for Russian status apply for Russian citizenship. The non-Estonian population is generally urban, while the rural areas are mainly inhabited by Estonians⁶³. On 8 December 1998, the European Parliament adopted amendments to the law on citizenship which include the possibility for stateless children born in Estonia after 26 February 1992 to obtain Estonian nationality with a simplified procedure. This was one of OSCE's main recommendations concerning citizenship⁶⁴

Migration patterns have now reversed⁶⁵. While at least 10,000 migrants came to Estonia every year for 50 years, since 1990 about 100,000 aliens have returned to their 'homelands' of Russia, the Ukraine, Belarus and EU countries (e.g. Germany, Finland) and other CIS countries (e.g. Azerbaijan)⁶⁶.

Illegal migration

The Department of Illegal Immigration of the National Citizenship and Migration Board (which was restructured and enlarged in July 1998) currently deals with illegal immigrants on the basis of the Aliens Act (1993). The possibilities of expelling an illegal immigrant are considered by the above-mentioned Board, after which the police can be asked to put him in a transit camp. The final decision is made by administrative courts which can extend the transitional period. According to Article 171 of the Code on Violation of Administrative Law, negotiations shall be held with the country of origin in the case of expulsion.

In order to fight illegal immigration, the National Border Guard Board has improved cooperation with the border guards of Latvia and Russia and with Interpol, and has also organized seminars and meetings of professional staff. The level of cooperation and information exchange with Western

⁶²Statement by the Minister of Internal Affairs, Republic of Estonia, to the 6th Conference of European Ministers responsible for migration affairs, Warsaw 1996

⁶³Statistisches Bundesamt, *Monographs on countries: Estonia*, 1996

⁶⁴Agence Europe, 14 December 1998

⁶⁵SIPAVIČIENĒ A., *International Migration in the Baltic States: New Patterns and Policy*, Vilnius, 1996, pp. 11-12

⁶⁶In December 1997, the EU congratulated the Estonian government on its decision to introduce an amendment in Parliament to give Estonian citizenship to children born of stateless parents.

Europe and the EU (SOPEMI) is satisfactory. Cooperation with Finland is excellent⁶⁷. Estonia also provides the International Organization for Migration with information.

The EU has given only moderate help to the National Border Guard Board within the framework of the PHARE programme. The reason for this lies in the restrictions in the PHARE programme which focuses on the frontiers bordering the EU states, whereas illegal immigration would mostly occur on the border between Estonia and Russia.

The Commission states that staff levels have to be increased; working conditions, training and investigation techniques should also be ameliorated⁶⁸.

Estonian legislation does not currently deal with all the new criminal aspects of illegal trafficking of people, but the new penal code should cover these areas. It will also include liability of employers using the labour of illegal immigrants, organizing border crossing, etc.⁶⁹

Readmission agreements

It seems Estonia has concluded readmission agreements with Latvia, Lithuania, Finland, Sweden, Norway, Iceland Italy, Slovenia and Switzerland. Article 7 on visa-free travel agreements with Denmark, Poland and the Czech Republic also stipulates the readmission obligation of citizens of third countries. There are no fixed rules for the expulsion of those who arrive illegally from Russia⁷⁰ and no negotiations in this field. The Estonian Government was hoping to sign a border agreement with Russia on 2 December 1996, but the draft border agreement did not accord with the border stipulated by the 1920 Tartu Peace Treaty⁷¹, so no agreement has been reached until now.

2. Asylum

Before 1997, the authorities did not make legal distinctions between asylum-seekers and economic migrants and considered them all to be illegal migrants.

The Estonian Parliament adopted the Estonian Refugee Act on 18 February 1997 and ratified the 1951 Geneva Convention on 19 February 1997. The national Refugee Act and Geneva Convention entered into force simultaneously on 9 July 1997.

The Ministry of Internal Affairs will be responsible for the status determination procedure and the Ministry of Social Affairs for the reception of asylum seekers and the integration of refugees.

⁶⁷Statement of the representative of the Republic of Estonia at the meeting of the Committee on Civil Liberties and Internal Affairs of the European Parliament with corresponding Committees of the Parliaments of the Countries of Central and Eastern Europe, June 1996

⁶⁸European Commission, 'Enlarging the EU, progress towards accession', November 1998

⁶⁹Statement of the representative of the Republic of Estonia at the meeting of the Committee on Civil Liberties and Internal Affairs of the European Parliament with corresponding Committees of the Parliaments of the Countries of Central and Eastern Europe, June 1996

⁷⁰Unlike Sweden in its negotiations with Estonia, Finland does not require Estonia to become party to the 1951 Geneva Convention. Negotiations between the two countries on visa-free travel, to be introduced in 1997, are currently going on. Finland insists, inter alia, on police cooperation and on introducing electronic checks on Estonian passports (*Migration News Sheet* 02/96).

⁷¹Press Agency, 4 December 1996

On 13 January 1998 the Government initially allocated 140,000 US\$ for the renovation of the reception centre. An additional 322,000 US\$ is planned for the same purpose in the 1998 State budget.

Currently there are 21 asylum applications before the Estonian authorities⁷². As of 6 November 1998, the first three decisions had been taken. All three were negative⁷³.

⁷²15 Iraqis, 3 Algerians, 2 Pakistanis and 1 Armenian - UNHCR Estonia, Kristina Mauer, July 1998

⁷³UNHCR, Jennifer Sarvary, December 1998

Hungary

1. Migration

The characteristics of migration in Hungary are related to both its geographical situation and its history, including the dissolution of the Austro-Hungarian Empire and the strong migration patterns of Hungarians living in neighbouring countries. The relative openness of Hungary's former communist government also explains the peculiarity of the situation.

Many migrants use Hungary as a springboard to further migration, because it is the most 'Western' country of the region. It allows migrants to settle, experiment and prepare for further migration⁷⁴. The social status of transit migrants is diverse. Among them are intellectuals, manual workers and small-scale market traders. Over half are under the age of 30⁷⁵.

The legislation regarding residence of foreigners and the rules concerning foreign labour are rather strict in Hungary. At the same time, entering the country as a tourist is possible as a result of visa-free agreements with neighbouring countries and others. These contribute to the high number of foreigners staying illegally in Hungary or trying to migrate further.

The situation with regard to **permanent migration** has fluctuated, the number of foreigners holding work permits decreasing from 48,700 in 1990 to 18-20,000 per year in the following years. The largest group is **Romanian**, although their numbers are going down. There is an increasingly large group of **Chinese**; many of them run small businesses, some of them to launder money and others to find investment opportunities. The number of Chinese currently resident in Hungary is estimated at 10,000. In addition, Russian and Bulgarian capital is increasingly finding its way into Hungarian banks⁷⁶.

Illegal migration and trafficking in human beings

Illegal migration, and international organized crime related to the smuggling of people has rapidly increased. By the end of 1998, the number of illegal immigrants was 40% more than in 1997.

Forgery of official documents, for instance, involved 1,321 persons in the first half of 1998, 2,640 persons in 1997. In 1997, 391 persons were arrested for assisting in illegal border crossings, in 1998 (up until June) the number was 252⁷⁷. The majority of them were smuggling people, but it was impossible to prove a criminal act. In certain cases, women travelling from the Baltic States or the CIS to the West, obviously for the purpose of prostitution, are observed, but they do not commit offences under Hungarian law because they travel legally.

⁷⁴IOM, Study on migration, Hungary, 1996

⁷⁵IOM, Study on migration, Hungary, 1996

⁷⁶Salt J., 'Current developments in international migration in Eastern Europe', IOM, October 1996

⁷⁷Ministry of the Interior of the Republic of Hungary, Ministerial Cabinet, Office of EU Integration, Dr. Vivien Vadasi, October 1998 and Dr. Krisztina Berta, October 1998

Nationalities of traffickers in human beings

	Romanian	Hungarian	Slovak	Yugoslav	Turk	Chinese
1996	20	94	29	18	5	1
1997	16	186	23	13	2	1
1998 (30.6.98)	5	93	10	7	0	0

Source: Ministry of the Interior, Budapest, October 1998

Border controls

Since the adoption of the new law on border protection in November 1997, border guards are authorized to carry out investigations in the field of organized crime. Already since 1989, border control has changed significantly in order to bring its practice in Hungary into conformity with European standards. Enlisted personnel have been replaced by professional staff. Special organizations like the directorates' investigations groups and the Border Guard Action Service have been set up.

The most active border section is that of Austria, followed by the Romanian, the Slovenian and the Slovakian sections⁷⁸.

Stricter rules were introduced in October 1991 to ensure a consistent check upon requirements for entry into the country (validity of travel documents, visa, money required to stay in Hungary, etc.). The Act on controlling foreigners, which entered into force on 1 May 1994, reinforced the possibilities for the Hungarian authorities to restrict entry at their borders. Large-scale border traffic, international organized crime and illegal immigration have necessitated a renewal of the system of control which is also necessary to bring it in line with the guidelines of the Schengen Agreement. Hungary has introduced a double screening system which meets the control technology principles of the Schengen Agreement (Article 6, § 2). In the course of preparations for joining the Schengen Agreement, the information system must be completed. On internal borders, efficient control is carried out at permanently operating border check points. The representative of the Republic of Hungary underlined that abolition of the obligation to carry visas for citizens of neighbouring countries is possible if border controls are improved⁷⁹.

Hungary is participating in the Budapest Group on illegal migration⁸⁰.

⁷⁸On the Austrian-Hungarian border, there are three corridors to enter or leave the country: one for Schengen countries' citizens, one for Hungarian citizens and a third for citizens of countries requiring a visa to enter any Schengen state.

⁷⁹Statement of the representative of the Republic of Hungary at the meeting of the Committee on Civil Liberties and Internal Affairs of the European Parliament with corresponding Committees of the Parliaments of the Countries of Central and Eastern Europe, June 1996

⁸⁰The **Budapest Group** deals with uncontrolled migration issues. 36 countries (including Canada, the USA, Australia, Russia, Moldova, Ukraine), as well as several international organizations, are members of this group. It seems to be the only forum where specialists on immigration issues gather from the EU countries, associated countries and the CIS.

