Repatriation and Return Policies in EU Member States

Country Report – Slovenia

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Introduction

The regulation of return policies in Slovenia differs depending on whether return is voluntary or involuntary. While involuntary return is well regulated in domestic legislation and interstate readmission agreements, voluntary return mostly consists of *ad hoc* practices and provisional solutions. A very important role in carrying out voluntary return is played by non-governmental and international organizations, especially by the International Organization of Migration (IOM). The most important step forward in terms of regulating voluntary return was taken with signing a memorandum between the IOM and the Government of the Republic of Slovenia.

This report consists of three chapters. The first chapter (“Legal Framework”) sets forward both national and international legal provisions forming a basis for executing return policies. The second chapter (“Involuntary Return”) addresses basic areas of return. It examines past and present return practices for different groups of migrants (illegal migrants, foreign nationals, refugees, victims of trafficking and displaced persons under temporary refuge), describes judicial review procedure and respect for the right to appeal, deportation barriers, regularization, as well as detention. The third chapter (“Voluntary return”) describes the manner in which assisted voluntary return is carried out in Slovenia and the manner in which return practices will be carried out in the future considering the newly signed memorandum between the IOM and the Government of Slovenia.

The characteristic of the return policies in Slovenia are:

- According the statistics, approximately half of illegal migrants are returned on the basis of readmission agreements.
- The other half of illegal migrants who cannot be returned immediately are awaiting deportation in the Center for Aliens and are not forcibly returned as stipulated in the Aliens Act. Namely, while waiting, most of them decide to return to their country of origin voluntarily.
- Assisted voluntary returns are carried out by the IOM. However, the involvement of the IOM has so far depended on the availability of funds from the pilot projects.
- There is a lack of legal regulation of cases when recognized refugees decide to return to their country of origin.
- There is a lack of legal regulation of dealing with victims of trafficking, including their return.
I. Legal Framework

The legislation and international agreements regulating return policies in Slovenia are as follows:

1. National Legislation

- Constitution of the Republic of Slovenia (Official Gazette of the RS, No. 33/91);
- Aliens Act (Official Gazette of the RS, No. 108/2002, entered into force 27 November 2002);
- Asylum Act (Official Gazette of the RS, No. 134/2003, entered into force 14 August 2003);
- Temporary Refuge Act (Official Gazette of RS, No. 20/97, No. 67/2002). Temporary Refuge Act will very soon be replaced by Temporary Refuge of the Displaced Persons Act, which has already been published in the Official gazette of RS, No. 65/2004 and will enter into force on 23 July 2005.
- Penal Code (Official Gazette of the RS, No. 95/2004)

2. International Agreements

- The Convention for the Protection of Human Rights and Fundamental Freedoms;
- The European Convention for the Prevention of Torture and Inhuman or degrading treatment or Punishment;
- The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially women and Children,
- United Nations Convention against Organized Crime,
II. Involuntary Return

1. Scope of Involuntary Return

a. Illegal Migrants

i. Legal Provisions

Legal bases for removal of illegal migrants are provided by the Aliens Act. According to Article 47 of the Aliens Act, aliens who reside in the Republic of Slovenia illegally must leave the country immediately or within a stipulated period of time, determined by the Ministry of Interior. In determining the term in which an alien must leave Slovenia, the authority which issues a decision must take into account the time in which the alien is able to leave the country, whereby the term must not exceed three months. (Article 47/4 of the Aliens Act) The aliens who cannot be returned immediately wait for deportation in the Center for Aliens in either Postojna or Prosenjakovci (see below the section on Detention).

Aliens are considered to be residing in Slovenia illegally:

- if they entered the country without permission;
- if their visa was annulled or if the period for which it was issued has expired, or they reside in the Republic of Slovenia in contravention of the entry entitlement, or if the time for which they were allowed to reside in the Republic of Slovenia on the bases of the law or an international agreement has expired;
- if they are not in possession of a residence permit, or if the permit has expired. (Article 47/2 of the Aliens Act)

If an alien filed an application for an extension of his or her residence permit or for a further permit in due time he or she is permitted to remain on the territory of Slovenia until his or her application is decided upon. The alien is also issued a special confirmation, which serves as a permit for temporary residence until the application is decided upon. (Article 47/3 of the Aliens Act) While waiting for a decision upon his or her application for extension the alien may not be returned, since the application for extension serves as a permission to stay.

An alien, who does not leave the territory of the Republic of Slovenia pursuant to Article 47/1, is deported from the country. (Article 50/1 of the Aliens Act) An alien who must be deported from the country is brought to the state border by the police and directed across the border and handed over to the authorities of that country. (Article 50/4 of the Aliens Act) The police also bring to and direct across the state border and hand over to the authorities of that country an alien who is being deported on the basis of an international agreement (see below the section on Readmission Agreements). (Article 50/5 of the Aliens Act)
ii. Actual Situation

According to the information provided by the Ministry of Interior, the authorities refrain from executing forced involuntary returns as stipulated in Article 50 of the Aliens Act. Although these returns, according to the Ministry of Interior, are more voluntary than involuntary in nature, they are included in the section “Involuntary Returns,” since they are carried out by the Ministry of Interior and do not fall under the definition of assisted voluntary returns carried out by the IOM and described in chapter III. However, it needs to be taken into account that in most cases these returns could and would be assisted by the IOM if there had been sufficient funds available.

