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## Student Paper

# Assisted Voluntary Return of Irregular Migrants: Policy and Practice in the Slovak Republic

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### ABSTRACT

Assisted voluntary return (AVR) is a new approach to return of irregular immigrants aiming at combating unlawful migration, and thus strengthening national immigration systems. AVR lowers risks of the violation of human rights and preserves migrants' dignity and safety. In addition, it carries fewer political and financial costs. AVR of irregular immigrants is an integral part of migration management in some European countries, including the Slovak Republic. This paper provides a general understanding of the issue of irregular migration and an analysis of policies and practices in assisted voluntary return of irregular migrants in the Slovak Republic. The paper concludes with a discussion of the major issues that need to be addressed in order to achieve sustainable and effective AVR management.

### INTRODUCTION

The paper provides knowledge about the policies and practice in assisted voluntary return of irregular migrants in the Slovak Republic. Although assisted voluntary return has emerged as an important issue on the Slovak policy agenda, few studies have been conducted thus far. The paper provides a general understanding of the issues and an analysis of policies, procedure and good practice. This study has three objectives: to

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describe the trend of irregular migration in the country; to investigate return policy and strategy pursued by the Slovak authorities; and finally, to discuss the major issues that should be addressed.

The Slovak's experience in assisted voluntary return of irregular migrants is important for three reasons. First of all, the Slovak Republic is a small central European post-communist country that has experienced extensive irregular transit migration in the 1990s and the beginning of this century. With accession to the European Union in 2004, and the Schengen Area in 2007, the country has attracted more irregular migrants. In order to diminish irregular migration, the Slovak authorities have adopted a number of provisions and set up operational instruments including enforced and voluntary return.

However, it became clear that enforced return is ineffective, expulsion often fails to be realised, and there are high political and financial costs associated to enforced removal. Assisted voluntary return, on the other hand, lowers risks of the violation of human rights and preserves migrants' dignity and safety. In addition, it brings less political and financial costs. I also argue that the Slovak Republic should improve transparency, sustainability, effectiveness and cost-efficiency of assisted voluntary return. These issues have not been addressed adequately because of the lack of empirical studies and theoretical analysis. Lastly, the Slovak Republic case can be set in a broader European perspective, thus contributing to the discussion on common European assisted voluntary return policy.

The data presented in this study were produced by the Ministry of Interior, the Bureau of Border and Alien Police, the Migration Office of the Slovak Republic and international organisations (the International Organisation for Migration [IOM] and the UN High Commissioner for Refugees [UNHCR]). The Ministry of Interior of the Slovak Republic publishes an annual statistical report on legal and illegal migration entitled "Yearbook", while the IOM and the European Migration Network publish occasional studies on policies and practice of return migration in Europe.

## LEGAL BACKGROUND

With the end of the Cold War, the Slovak Republic became a transit country for people migrating from economically under-developed and

politically unstable regions towards rich Western European countries. Immigration policy, including return policy, and international cooperation were weak and inefficient. The situation has changed significantly with the accession of the Slovak Republic to the European Union and the Schengen Area. The Slovak Republic has implemented Communitarian law on immigration and the Schengen *acquis*, and further improved border management, and cooperation with neighbouring and third countries.

In short, the European Community law on immigration and return migration includes the 2003 Dublin II Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the EC, and Schengen *acquis* that obliges the Slovak Republic to return third-country nationals who have entered or reside in the country without authorisation. Further, the EU negotiated 11 readmission agreements with third countries, and issued a number of Directives and Decisions that regulate migration and return of migrants. Recently, the Council and the Parliament of the European Union have approved the “Proposal for Directive on Common Standards and Procedures in Member States for Returning Illegally Staying Third-country Nationals”, reaffirming that the return policy is an integral and crucial part of the fight against illegal immigration.

