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## THE ISSUE OF ASYLUM POLICY AND LAW IN THE GERMAN-SPEAKING COUNTRIES AND IN SLOVAKIA<sup>1</sup>

Jana Štefaňáková\*

### ABSTRACT

Asylum law and policy are tightly connected to migration, which remains an omnipresent phenomenon in the globalized world and an alarming issue of the 21<sup>st</sup> Century. Some of the European countries including Germany, Austria and Switzerland have been dealing with immigrants for more than a century. In other countries, such as Slovakia, it is a relatively new phenomenon. The current study aimed to provide a comparative insight by pointing out political, institutional and legislative frameworks of asylum in the German-speaking countries and in Slovakia, and to highlight particularities of the asylum procedures and legal terminology of the respective countries in the context of the European law. The analysis and legal comparison showed that following EU legislation, the countries had undergone legislative changes as well as establishing a number of new institutions, with specifics stemming from differences in preexisting asylum and migration policies. This process was determined mainly by the increased pressure on the migration systems, which reflected in the need to improve the efficiency of the migration system management.

**Key words:** asylum, asylum policy, asylum law, German-speaking countries, Austria, Switzerland, Germany, Slovak Republic, institutional and legislative framework of the asylum policy and law

### Introduction

One of the main challenges currently faced by Europe is the rising influx of migrants, which is motivated by a number of factors. These factors include mainly political instability, low living standards, poverty, diseases, armed and other conflicts, etc. In accordance with the international agreements, refugees fleeing from their homes are eligible for protection in the countries of arrival. The

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single open asylum policy adopted by all EU member states represents an important aspect of the unified Europe. All measures aim at turning the migration into a controlled phenomenon. The study analyses the issue of asylum policy and law in the German-speaking countries and in Slovakia in the context of the European asylum law system. Since Slovakia joined the European Union (2004) and Schengen Area (2007), statistics regarding the number of incoming migrants from third countries has been continuously attracting the attention of both the expert community and the public. The issue of migration and asylum law in Slovakia used to be in the periphery of the society's interest, therefore relevant literature addressing the issue in a complex way is missing. This paper aims to address the phenomenon of asylum from both diachronous and synchronous perspectives, provide a summary of the main features of the asylum policy and law in the German-speaking countries and in Slovakia, as well as to address the specific differences in the legal terminology pertaining to individual countries. The methods of analysis and legal comparison were employed to tackle the subject matter. The methodology included collecting, processing and evaluating data available from a number of sources.

## **1 Migration and immigration in the German-speaking countries and in Slovakia**

The asylum policy and law are closely related to migration and migration policy. The asylum and migration including different aspects resulting from the national policies. Besides law enforcement, it is also interconnected with social policy, employment policy, development and international relations. Some of the European countries including Germany, Austria and Switzerland have been dealing with immigrants for more than a century. In other countries, such as Slovakia, it is a relatively new phenomenon.

Thanks to its geographical location, Austria has been both transit and target country for many migrants, especially after the Cold War period. Its history of economic migration began with the programmes targeted at foreign workers from Turkey and former Yugoslavia. For a long time, Austria has been sheltering large numbers of refugees from Hungary, former Czecho-Slovakia, Poland, former Yugoslavia, Russia and Afghanistan. At the beginning of 2008, 1.42 million inhabitants were of immigrant origin, which represented 17.3% of the total population. Out of this number, 854,752 persons did not possess Austrian

citizenship increasing the share of foreigners (citizens of EU and other countries) in the total population to 10.3%. Besides, Austria is one of the countries with the highest immigration rate in proportion to its total population. According to the Austrian Statistical Office, in 2012 about 970,000 foreigners lived in Austria (11.5% of population) and 18% of all inhabitants were of an immigrant origin.

Germany also has a long immigration history. In 1945–1949 almost 8 million refugees and persons resettled after WWII left Germany for the Western occupational zones; approx. 3.6 million people left for the occupied East Germany. After the establishment of the Federal Republic of Germany (FRG) in 1949, the mass migration from East Germany to West Germany began. By the time the Berlin Wall was built in 1961, about 3.5 million people crossed the East Berlin border to remain in the Federal Republic of Germany. After the economic growth declined, in 1955–1974 migrant workers were recruited through recruitment agreements concluded with Italy (1955), Spain and Greece (1960), Turkey (1961), Morocco (1963), Portugal (1964), Tunis (1965) and Yugoslavia (1968). Until 1980s, asylum played a minor role in terms of quality; asylum seekers came mainly from the former Eastern Bloc. Since 1985, asylum became the main migration category in Germany. According to the statistical office, at the end of 2011, 7 million foreigners lived in Germany (7.9% of the population); one fifth of German citizens had migrant origin.

Switzerland also has profound historical experience with immigration. During WWII, many Jewish refugees fleeing the Nazi regime found sanctuary in Switzerland. In 1947–1990 Switzerland dealt with several waves of refugees; despite the strict reception criteria, many refugees from Hungary, Tibet, Uganda, Poland and Czecho-Slovakia found help there. During this period, observers were invited to attend the refugee hearings based on which they were subsequently either accepted, or rejected. However, the first Swiss act on asylum entered into force only on 1 January 1981. Due to the increasing number of asylum applications, the first intense internal political debate took place in 1980s; in 1983, the act was revised for the first time. After eleven revisions, in 2016 a more transparent asylum act introducing the fast track asylum procedure was adopted which remains in force to this day. In the recent years, mainly refugees from Eritrea, Syria, Afghanistan, Guinea, Sri Lanka and Somalia applied for asylum in Switzerland. In 2016, 31,299 applications were submitted; in 2017 their number declined to 14,113 (Zahlen und Fakten zu Asyl in der Schweiz, 2017).