Aliens accommodated in Center for Aliens on the basis of Article 56 of the Aliens Act, in the time from reception until deportation, are dealt with by a police inspector who examines each case individually. The inspector is assisted by social workers who offer psycho-social support to the alien. According to the Ministry of Interior, in these circumstances most illegal migrants choose to return voluntarily to their country of origin. At the return the aliens are accompanied by the police only in cases of group returns or at the request of the airline carriers. The authorities of the country of origin are not notified about the arrival of an illegal migrant.

Most of such returns are carried out by air (e.g. to Kosovo, Turkey, Iran and Iraq). Due to lower numbers of migrants in Slovenia the authorities use regular lines instead of charter lines. Valid travel documents are obtained in cooperation with embassies of the countries of origin.

Unaccompanied minors ordered to return are accompanied by their legal guardians (usually NGO representatives) from Slovenia to the country of origin. The same goes for the victims of trafficking if they are identified as such.

In 2004, 472 illegal migrants who were accommodated in the Center for Aliens were returned. Out of the total number of returned migrants in 2004, 148 were returned to Serbia and Montenegro, 102 to Albania, 44 to Bosnia and Herzegovina, 43 to Romania, 28 to both Turkey and Moldavia, 27 to Macedonia, 16 to Ukraine, 11 to Bulgaria and the rest to China, Georgia, Russian Federation, Ecuador, Lithuania, Croatia, France, Sierra Leone, Sweden, Liberia and Lebanon. These statistics only include returned aliens who were awaiting deportation in the Center for Aliens, while the statistics for migrants returned on the basis of readmission agreements are included in the following section (Readmission Agreement).

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1 Ministry of Interior detention statistics sent for a purpose of a doctoral thesis of Mr. Andrej Živanović on 04. 04. 2005.
2 Id.
3 Information was obtained at the interview on 27 June 2005 with Ms. Tamara Jerman, United Nations High Commissioner for Refugees, Branch Office Ljubljana.
4 Id.
5 Information was obtained at the interview on 29 June 2005 with Ms. Alenka Malenšek, International Organization for Migration Ljubljana.
6 See above, note 1.
7 See above, note 1.
iii. Readmission Agreements


In the period between January 1, 2005 and December 31, 2005 the Slovenian police returned 611 persons on the basis of the readmission agreements, out of 2,116 illegal migrants that illegally entered the territory of Slovenia. Most of illegal migrants were retuned at the border of Croatia (557). Their nationality was of Serbia and Montenegro (120), Albania (89), Bosnia and Herzegovina (90), Macedonia (89) and Turkey (23). At the border of Hungary 29 persons was returned, at the border with Italy also 21 and at the border with Austria 3.9

In the period between January 1, 2005 and May 31, 2005 the Slovenian police returned 692 persons on the basis of the readmission agreements, out of 2.732 illegal migrants that illegally entered the territory of Slovenia. Most of illegal migrants were retuned at the border of Croatia (656). Their nationality was of Serbia and Montenegro (176), Albania (156), Bosnia and Herzegovina (93), Macedonia (69) and Turkey (59). At the border of Hungary 17 persons was returned, at the border with Italy also 17 and at the border with Austria 1.10

iv. Costs of Deportation

According to the Aliens Act, the aliens awaiting their deportation in detention who have their own funds are obliged to cover the costs of their subsistence and accommodation and the costs incurred in relation to their deportation to the amount of their own funds. (Article 62/1 of the Aliens Act) If they have no funds, the costs are covered from the budget of the Republic of Slovenia. (Article 62/2 of the Aliens Act) The costs are also covered, in solidarity, by the person who illegally transported the alien across the national border or who offered the alien illegal employment or work or enabled him/her illegal residence in the Republic of Slovenia. (Article 62/3 of the Aliens Act)

b. Expulsion of Foreign Nationals

An alien, against whom the additional sentence of expulsion from the country (for a crime) or the security measure of deportation from the country (for a minor offence) has been issued, is also deported from the country. (Article 50/2 of the Aliens Act) Additional sentence of expulsion of an alien from the Republic of Slovenia is defined with the Article 40 of the Penal Code of the Republic of Slovenia. Namely, the court

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10 Id.
may issue an expulsion of an alien from the territory of the Republic of Slovenia for
the period from one to ten years. The duration of the expulsion starts with a final
judgment. The time spent in detention is not included in the duration of the
expulsion.\textsuperscript{11}

The procedure for them is the same as for illegal migrants and is carried out in
accordance with the Aliens Act.

c. Refugees

An asylum seeker whose asylum application has been rejected by the final decision in
the asylum procedure and who does not leave the territory of the Republic of Slovenia
within the prescribed time is forcibly removed from the state pursuant to the Aliens
Act, unless he or she enjoys a special form of protection under this law (see below,
page 11). Until the decision on the special form of protection is final, the alien is
accommodated in the Center for Aliens [an accommodation and detention center
which forms part of the Immigration Division of the Police – authority, responsible
for the removal from the State]. (Article 40/1 of the Asylum Act)

However, such removal is not enforced before the asylum procedure has been closed
by a final decision. (Article 40/2 of the Asylum Act) The procedure shall be deemed
final:

- when the time limits for appealing against the first instance decision have
  expired and no appeal has been submitted, or when an appeal has been lodged
  after the expiry of the time limit, but no \textit{restitutio in integrum} has been
  granted;
- when the time limits for appealing against the decision by the administrative
court have expired and the appeal has not been lodged; or the appeal has
indeed been lodged after the expiry of a prescribed time limit and the \textit{restitutio
ad integrum} has nor been granted;
  - when a judgment of the supreme court by which the appeal has been rejected,
    has been served; or
  - when a decision by the supreme court by which the appeal has been rejected,
    has been served.