Unauthorized border crossing

1993	1994	1995	1996	1997	1998 (30.6.98)	TOTAL
15,025	12,988	12,059	10,579	12,432	4,539	67,622

Source: Ministry of the Interior, Budapest, October 1998

Number of those expelled or returned by country

	1993	1994	1995	1996	1997
Romania	592,066	139,706	138,382	101,599	32,258
Yugoslavia	33,538	16,764	7,409	7,230	6,520
CIS	39,543	38,672	2,035	-	-
Ukraine	-	34,389	154,290	128,831	5,054
Bulgaria	16,753	11,021	8,361	11,021	432

Source: Ministry of the Interior, Budapest, October 1998

Readmission agreements*Readmission agreements - number of persons sent back to their country*

	Austria	France	Romania	Ukraine	Switzer- land	Czech Rep.	Slovak Rep.
Signed	9.10. 1992	16.12. 1996	1.9.1992	26.2.1993	8.7.1995	2.11.1994	5.8.1994
Entered into force	20.4. 1995	-	30.10. 1994	5.6.1994	8.7.1995	5.8.1995	20.4.1995
No.of persons transferred back to their country	42		4,282	478	--	--	109

	Croatia	Slovenia	Poland	Italy	Bosnia-Herzegovina	Moldova
Signed	9.12.1992	20.10.1992	2.11.1994	20.5.1997	21.4.1996	4.6.1997
Entered into force	21.11.1996	22.5.1996	5.8.1995	-	-	-
No. of persons transferred back to their country	35	11	11			

Source: Ministry of the Interior, Budapest, October 1998

The Ministry of the Interior considers that asylum seekers' applications can always have priority⁸¹, though NGOs and UNHCR consider that these readmission agreements do not necessarily take into account the special protection needs of asylum seekers, which is a cause of concern⁸².

2. Asylum

Since 1989, Hungary has registered more than 54,000 refugees from Romania (the majority of whom were ethnic Hungarians who fled Ceaucescu's policy against minorities) and received more than 75,000 refugees when war broke out in the former Yugoslavia⁸³. For 1998 (up until 31 July), 2,159 persons applied for asylum, mainly from Kosovo (24%), Afghanistan (19.5%), Iraq (11.4%), Algeria (8.6%) and Sierra Leone (7.2%).

In the past 10 years, around 4,300 people have been granted refugee status⁸⁴, including 116 persons in 1996, 27 in 1997 and 243 in 1998 (up until July).

Percentage of approvals

1989	1990	1991	1992	1993	1994	1995	1996	1997	1998 (June)
97.2	72.7	47.1	103*	77.1	115.5*	89.2	50	15.25	12.14

Source: Ministry of the Interior, Budapest, October 1998

**In excess of 100% because of the number of cases started in the preceding year and evaluated in the current year*

⁸¹Ministry of the Interior, Ministerial Cabinet, Office of EU integration, Dr. Vivien Vadasi, October 1998

⁸²Danish Refugee Council, 'Safe third countries', 1997, p. 84, and UNHCR, *Background information in the Republic of Hungary in the context of the return of asylum seekers*, November 1998

⁸³UNHCR information bulletin, September 1998

⁸⁴Associated Press, 13 January 1998

Procedure and legal basis

Hungary was the first of the countries in Central and Eastern Europe to join the Geneva Convention, and its 1967 Protocol, in March 1989. Due to the prevailing political and economic circumstances, a geographical reservation was made for people persecuted as a result of events in Europe only. Non-European refugees could not apply for asylum, though there was a special agreement with the UNHCR Office. This reservation was lifted in March 1998.

National legislation related to refugees is primarily contained in the new asylum law (March 1998) which represents a 'distinct improvement of the system in place since 1989 (...). The lifting of the geographic limitation, the discontinuation of the 72-hour time-limit for lodging an application, the procedure and status established for beneficiaries of temporary protection and for persons who may not be Convention refugees, but whose expulsions raise compelling human rights issues are major achievements of the new legislation'⁸⁵

Tasks relating to asylum were transferred from police administration to civil administration in March 1998. A separate organization for the evaluation of asylum requests has been created, the ORMA (Office for Migration and Refugee Affairs). Applications must be submitted to its local organs. This office also decides on appeals against request refusals. Applicants who are rejected may initiate judicial procedures to review the Office's decisions.

ORMA makes a decision within 60 days of submission of the claim. The deadline can be extended by 30 days in justified cases. The decision, in Hungarian language, has to be announced in the applicant's mother tongue or in any other language spoken by the applicant. The decision must be in writing.

The applicant may request a judicial review of the decision within 5 days. The court has to decide within 15 days.

The rejection of an asylum request in an EU Member State is not in itself a reason for rejection in Hungary, although it is taken into account.

Role of UNHCR

UNHCR established an office in Budapest in 1989 to help the Hungarian government cope with the influx of tens of thousands of Romanians. It has also assisted in developing national NGOs that can help refugees integrate into Hungarian society.

According to the Hungarian Act of Asylum the representative of UNHCR may take part in any stage of the refugee status determination procedure. He may be present at the applicant's interview, gain access to refugee documents and make copies. A sample of the decision is sent to UNHCR.

⁸⁵UNHCR, *Background information on the situation in the Republic of Hungary in the context of the return of asylum seekers*, November 1998

Convention refugee status

Convention refugees have almost the same rights as Hungarian citizens. They are entitled to unlimited stay in Hungary, to be employed without obtaining a work permit, to a free Hungarian language course, vocational training, housing service and to apply for Hungarian citizenship in an expedited manner. The only differences with Hungarian citizens are that they are exempt from military service and cannot vote.

People with refugee status are entitled to receive a one-off settlement payment and may be given interest-free housing, rent benefit or a contribution to their accommodation expenses. Furthermore, in addition to reimbursement of their Hungarian language tuition fees, they are entitled to free basic medical services, access to nursery schools, education or training, as well as to the cost-free translation into Hungarian of their personal documents.

Recently, a number of asylum seekers have been appearing in Hungary who do not speak Hungarian and do not have any vocational skills. This growing trend has necessitated the organization of free vocational and language courses for refugees⁸⁶.

Temporary protection

According to the Asylum Act there are two types of non-Convention status. An applicant might be recognized as a temporary protected person or a person authorized to stay⁸⁷.

Number of asylum seekers from former Yugoslavia⁸⁸

1991	1992	1993	1994	1995	1996*	1997*
48 485	15 021	4 593	2 386	5 046	65	26

Source: Ministry of the Interior, Budapest, December 1997

** UNHCR Budapest, December 1997 (figures until 30 October 1997)*

Following the Dayton Agreement, the government stopped admitting refugees from former Yugoslavia from 15 January 1996, except in specific cases such as family reunification.

As of 15 January 1997, there were 4,469 persons registered under the temporary protection regime; as of 15 September 1997 the number was 3,445 and 1,710 as of 15 October 1998.

Since January 1998, due to an amendment to the Law on Employment, beneficiaries of the temporary protection regime holding a temporary residence permit do not need permission from the competent labour authority to undertake work in Hungary (while other aliens do need such permission).

⁸⁶Ministry of the Interior of the Republic of Hungary, Office of EU integration, Dr. Vivien VADASI, October 1998

⁸⁷Persons authorized to stay are foreigners who cannot temporarily be returned to their country because they would be exposed to capital punishment, torture, inhuman or degrading treatment. According to ORMA's registers, 30 persons are in this situation.

⁸⁸UNHCR Budapest, background information on the situation of non-Europeans in Hungary in the context of the 'safe third country' concept, November 1995

Persons authorized to stay are foreigners who cannot be returned to their country temporarily because they would be exposed to capital punishment, torture, inhuman or degrading treatment. 30 persons are in this position⁸⁹.

Main difficulties

Asylum

There are some shortcomings in the law on asylum, as well as in practice, but UNHCR considers these will be improved by the Hungarian authorities. The following should be improved: the training of eligibility officers and interpreters, the conditions of border guards' community shelters, the information given to asylum seekers on their rights, the updating of the country of origin database, the integration of recognized refugees.

As a consequence of mandatory medical screening (tuberculosis, parasites, venereal diseases) in the course of the asylum procedure, a refusal may be based on the grounds of endangering public health, which is in contradiction to the provisions of the 1951 Convention.

Due to a pre-screening procedure which is applied in practice (without any kind of legal basis), 80% of the applicants allowed to enter the first instance procedure are Hungarians from neighbouring countries (mainly from Romania), as well as 80% of refugees recognized.

Due to the recent change of regime, the security police (normally in charge of the investigation of criminal cases) have been authorized to deal with refugees arriving at Budapest airport despite the fact that they have had no proper training in this area.

Immigration

- Several human rights organizations, such as the Hungarian Helsinki committee, the Hungarian Human Rights Centre and the Refugee Association, have criticized provisions dealing with asylum seekers and foreigners in the anti-crime legislative package before Parliament (November 1998)⁹⁰ because they do not respect international human rights standards.
- Human rights organizations protest about the treatment of illegal immigrants and claim that Hungary illegally holds immigrants in border guard centres for months in very bad conditions because of the sudden increase in the number of illegal immigrants⁹¹.

⁸⁹Ministry of the Interior, Ministerial Cabinet, Office of EU Integration, Dr. Krisztina Berta, October 1998

⁹⁰Agence France-Presse, 26.11.1998

⁹¹Agence France-Presse, 26.11.98 and *De Standaard*, 9.12.98 'Verdrag van Schengen stelt Hongarije voor dilemma'.

Latvia

1. Migration

Immigration during the Soviet period

Due to its geographical location and complicated history, Latvia has traditionally been a multi-ethnic State. The number of migrants residing in Latvia is not significant by Western European standards; however, another unique and specific phenomenon has developed there. Latvian citizenship was not granted to those persons who arrived on Latvian territory during the period of more than fifty years of Soviet occupation, when Latvia was incorporated into the USSR. It is estimated that during these 50 years several million people, including military personnel, the number of whom has never been included in official statistics, moved throughout the country. Some who arrived during this period have left Latvia, but a significant number of them are still resident there.

The total number of persons without Latvian citizenship is estimated to be over 700,000. These people do not integrate well as most of them do not know the Latvian language. Therefore, the integration (and naturalization as one of its forms of implementation) of non-citizens is an important task of internal policy⁹³. In October 1998, 53% of the Latvian population voted in favour of immediate reforms already approved by the Latvian Parliament and government on obtaining Latvian citizenship: simplification of tests on the linguistic knowledge of candidates and automatic granting of citizenship to children of 'non-citizens' born after 31 August 1991. These measures will increase the possibilities for non-citizens, including stateless children, to acquire full citizenship.

Emigration since 1991

After 1991 the migration flow turned in the opposite direction. People who were not satisfied with the changes taking place left Latvia. The withdrawal of Russian Federation troops also diminished the number of inhabitants.

Net emigration to Western countries increased from near zero at the beginning of 1990, to 1,500 in 1996. The majority of emigrants travelling to the West go to Germany (638 persons in 1996), Israel (581) and the USA (453). The majority of emigrants to the East go to the Russian Federation (6,360 persons in 1996), the Ukraine (719) and Belarus (685). The long-term migration flows between Latvia and its neighbouring countries - Estonia and Lithuania - are quite low (40 immigrants from Estonia and 79 from Lithuania in 1996, 59 and 174 emigrants respectively)⁹⁴.

There are still many people in Latvia who entered legally under Soviet legislation, but did not regularize their situation after independence. This category mainly includes former guest workers in the textile industry from Vietnam and Mongolia⁹⁵.