In 2007, the European Parliament and the Council established the Solidarity and Management of Migration Flows Programme,<sup>1</sup> and the European Return Fund for the period 2007-2013. The objectives are to institutionalise an integrated return management in the Member countries, to enhance cooperation in integrated return management, and promote equal standards of return. The European Return Fund is a financial instrument created to finance activities defined in the Solidarity Programme. The total amount of financial resources allocated for the Solidarity and Management of Migratory Flows Programme is €4,020.37 million for the period 2007-2013, and the European Return Fund envisages resources of €676 million for the period 2008-2013.

To summarize, the European Community has developed a number of instruments to improve enforced return of irregular immigrants from the territory of the European Union, but has only a few instruments on voluntary return and assisted voluntary return. The reason is simple: the EU member states were unable to agree on common terminology. For example, the Netherlands questions whether an irregular immigrant can

actually be considered to have returned voluntarily if he/she is unable to obtain the right of lawful residence.

On the other hand, the Slovak Republic has defined voluntary return in its national law and uses the term assisted voluntary return in practice. Voluntary return, as defined in the Slovak Act No. 48/2002 on Stay of Aliens and on Modifications and Amendment of Some Acts, § 2 (j), shall mean return to the country of origin or former residence of an alien who requested return. Voluntary return is based on a voluntary decision taken by individuals on the basis of adequate and full information. Return is not voluntary when the decision is elicited as a result of lack of effective protection in the host country, an imposition of sanctions, or lack of adequate and true information.

The term assisted voluntary return of irregular migrants refers to situations when persons cross international borders in a way that violates the immigration law of the destination country; or they stay in the destination country in violation of the international agreements and immigration law. In turn, these irregular migrants have been registered or detained by the police and decide to return voluntarily to their countries of origin or third countries; and to avail themselves of the assistance of the government, the IOM, NGOs or other organizations. Return should always be organized and executed in absolute respect for human rights, dignity and security and in full conformity with international law and practice. Return must take place under conditions of human physical and psychological security, legal safety and material security and all returnees must always be treated with dignity and respect. Only if all these conditions are satisfied, is assisted voluntary return truly voluntary, humane and sustainable. Responsibility lies with the public institutions, IOs and NGOs involved in the process of returning.

## TRENDS IN IRREGULAR MIGRATION

The majority of irregular migrants have come to the Slovak Republic from economically fragile countries and countries with unstable military-political regimes such as Afghanistan, the former Soviet Union and the Balkan countries. In 1998, the majority of irregular migrants came from the territory of the former Yugoslavia, between 1999 and 2002 from Afghanistan, 2003 to 2004 from Russia and in 2008 from Moldova, Georgia, Pakistan, the Russian federation and Afghanistan.

According to the statistics from the Ministry of Interior of the Slovak Republic, the number of irregular migrants increased significantly between 1998 and 2001 from 8,236 to 15,548, and then decreased between 2002 and 2008 from 15,235 to 2,355. The changes are what might have been expected from the enforced border protection, international cooperation, and other policies developed by the European Union and the Schengen regime, and implemented by the Slovak Republic in the last few years.

Between 1998 and 2004, as an EU candidate country, the Slovak Republic attracted illegal transit migration heading towards Western European countries. The situation changed with the accession to the EU on 1 May 2004 when the Slovak Republic became an attractive destination country for irregular migrants. Finally, with the accession to the Schengen Area in 2007 and implementation of the Schengen rules on border controls and cross-border movements, irregular migration diminished significantly.

In fact, between 2007 and 2008, the decrease was significant both for illegal crossings of the Slovak state border and Schengen external border (a decrease from 3,405 in 2007 to 994 in 2008), and irregular stay in the territory (a decrease from 3,356 in 2007 to 1,321 in 2008).<sup>2</sup> As of 2008, the largest share of irregular migrants in the Slovak Republic were citizens of the Ukraine, Moldova and Pakistan. Ukrainian citizens represented almost one-half of the total number of foreigners detected during checks on overstaying. As I demonstrate below, these groups of foreign citizens were also issued the highest number of expulsion decisions, and unsurprisingly, they were detained the most by the Police in the Detention Centres. They were also most likely to be voluntarily returned to their countries of origin or third countries in 2008.