Regardless of the stage of the asylum procedure, an asylum application shall be
considered withdrawn and the procedure closed:

- if the asylum applicant withdraws his asylum application;
- if in spite of a received summon, the asylum applicant fails to attend the
  interview or oral hearing without prior excuse;
- if the asylum applicant fails to notify the change of his address which leads to
  unsuccessful deliveries of summons or any other mail;
- if the asylum applicant refuses to co-operate in establishing his/her identity; or
- if it is clear from the official evidences of the competent authority conducting
  the procedure that the asylum applicant left the asylum home or its branch on
  his/her own free will and did not return there in three days after such an
  arbitrary departure. (Article 42/1 of the Asylum Act)

\textsuperscript{11} Article 40 of the Penal Code of the Republic of Slovenia.
The asylum applicant, in cases mentioned in the second and third line of the previous paragraph, may submit a petition for *restitutio in integrum* on justifiable grounds within three days from termination of reasons causing the delay in responding to the summons or in notifying the change of his or her address or causing his or her departure from the Asylum Home or its branch for more than three days. (Article 42/2 of the Asylum Act)

In its decision the Ministry of Interior prescribes a time limit within which the asylum seeker must leave the Republic of Slovenia. (Article 42/3 of the Asylum Act)

On the 31 March 2005 a new measure was introduced at the Asylum Home where asylum seekers are accommodated. This measure amounts to a new basis for deportation of the asylum seekers. Namely, when illegal migrants express an intention to apply for asylum they are accommodated in the pre-reception area of the Asylum Home where they wait for their asylum application to be accepted. At their arrival they must sign a statement that their intention to apply for asylum will be deemed annulled if they leave the pre-reception area of the Asylum Home before their application is accepted.

This measure has no legal basis in the Asylum Act. However, it has many practical consequences. Namely, if a person signs a statement (in many cases without knowing what is being signed) and steps out of the pre-reception area of the Asylum Home, their intention to apply for asylum is deemed null and they are considered illegal migrants who, if caught by the police, are transferred into detention facilities in Postojna or Prosenjakovci (see below the section on detention) where they wait for deportation. It needs to be taken into account that “leaving” the pre-reception area does not only mean heading for Italy or Austria but also smoking a cigarette outside, outside the assigned recreation hours. Accordingly, this new measure represents a new basis for deportation from the country. Before this measure was introduced, persons who expressed their intention to apply for asylum would be accommodated in the pre-reception area until their asylum application was accepted and could leave the premises freely.12

**d. Victims of Trafficking**

In Slovenia there are no special legal provisions regulating the return of victims of trafficking. Moreover, there is a lack of legally established criteria for determination of a “status” of a victim of trafficking as well as a lack of procedure for such determination. Usually the fact that someone (an asylum seeker or an illegal migrant) is a victim of trafficking is established by “common sense” of the officials or through self-identification by victims themselves.13 Similarly, it is not regulated how the state bodies must proceed after determining that a person under their authority is a victim of trafficking. A Slovenian non-governmental organization called “Ključ,” which is specialized for dealing with victims of trafficking, concluded special framework agreements with the Ministry of Interior and the Police in order to regularize

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12 The non-governmental organizations have been calling for the removal of this measure at the Ministry of Interior, the Ombudsman and the Council of Europe Commissioner for Human Rights. See e.g. the letter to the ombudsman, 15.5.2005.

13 See above note 5.
(although not on the level of the legislative provisions) their activities consisting of preventive measures and education, support for victims, help line and safe house. However, these agreements do not regulate the victims’ return.

Whenever any of the victims expressed a desire to return to their country of origin and if there were sufficient funds available, the IOM took all the necessary measures to organize for their safe return home (see below).\textsuperscript{14}

e. Displaced Persons under Temporary Refuge

There are special provisions regulating return of displaced persons. In the time of writing this report a new Temporary Refuge of Displaced Persons Act was adopted, but has not yet entered into force. The Act includes the provisions of return and repatriation of persons under temporary refuge, taking into account the specific situation of this group of people.

If the situation of a country of origin of displaced persons allows for their return the temporary protection is terminated. After the termination the Ministry of Interior must adopt a voluntary repatriation plan. (Article 44 of the Temporary Refuge of Displaced Persons Act)

In order to facilitate a decision to voluntarily return to the country of origin the Ministry of Interior provides information on the conditions in the country of origin and on the possibilities to return. (Article 45/1 of the Temporary Refuge of Displaced Persons Act) The Ministry may organize informative visits in the country of origin for displaced persons that decided to return voluntarily. (Article 45/2 of the Temporary Refuge of Displaced Persons Act) If temporary protection has not been terminated yet, the Ministry may, taking in account the UNHCR recommendations, enable the persons who voluntarily returned to their country of origin to return to Slovenia, if the circumstances in the country of origin do not allow for a safe and permanent return. (Article 45/3 of the Temporary Refuge of Displaced Persons Act) The persons who decided to return voluntarily are treated as persons under temporary refuge until the day of their actual return. (Article 45/4 of the Temporary Refuge of Displaced Persons Act)