⁹³Council of Europe, *Report on the Republic of Latvia to the 6th Conference of European Ministers responsible for migration affairs*, Warsaw, June 1996

⁹⁴Council of Europe, *Recent demographic developments in Europe*, 1997

⁹⁵*Migration News Sheet*, February 1996, p.5

Since 1 July 1992 the law on 'residence and abode of foreign citizens and stateless persons in the Republic of Latvia' has been in force. It regulates short and long-term immigration as well as expulsion orders for those persons who violate the law.

Illegal immigration and trafficking in human beings

In 1995, out of an estimated 30,000 illegal border crossings, 7,511 persons were detained.

The main regions of origin of illegal immigrants are Russia, Belarus, Ukraine, Moldova, Iraq, Iran, Bangladesh, Vietnam and Afghanistan⁹⁶.

In order to reduce the flow of illegal migrants via Latvia, on 17 April 1995, the Saeima added a new paragraph 78 to the Latvian Criminal Code, which imposes the criminal punishment of imprisonment of up to 5 years for illegal trafficking of migrants across the border.

For the trafficking of 5 or more people, individuals can be imprisoned for 5-10 years with property confiscation. Officials who are involved in migrant trafficking can be imprisoned for up to 7 years with property confiscation.

The amendments include punishment for illegal migrants of up to 3 years' imprisonment or a fine worth 60 minimum monthly salaries (approx. 3,000 US\$).

Border guards

Historically, the Border Guards were subordinate to the Ministry of Defence. After the adoption of amendments to the Law on State Borders and the adoption of a new Law on Border Guards, since January 1997 the Border Guards have been subordinated to the Ministry of the Interior⁹⁷.

Several measures have been taken in order to improve border controls. Latvia has received assistance in the context of the PHARE programme and this includes improvement of border crossing points and preparations for the future creation of data bases and computer networks. Cooperation with Estonia and Lithuania is increasing. Interpol has also provided assistance with the border crossing points. On 26 February 1996 the border guard authorities of Latvia and Russia signed an agreement on information exchange and coordination of activities related to the prevention of human trafficking and illegal migration⁹⁸.

To give an idea of activity at the border for the first half of 1998, 1,671,682 Latvian residents crossed the border and 1,552,417 foreigners. On average, 538 border guards are on duty each day.

⁹⁶Statement of the representative of the Republic of Latvia at the meeting of the Committee on Civil Liberties and Internal Affairs of the European Parliament with corresponding Committees of the Parliaments of the Countries of Central and Eastern Europe, June 1996

⁹⁷Saiema, European Affairs committee, Gundars Ostrovskis, Adviser, October 1998

⁹⁸*Migration News Sheet*, April 1996

The establishment of effective controls on Latvia's eastern border has only just begun and substantial efforts will be needed in this field, including the installation of modern communication networks, properly equipped checkpoints and improved mobile patrols⁹⁹.

Readmission agreements

Latvia has signed readmission agreements with Estonia, Lithuania, Sweden, Denmark, France, Iceland, Italy, Norway, Slovenia, Finland, Switzerland, Liechtenstein and Ukraine. It has also submitted proposals for such agreements to Russia, Belarus, Bulgaria, Austria, Romania, Belgium, Canada, Greece, Poland, Portugal, Spain, Luxembourg, the Netherlands, Germany and Croatia.

Like Estonia, Latvia has underlined the importance of concluding readmission agreements with Russia as a precondition for creating any kind of refugee policy. During negotiations between the Latvian Minister of Foreign Affairs and his Russian counterpart in Riga on 6-7 August 1997, the two sides agreed to a draft agreement outlining their common border, including border descriptions and maps. However, the agreement avoids mentioning the controversial Abrene (Pitalovo) region which Russia annexed after World War II¹⁰⁰.

On 28 July 1997, Latvia and Finland signed an agreement on the mutual suppression of entry visas for visitors wanting to stay for a maximum period of 90 days. An agreement on basically the same conditions was signed between Latvia and Sweden on 4 August 1997. Both agreements were made conditional on Latvia's suppression of the geographical restriction on implementation of the 1951 Geneva Convention. After the vote on 2 October 1997, Stockholm and Helsinki announced that, as from 8 November 1997, the agreements would be implemented¹⁰¹. Similar agreements are also in force with Estonia, Lithuania, the Czech Republic, Poland, Slovakia, Hungary, Andorra, Denmark, Norway, Iceland, Switzerland, Ireland, Great Britain, Liechtenstein and Malta.

In March 1998, an agreement was reached on the determination of border cross-points between Latvia, Lithuania and Belarus. In October 1998, the agreement on mutual suppression of entry visas between Latvia and Slovenia, for visitors wanting to stay for a maximum period of 90 days, entered into force.

2. Asylum

Procedure and legal basis

Latvia came to face the problem of asylum seekers when, at the end of 1994, more than a hundred people were detained on a ship at sea not far from Latvian shores. In April 1995 a temporary camp was established in Olaine and most of those detained on the ship were moved there. The government adopted regulations '*For the temporary maintenance of persons detained for illegal residence in the Republic of Latvia*'. In 1996, a law on asylum was prepared. Finally, Latvia ratified the 1951 Geneva Convention and its 1967 New York Protocol on 19 June 1997. Contrary to Estonia and Lithuania, Latvia first joined the Convention with the so-called 'geographical limitation', meaning that only

⁹⁹European Commission, *Progress towards accession*, November 1998

¹⁰⁰*Migration News Sheet*, September 1997, p.16

¹⁰¹*Migration News Sheet*, November 1997, p.10

European asylum seekers could lay claim to the protection offered by this Convention¹⁰². On 2 October 1997 the Latvian Parliament voted in favour of lifting this geographical restriction.

Also on 19 June 1997, the Saeima (parliament) of Latvia adopted the Law on Asylum Seekers and Refugees in the Republic of Latvia. This law includes the same criteria for granting refugee status as the Geneva Convention; it identifies the institutions responsible for the process, clearly states the status identification procedure and other matters regarding asylum seekers and refugees. Article 4 of this law states that asylum seekers' applications are processed and decisions on granting or refusing refugee status are made by the Refugee Affairs Centre, which is a unit of the Citizenship and Migration Affairs Department of the Ministry of the Interior. Decisions made by the Refugee Affairs Centre can be appealed against at the Refugee Affairs Appeal Council which, in turn, is subordinated to the Ministry of Justice. The law entered into force on 1 January 1998 and the Refugee Affairs Centre was already established on 5 January and operates on the basis of regulations approved by the Minister of the Interior¹⁰³.

The first applications for granting refugee status were submitted in the middle of February 1998. As at 2 October 1998, **a total of 21 applications** had been submitted in Latvia which, together with the applicants' family members, constituted 30 people applying for the status. In accordance with the provisions of the law, negotiations with asylum seekers are carried out by State Police officials. Due to the fact that the Immigration Police Department has already been operating in Latvia, negotiations are led by officials of this unit and the majority of asylum seekers have already been interviewed.

In order to facilitate implementation of the Law on Asylum Seekers and Refugees in the Republic of Latvia, the cabinet of ministers has already adopted the following regulations:

1. Rules on asylum seekers' ID and its delivery;
2. Rules on refugees' ID and travel documents and their delivery;
3. Rules governing the order in which refugees can choose their place of residence in Latvia;
4. Registration order of refugees' permanent residence permits;
5. Rules on refugees' allowances.

When deciding upon the form of refugees' travel documents, Latvia has chosen to act in a similar way to Poland and Slovakia, namely to issue the refugee travel document approved by the U.N. Latvia had already received 100 such documents. Since matters connected to asylum seekers and refugees are new to Latvia, it has been receiving extensive support in kind, such as the training of local officials by the Danish Immigration Service and the Swedish Immigration Council, as well as by the U.S. In order to facilitate the efficiency of processing asylum seekers' applications and, within the framework of the PHARE programme, a project on a common computer network for the

¹⁰²*Migration News Sheet*, August 1997; BNS 10.7.1997

¹⁰³Before the adoption of legislation in the field of asylum, asylum seekers did not officially exist in Latvia. Refugees were treated as 'ordinary' migrants and could be detained if they entered the country illegally. Most asylum seekers came from Russia, to which they could not be returned without travel documents or other conclusive evidence that they had entered Latvian territory via Russia. Those who managed to evade detention tried to go to Finland, Sweden or elsewhere by ship, often under unsafe conditions.

Immigration Police Department, the Border Guards and the Citizenship and Migration Affairs Department has been submitted to the Ministry of Finance.

An action plan for establishing the 'Mucenieki' housing centre for asylum seekers (HCAS) has been approved. The first phase includes the construction of two dwelling houses and external engineering work, clearing up the land and participation in the municipality's project. The first phase will cost 1,005,860 Lats (600,000 US\$), of which 218,706 Lats (127,000 US\$) had already been invested in the project by 1 July 1998.

No positive decisions have been taken in the first instance and only two positive decisions in the second instance¹⁰⁴.

¹⁰⁴UNHCR, Jennifer Sarvary, December 1998

Lithuania

1. Migration

Lithuania is the most potent example of the growing migration problem associated with the break-up of the USSR in 1991. It is strategically located between the Russian Federation and Belarus, with their large number of irregular migrants on one side, and the countries of Western Europe, which are the final destination of most of these persons, on the other. In addition, **lax border controls make the number of irregular transit migrants in Lithuania the highest amongst the Baltic states.** According to the IOM Migration Information Programme study published in January 1997, 80% of migrants surveyed indicated that they had been trafficked ; virtually all of them arrived in Lithuania from Belarus; 50% crossed the border by foot at night and 20% were hidden in container vans. In response to this phenomenon, Lithuania is under great pressure to develop new structures and measures related to border management.

After the break-up of the Soviet Union, the character and tendencies of migration processes entirely changed . Annexed by the Russian Empire in 1795, independent from 1918 to 1940, Lithuania was subjected to a "Russification" policy and remained a Soviet Republic until 1990 when Vilnius declared its independence. Before 1990, many immigrants came from the former Soviet Union. After 1990, a great number of inhabitants started to leave the country. In 1992, people leaving outnumbered people entering the country by 22 000, the figure falling to 13,000 in 1993, 2,500 in 1994 and 1,700 in 1995¹⁰⁵. In 1996, 3,025 persons arrived in Lithuania for permanent residence, mostly from Russia, Belarus and Ukraine; at the same time 3,940 persons left the country. In the first half of 1997, 1,066 arrived and 1,223 persons left Lithuania, so the negative migration balance is decreasing (1,753 in 1995 and 915 in 1996)¹⁰⁶.

According to the law, only close relatives (parents, children and spouses of the citizens of the Republic of Lithuania) may immigrate into Lithuania, i.e. reside there on a permanent basis. The annual immigration quota, confirmed by the Seimas, is 2,500 persons. In 1993, 307 foreigners emigrated to Lithuania, 1,893 in 1994, 2,270 in 1995¹⁰⁷, 1,526 in 1996 and 1,288 in 1997¹⁰⁸.