It is difficult to predict the future trends of irregular migration in the Slovak Republic. One might assume that there will be further drop in illegal border crossings, along with an increase in irregular stay, similar to the situation in other EU member countries.

## DETENTION AND RETURN OF IRREGULAR MIGRANTS

An alien who enters or resides in the territory illegally must leave spontaneously or he/she is subject to expulsion. An alien who is issued an administrative expulsion – a decision of the police on terminating an

alien's stay, setting the conditions for leave, and the duration of prohibited entry – must leave the country within the term specified in the decision. If the alien does not leave the territory within the specific term (the time period cannot exceed 30 days), the expulsion is executed by the police to a border crossing of the respective neighbouring or other country. The Police of the Slovak Republic do not exercise administrative expulsion of an alien who has, prior to realisation of the decision on his/her administrative expulsion, applied for voluntary return to the country of origin. This practice aims, clearly, at decreasing financial costs that are associated with the alien's removal from the Slovak Republic.

In 2008, a decision on expulsion was issued to 1,734 foreigners; 1,569 foreigners were issued administrative expulsion while 165 persons were issued juridical expulsion. The greatest number of expulsions were issued to citizens of the Ukraine (679), Moldova (311), Georgia (124), Pakistan (90) and Afghanistan (77). However, there is no evidence about how many of these have resulted in implemented return or assisted voluntary return.

The police are entitled to take into custody an alien in order to execute his/her administrative expulsion or enforcement of the punishment of expulsion, execute his/her transportation, or his/her return, provided that he/she entered the territory of the Slovak Republic without authorisation or stays on the territory of the Slovak Republic without authorisation.<sup>3</sup> This provision, however, does not apply to a minor who does not have a legal representative.

Police Detention Centres for Aliens (PDCA) are responsible for the emplacement of detained aliens. There are two PDCAs under the responsibility of the Bureau of Border and Alien Police of the Slovak Republic – Medvedov in the west and Sečovce in the east of the Slovak Republic. Table 1 shows that the number of foreigners detained in the PDCA increased between 2006 and 2007 from 809 to 1,110, however, the largest share of detainees according to their country of citizenship changed only slightly.

An important indicator of the number of returns is the number of readmitted irregular immigrants from the Slovak Republic. Table 2 shows that the Slovak Republic readmitted fewer migrants in 2008 than in 2007. This fact does not necessarily indicate a decrease in efficiency of readmission. Decrease may be due to various reasons, including irregu-

TABLE 1  
FOREIGNERS DETAINED IN THE POLICE DETENTION CENTRES FOR ALIENS,  
2006–2007

Country of citizenship	2007	Country of citizenship	2006
Ukraine	448	Moldova	325
Moldova	241	Ukraine	184
India	75	India	64
Russia	70	Russia	47
China	53	Iraq	31
Others	223	Others	158
<b>Total</b>	<b>1,110</b>	<b>Total</b>	<b>809</b>

Source: Ministry of the Interior of the Slovak Republic, 2007.

TABLE 2  
READMISSION OF IRREGULAR MIGRANTS ACCORDING TO READMISSION  
AGREEMENTS

Readmission Agreements	2007	2008	2007	2008
	Persons handed over from SR		Persons taken over to SK	
Ukraine	1,183	691	4	7
Austria	0	0	470	31
Hungary	36	1	7	2
Czech Rep.	13	0	77	2
Poland	4	3	17	0
<b>Total</b>	<b>1,236</b>	<b>695</b>	<b>575</b>	<b>42</b>

Source: Ministry of the Interior of the Slovak Republic, 2008.

lar migrants that were returned voluntarily, disappeared, or could not be readmitted to their countries of origin due to technical or political reasons.