If due to health reasons a person who decided to return voluntarily cannot return yet, his or her temporary refuge status may be extended. (Article 46/1 of the Temporary Refuge of Displaced Persons Act) Extended stay may be permitted for the unaccompanied minors and families with minor children until the end of the school year, if they are going to school in Slovenia. (Article 46/2 of the Temporary Refuge of Displaced Persons Act) Both groups of people (minors and their families as well as persons with health problems) have the right to enjoy the same scope of rights as other persons under temporary refuge. (Article 46/3 of the Temporary Refuge of Displaced Persons Act)

The provision providing for a forced return states that a person whose temporary refuge was terminated and who did not regulate their status, permitting them to stay in Slovenia, must leave the host country in due time, otherwise the provisions of Aliens Act will apply. (Article 47 of the Temporary Refuge of Displaced Persons Act)

\textsuperscript{14} See above note 5.
There are no displaced persons under temporary refuge left in Slovenia anymore. In
2002, the remaining 2000 Bosnian refugees were given an option to either voluntarily
return to Bosnia and Herzegovina (for more information see below the section on
Voluntary Return) or to acquire permanent residence permits.\(^{15}\)

Altogether 9,058 persons were returned from Slovenia to Bosnia and Herzegovina and
1,056 to Croatia in the period from 1993 to 2003.\(^{16}\) From the statistics of the
Immigration Sector it is not evident how many of them returned voluntarily and how
many involuntarily (with an exception of 130 persons out of 9,058 total who did
return voluntarily to Bosnia and Herzegovina with the assistance of the IOM – for
more information see below section Assisted Voluntary Return of Persons under
Temporary Refuge). It could be established that all Bosnia refugees returned
voluntarily since those who did not want to return had an option to stay in the
Republic of Slovenia and obtain permanent residency.

2. Judicial Review of Return Orders and the Right to Appeal

In cases of asylum seekers a return order is issued by the Ministry of Interior. Against
such decision an asylum seeker may file an appeal to the Administrative Court in 15
days after the receipt of a decision. If an asylum seeker is rejected and deportation
order served because the asylum seeker entered Slovenia from safe third country, or
his or her application is deemed manifestly unfounded, he or she may file an appeal to
the Administrative court in three days after the receipt of a decision. (Article 38 of the
Asylum Act)

Illegal migrants, who must await their deportation in detention, have a right to file an
appeal against a decision on detention at the Ministry of Interior within a period of
eight days from the receipt of a decision. (Article 58 of the Aliens Act) Against a
decision of the Ministry the illegal migrants have the right to seek judicial review
within a period of 30 days from the receipt of a decision.\(^{17}\)

Persons under temporary refuge whose application was denied have the right to
appeal to the Ministry of Interior in 15 days from the receipt of a first instance
decision. (Article 13 of the Temporary Refuge Act) After the decision of the Ministry
they have the right to seek judicial review of their case by filing a complaint to the
Administrative court in 30 days from the receipt of the second instance decision.\(^{18}\)

In the year 2004 there was one appeal lodged against the decision on accommodating
an alien into the Center for Aliens. There were no appeals lodged against a decision
on stricter police supervision.\(^{19}\)

\(^{15}\) This opportunity was provided for them by the Amended Temporary Refuge Act of the Republic of
Slovenia.

\(^{16}\) Immigration Sector’s yearly statistics.

\(^{17}\) 30 days is a general deadline for seeking judicial review in administrative matters. See
Administrative Litigation Act.

\(^{18}\) 30 days is a general deadline for seeking judicial review in administrative matters. See
Administrative Litigation Act.

\(^{19}\) See above note 1.
3. Deportation Barriers

An alien may only be deported from the country if a decision on the basis of which the alien is obliged to leave the country is executable. (Article 50/3 of the Aliens Act) Since some aliens are not deportable due to the lack of cooperation of the country of origin, it has been reported that the competent authority at the Center for Aliens issues a permission to leave the Center (after he has already been detained for the maximum period of time) which the aliens use to leave the country. This usually happens when otherwise the maximum time for detention (six months) would be exceeded.\(^{20}\)

a. Permission to Remain

In general, Slovenian legislation prohibits deportation or expulsion of an alien to a country in which his or her life or freedom would be endangered on the basis of race, religion, nationality, membership of a special social group or political conviction, or to a country in which the alien would be exposed to torture or to inhumane and humiliating treatment or punishment. (Article 51/1 of the Aliens Act) Pursuant to such circumstances, remaining in the country means permission granted to an alien who has been given a deadline by which to leave the country, or to an alien who must be deported, to remain temporarily in the Republic of Slovenia. (Article 52/1 of the Aliens Act) In such case the Alien is issued a “permission to remain in the Republic of Slovenia.” (Article 52/2 of the Aliens Act) In addition, the permission to remain is also issued if deportation is not possible due to other reasons.