In Slovakia, immigration represents a relatively new phenomenon. Until 1989, the former Czecho-Slovakia had minimum experience with immigration. After the end of the Communist era when the state policy regarding asylum and migration changed, an open approach to this issue was adopted. Up to that point in history, Slovakia used to be an emigration country. Gradually, it turned into a transit one and according to several experts it may ultimately become a target country. So far, migration of Slovak citizens to other EU countries in order to find better job opportunities prevails. Right after the establishment of the Slovak Republic (SR), European migrants amounted for 80–90% of registered immigrants; since this point, their share is declining in favour of the Asian immigrants (and immigrants from other continents). As for the third countries, mostly *Ukraine, Vietnam, Russia and Korea* were represented.

Since 2014, a large increase in the number of irregular immigrants from Syria can be observed as a consequence of the Syrian conflict; these immigrants took the Western Balkans route, entered Hungary, and proceeded to cross Slovakia and Czech Republic to reach Germany. Besides this, human trafficking groups operating along the Western Balkans and secondary migration routes were activated. In result of the pressure put on the migration systems, European asylum and migration policies have been developing recently. Due to the increased demand for the labour force, dynamic legislative and practical changes took place. However, it is necessary to point out that some countries have abandoned the law enforcement based approach and opted for a more civic one instead, involving different institutions, international organisations and civic society. The German-speaking countries belong among them. Slovakia gradually follows.

## **2 Political and institutional frameworks of the migration policy in the German-speaking countries and in Slovakia**

The analysis of the available data shows that three ministries are involved in formation of the asylum and migration policy in both German-speaking countries and Slovakia: Ministry of Interior, Ministry of Labour (and social affairs), and the Ministry of Foreign Affairs. The executive elements of the institutional framework usually involve departments and other bodies pertaining to the three aforementioned ministries, which create the asylum and migration policy. In terms of asylum and migration policy development, the ministry of interior represents the most important institution in most member states. In Slovakia,

the following institutions cooperate to address the asylum and migration policy. The parliament called the National Council of the Slovak Republic approves laws in the area of migration and asylum; the Council is a constitutional and legislative body. From the institutional point of view, the area of migration and asylum is addressed by three ministries – Ministry of Interior of the SR, Ministry of Foreign and European Affairs and Ministry of Labour, Social Affairs and Family of the SR. (The organisation of migration and asylum policy in the EU member states).

The Ministry of Interior of the SR takes care of the agenda in the areas of migration and asylum mostly through the Migration Office, Border Control, and Immigration Police. The Directorate General for International Organisations, Development Assistance and Humanitarian Aid at the Ministry of Interior of the SR is responsible for their coordination. The Ministry of Labour, Social Affairs and Family of the SR prepares legal regulations setting out the conditions under which foreigners can be employed in the territory of the SR, criteria for different categories of third-country nationals (TCNs) regarding their entry into the labour market and conditions under which the work permit can be issued. Social care is provided by the individual Offices of Labour, Social Affairs and Family of SR (Labour Offices). The Ministry of Foreign Affairs of the SR is a central state administration body in the area of foreign policy and relations of the SR with other countries and international organisations. On the regional and local levels of state administration, there are more institutions, which deal with different aspects of the asylum policy. They include *Labour Offices*, *Immigration Police departments*, *Police Force of the SR*, *departments of general internal administration* and their respective *state citizenship departments* and *registry offices*. Asylum and migration are also addressed by certain international and non-governmental organisations such as the United Nations High Commissioner for Refugees (UNHCR), International Organization for Migration, Human Rights League, Spoločnosť ľudí dobrej vôle (The Good Will Society).

In Austria, Germany and Switzerland, the ministries of interior, labour (social affairs) and foreign affairs represent the key institutions in the migration and asylum policy. Responsibility for the policy creation in these countries lies with the whole government, since it is the government, who approves the law proposals and policies created by the particular “head” ministries. An infrastructure is also present on the regional level. In Germany, an institution called the Permanent Conference of Ministers of Interior and Senators in the Federal States regularly meets to decide on the implementation of the migration

policy in the individual federal countries (*Bundesländer*). Although their decisions do not have direct legal impact, they represent binding political recommendations, and the lawmakers refer to them on both federal and state levels. A number of non-governmental organisations under the auspices of the respective states participate in providing service and fulfilling the needs of migrants in Germany, Austria and Switzerland. The most common services provided by the non-governmental organisations (NGOs) include operating detention camps, providing legal and social consulting, education, professional training, language and cultural orientation, re-qualification training and integration measures. The NGOs providing these services in the largest extent include the *Red Cross*, but also *UNHCR* and *ILO*. In Austria, detention camps for asylum seekers are operated by a private company (European Homecare), including accommodation and general care. In Switzerland, a number of NGOs provides consultancy and assistance to migrants and asylum seekers. Among them are, for example, the Swiss Red Cross – Schweizerisches Rotes Kreuz or independent associations: Freiplatzaktion Zürich (FPA), Luzerner Asylnetz, Solidaritätsnetz Ostschweiz, Kirchliche Kontaktstelle für Flüchtlingsfragen, etc.<sup>[SEP]</sup>

### **3 The legislative framework for asylum in Slovakia and the German-speaking countries**

In the Slovak legislation, the Act No. 480/2002 Coll. on Asylum and on changes and amendments to some acts (Act on Asylum) addresses the issue. The Act on Asylum sets out the rights and responsibilities of asylum seekers as well as conditions under which subsidiary protection and temporary shelter can be granted. Asylum seekers provided with temporary shelter or subsidiary protection are also subject to the Act on Residence of Foreigners, based on which they are automatically eligible to stay in the territory of the SR even if their residence permit applications have not been evaluated yet or if they do not meet the legal requirements. The most significant change that resulted from the EU asylum legislation was the transposition of the Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (the procedural directive) into the Slovak legislation. It was transposed into the Slovak legislation by an amendment to the Act on Asylum (Act No. 643/2007 Coll.) which entered into force on 1 January 2008. Article 15 of the Directive (“Right to legal assistance and representation”) was also transposed; on 1 December 2008, new Act No.