Illegal migration and trafficking in human beings

In comparison with 1994, the number of illegal migrants increased tenfold due to trafficking in clandestine workers - originating from Afghanistan, India, Pakistan, Sri Lanka and Bangladesh - who, after living for a long time in Belarus or Russia, were coming through Lithuania and Poland to Western Europe and Scandinavia. These illegal migrants, around 2,000 a year, were either expelled or detained, mainly in the Lithuanian-Polish border regions (Lazdijai, Marjampolê, Vikaviskis).

¹⁰⁵Statement by the delegation of Lithuania to the 6th Conference of European Ministers responsible for migration affairs, Council of Europe, Warsaw, June 1996

¹⁰⁶Ministry of Internal Affairs of the Republic of Lithuania, Migration Department, November 1997

¹⁰⁷Legal basis = law on immigration, adopted in September 1991; law on legal status of foreigners, September 1991; law on citizenship, December 1991; law on emigration, November 1991

¹⁰⁸Ministry of Internal Affairs of the Republic of Lithuania, Migration Department, Janas Vidickas, First deputy director, August 1998

In January 1997, in order to deal with the increasing number of illegal migrants, the government approved a regulation on expulsion of aliens and established a "Foreigners' Registration Centre" in Pabrade, approximately 30 miles from Vilnius. In October 1998 there were approximately 240 people detained in this centre. The illegal migrants are screened in Pabrade, receive medical attention, and are given an opportunity to file a request for political asylum. Those found eligible to be considered for asylum are transferred to another facility in Rukla, near the city of Kaunas.

On 1 July 1996, the Lithuanian Seimas adopted an amendment to the Penal Code which provides for up to 8 years' imprisonment and confiscation of property for trafficking in illegal migrants. In 1997 the period of imprisonment was increased to 15 years.

Border delimitation

Being at the crossroad of migration processes, Lithuania has become a kind of 'waiting room' for hundreds of foreign citizens on the way to their final destination - the EU countries. Since autumn 1995, neither the Russian Federation nor Belarus has agreed to negotiate on signing agreements on the readmission of illegal immigrants of third countries. The return of illegal migrants to Belarus and the Russian Federation is still a problem¹⁰⁹.

The Lithuanian Border Police under the Ministry of Internal Affairs has the responsibility for controlling all Lithuanian land, sea and air entry points. As of 24 October 1997, Lithuania signed agreements delimiting all of its borders. The delimitation agreement with Latvia was signed on 29 June 1993 (excluding the sea border). The delimitation agreement with Belarus was signed on 6 February 1995 and demarcation work is currently in progress. The Lithuania/Kaliningrad border delimitation agreement was signed between Russia and Lithuania on 24 October 1997. There has also been an agreement with Poland since 28 May 1996¹¹⁰. Lithuania expects to complete demarcation of its half of the 650 km border by the end of 1998¹¹¹.

Border control

The Border Police underwent reforms in the first half of 1997 and is now better equipped to guard all of the frontiers, especially its eastern frontier with Belarus, which is the main source of illegal migrants¹¹², and **the number of illegal migrants in 1998 has decreased significantly** (from 1,632 in 1997 to 242 up until August 1998)¹¹³. It is now up to Belarus to fulfil its obligations.

¹⁰⁹Ministry of Internal Affairs of the Republic of Lithuania, Migration Department, Janas Vidickas, First deputy director, August 1998

¹¹⁰Ministry of Internal Affairs of the Republic of Lithuania, Migration Department, November 1997

¹¹¹Ministry of Internal Affairs of the Republic of Lithuania, Migration Department, Janas Vidickas, August 1998

¹¹²Ministry of Internal Affairs of the Republic of Lithuania, Migration Department, November 1997

¹¹³Ministry of Internal Affairs of the Republic of Lithuania, Migration Department, Janas Vidickas, August 1998

In fact, the Republic of Lithuania has an action plan for the strengthening of borders which should be implemented at the end of 1999¹¹⁴.

Lithuania is in the process of setting up a professional border guard service and equipping its border with electronic surveillance equipment. It is stepping up cooperation on border controls with the other Baltic countries but these controls are not yet up to EU standards¹¹⁵.

Lithuania has received observer status in the International Organization for Migration and also takes part in the activities of the **Budapest Group**¹¹⁶ dealing with issues of illegal migration.

Readmission agreements

Lithuania has concluded readmission agreements with Estonia, Latvia, Bulgaria, Finland, Italy, Iceland, Spain, Slovenia, Sweden, Switzerland, Poland, Croatia and Ukraine. **The readmission agreement signed with Poland in July 1998 includes automatic return of asylum seekers, without any safeguards. Considering Poland has the same type of readmission agreement with Germany, it means that asylum seekers rejected by Germany can be sent back from Germany to Lithuania, even if Lithuania is not a safe third country in respect of Germany, and thence to their country of origin.** Readmission issues between Lithuania and Malta, Cyprus, Norway and Denmark are regulated in visa-free travel agreements¹¹⁷.

In March 1997, the Republic of Lithuania concluded the first readmission agreement with a CIS country - Ukraine¹¹⁸. There were intense negotiations related to a readmission agreement with **Belarus** which, however, failed because of imperfect internal legislation in Belarus and heavy financial expenses. Representatives of Belarus stressed that there were no camps for illegal migrants and that Belarus had not signed similar agreements with CIS countries although the borders have been opened. Also there is no readmission agreement and, so far, no negotiations with Russia, although a border accord was signed between Moscow and Vilnius at the end of 1997.

¹¹⁴This action plan includes the following measures: 1) complete the Lithuanian-Belarus border demarcation (by January 1999); 2) begin demarcation work along the Lithuanian- Russian border (Kaliningrad region); 3) complete the radio communication system at all the borders (end 1999); 4) reorganize the infrastructure at the Lithuanian-Belarus border; 5) computerize police stations and border checkpoints and supply them with equipment for counterfeit document detection; 6) provide the border police units with Land Rovers, 4 additional helicopters, speed boats and dogs; 7) construct observation towers along the Belarus border; 8) acquire night-vision surveillance equipment for the Belarus border (end 1999); 9) present to the Seimas draft new laws on state border protection and the border police service; 10) establish a new border police school (in Klaipeda); 11) reorganize the border police intelligence service in order to enhance its capacity to collect and process information as well as to identify corrupt officers; gradually reduce military draftees in the border police service; raise salaries; 12) send abroad for training 200 Lithuanian border policemen minimum annually).

¹¹⁵European Commission, 'Progress towards accession', November 1998

¹¹⁶The **Budapest Group** deals with uncontrolled migration issues. 36 countries (including Canada, the USA, Australia, Russia, Moldova, Ukraine) as well as several international organizations are members of this group. It seems to be the only forum where specialists on immigration issues gather from the EU countries, the associated countries and the CIS countries.

¹¹⁷Ministry of Internal Affairs of the Republic of Lithuania, Migration Department, November 1997

¹¹⁸UNHCR, 3rd international symposium on the protection of refugees in central Europe, April 1997, Budapest, p.279

Visa-free regimes exist with Iceland (April 1997), Sweden (May 1997), Finland (November 1997) and Switzerland (January 1998). In the meantime, citizens of 28 countries can come to Lithuania visa-free and Lithuanian citizens, on the basis of bilateral agreements concluded with, or unilateral decisions taken by, destination countries, can visit 29 countries without a visa¹¹⁹.

Readmission agreements with the following countries are reportedly under consideration: Russia, Belarus, Romania, France, Germany, Belgium, the Netherlands, Luxembourg, China, India, Pakistan, Sri Lanka and Bangladesh¹²⁰.

2. Asylum

The Republic of Lithuania ratified the 1951 Geneva Convention and the 1967 New York Protocol on 21 January 1997. The Lithuanian Refugee Law was adopted on 4 July 1997. The Refugee Law and the Convention entered into force on 27 July 1997. The first two asylum seekers were granted refugee status on 3 September 1997. On 18 November 1997, the Seimas (Parliament of the Republic of Lithuania) restricted the Refugee Law by eliminating the article on the refugee quota.

On 24 June 1998 the Lithuanian government issued a decree setting up an interagency group to prepare amendments to the Refugee Law. The amendments are supposed to be submitted to the Seimas by the end of 1998.

On 16 July 1998 the Seimas amended the Refugee Law by introducing an additional exclusion clause to those already incorporated in the national legislation. This exclusion clause states that 'a foreigner shall not be provided with refugee status in the Republic of Lithuania if there are serious grounds for assuming that, while serving in the repressive structures of totalitarian regimes or collaborating with the occupying regime which ruled a country, or while being involved in the activities of terrorist groups, he/she has grossly violated fundamental human rights and freedoms and has fled his/her country in order to evade responsibility for such acts of crime'¹²¹.

As of 30 November 1998, the number of asylum seekers in the Refugee Reception Centre in Rukla was 170 persons. In August 1998, 61 applications for refugee status, covering 78 individuals, were currently registered at the Foreigners' Registration Centre (pre-screening institution) and awaiting a decision by the Migration Department on admissibility into the asylum procedure and, accordingly, the granting of temporary territorial asylum and transfer from the Foreigners' Registration Centre to the Refugee Reception Centre in Rukla.

As at 1 August 1998, refugee status had been **granted to 25 individuals**, including children. Those who were granted refugee status will get a residence permit and go through the social integration programme for refugees which was adopted by the government of Lithuania in February 1998. It

¹¹⁹Ministry of Internal Affairs of the Republic of Lithuania, Migration Department, Janas Vidickas, August 1998

¹²⁰UNHCR, Jennifer Sarvary, December 1998

¹²¹UNHCR Lithuania, Linas Sesickas, Liaison officer, August 1998

encompasses housing, language training, employment, public awareness, etc. UNHCR Stockholm contributed 10,000 US\$ to this programme for 1998¹²².

Vilnius and Telsiai have given their consent to accept refugees. However, the majority of refugees are still living in the Refugee Reception Centre.

Main difficulties

Being at the crossroads of migration processes - with unresolved border problems concerning Belarus and the Russian Federation and not even half of the 650 km border officially demarcated - Lithuania is an easy door for illegal transit immigration.

The readmission agreement signed with Poland in July 1998 might bring about a chain of asylum seeker deportations from Germany to Poland, from Poland to Lithuania and thence to the country of origin, although Germany does not consider Lithuania a safe third country.

¹²²UNHCR Lithuania, note to DG IV, January 1998

Poland

1. Migration

The geographical position of Poland between the western edge of the former Soviet Union and the affluent West makes it a busy transit area, used both by economic migrants and asylum seekers. Subsequently, however, it has begun closing up its borders but nevertheless remains an important transit country.

