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REPORT

on the Implementation of the Border Monitoring Mechanism in the Republic of Slovenia

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TABLE OF CONTENTS

I.	SUMMARY.....	3
II.	INTRUDUCTION.....	3
III.	GENEVA CONVENTION & NATIONAL ASYLUM LEGISLATION	4
1.	General Information.....	4
2.	Right to Asylum, Entry and Lodging an Asylum Application.....	5
3.	Prohibition against Forced Deportation or Return (Non -Refoulement)	6
4.	Asylum Applicants' Right to Temporary Residence	6
5.	Assistance to Asylum Applicants, Refugee Counsellors, Language in the Right to Interpreting Services.....	7
6.	Pre-procedure for Aliens Arriving from Safe Third Countries	8
IV.	STATE BODIES & UNHCR & NGOs	8
1.	State Bodies	8
2.	United Nations High Commissioner for Refugees (UNHCR)	9
3.	Non-Governmental Organizations (NGOs).....	9
V.	ACCOMMODATION & ACCESS TO FACILITIES	10
1.	Police Stations.....	10
2.	Aliens Centre.....	10
3.	Asylum seekers	12
VI.	ACCESS TO THE TERRITORY & ASYLUM PROCEDURE:.....	13
1.	Declaration of Intention at the Border	14
2.	Declaration of intention within the territory.....	17
VII.	EDUCATION.....	18
VIII.	VULNERABLE GROUPS	18
1.	Vulnerable groups in general.....	18
2.	Female asylum seekers.....	19
3.	Legally incompetent persons	19
4.	Unaccompanied minors	19
5.	Practice concerning vulnerable groups	20
6.	Victims of Trafficking	21
IX.	CLOSING REMARKS.....	21

I. SUMMARY

Border monitoring is a systematic presence of representatives of non-governmental organizations at state borders in order to monitor border procedures and a possibility of migrants to access asylum procedure. In Slovenia, border monitoring mechanism is carried out by the Legal Information Centre for NGOs – LIC, an implementing partner of the United Nations High Commissioner for Refugees and an independent non-governmental organization whose mandate is to provide free legal aid to socially deprived groups and other non-governmental organizations. The aim of border monitoring is to observe the respect of Asylum Act, Aliens Act and National Border Control Act as well as internationally recognized human rights standards. The term 'border' should be understood in a wider sense since actual presence at the entire border is physically not possible. Accordingly, border monitoring is carried out at police stations (on the Slovenian-Croatian border and within the region in the vicinity the Republic of Croatia where border police operates); at the Aliens Centre in Postojna where both asylum seekers and undocumented migrants are detained; and at the Pre-reception area of the Asylum Home in Ljubljana. The mechanism includes several different methods: monitoring by daily visits at the Pre-reception Area, monitoring by visits three times per week at the Aliens Centre, and monitoring by on-call visits to the police stations.

The experience of Slovenia shows that presence of civil society organizations with a purpose to conduct border monitoring at the early stages of asylum procedures has numerous positive effects. It serves as a source of information on border procedures and improves familiarity of civil society organizations with these issues. Consequently, border monitoring improves the mutual trust between the police and the NGOs, opens the police towards the civil society and sends out the message that the work of the police at the borders is important for the state, and that the civil society is interested in it and respects it. Simultaneously, border monitoring has a preventive effect and decreases the possibility of disrespect for human rights of aliens. It allows for experts on the asylum and human rights law to be present at the border procedures where, upon, request they are able to provide expertise and advice.

Border monitoring also allows for improvement of following of the whereabouts and well-being of migrants and asylum seekers who enter Slovenia, from the point of entry in the state to the point of accommodation in the Asylum Home or detention in the Aliens Centre. This way track of migrants and asylum seekers is kept by the NGOs which enables a conduct of a more open and humane treatment.

II. INTRODUCTION

The present report on the implementation of the border monitoring mechanism in the Republic of Slovenia was prepared within the project "Protection of Asylum Seekers in the Republic of Croatia and the Region", coordinated by the Croatian Law Centre, Zagreb, Croatia, and financially supported by the European Commission. The project is divided to several activities. The activity that focuses on border monitoring is implemented by the Peace Institute and the Legal Information Centre for NGOs – PIC, both located in Ljubljana, Slovenia.

Border monitoring is a relatively new concept which is not yet widely known or spread.¹ Besides Slovenia, it is carried out only in a few other EU member states,² mostly those on the external South-Eastern borders of the European Union. In short, border monitoring could be defined as a systematic presence of representatives of non-governmental civil society organizations at state borders in order to monitor border procedures and the possibility of migrants to access an asylum procedure. The purpose of border monitoring is to ensure access of migrants to asylum procedure and monitor the respect of rights of asylum seekers at initial stages when they are most vulnerable (i.e. within border procedures and before and after lodging asylum application).

This report presents the provisions of legislation the respect of which is subject to border monitoring in Slovenia. Further, the report provides information on locations where monitoring is conducted, as well as the organization of activities and tasks performed by the border monitoring team functioning within LIC.

On the basis of this report the project team prepared a questionnaire for the project partners in Croatia (Croatian Law Centre), Serbia (Belgrade Centre for Human Rights), and Bosnia and Herzegovina (Centre for Human Rights of the University of Sarajevo) who were asked to complete it. On the basis of the answers provided by the partner organizations comprehensive information were obtained needed for the assessment of capacities for establishing a border monitoring mechanism in the three partner countries.

III. GENEVA CONVENTION & NATIONAL ASYLUM LEGISLATION

1. General Information

The asylum system in Slovenia was structured following the formation of a common EU asylum policy. Before that, Slovenia has established its legal succession of the Geneva Convention Relating to the Status of Refugees³ (hereinafter: the Geneva Convention) and of the Protocol relating to the Status of Refugee⁴ (hereinafter: The New York Protocol) with the Act on Notification of Succession regarding Conventions of the UN Organisation and Conventions adopted by the International Agency for Atomic Energy.⁵ In 1999, Slovenia adopted the Asylum Act⁶ creating an asylum system similar to other EU Member States. Before that the only law

¹ For further information on the border monitoring concept see Neža Kogovšek, ll.m. (ed.), *Border Monitoring Methodologies – Stakeholders Manual for Establishing a Border Monitoring Mechanism*, Peace Institute, Ljubljana, 2006.