451/2008 Coll. entered into force, which brought upon a number of changes. Act No. 48/2002 Coll. on Residence of Foreigners and on changes and amendments to some acts represents the basic regulation addressing the area of TCN residence. The amendment to this Act entered into force on 1 January 2007 in relation to the transposition of three other EU directives; in 2011, it was amended by Act. 404/2011 Coll. specifying the conditions under which TCNs can enter the territory of the SR.

The migration and asylum legislation in the Federal Republic of Germany is organised on the federal level by the Immigration Act (*Das Zuwanderungsgesetz – Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern*) which entered into force in 2005; it consists of a number of laws regulating specific aspects of migration and asylum. It includes the Act on Residence, which sets out the entry, residence and employment of TCNs as well as the Act on Free Movement of Persons. Granting of asylum and refugee status is set out in the Act on Asylum. These acts are regularly amended, usually with the aim to transpose the EU directives. In Germany, the Act on Residence of 2005 along with other acts and decrees were amended in relation to Act on Implementation of EU Directives based on which 11 EU directives have been transposed into the German legislation. In general, EU member states including Germany differentiate between the international and national legal asylum protection. International protection results from the Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted; it includes the status of controlled refugee protection in terms of the Convention Relating to the Status of Refugees (German: GFK) and internationally subsidiary protection. In FRG both these categories have been integrated in the Act on Asylum (*das Asylgesetz*). National protection covers institutional protection of persons eligible for asylum (*das Grundgesetz*) and protection from deportation (*das Aufenthaltsgesetz*). The tolerated TCN status is different from the legal asylum protection; in case of tolerated TCNs, their deportation is temporarily postponed in accordance with Section 60a of Act on Residence (*Migrace v zemích střední a východní Evropy*, 2017). In result of the developing refugee crisis, in January 2016 the coalition government in Berlin approved the draft bill, which limits unifying of refugee

families and speeds up the decision-making process regarding the asylum seekers of certain asylum seekers. The main point of the resolution was to establish specialised reception centres in which asylum applications of TCNs from the so-called safe countries of origin will be processed in the fast track procedure. These people can be immediately returned into their countries of origin. The draft bill approved, in Germany referred to as the Asylum Package II, relates to the government's effort to limit the influx of migrants into the country. According to the DPA agency, almost 1.1 million migrants and refugees came to Germany in 2015 (compare: Nemecká vláda schválila nové opatrenia týkajúce sa integrácie migrantov, 2017).

In Austria, the current legislation addressing the migration issues includes Act on Basic Care for Asylum Seekers – Das Grundversorgungsgesetz – Bund 2005 – which is a set of multiple laws. This Act substitutes the act of 1991 (Bundesbetreuungsgesetz), determining the basic rights and care for asylum seekers in the asylum procedure. It consists of the two main parts: Act on Asylum (das Asylgesetz) and Act on Residence (das Niederlassungs- und Aufenthaltsgesetz – NAG); besides other functions, they provide the free legal assistance in the process of asylum seeking as well as a new amendment related to the immigration of qualified workers called Red-White-Red Card. The Act of 2005 was amended in 2017 for the last time (Fremdenrechtsänderungsgesetz). In order to simplify the institutional form of the system, the Austrian government established the single Federal Office for TCN Affairs and Asylum in 2014, which is subject to the Austrian Ministry of Interior. In 2011, the National Action Plan for Integration was approved, providing assistance for refugees and asylum seekers in learning German in order to allow them to participate in the social, economic and cultural life in Germany. The responsibility for integration is increasingly more frequently transferred to the regional level. Austria supports building structures in the individual municipalities and promotes initiatives on this level. As a measure to tackle the refugee crisis, the Austrian government adopted one of the strictest asylum laws in Europe in 2016. It allows the government to announce an “emergency state” if the numbers of refugees threaten the public order and internal security. In such case, asylum seekers – including those from the war-stricken countries such as Syria – can be rejected at the border and returned to safe countries. The exception includes refugees who already have close relatives in Austria, unaccompanied minors, women with little children and persons who cannot be returned to a country where they might be subjected to

torture or other inhuman treatment. However, the duration of asylum procedure increased from six to 15 months. After receiving the record number of 90,000 asylum seekers, in 2015 the Austrian government decided to limit the number of asylum seekers who can be accepted. In case the person is at risk of expulsion, the fact that they took language and integration courses may help them (compare: Rakúsky parlament schválil sprísnenie azylových zákonov, 2016).