Illegal migration and trafficking in human beings

With 1,300 km, Poland has the longest border with the former Soviet Republics, namely Russia (Kaliningrad), Lithuania, Belarus and Ukraine.

It is estimated that up to about 15,000 people illegally cross the territory of Poland¹²³ every year. Two main transit routes lead through the country. The 'Balkan trail' is used by Romanians, Bulgarians and citizens from former Yugoslavia who enter legally because regulations allow a one-month stay without a visa. They then try to cross into Germany illegally. Strong cooperation between German and Polish border guards is now discouraging many illegal travellers. The second emigration trail via Poland runs from the Lithuanian border to Germany. This route, mainly used by Asians, is dominated by citizens from Afghanistan, Iran, Iraq, India, Pakistan and Sri Lanka¹²⁴. The number of illegal migrants caught at this border has almost doubled since 1996. The smuggling of people across this eastern border is apparently constantly rising, is increasingly better organized and seems to be linked to the opening of the Russia-Belarus border, which means there is no control.

Those organizing such smuggling operations create networks of couriers and guides, and their profits are comparable to the profits of drug traffickers. For leading a group into Germany, a courier network charges from 2,000 US\$ to 5,000 US\$ per person. In countries such as Afghanistan and India, whole families often pitch in to send one of their members to the West, hoping that this person will then bring over the rest of the family.

It is increasingly less common for immigrants to try their luck crossing Poland illegally on an individual basis, in car boots or by hiding on trains¹²⁵.

¹²³Helsinki Foundation for Human Rights, 'Asylum and Migration in Poland', answer to the questionnaire of DG IV, July 1996

¹²⁴Piotr Dukaczewski, 'Refugees Rising', *Voice-Society*, 23 June 1996, p.16

¹²⁵Major Jaroslaw Zukowicz, spokesman for the National Border Guard Headquarters, in *Voice*, June 1996

Main regions of origin of illegal immigrants from 1993 to 1995

Romania	13,274
Ukraine	3,390
Armenia	3,069
Bulgaria	2,563
Russia	1,966
Moldova	1,250
Asia, Africa	6,087 (India: 1,281)

Source: Ministry of Internal Affairs, Poland, June 1996

Estimates concerning the number of foreigners staying and often working in Poland illegally vary from between 50,000 to 200,000¹²⁶.

Border controls

The conclusion of new bilateral agreements plays an important role in the improvement of cooperation in the fight against border-related criminality. Measures aimed at the rationalization of expulsion, such as deportation by plane and preparations for the creation of detention centres, have been implemented. The equipment of the Border Guards, including a helicopter protection system, new control stations, computers and additional transport facilities, has been improved, particularly with assistance from Germany. Poland takes part in the PHARE programme for a further tightening of the eastern border and the development of a more efficient information and communication system. The coordination of border controls has become more efficient.

Readmission agreements

Poland has signed a readmission agreement with the Schengen States and bilateral readmission agreements with the following countries: Germany, Bulgaria, the Czech Republic, Romania, the Slovak Republic, Ukraine, Croatia, Moldova, Greece, Hungary, Latvia, Lithuania, Estonia, Slovenia, Austria, Switzerland and Sweden. Transfer of people between Poland and Russia or Belarus are dealt with on the Polish-CIS border under the Act on Legal Relations.

The readmission agreement of March 1991 between Poland and the Schengen States includes an obligation by the States to readmit third country nationals and stateless people who have crossed the common external border and stayed in the territory of one of these States illegally.

In practice, the agreement between the Schengen States and Poland has not reduced migration, in particular into Germany. In May 1993, therefore, Germany and Poland signed a bilateral modification of the agreement with the Schengen States. As a result, Poland is obliged to accept asylum seekers whose applications have been rejected by the German authorities, as well as migrants

¹²⁶PAP News Agency, Warsaw, 18 June 1996

from the Schengen States. Since the modification, from 1993 to 1997, 18,000 people have been readmitted¹²⁷. Returned asylum seekers from Germany are informed of the possibility of applying for asylum in Poland as stipulated in a special agreement between the Ministers of the Interior of both countries. Many asylum seekers do not wish to apply¹²⁸.

The readmission agreement signed between Poland and Lithuania (July 1998) specifically stipulates, in respect to its Article 3, that persons 'who are subject to refugee status application procedures on the territory of the State of the Requesting Party' will fall within the scope of persons to be returned under the readmission agreement. UNHCR is seriously concerned that the clause will facilitate the automatic return of asylum seekers to Lithuania without due consideration for the safety of the asylum seeker from *refoulement*, or the possibility of his/her entering the status determination procedures in Lithuania¹²⁹.

2. Asylum

In 1989, the first group of asylum seekers, mostly from the Middle East and Africa, arrived in Poland.

Although tens of thousands of people transit Poland annually, refugee numbers have until now been limited and there are currently only an estimated 800 refugees of various nationalities, including 300 Bosnians. In the last two years, however, there has been a sharp increase in the number of asylum seekers, a number which quadrupled between 1995 and 1997.

Asylum applications in Poland

Year	Number
1994	598
1995	843
1996	3,212
1997	3,533

In 1994, nearly two-thirds of the applicants were granted refugee status. In 1995, only one in eight asylum seekers was granted Convention status. In 1996, contrary to the increase in the number of applications, the number of positive decisions by the First Instance was only 120¹³⁰.

The situation in Poland, as elsewhere in Central Europe, is complicated by the fact that many asylum seekers, including those returned from Western countries, and particularly from Germany, through the application of readmission agreements, do not necessarily wish to apply for asylum in Poland.

¹²⁷ *Safe third country*, Danish Refugee Council, 1997

¹²⁸ UNHCR, Background information on the situation in Poland in the context of the return of asylum seekers, November 1998

¹²⁹ UNHCR, Background information on the situation in Poland in the context of the return of asylum seekers, November 1998

¹³⁰ Ministry of the Interior and Administration, Department for Migration and Refugee Affairs, September 1997

Often they lodge an application for refugee status only when they are confronted with the possibility of deportation; many of them do not pursue the procedure¹³¹.

Main countries of origin of asylum seekers in numbers

Country	1996	1997
Sri Lanka	609	863
Afghanistan ¹³²	337	632
Armenia	258	464
Pakistan	173	350
Bangladesh	203	229
Iraq ¹³³	289	198
India	230	160

Source: UNHCR Warsaw, February 1998

Procedure and legal basis

On 27 September 1991, Poland acceded to the 1951 Geneva Convention and its 1967 Protocol.

The European Convention for the Protection of Human Rights and Fundamental Freedoms was ratified on 19 January 1993. National legislation concerning refugees is mainly contained in the Aliens Act. The UNHCR submitted extensive comments on the draft and on several occasions has been invited to present its opinions to the Parliamentary bodies responsible for its review. Many, but not all of the concerns raised by UNHCR as to the compatibility of the draft with international standards, were taken into account in the final version of the Aliens Act¹³⁴, which entered into force at the end of 1997. The law introduced a number of restrictive measures, such as those concerning 'manifestly unfounded claims'.

The application for granting refugee status should be lodged at entry onto Polish territory, unless the alien has justifiable fear for his/her life or health, in which case the application should be lodged within 14 days. An asylum seeker arriving in Poland illegally must lodge the application immediately.

The asylum seeker receives a residence visa from the Minister of the Interior and Administration if the procedures for granting refugee status are initiated (Article 39 of the Aliens Act). According

¹³¹UNHCR Warsaw, Background information on the situation in Poland in the context of the 'safe third country' concept, first update, June 1997

¹³²489 according to information from the Ministry of the Interior and Administration, Department for Migration and Refugee Affairs, Maciej Kuczynski, Deputy Director, August 1998

¹³³359 according to information from the Ministry of the Interior and Administration, Department for Migration and Refugee Affairs, Maciej Kuczynski, August 1998

¹³⁴UNHCR Warsaw, Background information on the situation in Poland in the context of the 'safe third country' concept, first update, June 1997

to Article 41 of the said Act, the decision should be taken within three months. Each asylum seeker may freely contact the representative of UNHCR (Article 49). As a Second Instance, **the 'Council for Refugees', an appeal body which will examine decisions taken by the Ministry of the Interior, will be established as of January 1999, and will be situated outside the organizational framework of the Ministry of the Interior** (Article 69). Asylum seekers may also appeal to the Supreme Court after exhausting all other remedies.

Employment without the required permission, illicit border crossing, lack of documents or staying illegally on Polish territory may lead to expulsion or detention. Referral to a detention centre does not exclude the possibility of applying for refugee status.

Asylum seekers who are admitted into the procedure are granted residence visas and are permitted to stay in a refugee centre which provides full board and medical care. At the moment, there are five refugee centres in Poland: Dębak (118 asylum seekers), Lomza (40), Lukow (60), Lublin (103) and Smoszewo (60)¹³⁵.

Convention status

Recognized refugees can be employed or self-employed. Unemployed refugees are eligible for benefits provided that, during the 18 months' period prior to registration, they were employed and obtained remuneration in the amount of at least the minimum official rate for a total of at least 365 days. Their children can attend primary or high school for free. **Housing remains the biggest problem, as well as employment and access to social assistance.** Responsibility for the care and maintenance of recognized refugees was recently transferred from the Ministry of the Interior to the Ministry of Labour. The Ministry of the Interior financed and implemented a programme of support for recognized refugees in 1996 and 1997. **The Ministry of Labour, however, has not yet systematically started providing assistance to recognized refugees through local government offices.** Through most of 1998, newly recognized refugees relied solely on material assistance provided by UNHCR for their livelihood. Recently, the social assistance system has begun to provide moderate social benefits to newly recognized refugees. UNHCR is working closely with the Ministry of Labour to help initiate integration-related programmes and strategies.

The role of UNHCR

Initially UNHCR worked with the government to help set up the first centers for refugees and asylum seekers and establish determination procedures. It also funded early integration programs before the introduction of the current government scheme. As refugee officials acquired more experience, UNHCR shifted its focus to other institutions dealing with asylum seekers and refugees, such as the border guards, police, social workers, NGOS and legal associations.

¹³⁵Ministry of the Interior and Administration, Department for Migration and Refugee Affairs, August 1997

Main difficulties

Controlling borders is still a major issue and trafficking in human beings continues to grow.

As regards the return of asylum seekers to Poland, whether under a readmission agreement or other bilateral arrangements, UNHCR recommends that assurances should be received that asylum seekers whose claims have not yet been examined will have access to the refugee status determination procedure in Poland. If they come to Poland from Lithuania, they should not be returned to Lithuania without the assurance that they will be granted access to the asylum procedure there.

In addition, governments implementing returns should receive formal assurances that returned asylum seekers will not be detained unjustifiably. Returning countries should inform asylum seekers of their right to apply for refugee status in Poland¹³⁶.