² For further information on other border monitoring activities in the European Union see Sonja Sikošek, *Example of a Good Practice: Slovene and Other Possible Models* in Neža Kogovšek, ll.m. (ed), *Border Monitoring Methodologies – Stakeholders Manual for Establishing a Border Monitoring Mechanism*, Peace Institute, Ljubljana, 2006.

³ Official Journal FLRJ – International Treaties, No 7/6.

⁴ Official Journal SFRJ – International Treaties, No 17/67.

⁵ Official Journal RS – International Treaties No 11/92.

⁶ Official Journal RS, No 61/99.

providing a legal basis for international protection was the Temporary Protection Act⁷ which was used only in case of a mass influx of refugees from successor states of the former Socialist Federal Republic of Yugoslavia to Slovenia in early 1990s⁷.

The law regulating the asylum system in Slovenia is Asylum Act. The Asylum Act lays down the principles, conditions and procedures for obtaining international protection, its termination as well as the status, rights and obligations of asylum applicants and refugees in Slovenia. The Act was amended considerably in February 2006⁸ in order to transpose the EU Directive on Reception Conditions⁹ and the EU Qualification Refugee Status and Complementary Forms of Protection Directive¹⁰ into the Slovene legislation. A complete revision of the Asylum Act is foreseen in the Fall of 2007.

So far the procedural provisions have mostly been in accordance with the EU asylum acquis, however, with the amendments substantial changes have been introduced regarding rights and duties that asylum seekers enjoy during the asylum procedure, and regarding standards that have to be met in order to qualify for a refugee status. A new provision defining the police procedure at the border (the so-called "police pre-procedure"), introduced with Article 26 of the amended Act, is at the moment temporarily withheld by the Constitutional Court until a final decision upon the constitutionality of this provision is issued. Namely, the provision allows the police to apply a procedure for illegal entry or residence to an alien who illegally enters or illegally resides in Slovenia and declares intent to apply for asylum, if an alien's statement does not correspond with the circumstances defined in the second and the third paragraph of Article 1 of the Geneva Convention. This means that if the police assesses that the migrant's reasons to apply for asylum do not correspond with the reasons for which asylum may be granted the migrant will not be allowed to lodge an asylum application. Such regulation does not correspond with the position of UNHCR, namely that such alien should immediately be treated as an asylum seeker regardless of the reasons he or she is stating and should therefore not be punished for illegal entry or residence (see also the explanation of the Article 7 of Asylum Act below).

2. Right to Asylum, Entry and Lodging an Asylum Application

The question of who can be granted a refugee status (asylum) is essential for understanding the importance of the term *access to the asylum procedure* – an issue which is subject to border monitoring. Article 1, § 2 and 3, of the Asylum Act defines a right to international protection which includes both a refugee status and a subsidiary form of protection. The refugee status is granted to aliens when requested on the grounds stipulated in the Geneva Convention. Aliens who request protection in Slovenia and do not meet conditions for refugee status may be granted

⁷ Official Journal RS, No 20/97.

⁸ Official Journal RS, No 17/06.

⁹ Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers.

¹⁰ Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

a subsidiary form of protection due to well-founded fear that they will face a real risk of suffering serious harm upon deportation to their country of origin or to the country of their former habitual residence if they are stateless persons. Conditions for acquisition of international protection are considered by the competent authority in a single procedure, first by an assessment based on the refugee definition stipulated in Article 1 of the Geneva Convention, and only if those criteria are not fulfilled the need for subsidiary protection is examined.

According to Article 2 of the Asylum Act, an asylum applicant (or asylum seeker) is therefore an alien who has submitted an asylum application and is considered as such from the moment of the submission until the adoption of the final decision. The importance of this principle is supported by the fact that a person, who has a status of asylum seeker, has the right to enjoy reception conditions for asylum seekers¹¹ providing him or her with a higher standard of living than the conditions guaranteed to undocumented migrants. The aim of border monitoring is to ensure that those migrants who express their wish to apply for asylum are heard and have an opportunity to lodge their application. This rule derives from Article 7 of the Asylum Act which stipulates that an alien who upon entry in the Republic of Slovenia declares his or her intention to submit an asylum application in the Republic of Slovenia shall be treated as an asylum seeker in accordance with the Asylum Act, and he or she must be allowed to enter the State.

The refugee status determination procedure (hereinafter: RSD procedure) is introduced with lodging of the asylum application at the Ministry of the Interior. In practice this means that an alien who entered the territory illegally has to lodge the asylum application at the Ministry of the Interior, at the Asylum Home or at the Police. The moment of lodging the application is important in order to determine the points (locations) where border monitoring is needed. In Slovenia these points are: police stations (eastern part of Slovenia), Aliens Centre (Postojna) and Asylum Home (Ljubljana).

3. Prohibition against Forced Deportation or Return (Non -Refoulement)

Article 6 of the Asylum Act prohibits forced deportation of persons to a country where their life or freedom would be threatened or to a country where they could be exposed to torture or inhuman and degrading treatment or punishment. The aim of border monitoring is to ensure that the principle of non-refoulement is not violated at the stage when migrants are the most vulnerable (at the border, at the entry to the country or in detention facilities) and where the possibilities for monitoring of the respect of this principle would otherwise be limited.