Switzerland is not an EU member state, but a number of international acts apply to the country besides the national legislation regarding asylum and other protection. For a long time, the provisions related to asylum were integrated in the general law on foreigners (das allgemeine Ausländerrecht). On 1 January 1981, the Swiss Act on Asylum (das Schweizerische Asylgesetz) entered into force; since then, it has been revised several times. This Act sets out which persons can be granted the refugee status and asylum; the definition of refugee corresponds with the 1951 Refugee Convention. It also takes into account the non-refoulement principle based on which no country to which the Convention applies can expel a refugee, nor can it return them to the border where their life is at risk because of their race, religion, nationality, social group or political opinions. Besides this, the Act on Asylum determines the asylum procedure and other aspects related to the residence of people who seek protection in Switzerland., e.g. conditions under which the TCNs can be granted residence, arrival and stay of family relatives, employment, right to social benefits, health insurance and integration measures. If the Act on Asylum lacks specific provisions, the Act on Foreigners (das Ausländergesetz) represents the binding regulation. Regarding the provision of protection and asylum, the 1951 Refugee Convention, the *European Convention on Human Rights and Basic Freedoms*, UN Convention on Elimination of all Forms of Violence, UN Convention on Rights of the Child and Association Agreement are binding for Switzerland. The *Dublin III EU directive* in force since 1 January 2014 specifying the conditions under which asylum applications are evaluated is of utmost importance (Asylgesetz, 2017).

## **4 The asylum law from the perspective of the current migration crisis**

Despite directives and regulations aiming to harmonise the whole EU, the discrepancies between the individual member states persist in the area of protection, opportunity to gain the refugee status, number of refugees granted

the status, and reception conditions. For example, in some member states the access to basic material support is so limited that many asylum seekers end up in the streets. The current issues of the Common European Asylum System (CEAS) partly result from the insufficient harmonisation of the asylum system across the member states. It indicates that the directives are probably too extensive and detailed. The national legislations are supposed to integrate a whole range of unclear concepts whose proper meaning needs to be specified additionally by the EU Court of Justice (CJEU). However, the CJEU case law often fuels the legal insecurity. The Dublin system crisis is also referred to – it relates to the inability or unwillingness of certain members states to act on their commitments, but it also relates to the European Court of Human Rights, which *de facto* suspended the applicability of the Dublin directive in case of Greece. Therefore, the basic concept of the Dublin system is sometimes doubted; it is based on placing the main responsibility in the hands of a couple of states, which happen to be located in the first line. According to certain experts, Europe does not currently represent a harmonic asylum and migration space. The European integration is based on democracy, rule of law and human rights; the politically and socially sensitive issue of asylum and migration receives different kinds of responses including some extreme views. The statistics on asylum seekers, legally or illegally detained persons, structure and amount of social benefits, practical experience with refugees and immigrants as well as basic political approaches largely differ across the individual member states. Besides, the discussion is quite emotive in certain countries reflecting people's fear of refugees and immigrants or specific manifestations of humanity. The contradiction of interests and opinions indicates that the only way the complicated form of the Common European Asylum System (CEAS) can be maintained is to follow the already existing legal standards (compare: Azylová politika Európskej Únie, 2016).

## **5 The specificities of the asylum procedure legislative framework in Slovakia and the German-speaking countries**

### **5.1 Asylum procedure in the Federal Republic of Germany**

The asylum procedure in Germany follows the international law. People coming to Germany with the aim to apply for asylum can claim so at one of the following institutions specified by the state: border customs office, police, TCN

office (*Ausländerbehörde*), *Federal Office for Migration and Refugees* (*das Bundesamt für Migration und Flüchtlinge, BAMF*) or a reception facility (*Aufnahmeeinrichtung*). From there, they are relocated to the nearest reception facility (*Erstaufnahmeeinrichtung*). When the asylum seeker registers with the Central TCN Register (*Ausländerzentralregister – AZR*) controlled by the BAMF federal office after visiting the aforementioned offices or institutions, their basic personal data and fingerprints are made available to all public authorities. The security authorities also check whether they have not applied for asylum elsewhere. At the first registration, the asylum seeker is issued a document, *Ankunftsnachweis*, containing their personal data and the information about their first reception facility (*Erstaufnahmeeinrichtung*). It represents a first valid document allowing them to reside in Germany and receive services such as accommodation, healthcare, food, etc. Allocating asylum seekers to different facilities depends upon their capacity; the given federal country also plays a role. In Germany, the EASY quota system is applied in the first allocation of asylum seekers, (*Erstverteilung von Asylbegehrenden*), following strict regulations referred to as *Königsteiner Schlüssel*. These regulations determine how many refugees can be received by individual federal countries of Germany. Based on this system, the asylum seekers can be accommodated in the reception facility for as long as six months until their application is processed. In case families need to be unified, TCNs can be moved. Reception and other accommodation facilities provide asylum seekers with food, accommodation, clothes, healthcare in case of need, basic domestic goods and a benefit to cover their common personal expenses in accordance with the Act on Assistance and Benefits for Asylum Seekers (*Asylbewerberleistungsgesetz*). The asylum application is submitted in person at the relevant office; an interpreter is present to explain the rights and responsibilities within the asylum procedure to the asylum seekers. Asylum seekers must provide all necessary personal documents, which are subsequently checked by the authorities. The Federal Office for Migration and Refugees – BAMF (*das Bundesamt für Migration und Flüchtlinge*) is responsible for the asylum procedure; besides the central office in Nuremberg, it has more than 40 workplaces across Germany. After submitting their application, the asylum seekers receive a residence permit (*Aufenthaltsgestattung*) which allows them to stay in the territory of Germany. However, the permit is limited to the given region requiring the asylum seekers to remain in their reception facility (*Residenzpflicht*) until their application is processed (in case their application is rejected, they must stay in the specified