The permission to remain is issued by the competent authority [the police] at the request of the alien, or \textit{ex officio}, for a period of six months; the permission may be extended for as long as the conditions for which permission to remain is granted exist. (Article 52/3 of the Aliens Act) In the decision which permits an alien to remain in the Republic of Slovenia, the Ministry of Interior determines the alien’s place of residence at a specific address. (Article 52/4 of the Aliens Act) However, the permission to remain does not cancel or in any way change the alien’s obligation to leave the country. (Article 52/5 of the Aliens Act)

Permission to remain in the Republic of Slovenia ceases to be valid immediately after the reasons preventing deportation cease to exist or if an alien acquires the permit to reside in the Republic of Slovenia on the basis of a law or an international agreement. (Article 53 of the Aliens Act)

b. Special Form of Protection

Pursuant to the country’s obligation to respect the principle of \textit{non-refoulement} the Asylum Act of the Republic of Slovenia established a “special form of protection.” The difference between a special form of protection and the permission to remain is that the special form of protection can only be granted to a person who previously applied for asylum and whose application was rejected while the permission to remain can be granted to migrants with no status who did not seek asylum. In addition, the permission to remain is granted by the police while the special form of protection is granted by the Ministry of Interior, Asylum Sector.

\(^{20}\) See above note 3.
The Asylum Act prohibits forced removal or deportation of persons to a country where their life or freedom would be threatened or to a country where he could be exposed to torture or inhuman and degrading treatment or punishment. (Article 6/1 of the Asylum Act) Persons whose right to asylum has not been recognized and may not be removed or deported, can be granted a special form of protection in the Republic of Slovenia, provided by the Asylum Act. (Article 6/2 of the Asylum Act)

The special form of protection means permission for the foreigner whose asylum application has been rejected by a final decision, to stay temporarily in the Republic of Slovenia. (Article 61/1 of the Asylum Act) The special form of protection may be granted to the foreigner by the authority that conducted the asylum procedure on his or her request or ex officio. (Article 61/2 of the Asylum Act) It is granted if:

- removal from the country would contradict paragraph 1 of Article 6 of this law (see two paragraphs above);
- conditions to protect the foreigner in the republic of Slovenia exist pursuant to another regulation or an international agreement (Article 61/3 of the Asylum Act)

The competent authority may grant the special form of protection in Slovenia for as long as these reasons exist but for no more than six months. Upon the proposal of the alien, the special form of protection may be extended. (Article 61/4 of the Asylum Act)

The alien may lodge an appeal against the decision on the special form of protection within three days after the receipt of the decision. The competent authority to decide upon the appeal is the Government of Slovenia. The Government must decide within seven days. An administrative litigation is allowed against the decision on the appeal by filing a complaint to the Administrative Court in 30 days after the decision is served. (Article 61/5 of the Asylum Act)

With the decision by which an alien is granted special form of protection in Slovenia, the Ministry of Interior shall accommodate him/her in the asylum home or its branch or determine the alien’s domicile at a designated address. (Article 61/6 of the Asylum Act)

c. Deportation Barriers for Displaced Persons

For special provisions on deportation barriers regarding displaced persons under temporary refuge see above section on Displaced Persons, pages 9 and 10.

4. Regularization

There are no legal provisions regulating regularization of illegal migrants in the Republic of Slovenia.

However, in the late nineties the Slovenian Government decided to tackle the so-called problem of the “erased” population. Members of this population were citizens of the republics of the former Yugoslavia who were permanent residents in Slovenia.
at the time of Slovenia’s separation from Yugoslavia. Since for some reason they did not apply for the citizenship of the Republic of Slovenia in accordance with a newly adopted Citizenship Act, approximately 18,000 of them was erased from permanent residency registry in 1992. A 1999 Regulating the Status of Citizens of the Other Republics of the Former Yugoslavia Act was an attempt to regulate the statuses of these people by returning them their permanent residence permits.21

5. Detention

a. General

Until the time they are deported, but for no longer than six months, aliens who do not leave the country in due time and whom it is not possible to deport immediately for whatever reason, are ordered by the police to move to the Center for Aliens (hereinafter referred to as the “Center”) or outside the Center, until their removal from the country. (Article 56/1 of the Aliens Act) This provision is also applied in cases where the identity of the alien is not known. (Article 56/2 of the Aliens Act) If an alien is not possible to accommodate at the Center due to special reasons or needs he or she may, in agreement with the social security office and with the costs borne by the Center, be accommodated at a social security facility or provided with other appropriate institutional care. (Article 56/3 of the Aliens Act)

In 2004 there were 1,544 detention decisions issued, in 2003 1,908 and in 2002 3,272 decisions.22

b. Stricter Police Supervision

An alien may also be accommodated under stricter police supervision in the Center. (Article 57/1 of the Aliens Act) Accommodation under stricter police supervision may be ordered by a police decision if it is suspected that the alien will attempt to avoid deportation or if the alien has already avoided such a measure, or if this is necessary due to reasons of public order, national security or international relations. Residence under stricter police supervision is ordered for the period required for the removal of the alien, however, not exceeding six months. (Article 57/2 of the Aliens Act) Stricter police supervision shall mean the restriction of the freedom of movement to the premises of the Center and in accordance with the house regulations of the Center. (Article 57/3 of the Aliens Act)

According to the sample form used for decisions on stricter police supervision, this measure is imposed to aliens if:

- an alien was prohibited to enter Slovenia,
- expulsion from Slovenia was issued to an alien as an additional punishment for a crime;
- precautionary measure of expulsion of an alien was issued to an alien for a minor offence;
- if the identity of a foreigner was not determined.

22 See above note 1.
In 2004 no decisions on stricter police supervisions were issued. In 2003 there were 8 decisions on stricter supervision issued while in 2002 there were 464 such decisions.  