4. Asylum Applicants' Right to Temporary Residence

According to the Article 11 of the Asylum Act an asylum seeker who entered Slovenia pursuant to the Article 7 and lodged an asylum application has to be allowed to reside in Slovenia for the

¹¹ The level of reception conditions that apply for asylum seekers are defined with the Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers.

period necessary for a completion of the procedure by virtue of an ultimate decision. While the principle of non-refoulement prohibits the return of those migrants whose life, personal freedom or freedom of torture are threatened, Article 11 prohibits in addition to that the return or expulsion of those migrants who lodged their asylum application and therefore became asylum seekers. Such migrants have the right to reside temporarily within the country and should not be expelled until the final decision is issued. The respect for this right is subject to scrutiny of border monitoring in the Aliens Centre where both migrants and asylum seekers are held.

5. Assistance to Asylum Applicants, Refugee Counsellors, Language in the Right to Interpreting Services

Due to reasons such as foreign environment, lack of knowledge of the local language and of the procedures it is necessary to provide all assistance that the asylum seekers need, which is another issue closely monitored by the border monitoring team at all locations (police stations, Aliens Centre and Asylum Home).

Article 9 of the Asylum Act stipulates that every asylum seeker shall be given an opportunity to lodge his asylum application without delay. It further stipulates that the asylum applicant shall be informed of the procedure for acquiring asylum status and his rights and duties in such a procedure as well as about the right to contact NGOs providing help to refugees, in a language he or she can understand. The aim of border monitoring is to observe and ensure that these rules are respected.

Taking into account the language barriers, Article 12 of the Asylum Act stipulates that each asylum seeker shall be enabled to follow and participate in the procedure in a language he or she can understand. If the applicant does not understand the official language of the procedure he or she shall be provided with the services of an interpreter. The interpreters are approved by court, however, in some cases, when such interpreters are not available, interpreting can also be entrusted to a trustworthy person capable of interpreting into a language the asylum applicant can understand. Whether or not the authorities, when in contact with asylum seekers, use the language he or she can understand is also subject to border monitoring procedures. In practice, border monitoring team detected cases of members of the border police who do not call the interpreters when questioning the migrants from Serbia, Kosovo or Macedonia because they consider their knowledge of the Serbian language as sufficient. The reason for this seems to be the similarity of the Serbian and/or Macedonian language to the Slovenian language, however, in many such cases communication between the migrant and the police has been assessed as troubled.

Further, since most asylum seekers are not familiar with national asylum legislation they are entitled to free legal aid, but only to a limited extent. Namely, Article 16 stipulates that, for providing support and legal assistance to asylum applicants in asylum procedures with the Administrative and Supreme Court, the Minister of the Interior appoints refugee counsellors. Appointment procedure is conducted in accordance with the General Administrative Procedure

Law. Calls for applications for refugee counsellors are published by the Ministry of the Interior in the Official Journal of the Republic of Slovenia. The decision on appointment of a refugee counsellor is final. The list of refugee counsellors is published in the Official Journal of the Republic of Slovenia. Refugee counsellors are entitled to be remunerated for the legal assistance they provide in the procedures before the Administrative or Supreme Court and be reimbursed for any expenses out of the budget of the Republic of Slovenia and according to criteria established by the Minister of the Interior.

Until February 2006 asylum seekers in Slovenia had the right to free legal assistance in the first instance of the asylum procedure as well (before the Ministry of the Interior) however, the amendments adopted at that time cancelled this right. For this reason monitoring in the initial stages of the asylum procedure (and before it begins) is even more important since asylum seekers are left to themselves and might find it difficult to counter possible illicit conduct of the authorities.

6. Pre-Procedure for Aliens Arriving from Safe Third Countries

As in most of other EU Member States, in Slovenia there is a separate procedure applied to persons who arrive from a safe third country. Namely, according to Article 37 of the Asylum Act, the competent authority may reject the asylum application to any alien who arrives from a safe third country. An asylum applicant has the right to appeal against the rejected application within 3 days to the Administrative Court, which shall decide on the appeal within 7 days. The appeal does not prevent the execution of the decision (this provision is also withheld by the Constitutional Court). The competent authority has to provide any alien, whose asylum application has been rejected with a special attestation stating the reasons for which his/her asylum application has not been examined by the competent authority, and that the rejection of his/her application was based on the fact that the applicant can return to a safe third country. Through a border monitoring mechanism it can be observed whether such "safe third country" procedures are correctly applied. Only correct application of such provisions can ensure the respect of the principle of non-refoulement and this is when border monitoring also plays a preventive function.

IV. STATE BODIES & UNHCR & NGOs

1. State Bodies

According to Article 4 of the National Border Control Act, the competent authority for control of the state border is the police. In addition to that, the Article 64 of the Aliens Act stipulates that the border control, rejection of aliens at the border, invalidation of a visa, deportation of aliens, permission of temporary detaining, and other measures or decisions taken regarding aliens at the border or in the territory of the State are under the police's competence. The police retain their competence over a person from the moment of captivation until he or she is accommodated in the Asylum Home (if they apply for asylum). If a person does not apply for asylum and is

detained in the Aliens Centre, he or she remains under the competency of the police. However, if a person who is already detained in the Aliens Centre (which is under the authority of the police), applies for asylum, such person is under the competency of asylum home staff (i.e. the Ministry of the Interior) who are present at the Aliens Centre on a regular basis. Namely, in line with Article 20 of the Asylum Act, the RSD procedure at the first instance is conducted by the Ministry of the Interior regardless of where the alien is staying.

An asylum seeker may file an appeal against a decision issued in the asylum procedure by the Ministry of the Interior at the Administrative Court.

2. United Nations High Commissioner for Refugees (UNHCR)

The branch office of UNHCR in Ljubljana, Slovenia closed down on May 31, 2006. Since then, Slovenia has been under the competency of the UNHCR Regional Representation in Budapest, Hungary. In accordance with Article 10 of the Asylum Act, the state and local authorities have an obligation, in matters and questions regarding refugees and asylum seekers, to provide the Office of the UNHCR the assistance requested in the course of their tasks, particularly with respect to implementation of the Geneva Convention and other international instruments concerning refugees. Competent authorities also have an obligation to immediately inform a representative of UNHCR of any asylum application submitted, enable them to contact asylum applicants, inform them of the progress of individual procedures and decisions by competent authorities, and enable them to make comments on these procedures and decisions.