region until they depart from the country). During this period, they are not allowed to work or leave the facility until they obtain an official permit from the BAMF federal office. This obligation to remain in the given reception facility lasts three months in case of asylum seekers whose asylum application may be accepted; after this period the validity of their residence permit extends to the whole German territory. Personal hearing (*persönliche Anhörung*) at the BAMF federal office is an important step in the asylum procedure; persons referred to as *Entscheiderinnen und Entscheider* are responsible for this process. They invite asylum seekers for hearing and provide interpreters, legal representatives or UNHCR representatives. Hearing (*Anhörung*) is not public and its aim is to examine the reasons and justification of the asylum application. After evaluating the application and other relevant documents, the BAMF federal office issues the decision. The decision is justified in writing and delivered to the asylum seekers, authorised persons and competent TCN offices. During the evaluation of the application, the federal office examines whether any of the four legal forms of protection applies to the asylum seeker, i.e. *eligibility for asylum (Asylberechtigung)*, *refugee protection (Flüchtlingsschutz)*, *subsidiary refugee protection (subsidiärer Schutz)* or *ban on expulsion (Abschiebungsverbot)*. If none of these forms of protection applies, the application may be rejected. In case the asylum application is accepted, according to Art. 16a Section 1GG, the asylum seeker is granted residence permit for three years (*Aufenthalserlaubnis*) with the possibility to gain *permanent residence (Niederlassungsaufenthalt)* after three to five years if further requirements are met (e.g. ability to provide for themselves, adequate proficiency in German); besides this, the asylum seeker gains an unlimited work permit and their family relatives gain the privilege to arrive. If the application for asylum or other form of protection is rejected, the asylum seeker receives a negative decision (*ablehnender Bescheid*) and are obliged to leave the territory of Germany (*Abschiebungsandrohung*). They can file an appeal against the decision (Brunner, 2015).

## 5.2 Asylum procedure in the territory of Austria

Regarding the asylum procedure in Austria, the application for international protection can be submitted at any *police department* or to any *police officer*. If a person applies for asylum, they are usually protected from expulsion (*Abschiebeschutz*), meaning they are allowed to stay in the territory of Austria until their application is processed. If the TCN approaches a police department

or officer to apply for asylum, they have to attend a *preliminary hearing*. Afterwards, another *hearing (Befragung)* takes place at the Federal Office for TCN Affairs and Asylum (*Bundesamt für Fremdenwesen und Asyl– BFA*) which decides on further steps. Based on the preliminary hearing, the BFA employees issue a preliminary ruling (*Prognoseentscheidung*). Subsequently, the process during which the asylum application is accepted or rejected takes place (*Zulassungsverfahren*). If the application is deemed justified, the asylum procedure itself follows. If the justification of the asylum application was not clarified in the preliminary ruling, the asylum seeker is placed in their first detention facility (*Erstaufnahmestelle*). Otherwise, asylum seekers are transported to the given asylum or accommodation facility (*das Verteilerquartier*) for free. Detention facilities and accommodation camps teach the asylum seekers about their rights and the asylum procedure; they are also provided with legal assistance. Further examination of the application includes another hearing at the BFA federal office at which the asylum seeker is heard in their mother language using an interpreter. If Austria cannot accept the asylum application, the BFA office rejects the application as unjustified already in the process of its evaluation. If the application is justified, the asylum procedure continues with further examination of reasons. An important part of the asylum procedure is *hearing* of asylum seekers (*Einvernahme*) using an interpreter. Based on the new regulations, the asylum procedure can be accelerated (*Fast Track Verfahren*) if the TCN comes from a safe country (Kosovo, Montenegro, Serbia, Morocco, Algeria, Tunisia and all EU member states). The resulting evaluation of the asylum application is delivered to the asylum seeker in the form of a decision. Every decision of the BFA office includes the ruling (*Spruch*), result of the investigation and information about the appeal against it (*Rechtsmittelbelehrung*) in a language which the asylum seeker understands. In result, the asylum application may be accepted (in this case the asylum seeker is granted a three-year residence permit) or rejected, but provided subsidiary protection and preliminary residence permit for one year, or rejected without subsidiary protection (in this case the asylum seeker has to leave the country in the given period, otherwise they will be expelled (*Asylwerber wird abgeschoben*)). An appeal can be submitted (*Beschwerdeerheben*) in the given period at the *Federal Administrative Court (das Bundesverwaltungsgericht–BVwG)* (Asylverfahren, 2017).

### 5.3 Asylum procedure in the territory of Switzerland

The person seeking protection in **Switzerland** can apply for asylum in the reception centre called *Empfangs- und Verfahrenszentrum (EVZ)* located at the border or airport control at one of the Swiss airports. Since 2012, it is not possible to apply for asylum at Swiss embassies abroad, only in the territory of Switzerland. There are no formal criteria for the application, the asylum seeker can submit it in the oral or written form. The applications are usually submitted in one of the Swiss EVZ reception centres, which are subject to the State Migration Office, SEM (*Staatssekretariat für Migration*). They are located in Basel (canton of Basel-Stadt), Chiasso (canton of Tessin), Vallorbe (canton of Waadt), Altstätten (canton of St. Gallen) and Kreuzlingen (canton of Thurgau). If the application is submitted in a transit zone at one of the Swiss airports by an asylum seeker outside of the Schengen Area, the asylum procedure follows specific rules; the SEM office decides to allow or refuse their entry into Switzerland directly at the airport. Otherwise, the SEM office is responsible for the evaluation of the applications, each of them is addressed individually. After applying for asylum, the *preparatory stage* follows (max. three weeks); before the examination, the asylum seeker must be acquainted with the asylum procedure conditions and officially register with the SEM office. The office records their personal data, fingerprints and other biometric data as well as their travel and other documents are checked; it is also examined whether another country may be competent to start the asylum procedure instead. In the preparatory stage, first short *hearing* takes place to determine the TCN's identity and their reasons for asylum seeking. Subsequently, the SEM office decides whether the application is further examined or rejected; in the latter case the ruling referred to as *Nichteintretensentscheid – NEE* is issued. If Switzerland really is responsible for the evaluation of the application, the SEM office begins the *asylum procedure proper (ordentliches Asylverfahren)* in which the asylum seeker can provide details on the reasons why they fled their country. Based on *hearing (Anhörung)* asylum may be *granted (Asylentscheid)*. If the TCN meets the requirements to be granted asylum, SEM accepts their application; otherwise it is rejected. Asylum seekers whose applications cannot be processed promptly are assigned to one of the cantons where they are provided accommodation and the *N-identification card (Ausweis N)* – a valid identity document. Meanwhile, their application is processed. If the asylum seeker does not seek protection but aims to satisfy their economic or health needs, or