¹³⁶UNHCR, Background information on the situation in Poland in the context of the return of asylum seekers, November 1998

Romania

1. Migration

Although Romania has been a source of emigration since the revolution in 1989, fewer citizens are now leaving the country. In 1990, 96,919 Romanians permanently settled abroad. In 1994, the figure was only 18,148, in 1996, 24,888 and in 1997 21,635¹³⁷. 21,643 Romanians, who left the country during the communist period, returned to their home country between 1990 and 1995¹³⁸.

Romania remains a transit country for most migrants, although many give up their plan to go to Western Europe and try to find work in Romania.

Illegal migration

At the moment, Romania faces serious problems concerning the prevention of illegal immigration. From 1993 to 1996, 45,000 foreigners have been refused entry; 15,000 living illegally in the country have been discovered by the authorities, but were allowed to stay in the country though more than 1,800 have been returned to their countries of origin. In November 1997, the unofficial number of illegal migrants reached 25,000¹³⁹.

The majority come from Turkey, Sri Lanka, Bangladesh, Iran, Iraq, Pakistan and Egypt and intend to go to the West, especially Germany. Three main routes cross Romania - two of them are organized from Moscow as departure point. One goes from Moscow to Chisinau to Hungary, the other from Moscow to Kyiv to Hungary. These routes are used for migrants coming from India, Sri Lanka, Pakistan, Bangladesh, Egypt and Nigeria. The third route is the southern one and is used by Iranians and Iraqis who cross Bulgaria and Romania to Hungary¹⁴⁰.

The 'Law on Foreigners' was adopted in September 1998. It stipulates that persons cannot house foreigners who do not have passports and valid visas. Persons housing foreigners will have to inform the police of their presence within 48 hours, hotels within 24 hours. According to the law, the 'citizens of the states known as having immigration tendencies' who request visas for Romania will have to present a written invitation from a Romanian citizen (or legal person) approved by the Ministry of Internal Affairs. Besides the Ministry's approval, the invitation must also contain the host's declaration that he will take responsibility for expenses during the foreigners' stay in Romania, as well proof of a bank guarantee. The tourist companies, through which foreigners from these countries come to Romania, are also obliged to provide bank guarantees. The Romanian authorities can refuse the visa if the foreigner does not prove that he has enough money for his stay in Romania

¹³⁷Council of Europe, CDMG, 'Evolution récente des politiques relatives aux migrations et aux migrants', Provisional version, 28 August 1998, p.66

¹³⁸Statement of the representative of the Republic of Romania at the meeting of the Committee on Civil Liberties and Internal Affairs of the European Parliament with corresponding Committees of the Parliaments of the Countries of Central and Eastern Europe, June 1996

¹³⁹*Nine O'Clock*, 7/8 November 1997

¹⁴⁰Council of Europe, CDMG, 'Evolution récente des politiques relatives aux migrations et aux migrants', Provisional version, 28 August 1998, p.66

should there be evidence of his intention to remain there, in cases of diseases which jeopardize public health or in the case of criminal records.

The law stipulates the maximum length of the different kinds of visas: business and employment visas will be granted for a period of maximum 30 days, with the possibility of prolonging it for up to 6 months. The same regulation is valid for foreign journalists. The tourist visa can be granted for 60 days and can be prolonged for up to 60 days; the transit visa is granted for 3 days without the possibility of prolongation.

85 countries are considered 'as at risk'.

Border control

The activities of human traffickers have sharply increased. The Romanian authorities have implemented several legislative and administrative measures, border controls have been tightened in order to improve the possibilities of identifying false passports and travel documents, forged visas and means of transport for trafficking in human beings. Within the framework of the PHARE programme, border posts have been modernized. The granting of visas for people from emigration countries (a list containing 85 countries has been drawn up and a visa for transiting airports for the citizens of Afghanistan, Ethiopia, Eritrea, Ghana, Iran, Iraq, Somalia, Sri-Lanka, ex-Zaire, Pakistan and Bangladesh has been introduced¹⁴¹) has become more restrictive. Staff of the Border Police are trained in special courses at the Police Academy of the Ministry of the Interior. The law on the status of customs staff was debated at the chamber of deputies in October 1998 after having been adopted by the senate. Title VI of this law provides for improving of financial conditions of the customs staff in order to protect it from temptation of bribery and corruption. Additionally, information exchange and cooperation with border police units in Belgium, France, Germany, Greece, Bulgaria, the Czech Republic, Hungary, the Slovak Republic, Turkey, Ukraine and the Federal Republic of Yugoslavia have been improved.

Despite these activities, the lack of financial resources makes **efficient border controls, and especially the expulsion of illegal immigrants to their country of origin, very difficult**. Cooperation with Europol remains an important political option for Romania. The European Commission states that no significant progress has been recorded on border controls, though this was one of the three short-term priorities of the accession partnership. Particular attention should be paid to the borders with Moldova and Ukraine, and the port of Constanza¹⁴².

Readmission agreements

Romania has negotiated and concluded readmission agreements with 15 countries in Europe and with India. Readmission agreements have been concluded with the following countries: Austria, Benelux, the Czech Republic, France, Germany, Greece, Hungary, India, Italy, Poland, Slovakia, Slovenia, Spain, Sweden and Switzerland. Negotiations are underway with Portugal, Finland,

¹⁴¹Romanian Mission to the EU, Florin Saghi, Counsellor, August 1998

¹⁴²European Commission, 'Progress towards accession', November 1998

Denmark, Estonia, Ukraine, Belarus, China, Bulgaria, Lithuania, Turkey, Latvia, Yugoslavia, Lebanon and Iran¹⁴³.

2. Asylum

Following the 1989 democratic transformation, Romania, having previously been considered uniquely as a source of refugees fleeing the communist regime, quickly became an asylum country.

Asylum claims between 1991 and mid-1998:

Status of Claims	1991	1992	1993	1994	1995	1996	1997	31.07.98	Total
Refugee claims submitted	315	426	928	647	634	584	1424	606	5564
Refugee status granted	315	41	0	16	94	94	80	215	855
Claims rejected (First Instance)	0	327	0	209	348	522	214	1773	3393
Claims withdrawn	0	0	0	0	155	93	75	30	353
Claims abandoned	-	-	-	-	-	1085	-	-	1085
Voluntary repatriation	0	50	20	16	55	47	19	61	268

Source: The Office of Refugees, Bucharest, August 1998

Main country of origin of asylum seekers:

Country of origin	Number of Claims	Refugee status granted
Bangladesh	1280	-
Iraq	1057	229
Somalia	458	349
Sri Lanka	411	1
Iran	400	77
Albania	346	5
India	162	-
Turkey	160	14
Pakistan	48	3

Source: The Office of Refugees, Bucharest, August 1998

¹⁴³Romanian Mission to the EU, Florin Saghi, August 1998

Procedure and legal basis

Romania acceded to the 1951 Geneva Convention and its Protocol of 1967 without reservations according to Law n° 46/1991. A committee for migration problems was created (Decision n° 417/91). The recommendations of the UNHCR concerning minimum standard guarantees are applied. The law concerning the status of refugees in Romania entered into force on 5 May 1996 and is in line with the 1951 Convention and its Protocol. Asylum seekers coming from war-torn areas can be granted refugee status for humanitarian reasons even if the conditions of the 1951 Geneva Convention are not fulfilled¹⁴⁴. During the provisional period, the asylum seeker has the right to a temporary identity document, to necessary living support and social assistance.

Refugee status is not granted to a foreigner who has committed a crime against peace and humanity or a crime in Romania for which Romanian law provides a sentence of more than three years (Article 4 of the Law on the Status of Refugees). Foreigners applying for asylum in Romania have to submit a written and detailed application to a diplomatic mission, to a consular office, to the General Department of the border police or to Romanian territorial bodies. If the application is made to the border police, the foreigner is allowed to enter the country if he has valid entry documents and the necessary visa or if he is arriving directly from the territory where his life or freedom are in danger. Responsibility for interviewing the applicant and analysing the reasons for granting refugee status lies with a commission appointed by the government and composed of representatives of the Ministry of Foreign Affairs and the Ministry of Labour and Social Protection. UNHCR representatives can assist in the proceedings. The commission will decide whether to approve or reject the application within 30 days of its receipt (Article 10 of the Law on the Status of Refugees). According to Article 11, refugee status can also be refused if the asylum seeker dishonestly refuses to provide all data and information necessary for the Romanian authorities to deal with the request, if he tries to obtain refugee status by giving false data or information or if he does not observe the obligation stipulated in Article 10 (e.g. the asylum seeker must undergo a medical examination and remain at the residence locality, unless otherwise authorized).

An appeal against the decision of the commission is possible.

According to Article 15 of the Law on the Status of Refugees, a Convention refugee has the right to stay on Romanian territory and receive adequate documents, to work in Romania, to undertake all forms of education and to receive refundable support within the limits of the state's financial possibilities¹⁴⁵. In practice, it is very difficult for a refugee to find employment without sufficient knowledge of the Romanian language and no language courses are organized. UNHCR assistance constitutes the main financial support and hundreds of needy asylum seekers and refugees rely on it. The slim chances of integration have forced numbers of recognized refugees to leave Romania.

¹⁴⁴Statement of the representative of the Republic of Romania, at the meeting of the Committee on Civil Liberties and Internal Affairs of the European Parliament with corresponding Committees of the Parliaments of the Countries of Central and Eastern Europe, June 1996

¹⁴⁵*Romanian Business Journal*, 'The law concerning the status and conditions of refugees in Romania', April 1996, p.12

Main problems

The new Law on Refugees contains some doubtful provisions: **refugee status may be granted for only three years (Article 22 of the Romanian Refugee Law), and is subject to a further two-year extension.** Another worrying provision of the law is that it denies access to asylum to those who arrive at the border without valid documents, unless they arrive directly from the country in which they have been persecuted¹⁴⁶.

As in all the CEECs, integration within the country is not easy and there is no access to free language courses. In the field of border control, there seems to be no significant progress, though the problem of illegal immigration is growing.

¹⁴⁶UNHCR, information bulletin, September 1998

Slovak Republic

1. Migration

The Slovak Republic is one of the main transit countries for migration flows from the south and east to Western Europe. Between 1 January 1993 and 31 July 1998, about 464,000,000 people entered the country legally. During this period, 548,000 were denied entry by the state border protection authorities and 17,287 were detained because of illegally crossing the border, including 4,269 in the first half of 1998. In the same period of 1998, 1,467 people were expelled from the territory, most of them from the Ukraine, Romania and former Yugoslavia¹⁴⁷.

In 1998, the number of illegal migrants trying to enter the Slovak Republic is 135% higher than in 1997, and the number of illegal migrants trying to leave the Slovak Republic is 130% higher¹⁴⁸.

The strongest migration pressure comes from the **Federal Republic of Yugoslavia (1,904), Afghanistan (400), Iraq (182), China (172), Vietnam (164), Sri Lanka (115) and India (110)**¹⁴⁹. The emigrants' aim is to reach the developed countries of Western Europe, especially Germany. Many aliens enter the Slovak Republic legally but fail to leave after expiration of their visas. They wait for opportunities to illegally cross the Austrian or Czech border or try to find illegal employment.