3. Non-Governmental Organizations (NGOs)

In Slovenia, there are about ten NGOs active in the field of asylum: Legal Information Centre for NGOs – PIC, Slovene Philanthropy (both are implementing partners of UNHCR), Association Mozaik, Association Ključ, Amnesty International Slovenia, Peace Institute, Association Matafir, Jesuit Refugee Service, Institute for African Studies, and Racio Social. Some of them provide various forms of assistance to asylum seekers, some monitor the asylum situation and some participate actively in lobbying and advocacy activities supporting the asylum seekers.

Each asylum seeker has a right to be informed about the right to contact NGOs that are providing help to refugees, in a language he can understand. In accordance with Article 16 of the Asylum Act he also has the right to select his legal counsellor (representative) or a refugee counsellor to assist him during the procedure. Refugee counsellor selected by the asylum seeker and representatives of the Office of the UNHCR have the right to contact the asylum applicant at any time and at all stages of the asylum procedure. An asylum seeker shall have the right to request contacts with all the above mentioned persons at any time. (Article 9)

V. ACCOMMODATION & ACCESS TO FACILITIES

1. Police Stations

Generally, police stations have no facilities for accommodating migrants and asylum seekers. When migrants are captured they are taken to the nearest border police station when they can be kept over night, but for a maximum of 48 hours before they are taken either to the Asylum Home or the Aliens Centre or returned to their country of origin or safe third country. In some cases border police has separate units at or close to the borders while in other cases border police form only one part of the police squad. While there are no accommodation premises, the border police stations usually have one or two rooms at their disposal where migrants can rest and sleep before they are interviewed.

2. Aliens Centre

The Aliens Centre is located in Postojna (southern part of Slovenia) and is under the police's competence. Its capacity is up to 120 aliens. Detention measures used for illegal aliens differ by the degree of security applied and the restrictions placed on the freedom of movement. Aliens can be placed:

- in the Aliens Centre or in a social-care facility;
- in the rigorous police supervision division within the Aliens Centre;
- at a specific address in case of issued order delaying deportation;
- outside the Aliens Centre (a lenient measure).

The Aliens Centre only has a closed unit, which means that aliens are detained 24 hours per day, but can be allowed to leave the institution in some cases (to visit a legal advisor, a doctor, etc.). Aliens placed in a separate unit to be under rigorous police supervision cannot leave the Aliens Centre.

It is required that aliens be placed in various units, such as special units organised for unaccompanied minors, single women and families. However, since the police in the Aliens Centre lack personnel, aliens are often accommodated together while some units remain vacant. Aliens are locked in their rooms and can move freely within the courtyard only a few hours per day.

Aliens who have declared their intention to lodge asylum application (according to the UNHCR and NGOs standpoint these persons are asylum seekers and no differentiation should be made only based on the fact to which state body an alien lodges his asylum application – for more information on this question see above p. 5) are placed together with other aliens due to a lack of personnel. The regime does not differ from the regime under which the rest of the aliens are placed. In the Aliens Centre they wait until the Asylum Section officials arrive to collect asylum applications. These asylum seekers are never moved to the Asylum Home. The official reason for

this is a fact that they had not applied for asylum immediately after entering the country which is why they were treated by the police as illegal migrants. As such they were issued a decision on small offence for crossing the border illegally with a punishment of deportation from the country, and if they could not be deported immediately, a decision on their accommodation at the Aliens Centre was issued to them on the basis of Article 56 of the Aliens Act. However, the border monitoring outcome shows that some migrants have tried to apply for asylum immediately after entering the country but the police at the border refused to collect their asylum applications after consulting with the Ministry of the Interior which why they were treated as aliens . The reason why their asylum applications were not collected is a suspicion of the Ministry of the Interior officials that according to the reasons stated by the migrants they are not entitled to international protection in accordance with the Geneva Convention; their lodging of asylum application is therefore seen solely as an attempt to postpone the deportation, hence abuse of the asylum procedure. However, although abuse of the asylum procedure is one of the grounds for limitation of movement in accordance with Article 27 of the Asylum Act, these migrants who are already in the Aliens Centre are usually not issued any decision on the limitation of movement on the basis of the Asylum Act, but remain detained on the basis of the Aliens Act. Such practice shows that although the Constitutional Court withdrew the implementation of the police pre-procedure introduced with the revised Asylum Act of 2006, the pre-procedure is in some cases being conducted.

The Aliens Centre is a prison-like police facility with a strict regime equal to detention. Only some NGOs are allowed to access the Centre. Access is allowed to only those NGOs that provide assistance to the police when dealing with aliens or when conducting procedures (i.e. NGOs that provide guardians of unaccompanied minors, NGOs that organise activities for children, etc.).

However, LIC has also been provided with access to the Aliens Centre after several negotiations and years of providing legal assistance to aliens. Namely, LIC offers legal assistance to aliens in areas of regulating their status, gathering documents to return to their country, preparing appeals against detention orders, preparing motions for issuing a more lenient measure, etc. The current arrangement with the Aliens Centre is that LIC only has access to those aliens (i.e. people who are not asylum seekers) who demand to see LIC representatives or when police inspectors consider that such assistance would be helpful. Before every visit LIC is obliged to inform the police of the visit and announce which aliens LIC is going to see. LIC has been negotiating to be granted access to every alien without previous notice; however such agreement has not been reached yet. The observance of border monitoring has been that the police do not want any interference with police procedures, especially when deportation procedures are in progress. The police are also under the impression that NGOs, especially those that provide legal assistance, are trying to influence aliens to lodge asylum applications in order to avoid deportation. Therefore, LIC believes it is necessary to restore the police's comprehension of NGOs' presence at police procedures and NGOs' involvement as only to assure due process of law and the respect of rights. Any involvement or interruption of police proceedings should be based on the police's dereliction of any legal provisions.