**c. Procedure**

An alien’s accommodation at the Center or outside the Center and accommodation under stricter police supervision are ordered by the police with a decision, against which the alien may file an appeal to the Ministry of Interior within a period of eight days of the receipt of the decision. (Article 58/1 of the Aliens Act) An appeal does not withhold the execution of the decision. (Article 58/2 of the Aliens Act) An appeal must be decided upon by the minister within eight days. An administrative dispute [judicial review] may be initiated against the decision on the appeal. (Article 58/3 of the Aliens Act)

If for objective reasons it is not possible to deport an alien even after six months have passed, the police may:

- extend accommodation at the Center or accommodation under stricter police supervision for a further six months if it is realistic to expect that it will be possible to deport the alien within this time and, in particular, if the procedure for determining identity or the acquisition of documents for the deportation of the alien are still in progress, or if the extension is necessary for security reasons;
- determine another place of accommodation for the alien outside the Center until his/her deportation, where he/she must observe the rules on accommodation outside the Center; the alien may otherwise be re-accommodated at the Center. (Article 58/4 of the Aliens Act)

The police may adopt such measures even before six months have passed if, for objective reasons, it is not realistic to expect that the alien will be deported from the country within that time. (Article 58/5 of the Aliens Act)

In the last five years (2000-2004) the maximum duration of detention (six months) was never exceeded.  

**d. More Lenient Measures**

The police may, at any point in time, replace the measure of the obligatory accommodation of an alien at the Center with more lenient measures if they believe that it is possible to thereby accomplish their purpose. (Article 59/1 of the Aliens Act) On the basis of the preceding paragraph of this Article, the police may allow an alien to reside outside the Center, whereby the police may determine the place of residence. (Article 58/2 of the Aliens Act) In the event of such measure the police may restrict the movement of an alien to his or her place of residence, and impose on him or her, an obligation to report regularly to the nearest police station. (Article 58/3 of the Aliens Act)

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23 See above note 1.
24 See above note 1.
In 2005 more lenient measures were imposed in 16 cases, in 2003 in 10 cases and in 2002 in 94 cases.\(^{25}\)

**e. Minors**

Alien minors who have entered the Republic of Slovenia illegally and who were not accompanied by their parents or other legal representatives, or who remained without the persons who accompanied them after they arrived in Slovenia shall be temporarily accommodated by the police at the special department responsible for minors at the Center for Aliens, and the social work centre be notified hereof, which shall, in accordance with the law, immediately designate a temporary representative for the minors, if the authority which apprehended them cannot return them immediately to the country from which they came or deliver them to representatives of the country of which they are citizens. (Article 60/1 of the Aliens Act)

Such minors must not return to their country of origin or to a third country which is willing to accept them until suitable reception is provided; in no case may unaccompanied minors be returned in violation of the European Convention on Human Rights and Basic Freedoms, adopted with Protocols 3, 5 and 8 and supplemented with Protocol 2 and its protocols 1, 4, 6, 7, 9, 10 and 11 (Official Gazette of the Republic of Slovenia RS-MP, no. 7/94), the European Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (Official Gazette of the Republic of Slovenia RS-MP, no. 1/94), or the Convention on the Rights of the Child (Official Gazette of the Republic of Slovenia RS-MP, no. 9/92). (Article 60/2 of the Aliens Act)

Alien minors shall, as a rule, be provided with accommodation at the Center together with their parents or legal representatives, unless it is assessed that other solutions may be better for them. (Article 60/3 of the Aliens Act) In the case of minors under 16 years of age, stricter police supervision may be only ordered exceptionally, whereby they must be accompanied by both or at least one of their parents. (Article 60/4 of the Aliens Act)

In 2004 194 minors were detained in Aliens Center, in 2003 172, and in 2002 237.\(^{26}\)

**f. Cessation of Accommodation at the Center**

The accommodation of an alien at the Center shall cease when all reasons for it cease to exist or when its purpose has been achieved. (Article 61/1 of the Aliens Act) The Ministry of Interior may, with the decision by which it permits an alien to remain in the Republic of Slovenia, determine a specific address as the place of accommodation instead of accommodation at the Center. (Article 61/2 of the Aliens Act) Accommodation at the Center may also be cancelled at the request of an alien if the police determine that the conditions are given for more lenient measures in accordance with this Act. (Article 61/3 of the Aliens Act)

\(^{25}\) See above note 1.

\(^{26}\) See above note 1.
III. Assisted Voluntary Return

If a person expresses their wish to return to their country of origin voluntarily a so-called assisted voluntary return (AVR) is organized and carried out by the International Organization of Migration (IOM).

Persons who are entitled to AVR are:

- illegal migrants,
- victims of trafficking,
- asylum seekers whose asylum application was withdrawn before final decision or was not granted a refugee status, and
- displaced persons under temporary refuge.

Similarly as for involuntary return, most of the voluntary return is carried out by air. Due to lower numbers of migrants in Slovenia the authorities use regular lines instead of charter lines. In cases of return to neighboring country the persons are sometimes returned by ground transportation. In the case of persons under temporary refuge there were also ground convoys organized in order to transfer people and their belongings (namely, in that case people lived in Slovenia for longer periods of time and had many personal belongings to transport).\(^{27}\)

1. Incentives Encouraging/Supporting Return

There are no provisions on incentives encouraging or supporting the return of illegal migrants or refugees.