Table 3 shows that, in 2008, the Slovak authorities organized 83 voluntary returns of irregular migrants registered or detained by the police, as well as unsuccessful asylum seekers whose application for asylum status has been rejected or terminated for any reason (the asylum application was pending or withdrawn or refused, or asylum appeal was pending or dismissed). In 2007, the number of returns was 153, in 2006 it was 128, in 2005 the number was 119, and in 2004 it was 148. Regarding the country of return, most migrants were returned to Moldova, Iraq, Serbia, India and the Russian Federation in 2008.

TABLE 3  
VOLUNTARY RETURN

Country of return	2008	Country of return	2007
Moldova	32	Moldova	90
Iraq	17	China	14
Serbia	8	Iraq	9
India	6	Russian Federation	9
Russian Federation	4	Dominican Republic	6
Afghanistan	3	Serbia	4
Others	13	Others	21
<b>Total</b>	<b>83</b>	<b>Total</b>	<b>153</b>

Source: Ministry of the Interior of the Slovak Republic.

However, reliable data on the voluntary return of only irregular migrants are not available. Moreover, there is no evidence about sustainability of the return and whether or not the returnees reintegrated well in the society of their country of origin. Therefore, there is an urgent need for improved collection and reporting of statistics. In particular, it is important to make a distinction between voluntary return of irregular migrants and unsuccessful asylum seekers; to collect data on nationality, gender, age, occupation, and finally, to report on sustainability of returns.

## COSTS

The IOM argues that assisted voluntary return is cheaper and more cost-effective than enforced return. However, scholars and the policy-makers have not confirmed this hypothesis yet because of weak, fragmentary and incomplete statistical evidence.

In the Slovak Republic the total direct and indirect costs related to an alien's expulsion were €4,930 in 2007. The costs include, in general, ground transportation, police escorts and ticketing. The most expensive expulsions involved, per person costs, the citizens of India (€1,245), Ukraine (€1,000), China (€602), Pakistan (€347), the Republic of Korea (€790), Viet Nam (€266), Moldova (€166) and Iraq (€155). IOM reported that the total costs of assisted voluntary return were more than €40,000 in 2003, €21,700 in 2002, €14,124 in 2001, and €2,690 in 2000. Enforced return and assisted voluntary return of irregular immigrants is paid from the budget of the Ministry of Interior. The government might propose a rule requiring an employer who hires an immigrant illegally to contribute to the costs of return.

The IOM reported that in Portugal the costs of a forced expulsion are between €3,000 and €7,000 while the average cost of voluntary return is €650. The data available for Ireland show that in terms of transport costs alone, voluntary return is a much less expensive option for the state than deportation. In 2005, deportation costs were estimated to be approximately €4,200 per person while an average IOM assisted voluntary return cost was just over €600. The National Audit Office of the UK calculated that the cost of an enforced removal was between £11,000 and £12,000, as against £1,700 for voluntary return. In Norway, the average costs of implementation of assisted voluntary return is about €1,000 that is significantly less than cost of enforced return (€2,300). And in Austria, the average cost for pre-departure assistance, accommodation, flight and post-return reintegration was about €415 per person in 2003.

Based on this evidence, I assume that assisted voluntary return in Europe is cheaper and more cost-effective than enforced return. However, it is important to stress that the voluntary return programmes vary among the European countries, as well as the costs for enforced return.

In some countries, the assisted voluntary return programmes are defined narrowly, coming to cover only pre-departure counselling and travel arrangements, while in other, the programmes are designed broadly, including post-return and reintegration assistance. According to the European Migration Network, the costs associated with assistant voluntary return can vary between €2,000 and €5,000 per participant depending, indeed, on the type of the programme, objectives, the country of return and beneficiaries.

Similarly, the costs for enforced return vary widely among the European countries. They usually depend on the deportation procedure, time and form of detention of migrants, and means of transport. For example, the total costs may increase significantly when irregular migrant stays in the detention centres for long time and cannot be returned for administrative or legal reasons, or when a migrant must be escorted to the border, train or flight by the police.