On the other hand, LIC has access to all asylum seekers detained in the Aliens Centre, due to the fact of being an implementing partner of UNHCR (by law UNHCR is entitled to unimpeded access to all asylum seekers). Twice per week LIC receives from the Asylum Section data on new arrivals of asylum seekers, both those who have already lodged the asylum application and those who only declared the intention to lodge the asylum application. LIC visits the Aliens Centre twice per week in order to monitor the situation, especially whether new asylum seekers have been placed in the Centre. The particular focus of monitoring is given to the grounds on which detention orders have been issued and to the further proceedings concerning the new arrivals. To receive the necessary data for monitoring of the border procedure, LIC conducts interviews with all asylum seekers and persons who declared intent to lodge the asylum application, with an emphasis on the police procedure at the border. At every LIC visit the police ensure privacy between a LIC representative and an alien/asylum seeker during the conversation. Still, it is necessary to note that such practice is not always respected by every police officer or other staff member at the Aliens Centre (social workers, a nurse, etc.). There have been cases observed when an alien called LIC office to discuss his legal matter, and a social worker, who enabled him to make a phone call, refused to leave the room during the conversation.

Access of legal representatives to aliens and asylum seekers is in principle not limited (although in practice such cases have been noted). Also, access of UNHCR is unlimited. Other NGOs and visitors may visit aliens and asylum seekers only during official hours.

Aliens and asylum seekers do not have access to any information provided in writing (brochures) or being displayed on the walls of the Aliens Centre. LIC has been negotiating with the management of the Aliens Centre that the provision of legal information is necessary in order to enable persons to exercise their rights effectively, but the management believes such information may only lead aliens to apply for asylum in order to leave the Aliens Centre and to leave the state or avoid forced deportation. The negotiations have been successful, since the management allowed LIC to bring the information materials to inspectors who will hand out brochures to every asylum seeker who will lodge an asylum application in the Aliens Centre. By this practice asylum seekers will be treated equally with asylum seekers in the Asylum Home with regard to access to information on asylum procedure. Also, with the support of UNHCR, the police agreed to allow putting up pamphlet dispensers at border police stations as well as in the Aliens Centre, informing aliens about their right to seek asylum. The dispensers have already been made and handed out to the police.

3. Asylum seekers

Asylum seekers who declare their intention to lodge an asylum application upon entry in the state or declare their intention to apply for asylum at a police station or other state or local authorities within the territory of Slovenia, are in principle immediately referred or transferred to the Asylum Home, in accordance with Article 25 of the Asylum Act. Each person who arrives or is brought to the Asylum Home where he or she later formally lodges the asylum application is accommodated in the Pre-reception Area of the Asylum Home which is a separate facility under

Asylum Section's competence. There the person waits no longer than 12 hours before lodging the application and until then they are not formally considered asylum seekers. Standards of living in the Pre-reception Area are lower than in the accommodation part of the Asylum Home: the Pre-reception Area's capacity is up to 20 persons who share rooms, bathrooms, receive only a hygienic package with a soap, shampoo and a towel, clean bed linen and one package of dry non-cooked food (includes a small carton of milk, a toast bread and a tuna can) per every 24 hours. These persons cannot move freely because the Pre-reception Area is locked and regularly checked by the guards. Access to NGOs and refugee counsellors is almost non-existent since they have not been medically checked yet and since these rights (i.e. a right to have access to NGOs, UNHCR, etc.) only apply to asylum seekers.

The Slovene authorities do not regard such persons as asylum seekers until their asylum application is formally lodged before the competent authority (i.e. the Asylum Section). Before that, the person is only regarded as someone who merely declared the intent to lodge an asylum application and therefore does not qualify for receiving any asylum seekers' rights and benefits (i.e. reception conditions). In UNHCR's and NGOs' opinion such standpoint is also included in article 7 of the Asylum Act (see above, chapter "Geneva Convention & National Asylum Legislation). For years, UNHCR and NGOs have been trying to change the Government's position, arguing that it is not in accordance with the Geneva Convention and the UNHCR view; however, these attempts have been rejected.

The only NGO with access to the Pre-reception Area is LIC which provides first legal information on asylum procedure and rights and duties of asylum seekers in Slovenia to all persons accommodated in the Pre-reception Area. Information is provided orally and in writing, by handing out brochures in thirteen different most frequent languages that asylum seekers speak or understand. The brochure has been prepared jointly by LIC and UNHCR and encompasses most basic legal information. Personal interviews are conducted by LIC staff in order to gain information from asylum seekers on their arrival to the Slovene territory, the police procedures and treatment they received at the border crossings as well as on possible problems encountered in access to asylum procedure.

Although the Asylum Act requires Asylum Home's staff to provide asylum seekers with necessary information on asylum procedure and rights and duties of asylum seekers in Slovenia, to ensure access to UNHCR, NGOs and to legal representation, the staff only provides the asylum seekers with a list of legal representatives (refugee counsellors), which is incomplete (i.e. phone numbers of some counsellors are missing and the majority of the counsellors from the list is not taking asylum cases anymore), while no information on UNHCR and NGOs is given in writing.

VI. ACCESS TO THE TERRITORY & ASYLUM PROCEDURE:

The Asylum Act lays down an obligation of the state that when an alien upon entry in Slovenia declares his intention to submit an asylum application in Slovenia, he shall be treated as an asylum applicant and must be allowed to enter the state (Article 7 of the Asylum Act). After

illegal entry in the state an alien shall lodge, without delay, his asylum application with the competent authorities. For illegal crossing of the state border he shall not be punished. (Article 8 of the Asylum Act) Every asylum seeker shall be given opportunities to lodge his asylum application as soon as possible. (Article 9 of the Asylum Act)

In practice, a differentiation should be made between different procedures according to a place where an alien declares his intention to submit an asylum application:

- at the border, or
- within the Slovene territory.