However, when Bosnian refugees under temporary refuge were being retuned to their Country of Origin they were entitled to financial support in amount of 1000 EUR, which was decreased with time to an allowance of 416 EUR (with a purpose of encouraging early return).\(^{28}\)

2. Assisted Voluntary Return of Recognized Refugees

The authority competent to deal with recognized refugees in Slovenia is Immigration Sector (previously called Immigration Directorate), an organizational unit within the Ministry of Interior. In 2004 they dealt with a first case of a recognized refugee (an asylum seeker who was granted a refugee status) who expressed a wish to return to his country of origin and was actually retuned. Due to the lack of legal regulation of such situation the Immigration Sector took several ad hoc measures to carry out the return.\(^{29}\)

When the refugee expressed that he wished to return to his country of origin the Immigration Sector officials first obtained country of origin information according to which the situation there was not safe. Accordingly, the officials dissuaded him from

\(^{27}\) See above note 5.
\(^{28}\) Information was obtained at the interview on 28 June 2005 with Ms. Sonja Gole Ašanin, Immigration Sector, Ministry of Interior.
\(^{29}\) Id.
returning. The refugee insisted he wished to return. His decision was double checked by the Asylum Sector (an organizational unit competent for processing asylum applications) and since it was established that a refugee’s decision is voluntary the Asylum Sector issued a decision on termination of his refugee status. In order to protect the refugee, no deadline to leave the country was specified in a decision since it was not clear how it would proceed.30

Since the Asylum Act does not regulate such situation the officials made sure that the refugee would not be prevented to enjoy his rights to which all recognized refugees are entitled (free housing, social benefits etc.) by keeping his name in the registry of recognized refugees until the actual date of his return.31

In the meantime (between the decision was issued and his actual return) the Immigration Sector contacted the IOM that carried out all the activities necessary for facilitating the return: counseling, providing information on his country of origin and contacting the embassy of his country of origin, obtaining valid traveling documents, purchasing a cheaper air ticket etc. At the actual return, the returnee was accompanied to the airport. The IOM arranged that the IOM in a connecting country received him and accompanied him to the connecting flight.32

While processing this return it became clear that the main existing legal loophole is the lack of provisions regulating the status of a refugee between the date when a statement expressing a wish for voluntary return is given and the date of the actual return. Namely, if certain part of the authorities strictly interpreted the decision on the termination of his refugee status he should be treated as an illegal migrant and should await his return in the Center for Aliens, which would be unacceptable. In order to avoid similar uncertain situations in the future the Immigration Sector will propose amendments to Asylum Act, stating that a refugee who stated that he or she wishes to return voluntarily to his country of origin shall be treated as a refugee in his rights and duties, until the day of his actual return. According to a different status of a person who has already had his or her refugee status recognized, it would be reasonable if the return of such person would continue to be administered by the Immigrations Sector and not the Police.33

3. Assisted Voluntary Return of Illegal Migrants and Asylum Seekers whose Application has been rejected

The IOM plays a key role in voluntary returns of illegal migrants and victims of trafficking. Again, there are no legal provisions regulating their activities, therefore all return programs were project based. IOM only administers voluntary returns and due to a constant lack of funds mostly to persons who pay for the return by themselves. On many occasions the Aliens Center contacts them and asks for assistance with voluntary return, but if no funds are allocated for such returns IOM cannot process them.34 In 2001 and 2002 IOM Ljubljana assisted 15 asylum seekers and illegal

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30 Id.
31 Id.
32 Id.
33 Id.
34 See above note 5.
migrants. Besides, other assistance and counseling was provided to nearly 100 migrants.\footnote{35 IOM Ljubljana - yearly statistics.}

Other assistance provided by IOM Ljubljana included: providing travel documents for returning home or to resettle; providing transit assistance at the Ljubljana's airport for migrants traveling through Slovenia as well as counseling assistance to more than 20 other migrants who contacted IOM in 2002. Those migrants were mainly from Romania, Bulgaria, the Philippines, Iran and FRY and have asked IOM for assistance to return home. Since the Memorandum on AVR with the Government of Slovenia was not yet signed at the time, IOM Ljubljana could not return all the migrants who had asked for return assistance but only the self payees. However, the migrants were provided with all the other assistance.\footnote{36 Id.}

In 2003 counseling assistance was provided to 6 migrants who were originating from Serbia and Montenegro, Bosnia and Herzegovina, Moldova and Kosovo. Mainly they were asking for the resettlement assistance. One migrant (the so called "erased") who was already residing in Slovenia was asking for the return assistance back home to Bosnia and Herzegovina.\footnote{37 Id.}

\section*{4. Assisted Voluntary Return of Victims of Trafficking}

In 2001 and 2002 IOM Ljubljana assisted 4 victims of trafficking. On the basis of the Project on Assisted Voluntary Return & Reintegration Program for Victims of Trafficking in Slovenia, return and reintegration assistance was offered to one victim of trafficking to return home to Ukraine in 2003, where the person was assisted with the reintegration assistance by IOM Kiev.\footnote{38 Id.}

Through IOM victims of trafficking (as well as other vulnerable groups, e.g. minors) receive additional assistance in the country of origin: housing, psycho-social assistance, education and feedback on the progress of a person from the IOM offices in countries of origin.\footnote{39 See above note 5.}

\section*{5. Assisted Voluntary Return of Displaced Persons under Temporary Refuge}