another country should be responsible for their asylum procedure based on the Dublin system, or the asylum seeker can be returned a country where they have already been granted protection, or country where they have already obtained visa, the application is rejected. The person who was granted asylum receives the *B-identification card (B-Ausweis)* and a *refugee travel document (Flüchtlingspass)* in accordance with the *1951 Refugee Convention*. In this case, their relatives can come to Switzerland. In some cases, asylum seekers only gain the status of refugees and receive *preliminary reception (vorläufige Aufnahme)*; in this case, they receive the *F-identification card (F-Ausweis)* and a refugee travel document in accordance with the *1951 Refugee Convention (Reiseausweis für Flüchtlinge)*. The asylum seeker is usually placed in a collective facility – an asylum or transit centre (*Asylzentrum, Transitzentrum*) where they are given 8–9 CHF daily to cover their expenses regarding food, hygiene, telephone, clothes and transport. If the asylum seekers live in a centre, which provides food, their pocket money amounts to ca. 3 CHF per day. Successful asylum seekers are entitled to the same social benefits as Swiss citizens. For the first 3 to 6 months, asylum seekers cannot work. Besides this, they only work in fields with a shortage of labour force. The asylum seekers are obliged to pay back the costs related to their asylum procedure and social assistance benefits (tzv. *Sonderabgabepflicht*). The law allows them to keep property only up to a thousand francs. When they find a job, the state regularly takes ten percent off their salary. These salary deductions can continue for up to ten years but they can be discontinued after the levies reach 15 thousand francs (compare: *Asylverfahren kurz erklärt*, 2017).

## **5.4 The asylum procedure in the territory of the Slovak Republic**

The asylum procedure in the territory of the Slovakia begins when the *TCN declares that they request asylum or subsidiary protection* in the territory of the SR. They can do so at the relevant police department at the border crossing, or at a police department pertaining to an asylum facility, police department in the transit area of an international airport (Košice, Bratislava, Poprad), or a police department pertaining to the healthcare facility, or prison if the TCN is hospitalised or imprisoned. The police department records their declaration in the form of an official document, retains the asylum seeker's travel or other document and their copies and sends them to the Migration Office at the

Ministry of Interior of the SR, which decides about the matter. Besides this, the police department takes the asylum seeker's fingerprints. During the asylum procedure, the Ministry issues an *asylum seeker identification card* to the asylum seeker, which they use to prove their identity. The assigned employee of the Ministry (Migration Office) organises an *entrance interview* with the asylum seeker. This usually takes place in the *detention camp* in which the asylum seeker has to come 24 hours after their declaration. The detention camp is located in Humenné. During the entrance interview, the asylum seeker is obliged to provide all requested information (which must be true) to be recorded in the official form. If the asylum seeker fails to arrive at the detention camp in three days, the Migration Office stops their asylum procedure. In the detention camp, the TCN's movement is limited; hereby, they are examined by a GP. If the asylum seeker does not suffer from any infectious disease, they are placed into the *accommodation camp*. There are *two accommodation camps* in Slovakia – the one in Opatovská Nová Ves houses primarily families with children and vulnerable persons, whereas the one in Rohovce houses other asylum seekers. The asylum seeker remains in the camp during the whole asylum procedure. If they have sufficient financial means to find accommodation elsewhere, they have to apply at the Migration Office to be issued a *permit to stay outside the accommodation camp* (the so-called long-term pass). The asylum seeker can also attend an *additional interview* at the place and time specified by the Ministry. The administrative authority is obliged to issue the decision on the asylum procedure in 90 days after the procedure begins. The Ministry grants *asylum of indefinite duration* to the asylum seekers who can justify that in their *country of origin* they may be persecuted because of their race, nation, religion, political opinions or social class. However, asylum can be granted due to humanitarian reasons or to help unify a family. If the Migration Office decides that the asylum seeker does not meet the requirements for asylum, it must proceed to evaluate their right to subsidiary protection. (Azyl, 2017).

## **6 Asylum procedure in Austria, Germany, Switzerland and Slovakia**

Based on the analysis of the asylum procedures in Germany, Austria, Switzerland and Slovakia, it can be stated that these procedures are similar in all EU member states (and Switzerland) the 1951 Refugee Convention, *European Convention on Human Rights and Basic Freedoms*, UN Convention

on Elimination of all Forms of Violence, UN Convention on Rights of the Child and Association Agreement are binding. The *Dublin III EU directive* in force since 1 January 2014 specifying the conditions under which asylum applications are evaluated is also important (Asylgesetz, 2017). The asylum law relates to a demanding process in which national legislations need to be approximated to the European law. On the other hand, the procedures in these countries differ to some extent due to the differences in the respective national legislations.