Another necessary differentiation of procedures is based on the time when an alien makes a declaration of his intention within the territory:

- an alien might declare his intention and not be detained for his illegal entry into the State or illegal residence in Slovenia because the police has not detected or captured him, or
- an alien might declare his intention after being detained for his illegal entry or illegal residence in Slovenia.

In the first situation, an alien will most likely be referred directly to the Asylum Home when the circumstances of his situation show he has merely arrived to Slovenia and therefore has not been illegally residing in Slovenia. In the second situation the alien will be, for reason of illegal entry or illegal residence (and a subsequent measure of expulsion), detained in the Aliens Centre (for more information on this see p. 10).

1. Declaration of Intention at the Border

In accordance with Article 14 of the National Border Control Act, crossing the state border is allowed only at designated border crossings. When conducting border control, a police officer may, in accordance with Article 28 of this Act:

- demand valid travel documents to be presented to him;
- fill into the documents data on important circumstances for entering or leaving the State;
- conduct a personal control, a control of transportation and control of things;
- detain a person until necessary.

A personal control is a control of documents for crossing the state border with establishing the person's identity and other conditions for crossing the state border, and apprehension-technical verification of the person by fingerprinting and palmprinting, and verification of other bodily identifiable characteristics. A police officer may demand from a person to present his or her personal belongings. A personal search may be conducted in case of suspicion of possessing illegal things, objects or for establishing identity. (Article 29)

A police officer may detain a person (for a necessary period of time but not longer than 48 hours), who has intended or already crossed the borderline and a reasonable suspicion is established that

the person crossed the state border illegally. A detainee has to be notified of the grounds for detention immediately, however after six hours he or she has to be issued a written decision. A detainee has a right to appeal to the district court which has to decide upon the appeal in 48 hours. (Article 32)

According to the *Instruction on Procedures and Treatment of Aliens who, upon Entry in the Republic of Slovenia Intend to Submit an Asylum Application, and on the Acceptance, the Content and Treatment of Submitted Asylum Applications or Declarations Accepted on the Record*¹² (an act implementing the Asylum Act), the border police shall, upon illegal entry in the state, after an alien's declaration of his intention to submit an asylum application, fill in a registration form, examine the alien for safety reasons and refer him directly to the Asylum Home. Afterwards, the border police shall, without delay, fax the registration form and the alien's written and signed declaration of his intention to submit an asylum application, providing the reasons for submitting asylum application. For reasons of an illegal entry in the State, the unestablished identity of the alien or the suspicion of the spread of contagious diseases the border police shall, without delay or in 24 hours at the latest, bring the alien to the Asylum Home.

The Aliens Act defines other competencies of the border police as well as conditions defining when the entry or residence of an alien is illegal. Pursuant Article 10, upon entry and leaving the state an alien shall undergo border control. Border control when entering the state encompasses personal control; control of transportation; control of things; or control of existence of grounds for rejection of entry in the state. The Aliens Act defines illegal entry in the state as a situation when entry was not allowed; when border control is avoided; or when upon entry forged, of other person or in other way modified documents are used or when false data are used in order to enter the state (Article 11). Pursuant to Article 47, when an alien resides illegally in Slovenia, he should leave the state immediately or in a specified period. An alien resides illegally in Slovenia when he entered the state illegally; his visa has been invalidated or has expired; resides in Slovenia on basis of unlawful reason; or does not have a residence permit or has already expired. An alien who does not leave the territory of Slovenia in accordance with Article 47 (immediately or in a specified period), shall be deported from the state, but only when a deportation order has an executable effect. An alien shall be brought to the borderline and referred across the border in order to extradite him to foreign bodies. The same procedure is conducted when an alien is being extradited on the basis of a readmission agreement (Article 50). If an alien does not leave the state in a specified period and for any reasons cannot be deported immediately, an order of placement in the Aliens Centre or outside the Centre will be issued by the police. In such case the placement may stay in effect no longer than six months. Such measure is used also when an identity of an alien has not been established (Article 56).

In accordance with the General Administrative Procedure Act, aliens have a right to an interpreter when they do not speak the language in which the procedure is being conducted or when they cannot speak the language due to their disability. The administrative body has to inform the party of that right. (Article 62) The interpreters are called to the borders and the police wait for them before they start with interviewing.

¹² Official Journal No 65/00.

Border monitoring in Slovenia at the borders is also carried out by Legal Information Centre for NGOs – LIC (hereinafter LIC) in Slovenia in cooperation with UNHCR and the General Police Administration. LIC and the Police have reached an agreement that the LIC staff may participate and observe police procedures at the border. According to the agreement, the staff of ten persons spends time on duty 24 hours per day, five days per week (weekends and holidays excluded), in order to be able to receive phone calls from the border police whenever new illegal migrants enter the Slovene territory at the Slovene-Croatian border or when aliens are returned to Slovenia by the foreign police (usually Italian). LIC staff then decides which border crossings to visit in order to observe police procedures. The decision is made based on the number of illegal migrants and the distance between Ljubljana, where LIC has its office, and a border crossing, because driving to a specific destination is time consuming and could lead to arriving to the specific destination too late to be able to observe the police procedure since the procedures have already been concluded. If the LIC representative, who is on duty, decides not to visit the border crossing, he or she has to record a phone call and gather as much information on illegal migrants as possible (i.e. number of illegal migrant, citizenship, intention to apply for asylum, etc.).

When a LIC representative arrives to a border crossing, he or she is immediately taken to a room where the procedure is being conducted. Before that the police has conducted a personal control, including establishing (when possible) the alien's identity, taking fingerprints and photos of him or her and taking all personal belongings, including personal documents.