Since the beginning of the Pilot Project on the Assisted Voluntary Return, (2001) IOM Ljubljana assisted altogether 130 migrants to return home to Bosnia and Herzegovina (mainly to Republika Srpska) in the northern part of BIH through six convoys. The assistance was provided in cooperation and upon the request of the Governmental Office for Immigration and Refugees, Center for Aliens, Slovenian NGO's and other relevant migrant organizations.\footnote{40 See above note 35.}

In order for the realization of the return of the migrants to be orderly, humane and cost effective IOM Ljubljana provided technical assistance and escort. Due to a close
co-operation with the Ministries of the Interior in transit and destination countries, UNHCR and IOM Missions in Croatia and Bosnia and Herzegovina all the relevant border and other authorities have been informed about the convoys in advance. Accordingly all the migrants returned home safely. Due to IOM endeavors crossing the borders was custom-free. The returnees were received by the IOM Sarajevo and IOM Banja Luka. The costs were covered by the Immigrations Sector (at the time called Office for Immigration and Refugees).41

6. Cooperation with the Authorities

An important step was taken on 25 July 2005 when the Government and the IOM Ljubljana signed a Memorandum between the Government of the Republic of Slovenia and the International Organization for Migration on Cooperation in the Programme of Voluntary Return of Migrants (Memorandum). The Memorandum was signed after two years of negotiations,42 recognizing the importance of Slovenia’s international commitments and conviction that AVR will contribute to attaining of the Slovenia’s migration policy.43

The purpose of the memorandum is to set forth the cooperation between the parties as outlined in the previously concluded agreement (Agreement on Cooperation between the Government of the Republic of Slovenia and the International Organization for Migration), and particularly to define the framework of the implementation of the program for the assisted voluntary return for certain categories of migrants (Program). (Article 1/1 of the Memorandum) The parties (Ministry of Interior for the Government and IOM Ljubljana for the IOM) also agreed that in implementing the program a special attention will be given to vulnerable groups of migrants (persons with special needs and notably victims of trafficking in human beings, unaccompanied minors, unaccompanied women, the disabled, the elderly, pregnant women, single parents with minor children, victims of sexual abuse and victims of torture or organized violence). (Article 1/2 of the Memorandum)

According to the memorandum voluntary return means free and informed decision of a person to return to the country of origin freely and on his/her own will. If such return is not possible, or if a person is stateless, a voluntary return means that a person, based on his/her own will, freely returns to the country of his/her last permanent residence or to a country willing or having to receive him/her. (Article 4/1 of the memorandum)

The memorandum comprehensively regulates all aspects of voluntary returns since it includes the following beneficiaries:

(a) Persons illegally residing in the Republic of Slovenia;
(b) Asylum seekers who join the program on their own wish before the asylum procedure is concluded;

41 See above note 5.
42 See above note 5.
(c) Person enjoying temporary refuge;
(d) Victims of trafficking in human beings and unaccompanied minors;
(e) Refugees who join the program on their own wish.

(Article 4/2 of the Memorandum)

The basic provisions of the memorandum are establishing an obligation of the Ministry of Interior to inform the beneficiaries on the contents of the programs carried out by the IOM (Article 5 of the Memorandum), responsibilities of the IOM Ljubljana, such as counseling the beneficiaries in cooperation with government bodies, providing information on the country of origin conditions and on persons/entities the returnees can contact if they need additional advice or counseling.

(Article 6/1 of the Memorandum)

Moreover, the memorandum specifies the contents of the assistance that the IOM in agreement with the competent bodies will provide to the beneficiaries:
(a) Assisting in obtaining valid travel documents;
(b) Organizing transport if requested by the competent authority;
(c) Whenever it is possible, organizing assistance upon departure, transit and arrival in the country of origin;
(d) Offering other forms of assistance in relation to the preceding points of this Paragraph and in accordance with its competencies and capabilities.

(Article 6/2 of the Memorandum)

For its services the IOM will receive funding from the state budget based on the proposed financial plan of the programs for the following fiscal year. (Article 7 of the memorandum) Currently, it is not clear what will be the scope of funding since the negotiations are still taking place. In return the IOM will have to report to the Ministry of Interior every six months. (Article 8 of the Memorandum)

This memorandum will be valid until December 31, 2005. Its validity will be tacitly extended every year.
Sources

- Aliens Act (Official Gazette of the RS, No. 108/2002, entered into force 27 November 2002);
- Asylum Act (Official Gazette of the RS, No. 134/2003, entered into force 14 August 2003);
- Immigration Sector’s yearly statistics;
- Interview on 28 June 2005 with Ms. Sonja Gole Ašanin, Immigration Sector, Ministry of Interior;
- Interview on 29 June 2005 with Ms. Alenka Malenšek, International Organization for Migration Ljubljana;
- Interview on 27 June 2005 with Ms. Tamara Jerman, United Nations High Commissioner for Refugees, Branch Office Ljubljana;
- IOM and Assisted Voluntary Return: An Overview (August 2004);
- IOM Ljubljana - yearly statistics;
- Memorandum between the Government of the Republic of Slovenia and the International organization for Migration (IOM) on Cooperation in the Programme of Voluntary Return, signed on 25 June 2005;
- Penal Code (Official Gazette of the RS, No. 95/2004);
- Temporary Refuge Act (Official Gazette of RS, No. 20/97, No. 67/2002).