The general conditions of entry and sojourn of aliens in the territory of the Slovak Republic are laid down in Law n° 73/1995. In accordance with this law, foreigners may only enter the Slovak Republic with a valid travel document and a visa, which are not needed by citizens of European states (except those from Albania, Macedonia, the Federal Republic of Yugoslavia and Bosnia-Herzegovina¹⁵⁰ and, currently, Britain¹⁵¹).

The European Commission's opinion is that progress remains very limited in the field of visa policy and foreign nationals. A working party has been set up to prepare the necessary changes, but these have not materialized, despite the urgency of the matter¹⁵².

The Slovak Republic has concluded bilateral agreements concerning the coordination of border controls with all neighbouring countries. Systems of information exchange have also been implemented.

¹⁴⁷Ministry of the Interior of the Slovak Republic, Department of European integration and law approximation, Vladimir Kotulic, Director, August 1998

¹⁴⁸Council of Europe, CDMG, 'Evolution récente des politiques relatives aux migrations et aux migrants', Provisional version, 28 August 1998

¹⁴⁹Ministry of the Interior of the Slovak Republic, Department of European integration and law approximation, Vladimir Kotulic, August 1998

¹⁵⁰Written statement of the Slovak delegation to the 6th Conference of European Ministers responsible for migration affairs, Warsaw, 1996

¹⁵¹*The Bulletin*, 22 October 1998, p. 12

¹⁵²European Commission, *Progress towards accession*, November 1998

Permanent migration

Since 1994 Slovakia can be considered as a migration country. In 1994, a total of 4,073 permits for long-term stay and 2,392 for permanent residence were issued. The same trend continued in 1995 when 3,022 long-term and 2,225 permanent residence permits were issued; in 1996 there were 3,250 and 1,348 respectively. Within the period from January 1997 to October 1997, 1,481 permanent residence and 2,248 long-term permits were issued¹⁵³. These numbers indicate that Slovakia, as a result of its stabilizing economic situation and also measures introduced by certain West European countries against migrants, began **to change from a prevailingly transit country to one where migrants prefer to settle**. At present, the largest group of aliens located in the Slovak Republic is formed by citizens of **south-east and east European countries**. By far the largest proportion of these are economic migrants, as shown by the highest amount of long-term stay permits issued for the purpose of employment or business activities in comparison with all other forms of stay¹⁵⁴.

Readmission agreements

Readmission agreements have been concluded with all neighbouring countries (Austria, Hungary, Ukraine, Poland, the Czech Republic) and with Romania, Bulgaria, Croatia and Slovenia. They contain provisions on the return of their own citizens and those of third states. Agreements with the Benelux countries are under preparation.

In the field of asylum seekers, in the interest of avoiding *refoulement* and orbit situations and promoting international cooperation for the protection of refugees, the return of applicants who have found or could have found protection in another country should take place in accordance with arrangements agreed among the States concerned, in order to determine which State is responsible for considering an application for asylum and for granting the protection required. Readmission agreements should not be used for this purpose unless they explicitly provide for the protection of refugees¹⁵⁵.

2. Asylum

In 1997, applicants for refugee status came mainly from the following countries: Afghanistan, Armenia, Bosnia Herzegovina, Bulgaria, India, Iraq, former Yugoslavia, Turkey (Kurds), Sri Lanka.

¹⁵³Ministry of the Interior, November 1997

¹⁵⁴Statement by the delegation of the Slovak Republic to the 6th Conference of European Ministers responsible for Migration Affairs, Council of Europe, Warsaw, June 1996

¹⁵⁵UNHCR, Background information on the situation in the Slovak Republic in the context of the return of asylum seekers, August 1998

Year	Applications	Recognition	Rate
1994	140	54	38.6%
1995	359	66	18.4%
1996	415	128	30.8%
1997	645	65	10.7%
1998 (at 31.07)	138	21	15.2%
Totals	1,697	334	19.6%

Source: Ministry of the Interior, Migration Office, August 1998

Officially, the criteria for granting refugee status corresponds to the definition of the 1951 Geneva Convention and its 1967 Protocol. According to UNHCR, **the ability to learn/speak Slovak** is very much taken into consideration. That is why many of the refugees recognized are 'in situ' refugees, for instance, students from former Communist countries who arrived before 1990 and hold or will hold Slovak academic degrees.

Applicants without valid documents constitute almost 90% of all applications¹⁵⁶. According to Slovak migration officials, people only request asylum when caught by border police¹⁵⁷.

Procedure and legal basis

The Slovak Republic acceded to the 1951 Convention and 1967 Protocol, without reservation, in January 1993. National legislation relating to refugees is primarily contained in the Refugee Act which came into effect on 1 January 1996. UNHCR considers this law to be an improvement on the previous one regarding the legal status of recognized refugees¹⁵⁸ and the possibility for a foreigner to obtain refugee status in the Slovak Republic for humanitarian reasons.

Act n° 283/1995 is not only in line with the provisions of the Geneva Convention, but also with the General Declaration on Human Rights, the European Convention for the Protection of Fundamental Freedoms and Human Rights, the 1959 Agreement on the Rights of Children as well as further bilateral and multilateral agreements and treaties between the Slovak Republic and neighbouring countries.

The new Act on Refugees provides a unique procedure. The Migration Office of the Ministry of the Interior is the first instance in this process. The Minister of the Interior constitutes the appeal authority. A further appeal against his decision can be made at the Supreme Court of the Slovak Republic.

¹⁵⁶Ministry of the Interior of the Slovak Republic, Department of European integration and law approximation, Vladimír Kotulic, August 1998

¹⁵⁷UNHCR, Information bulletin, September 1998

¹⁵⁸UNHCR, Background information on the situation in the Slovak Republic in the context of the return of asylum seekers, August 1998

The application and the situation in the country of origin are carefully examined; all available sources are used (Ministry of Foreign Affairs, UNHCR, consular offices).

During the refugee status determination procedure, applicants pass through medical quarantine at the retaining refugee camp in Adamov-Gbely. During this period, freedom of movement is limited for medical reasons. After the quarantine period, applicants can leave the camp for defined periods of time.

The first interview is held by the Migration Office. Those who appeal against a negative decision are taken to the residential refugee camp centre in Brezova pod Bradlom. During this time, the Migration Office bears the costs of lodging and food.

Asylum seekers who have obtained access to the procedure are protected against refoulement and no problems have been experienced in its practical application¹⁵⁹.

According to the law, the Ministry takes a **decision within 90 days**. This time limit can be extended by the Ministry. In the event of a negative decision, the applicant can lodge an **appeal** with the same authority, and a decision is given by the Minister, on the recommendation of an advisory board, within 60 days. The decision of the Minister can be reviewed by the Supreme Court.

If, in the opinion of the Ministry, a claim is manifestly unfounded, the Ministry will make a decision within 7 days of the start of the procedure. The decision can be appealed against within three working days. The appeal has a suspensive effect.

A representative of UNHCR may at any time participate in the determination procedure. UNHCR provides legal opinions, country of origin information and trains the adjudicators.

In Zvolen, which is an integration centre, **recognized refugees** are provided with assistance in job seeking, renting an apartment or obtaining other social services. Refugees may spend a maximum of six months in this centre¹⁶⁰.

Recognized refugees are automatically given a residence permit of indeterminate term, which puts them on an equal footing with Slovak citizens (with the exception of franchise and military service)¹⁶¹.

Access to procedure

The greatest problem asylum applicants have to face is access to the procedure. According to new Refugee Law n° 283/95, undocumented applicants must apply for refugee status within **24**

¹⁵⁹UNHCR, Background information on the situation in the Slovak Republic in the context of the return of asylum seekers, August 1998

¹⁶⁰*Migration News Sheet*, November 1997, Hungarian Associations for Migrants

¹⁶¹Ministry of the Interior of the Slovak Republic, Department of European integration and law approximation, Vladimir Kotulic, August 1998 and Act of Refugees, §13, para. 2 and §17, para. 1

hours of entering the Slovak Republic (Article 4(2)b). Some of the Ministry of the Interior's internal regulations reduce this limit (Regulation No. 4/1996)¹⁶².

The Aliens and Border Police have to determine who may be allowed access to the procedure. The UNHCR has protested that the actions of the Aliens and Border Police have been arbitrary and inconsistent. When people are denied access, there is no possibility of appeal. Written decisions have not been issued. The UNHCR has intervened in many cases where applicants asked for asylum at the offices of the UNHCR and were then directed to the Aliens and Border Police. There they were either refused or placed in detention for up to 30 days.

Several cases went to the Slovak Constitutional Court before the Migration Office and the Aliens Police agreed to relax their internal instructions to allow for a broader range of exceptions for failure to comply with the 24-hour rule. In addition, the Aliens and Border Police are now obliged to issue written decisions. Nevertheless, they continue to arbitrarily deny access to asylum procedures without written justification. Oral rejections (often racially pejorative) have not ceased to be the norm¹⁶³.

In connection with UNHCR criticism concerning the 24-hour deadline and, even though 'softening measures' were implemented to extend the deadline in various cases (hospitalization, physical and mental exhaustion, extraordinarily bad weather conditions, language barrier), an amendment will be put forward in the near future to change this situation¹⁶⁴.

Following the European Commission's opinion on the progress towards accession of November 1998, asylum legislation needs to be more detailed, particularly regarding access to the procedure, because Slovakia has moved from being mostly a transit country to being a destination country as well.

The situation in the Slovak Republic is complicated by the fact that many asylum seekers, including those returned from neighbouring countries through the application of readmission agreements, do not necessarily wish to apply for asylum in the Slovak Republic because they still want to proceed to Western European countries.

Main difficulties

Access to procedure remains a great problem, not only because of the 24-hour time limit but because of the language question and the arbitrary practices of the Aliens and Border Police. When refused access, the asylum seeker has no possibility of appeal and receives no written explanation.