A police officer conducts an interview with every alien separately assuring them privacy in the procedure. In the interview, the police officer has to confirm the alien's identity by questioning him where he or she has come from, what was the journey like, through which countries he or she travelled, etc. The alien has to describe his or her journey in a detailed way and a great emphasis is given on the information on smugglers and traffickers. The police officer also asks about the reason for leaving his country of origin, the situation in his country, the journey destination, the reason for choosing this destination. During the interview an interpreter is present whenever his service is needed. He is usually informed about the procedure immediately after aliens are brought to the police station upon their apprehension.

During the procedure illegal migrants do not receive any information on legal representatives or organisations which provide legal assistance.

The role of the LIC staff is only to observe the police procedure, with special emphasis on police officers' behaviour, presence of an interpreter, special treatment of vulnerable groups and proceedings after an illegal migrant declares his intention to lodge asylum application. If any of the migrants applies for asylum his or her arrival to the Asylum Home can be monitored. If any of the migrants is taken to the Aliens Centre, his or her arrival can be double-checked as well. Members of the team have a law degree and have previous experience on monitoring of the pre-reception area of the Asylum Home or of the Aliens Centre. This project has been implemented since August 2006, is still on-going in the time of completing this report, and negotiations have been under way to extend it indefinitely. Every few months evaluation meetings are conducted to

discuss observations from border monitoring, the improvement of methodology and a question on how the police work could be improved.

Since August 14, 2007 (when the project started) until December 2007 the group responded to thirty-four phone calls by field visits, which included 157 undocumented migrants. The total number of phone calls was 106 which included approximately 540 persons. The majority of the persons were returned to the Croatian border police on the basis of re-admission agreements. A lower number of these aliens was detained in the Aliens Centre or accommodated at the Asylum Home

2. Declaration of intention within the territory

When an alien declares his intention to submit an asylum application at a local community body or at some other state body then the Police or Asylum Home, the body shall fill in the registration form and refer him, without delay, to the Asylum Home (Article 25 of the Asylum Act). When an alien in the Aliens Centre declares his or her intention to submit an asylum application, the police should in principle fill in the registration form and bring the alien to the Asylum Home. However, the majority of aliens who apply for asylum at the Aliens Centre are never accommodated at the Asylum Home (for more information see p. 10).

In practice, when an alien enters (legally or illegally) the Slovene territory or when after illegal entry he or she goes directly to the nearest police station and declares an intention to apply for asylum at border points or at the police station, he or she is brought directly to the Asylum Home where asylum seekers are accommodated. Before that, the police or state or local authorities merely fill out the registration form, take his documents and send them to the Asylum Section (group 1). If an alien is apprehended by the police on the Slovene territory after illegally entering the territory and does not immediately apply for asylum or is apprehended while leaving the Slovene territory in order to continue his journey towards other EU countries (group 2), he or she is brought directly to the Aliens Centre where illegal migrants are accommodated before returning them to their countries of origin or countries of a formal habitual residence. The difference between both groups of persons is made due to the lack of immediate lodging of asylum applications: the first group conforms with the Article 8 of the Asylum Act (obligation to lodge, without delay, asylum application with the competent authorities) while members of the second group are under a suspicion of misleading or abusive asylum procedure because the obligation to lodge asylum application without delay has obviously been disregarded since all circumstances of the apprehension show persons' intention to proceed with their journey and therefore their lodging of application is only an act with the purpose of postponing forced deportation. Such behaviour is, according to the Slovene administrative-judicial practice, regarded as abusive towards the asylum system and shows the absence of the need for international protection.

VII. EDUCATION

The purpose of border monitoring activities is also to monitor the capability and knowledge of the actors involved, on the right to access asylum procedure, treatment of vulnerable groups, recognizing victims of trafficking etc. In Slovenia, border guards undergo certain training on these issues (such as various ad hoc seminars), but trainings should be conducted more often due to frequent changes of legislation, changes of staff and new knowledge and skills available in the field. The RSD authorities have undergone several trainings, conducted mostly by UNHCR.

Several trainings have also been conducted by NGOs which work with unaccompanied minors, trafficking, etc. Such NGOs regularly conduct trainings for their staff working at the Aliens Centre and the Asylum Home.

A great defect is seen at the Faculty of Criminal Justice of the University of Maribor curriculum where no subject concentrates on migration issues with an emphasis on asylum matters. After graduation, the policemen and policewomen lack an in-depth knowledge on these topics. They gain some knowledge only in the course of their work, which is sometimes very risky due to vulnerable population they deal with.

VIII. VULNERABLE GROUPS

Monitoring of the treatment of vulnerable groups is one of the most important components of border monitoring activities in Slovenia and elsewhere. Vulnerable groups require special treatment in accordance with specific legal provisions and therefore also demand specific attention by the LIC monitoring team.

1. Vulnerable groups in general

The question which groups of people are considered vulnerable is answered by the Asylum Act. Pursuant the provision of Article 15a, specific care and attention is ensured to persons with special needs and vulnerabilities, especially children, unaccompanied children, the elderly, pregnant women, single parents with children, and persons who have survived rape, torture or other forms of psychological, physical or sexual violence. Special needs and vulnerability shall be established on the basis of an individual assessment of the situation of the asylum seeker, refugee or person with subsidiary protection. The accommodation of vulnerable asylum seekers, refugees or persons with subsidiary protection shall take into consideration their specific situation with regard to material conditions of reception, medical and psychological counselling and care. In addition to that, the Asylum Act defines additional favourable provisions for the following groups: female asylum seekers, unaccompanied minors who applied for asylum, legally incompetent persons and others (for more information see the following paragraphs).