In all the countries, the asylum seekers can apply for asylum or declare that they request asylum at the competent offices or institutions specified by the state. These include specific workplaces at airports, border customs office or internal authorities (those addressing specifically TCNs or asylum; police). In Germany, it can be the border customs office – *Grenzbehörde*; police department – *Polizei*, TCN office – *Ausländerbehörde*, Federal Office for Migration and Refugees – *das Bundesamt für Migration und Flüchtlinge, BAMF* or the competent reception facility – *Aufnahmeeinrichtung*. In Austria, each police department and officer can be approached; in Switzerland one of the federal reception centres can be visited *Empfangs- und Verfahrenszentren (EVZ) des Bundes* – they are located in Basel, Chiasso, Kreuzlingen, Vallorbe and Altstätten; in Slovakia, asylum seekers must visit police departments at a border crossing, asylum facility or the transit area of an international airport (Košice, Bratislava, Poprad).

In all the countries, hearing follows the asylum application. For example, in Austria the BFA employees issue a preliminary ruling – *die Prognoseentscheidung* after which the asylum application is evaluated and a decision issued *die Zulassungsverfahren*. If the application is deemed justified, the asylum procedure proper follows. In FRG, the asylum seeker attends two hearings organised by *Entscheiderinnen und Entscheider*. In Switzerland and Slovakia, the asylum seekers are also heard. In all the countries, the asylum seeker's identity is checked with the EURODAC system and their fingerprints are recorded. Subsequently, they are placed in the reception facility. In Slovakia and Switzerland, the asylum seeker must submit the asylum application before being placed to the accommodation facility, whereas in Austria and Germany they submit their application individually after being placed into the facility (it is sufficient to declare that they seek asylum to be placed there).

The following authorities are responsible for the asylum procedure in respective countries: Germany – Federal Office for Migration and Refugees, *das Bundesamt für Migration und Flüchtlinge (BAMF)*; Austria – Federal Office for

TCN Affairs and Asylum, *das Bundesamt für Fremdenwesen und Asyl (BFA)*, Switzerland – State Migration Office, *Staatssekretariat für Migration (SEM)*; Slovakia – *Migration Office at the Ministry of Interior of the SR*. Reception and asylum facilities are named differently in each country. In Germany they are called *die Erstaufnahmeeinrichtung*, or more generally, *die Aufnahmeeinrichtung*. While the asylum application is being evaluated in Austria, the asylum seeker is placed into the first detention facility – *die Erstaufnahmestelle*. If it is justified, the asylum seeker is transported into the relevant asylum facility called *das Verteilerquartier* for free. In Switzerland, asylum seekers are placed in asylum or transit centres (*das Asylzentrum* or *Transitzentrum*). In Slovakia, there are several asylum facilities: *reception centre, detention camp, accommodation camp* and *humanitarian centre*. In Germany, Switzerland and Austria, asylum seekers must remain in the given reception and accommodation facilities during the asylum procedure; they can leave the facility only if permitted to do so by the competent authority and work only under certain conditions. Swiss conditions are specific (*Sonderabgabepflicht*) since the asylum seekers are bound to pay back the costs incurred by their asylum procedure and social assistance benefits. In all the countries, the asylum seekers are provided basic assistance in terms of hygiene, clothing and food in the facilities and camps.

In each country, they receive an identification card to prove their identity or a temporary residence permit after submitting the application. In Germany, the permit is called *Aufenthaltsgestattung* (during this time they have to remain in their reception facility (*Residenzpflicht*) until their application is processed). In Austria, asylum seekers receive temporary residence permit *Aufenthaltsbewilligung* or *Aufenthalstitel*; in Germany, they are issued an N-identification card. In Slovakia, the Ministry issues the asylum seeker identification card granting the asylum seeker temporary residence. When the asylum seeker is granted asylum, they are allowed to reside in the territory of the given country for the specified period of time. In Germany, the *temporäre Aufenthaltsgenehmigung* is issued and after some time, the asylum seeker can be granted permanent residence – *Niederlassungsaufenthalt*; in Austria, the *Niederlassungsbewilligung* is issued, and in Switzerland the B-identification card called *B-Ausweis* and a *refugee travel document* (*Reiseausweis für Flüchtlinge* or *Flüchtlingspass*) are issued in accordance with the 1951 Refugee Convention. If the asylum application is rejected, the asylum seeker receives a negative decision (in all countries referred to as *ablehnender Bescheid*). They

can file an appeal against the decision. If the competent authority decides that the asylum seeker does not meet the requirements to be granted asylum, it is further obliged to examine whether they have the right for subsidiary protection – this applies to all these countries.