The second issue which is of relevance for the question of access to the refugee status determination procedure is **the return of persons on the basis of readmission agreements**. Such readmission agreements do not contain special provisions for asylum seekers. Consequently, potential asylum seekers are treated as illegal aliens and are denied access to the asylum procedure, unless the

¹⁶²Ministry of the Interior, Migration Office, November 1997

¹⁶³UNHCR Bratislava, *Asylum and Migration in the Slovak Republic*, note to DG IV, July 1996, p.2

¹⁶⁴Ministry of the Interior of the Slovak Republic, Department of European integration and law approximation, Vladimir Kotulic, August 1998

returning authorities indicate that the returned persons have applied for asylum in their country. In some cases, as a result of UNHCR's intervention, the Slovak authorities have shown willingness to accept asylum applicants who have been refused entry into the procedure in other countries. On the other hand, UNHCR is not aware of any case in which returned asylum seekers have had access to the procedure without prior notice or intervention. A further problem in this context is that the Slovak Refugee Act allows for applying the safe third country concept in cases of return from another country, i.e. that the person would be at risk to be sent back to the returning country, hence potentially producing an orbit situation. UNHCR is of the opinion that rejections of asylum claims on the basis of the safe third country rule should only be taken and returns carried out in cases where - be it under a bilateral readmission agreement or any other return arrangements - formal assurances from the Slovak authorities have been obtained that they agree to readmit the persons in question and to allow them access to the refugee status determination procedure. In addition to informing the Slovak authorities that the returnee is an asylum seeker whose claim has not been heard, returning countries should inform the claimant of his/her right to apply for asylum in Slovakia and of his/her obligation to do so at the time of his/her arrival.¹⁶⁵ No practical experience, however, is yet available.

¹⁶⁵UNHCR Brussels, note to DG IV, September 1998

Slovenia

1. Migration

During the communist era, economic factors caused migration from other parts of former Yugoslavia to Slovenia, which is now **mainly a transit area**. Nevertheless, it is **becoming a target country, not only for asylum seekers, but also for illegal migrants**. The use of counterfeit documents is increasing and illegal crossing of the state borders is more and more organized¹⁶⁶.

Illegal migration

Number of foreigners crossing the border illegally

1994	1995	1996	1997	1998 (August)
4,044	4,175	3,877	7,093	6,490

Source: Ministry of the Interior, Slovenia, August 1998

Number of people rejected at the border

1993	1994	1995	1996
50,287	37,337	40,000	47,635

Source: Ministry of the Interior, Slovenia, 1997

Data indicates the main movements of illegal migration in the territory of the Republic of Slovenia, which flow from the Southern and Eastern European states through the Republic of Hungary and the Republic of Croatia and then through Slovenia toward West European states. The increase in the number of illegal crossings of the state border is a consequence of the resumption of old migration flows through the territory of the former Yugoslavia, with Bosnia-Herzegovina becoming a transit state for numerous migrants from Turkey, Iraq, Egypt and Bangladesh¹⁶⁷. **The majority of illegal entries are made by Romanians and people from former Yugoslavia.**

In order to fight illegal migration, the Slovene police have developed close cooperation with neighbouring countries and the main destination countries, for example Germany. This cooperation includes information exchanges and the coordination of measures concerning prevention and investigation related to trafficking in human beings and in the detection of the use of forged documents.

Within the framework of trilateral meetings between Slovenia, Italy and Hungary, a joint Declaration was signed by the Ministers of the Interior of Italy, Slovenia and Hungary on 13 May 1997, whereby the Ministries committed themselves to strengthening cooperation in the spheres of the fight against

¹⁶⁶Written statement of the Slovenian delegation to the 6th Conference of European Ministers responsible for migration affairs, June 1996

¹⁶⁷Ministry of the Interior, Slovenia, December 1997

organized crime, drug trafficking and money laundering and in the fight against unlawful immigration¹⁶⁸.

Slovenian criminal law stipulates a prison sentence of up to three years for a person who engages in the illegal trafficking of others across the state border of Slovenia, or for a person who, for self-seeking purposes or as part of an organized group, trafficks another person across the border. Moreover, the Employment of Foreigners Act stipulates a fine for employers who employ foreigners illegally.

In the short term, the European Commission considers that legislation on foreign nationals is indispensable and border controls must be improved; the issue of determining the border with Croatia is essential¹⁶⁹

Readmission agreements

The Republic of Slovenia has concluded agreements on readmission with all neighbouring states (Italy, Austria, Hungary and Croatia). Besides Italy and Austria, other EU Member States with which Slovenia has concluded readmission agreements are Denmark, the Benelux states, France and Greece and, as regards non-EU Member States, the Swiss Confederation, Slovakia, Poland, Estonia, Lithuania and the Czech Republic. The readmission agreements signed with Canada, Romania and Germany deal only with nationals of the contracting countries. Agreements with Bulgaria, Latvia and Macedonia are in preparation¹⁷⁰.

In 1997, on the basis of readmission agreements, 1,554 foreigners were returned by foreign law enforcement and 3,577 foreigners by the Slovenian police force¹⁷¹. The European Commission considers that practical problems remain with the carrying out of deportations¹⁷²

2. Asylum

From June 1991 until June 1998, 236 asylum seekers filed applications, the majority of which came from the Federal Republic of Yugoslavia (64), Iran(43), Bosnia-Herzegovina (29), Iraq (23) and Liberia(15)¹⁷³.

Asylum applications

1994	1995	1996	1997	1998 (first half)
30	6	35	72	39

Source: Ministry of the Interior, Slovenia, August 1998

¹⁶⁸Ministry of the Interior, Slovenia, December 1997

¹⁶⁹European Commission, 'Progress towards accession', November 1998

¹⁷⁰Ministry of the Interior, Slovenia, December 1997

¹⁷¹Ministry of the Interior, Slovenia, International cooperation department, Gvido Mravljak, Head of the international cooperation department and Matjaz Dolsina, Under-Secretary of State, October 1998

¹⁷²European Commission, 'Progress towards accession', November 1998

¹⁷³Ministry of the Interior, Slovenia, International cooperation department, Gvido Mravljak and Matjaz Dolsina, October 1998

Procedure and legal basis

The Republic of Slovenia ratified both the 1951 Geneva Convention and its Protocol of 1967 without any reservations. Refugee status is granted on the basis of the criteria of the Geneva Convention and the provisions of Article 34 of the Law on Foreigners, which stipulates that refugee status in the Republic of Slovenia may be ratified for a foreigner who has abandoned a country of which he is a citizen, or in which he had permanent residence as a person without citizenship, in order to avoid persecution because of his political opinion, his cultural or scientific activities or because of his national, racial or religious affiliations¹⁷⁴. **Finalization of the draft new Asylum law is not yet complete, but should be finished by the end of 1998**¹⁷⁵.

However the Act on Foreigners does not contain any special stipulations with regard to the execution of the procedure to grant asylum status, so that it is the law on general administrative procedure which is used¹⁷⁶.

There is a 3-day deadline to fill in an application for asylum. Should this deadline not be respected, the application is rejected¹⁷⁷.

If refugee status is not granted, the asylum seeker is not sent back to his country of origin if he would be at risk of danger to his life and freedom due to race, religion, ethnic affinity or political views or if he could be exposed to torture or inhuman or degrading treatment (Article 33 of the Act on Foreigners).

It should be mentioned that there are 5,000-10,000 stateless persons in Slovenia who, for many reasons, did not apply for either Slovenian citizenship before 31 December 1991, the deadline fixed by the Slovenian government after independence, or refugee status. The Slovenian authorities, together with UNHCR, are currently dealing with this issue in order to identify, as a first step, the precise number of stateless persons. The government has also drafted a law on regularization which will go to Parliament in 1999 and provides for a permanent residence permit for all eligible applicants. This point was strongly advocated by UNHCR¹⁷⁸.

There are two NGOs dealing with Convention refugees: GEA 2000 and the Slovene Filantropija¹⁷⁹.

Temporary protection

From 1991 onwards, there were about 70,000 people seeking **temporary protection** in Slovenia due to the wars in Croatia and Bosnia-Herzegovina. A new Law on Temporary Protection was adopted in July 1997, as well as a decree on the gaining of temporary protection for citizens of Bosnia-Herzegovina. The conditions were modified in April 1998.

¹⁷⁴Ministry of the Interior, Slovenia, December 1997

¹⁷⁵UNHCR, 1998

¹⁷⁶Ministry of the Interior, Slovenia, 1998

¹⁷⁷Ministry of the Interior, Slovenia, 1998

¹⁷⁸UNHCR, Annabelle Roig, December 1998

¹⁷⁹UNHCR, Annabelle Roig, December 1998

In June 1998, 4,201 displaced people were still registered in Slovenia¹⁸⁰. In addition, UNHCR estimates that 150 refugees from Bosnia-Herzegovina remain in Slovenia without any kind of status. This decrease is composed of voluntary returnees to Bosnia, people who have left for third countries and people who have had the opportunity to regularize their status in Slovenia in a different way by getting work permits and temporary residence permits according to the law on foreigners.

Main difficulties

Border controls, and in particular the question of the border with Croatia, is the main problem. The use of counterfeit documents is increasing and illegal crossing is more and more organized.

¹⁸⁰UNHCR Ljubljana, Annabelle Roig, Repatriation/Protection Officer, August 1998

ECRE Position on The Enlargement of the European Union in Relation to Asylum Conclusions and Recommendations

1. ECRE generally **welcomes the increased attention now devoted to improving refugee protection standards** in the Associated States, which is a by-product of the EU enlargement process. Such harmonisation, in line with human rights standards, needs to urgently resolve the many legal and social problems which asylum seekers and refugees currently face in the region.
2. However, ECRE also wishes to point out that the EU *acquis communautaire* contains merely minimum standards and, in some cases, grossly inadequate standards. The guidance of UNHCR and other international experts should be followed in order to **avoid replication of EU failings**.
3. The enlargement process as a whole is **overly focused on control of illegal migration** and deterring abusive claimants from asylum procedures. Training and assistance relating to fair and efficient asylum procedures should be integral to the process and not regarded merely as a “luxury” element.
4. Where the current EU *acquis* provides no guidance on common standards, **best practice and the standards of human rights law** should be implemented. This relates, in particular, to issues of refugee integration and forms of protection beyond the 1951 Refugee Convention.
5. Where issues are currently under negotiation within the EU, the position of the Associated States should be fully taken into account in order to create **regional systems that are sustainable and equitable in an enlarged European Union**.
6. In its evaluations of whether an Associated State meets the Justice and Home Affairs accession criteria, the EU should **ensure that conformity with international standards is not merely a matter of legislation but also a matter of consistent State practice**. Monitoring with regard to the implementation of adopted standards is required in both the Associated States and the current Member States.
7. There is a need for **training** to be provided to everyone involved in the asylum process, not only interviewers and decision-makers. Interpreters, legal counsellors, police and border guards, in particular, require training, and such training is best conducted jointly with NGOs and UNHCR.
8. **Assistance** to the “second tier” of Associated States and to other central and eastern European States should be maintained at current levels in recognition of the strains which will be put upon their asylum systems following EU enlargement.
9. ECRE calls for far greater **transparency** (both public debate and access to information) with regard to Ministerial negotiations, European Commission preparatory committees, and training and assistance programmes in the Justice and Home Affairs component of the enlargement process.
10. The **non-governmental sector** in the region should be consulted on accession evaluations relating to asylum and immigration, where possible through roundtable meetings, and their concerns taken into account. NGOs in the region should also be actively supported and assisted, in recognition of their important role as bridges to the host societies and as service providers to refugees.