2. Female asylum seekers

The Law enables female asylum seekers to request for a female person to conduct the asylum procedure, and for a female interpreter. (Article 13)

3. Legally incompetent persons

Legally incompetent persons who apply for asylum shall be assigned a legal representative prior to commencement of the procedure. The legal representative shall be designated by the competent authority in accordance with the law. (Article 15)

4. Unaccompanied minors

The Aliens Act defines an unaccompanied minor as a minor who enters the State illegally, unaccompanied by parents or other legally responsible person, who is apprehended by the police, but cannot be returned to a country which he left in order to enter Slovenia, or to representatives of his country of origin. Unaccompanied minors who do not apply for asylum are temporarily accommodated in the Aliens Centre in a ward for minors. A centre for social work is notified about their arrival in order to assign a temporary representative. Minors cannot return to their country of origin or to a third country willing to accept them until a proper reception is guaranteed. However, under no circumstances a minor may be returned contrary to the provisions of the European Convention on Human Rights and Fundamental Freedoms and its Protocols, Convention against Torture, other Cruel, Inhumane or Degrading Treatment or Punishment, and Convention on the Rights of the Child. A minor shall be accommodated in the Aliens Centre together with his parents or a statutory representative, unless otherwise is in his best interest. For minors under 16 years of age, stricter police surveillance shall be ordered only exceptionally, and only when they are together with their parents (or one of them).

Unaccompanied minors¹³ who apply for asylum shall be, prior to the commencement of the procedure, assigned a legal representative by the competent authority in Slovenia, as stipulated by the Asylum Act. Asylum applications submitted by unaccompanied minors shall have priority and shall be resolved in the shortest time possible. In the shortest time possible shall the competent authorities also establish the minors' identity and verify whether they are actually unaccompanied. They shall not be deported to their country of origin or to a third country willing to accept them unless adequate reception and basic living conditions are provided for them in such country. Nevertheless, in no case shall unaccompanied minors be deported contrary to the adopted international instruments. (Article 14)

¹³ The definition in the Asylum Act is similar to the one in the Aliens Act: Aliens who are under eighteen years of age and arrive in Slovenia, or upon their arrival remain in Slovenia unaccompanied by parents or other legally responsible person. (Article 14, the Law on Asylum)

In practice, when vulnerable groups enter the State and are apprehended by the police, minors do not undergo a personal control and women are controlled by female employees. After being taken to the Aliens Centre, single women and unaccompanied minors are accommodated separately from other population in the Centre. Families are also accommodated separately.

5. Practice concerning vulnerable groups

When an unaccompanied minor is being apprehended, the police immediately notify a centre for social work in Postojna (where the Aliens Centre is placed) which cooperates with an NGO Slovene Philanthropy. On the basis of an administrative decision issued on behalf of the centre, the NGO is appointed as a temporary representative of the unaccompanied minor. They visit the unaccompanied minor at the Aliens Centre in order to discuss his further plans and reasons for leaving his home. If a minor decides to return to his home, the temporary representative arranges, together with the police, that a proper reception is available in his or her country. In order to secure that, they contact his family, but if he lacks any relatives, various humanitarian organisations such as Red Cross or Caritas are asked for assistance. When all arrangements are made the minor is returned to his country, usually by plane, being escorted by his temporary representative. If a minor decides to apply for asylum, the representative shall prepare his declaration of intention to apply for asylum and submit it to the police inspectors at the Aliens Centre which have to send it immediately to the Asylum Home. Afterwards, the representative will either escort the minor when taken to the Asylum Home or wait for his arrival at the Asylum Home. The representative shall visit the minor regularly and be present at all legal actions taken in the asylum procedure in order to secure his rights (formally lodging the asylum application, hearing, etc.).

When vulnerable groups come directly to the Asylum Home, only families and single women are accommodated in the Pre-reception Area, in a special ward; unaccompanied minors are accommodated directly in the Reception Area (which is separated from the Pre-reception Area and provides a higher level of reception conditions), where asylum seekers who have already formally lodged the asylum application are accommodated.

Both the police and the staff in the Asylum Home endeavour to involve skilled female employees and female interpreters in the (asylum) procedure where necessary, particularly where female asylum seekers find it difficult to present the grounds for their application in a comprehensive manner because of the negative experiences they have undergone or because of their cultural origin. The Asylum Section, which is the RSD procedure authority, also employs female decision-makers who are involved in the procedures where women lodge asylum applications. Female interpreters are also used.

6. Victims of Trafficking

In observing the treatment of vulnerable groups border monitoring in Slovenia also focuses on treatment of victims of trafficking. It has been observed that some activities in this respect are being carried out, however currently, only asylum seekers benefit from them but not the illegal aliens at the border or in the aliens centre. The activities are carried out by Society Ključ ("The Key"), an NGO specialized in dealing with victims of trafficking. Society Ključ carries out a 'Project against Human Trafficking and Sex and Gender Based Violence (PATs)'. Within the project, Ključ carries out information interviews with minors and single women who are accommodated in the Asylum Home. Through the interviews the beneficiaries obtain all the necessary information about human trafficking and violence. The purpose of the interviews is to raise awareness of the individuals about the traps of human trafficking, signs that abuse is taking place, forms of assistance and where to obtain it.

Society Ključ has also concluded an agreement with the Slovenian Police on cooperation in dealing with victims of trafficking. On the basis of this agreement the police have called the representatives of the Society Ključ, to assist due to their rich experience in this field. Unfortunately, the project was discontinued; however, it represented an example of good practice aiming at finding victims of trafficking in early stages of the border or asylum procedure.

IX. CLOSING REMARKS

The experience of Slovenia shows that presence of civil society organizations with a purpose to conduct border monitoring at the early stages of the asylum procedures has many positive effects. It serves as a source of information on border procedures and improves familiarity of civil society organizations on these issues. Consequently, border monitoring improves the mutual trust between the police and the NGOs, opens the police towards the civil society and sends out the message that the work of the police at the borders is important for the state and that the civil society cares about it. Simultaneously, border monitoring has preventive effect in terms of possible disrespect of human rights. It allows for experts on the asylum and human rights law to be present at the border procedures where upon request they are able to provide expertise and advice.

Border monitoring also allows for improved following of the whereabouts and well-being of migrants and asylum seekers who enter Slovenia, from the point of entry in the state to the point of accommodation in asylum home or detention in the Aliens Centre. This way track of migrants and asylum seekers is kept which allows for a more open and humane treatment they are receiving.