## OBSTACLES TO RETURN

Major difficulties are related to the practical management of return. Often, it is difficult to identify an irregular migrant, to obtain necessary travel documents from his/her consulate, or to organize return due to

lack of cooperation from migrants, their country of origin, or countries of transit. It is not possible to return irregular migrants to a territory where he/she fears persecution, where his/her freedom would be endangered, or in which he/she would be in danger of torture, cruel, inhuman or humiliating treatment or punishment, or where a death penalty was imposed on him/her. There are other political and technical obstacles to the execution of a return.

There are cases when irregular migrants, in the process of expulsion and return, escape from the detention centres and disappear in the Slovak territory or move to another Schengen state. Moreover, there are cases of irregular migrants who agree to return voluntarily, but afterwards, they disappear. Last but not least, many difficulties with implementation of assisted voluntary return are associated with lack of human and financial resources.

## COOPERATION WITH IOM AND NGOS

The IOM has been working with assisted voluntary programmes in Slovakia since 1996. Collaboration with the authorities of the Slovak Republic was institutionalised in August 1998 when the Ministry of the Interior of the Slovak Republic and the IOM signed the Agreement on Assistance with Return of Unsuccessful Applicants for Asylum and Illegal Migrants to the Country of Origin. In 2002, the provision on cooperation with the IOM was added in the new law on Asylum, Act No. 480 on Asylum and Amendments of Some Acts. In Section 44, on the Cooperation with the IOM, the Ministry of Interior is identified for cooperation with IOM in the execution of voluntary return. It is stated that “the Ministry shall co-operate with the International Organization for Migration in arranging the movement of migrants who want to return voluntarily to their country of origin or to a third country”.

In the logic of its mandate, the IOM helps with the organisation and execution of assisted voluntary returns of irregular migrants. The IOM cannot be engaged in the forced return, or any escorting or assistance services related to deportation. Representatives of the IOM receive requests from the Slovak authorities or directly from an applicant. In the first case, the Ministry of Interior informs the IOM about irregular migrants who need proper documents, transportation and return assistance. Upon receipt of the request, the IOM ascertains the voluntariness of the migrant to return. The IOM is allowed to contact potential

returnees, inform them about the assisted voluntary return programme and assess whether they would prefer to return voluntarily or not. Assisted voluntary return is usually arranged and executed within 30 days from the day of request from the Slovak authorities.

In a second step, the applicant is requested to compile, sign and submit the application form. The applicant is asked to declare that “he/she is desiring to return peacefully and voluntarily to his/her country of origin, hereby declares that after due consideration and entirely of his/her own free will, he/she wishes to be assisted by IOM to return to ... (name of the country)”. The migrant can be requested to sign the application form in the presence of an independent person (translator or social assistant). The IOM respects migrants’ privacy; the officers do not inform client’s relatives, or other persons, about the client’s decision to return voluntarily.

Subsequently, the IOM officers prepare the return itinerary that usually includes the travel route, travel documents, visas and other identification documents as well as travel tickets (often at reduced rates). In case the applicant does not possess the necessary travel documents, the IOM may procure the documents from his/her embassy. The IOM’s diplomatic status permits it to create faster and more efficient communications with the embassies and consular offices of the countries of origin; the arrangement for the documents is very short. A returning migrant can be provided with pocket money up to a maximum of US\$ 60 for pre-departure preparation and for use on the journey.

The IOM officers accompany the applicant thorough the departure, during the transit, and after arrival. Migrants travel as normal passengers without any involvement of the police or notification of the aircraft staff or authorities in the country of return. In case there is a need for assistance in the country of arrival the local IOM office may, in cooperation with relevant local administrations, provide reintegration assistance.

There were several projects carried out by the Bureau of Border and Aliens Police in cooperation with the IOM. One important project ran from March 2006 to August 2007. The project was called the “Reinforcement of Mechanism and Harmonisation of Standards in the Field of Voluntary Returns of Illegal Migrants in the Member States of the Central Europe”, and it was co-financed from the Return Fund – Preparatory actions 2005, and the budget of the Migration Office of the

Slovak Republic. The project provided technical and financial support to programmes that aimed at assisted voluntary return of irregular migrants in the territories of the Visegrad Group countries (the Slovak Republic, the Czech Republic, Hungary and Poland). There were eighteen voluntary returns organized under this programme in 2007. In all 18 cases, assisted voluntary return included reintegration financial assistance.