## 7 Asylum seeker, refugee and related terms

Terms *asylum seeker* and *refugee* are used differently in the German-speaking countries and Slovakia. In the German language area, the word *Asylant* was used in 1979–82 to refer to unwanted refugees (Link, 1988, p. 15). Therefore, it is accompanied with negative connotations as pointed out in *Asylrecht in Österreich und seine Auswirkungen* (Contraplus, Titel: Asylrecht in Österreich und seine Auswirkungen, 29/11/2005). Since there is no precise definition of *Asylant* in the asylum laws in Austria, Germany or Switzerland, this word appears frequently in German press, however, it is not a proper legal term used in the asylum procedure. In Austria, the term *Asylwerber/Asylwerberin*, in Germany *Asylbewerber/Asylbewerberin*, and in Switzerland *Asylsuchende/Asylsuchender* are used to refer to asylum seekers. Contrary to the German speaking countries, the word *azylant* has no negative connotations in Slovak, therefore it is used in the legislation. The Slovak legislation differentiates between the terms: *azylant*, *odídenec* and *žiadateľ o azyl*. Pursuant to the relevant Act, an *azylant* is a person who has been granted asylum by the Ministry of Interior of the SR. The term *odídenec* refers to a TCN who has been granted temporary shelter by the Ministry based on the decision of the Slovak government. The term *žiadateľ o azyl* refers to a TCN who, pursuant to Section 3 Paragraph 2, requests asylum or subsidiary protection in the territory of the SR, or another person to which the Act applies.

In the context of asylum, the German-speaking countries as well as Slovakia often use the term *utečenec – der Flüchtling (refugee)*; in Slovakia the term is used as a synonym for the word “*azylant*”. However, there is a discrepancy in the meaning of these two terms in the international law and the Slovak one. Let us examine the terms from the perspective of the international law. On the international level, the term *refugee* was defined in the Convention relating to the Status of Refugees also referred to as the 1951 Refugee Convention. Art. 1 of the Convention consists of three parts referred to as “inclusive”, “cessation” and “exclusive” clauses. According to the inclusive clause, statutory refugees are perceived as persecuted persons, which relates the origin of the 1951

Refugee Convention at the beginning of the Cold War when the western countries viewed refugees as the product of totalitarian regimes. On 4 March 1996, the Council of European Union adopted the common attitude to the harmonised use of the term “refugee” as provided in Article 1 of the 1951 Refugee Convention. An important step towards the unification of this concept in the EU member states was the adoption of the Council Directive 2004/83/EC of 29 April 2004; Article 2 Letter c) defines the term refugee. According to this provision, only a TCN can be regarded as refugee, i.e. the EU member state citizens cannot become refugees. In 1995 the Act of the National Council of the SR on Refugees (Act No. 283/1995 Coll.) was adopted which specified the terms refugee and migrant (the term asylum seeker was not specified). This Act regulated the procedure of refugee recognition performed by the state authorities; in 2002 it was substituted by Act 480/2002 Coll. on asylum as amended on 20 June 2002 and the term refugee was removed. The Act employs the aforementioned terms: *azylant* (person to whom asylum was granted), *odídenc* (TCN granted temporary shelter), *žiadateľ o azyl* (asylum seeker) and other specific terms related to the asylum law such as *azyl* (asylum), *doplnková ochrana* (subsidiary protection), *konanie o azyle* (asylum procedure), *azylové zariadenia* (asylum facilities). In accordance with the international law, the Slovak law distinguishes two forms of international protection: *asylum* and *subsidiary protection*. The concept of *asylum* is defined as protecting a TCN from persecution due to the reasons stated in the Convention relating to the Status of Refugees or the Constitution of the Slovak Republic. In accordance with Section 8 of Act on Asylum, the SR grants asylum of indefinite duration to the asylum seeker who can justify that: in their country of origin they may be persecuted because of their race, nation, religion, political opinions or social class; there is a risk that the asylum seeker cannot or does not want to return into that country, or they are persecuted there for exercising their political rights and freedoms. Asylum can also be granted due to humanitarian reasons or to help unify a family. Apart from asylum, subsidiary protection is only granted for one year; if the legal reasons persist, it can be repeatedly extended to two years. In both Slovakia and the German-speaking countries, the asylum procedure evaluates the following aspects: justification of the request, meeting asylum requirements, risks for the receiving country. The Austrian law defines asylum procedure as “*the procedure which determines the refugee’s status*” – *Verfahren zur Feststellung der Flüchtlingseigenschaft*. The Slovak Act on Asylum (sk-zoa Section 2 g) No. 480/2002 Coll. specifies that the

asylum procedure includes: *asylum granting procedure*, *asylum withdrawal procedure*, *subsidiary protection prolongation procedure*, and *subsidiary protection withdrawal procedure*. In Slovakia, the asylum seeker can also be granted *tolerated residence* as a specific type of residence for the maximum of 180 days.

## Conclusion

Although the migration and asylum phenomena date back to the origins of the human civilisation, they are omnipresent in the current globalised world and represent alarming issues in the 21<sup>st</sup> Century. In Slovakia, they are viewed as relatively new phenomena – until recently, they remained in the periphery of the interest. This study aims to enrich the knowledge of this issue by providing a comparative insight. Its goal was to point out the political, institutional and legislative frameworks of asylum in the German-speaking countries: FRG, Austria, Switzerland, and in Slovakia and address the specificities of the asylum procedures in the respective countries in the contexts of the European law and the recent migration developments. The asylum procedures in the respective countries were analysed based on multiple resources and a legal comparison indicating that the current asylum policy and law systems are based on the EU legislation. However, the legal systems pertaining to the individual countries retain some specificities related to the differences in the development of their respective asylum and migration policy systems as well as political development. The majority of European countries including Austria, FRG, Switzerland and Slovakia have undergone legislative as well as institutional changes, which established a number of new institutions. This process was determined mainly by the large increase in the migration flows, increasing numbers of asylum seekers and TCNs, increasing pressure on the migration systems, which, in turn, reflected in the need to improve the efficiency of the migration system management. For example, the German-speaking countries introduced the fast track migration procedure in the last two years. Slovakia belongs among countries in which the asylum and migration system has adapted to the current needs over the recent decades by improving migrant supervision, asylum seeker protection, but also state and citizen security.

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