Speaking of non-governmental organisations, there are several in the Slovak Republic that run migration and asylum programmes, often co-financed from the EU funds. These NGOs include Goodwill Slovakia, Slovak Humanitarian Council, People in Peril, and League for Human Rights, Caritas. None of these NGOs are, however, involved in assisted voluntary return programmes.

## FUNDAMENTALS FOR FOLLOW-UP

First and foremost, it is crucial to enhance, strengthen and promote assisted voluntary return in the Slovak Republic. Return cannot be perceived as a failure of the migration project but rather an alternative to administrative expulsion and enforced removal.

Secondly, assisted voluntary return must be sustainable. Sustainability means humane and safe return and good reintegration of returnees in their home countries and society. Sustainable return is achieved “when returnees are able to reintegrate in the community of return, often through a productive role as a member of such communities, without immediate inducement to leave again” (ECRE, 2005:53). Sustainable return is not possible to achieve in cases where the returning migrants perceive going back to their country of origin as a failure. Returnees often fear negative reactions from the part of their family or local community that increase frustration and stress. Therefore, it is important to improve the perception of voluntary return and reintegration. In order to achieve sustainability of return, potential returnees need to be prepared adequately. Preparing for return includes providing people with needed, impartial and objective information. Migrants should be provided with full and complete information about assisted voluntary return, legal and economic implications of voluntary return, and finally, the economic, social, political and cultural situation in the country of return. It is important to avoid situations where there is a lack of information or distorted information.

Post-repatriation and reintegration assistance is also a very important part of sustainable return, but it often lacks financial and human support. Reintegration actions should cover temporary financial assistance, consulting and legal assistance, participation in the health insurance scheme and pension, and services for vulnerable groups. Additional services could include training and vocational requalification courses, professional activities support, and also social reintegration.

Lastly, it is crucial to establish an effective and transparent voluntary return mechanism. Such a mechanism is represented by a flexible and cooperative network that includes national public institutions, agencies, international organisations, and NGOs, countries of origin and countries of transit. An effective and collaborative network of social services, assistance and consulting can make it easier for migrants to access the voluntary return programme at their place of residence. It is true that the Slovak Republic has set up an effective collaboration with the IOM, but this is not enough. Closer cooperation should be established with NGOs, local institutions and other actors. Non-state actors advocate on immigrants' behalf, strengthen the protection of immigrants' rights, shape views on migration policies, legislative measures and international agreements, and help improve the sustainability and effectiveness of return programmes. NGOs should be encouraged to participate in voluntary return programmes. The state should provide financial support to those NGOs and associations that could provide return assistance and should also improve multi-level dialogue across the countries. In addition, it must be remembered that diasporas, immigrants' organisations and communities in Slovakia play an essential role in the voluntary return process as well.

Finally, in order to improve, strengthen and enhance the sustainable assisted voluntary return of irregular migrants in the Slovak Republic, there is a need for collective EU responses. The European Community should find an agreement on harmonised approach, sharing burden costs, and cooperation with the countries of return and transit.

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## NOTES

1. Decision (EC) n° 575/2007/EC of the European Parliament and of the Council of 23 May 2007 establishing the European Return Fund for the period 2008 to 2013 as part of the General Programme *Solidarity and Management of Migration Flows* and repealing Council Decision 2004/904/EC.
2. Until 21 December 2007, the term external border referred to the Slovak's state border with Austria, the Czech Republic, Hungary and Poland, as well as the border area at the international airports in the country. After this date, the external border of the Slovak Republic refers to the Schengen border, including the external land border with Ukraine and five international airports in the country.
3. § 62 (1), Act No.48/2002 on Stay of Aliens and on Modifications and Amendment of Some Acts.

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