



# **MADE REAL – Making Alternatives to Detention in Europe a Reality by Exchanges, Advocacy and Learning**

Co-financed by the European Commission

European Refugee Fund

## **Completed Practices Questionnaire for the project MADE REAL**

**Slovenia**

**Saša Zagorc and Katarina Podlogar**

THE VIEWS EXPRESSED IN THIS PUBLICATION CANNOT IN ANY CIRCUMSTANCES  
BE REGARDED AS THE OFFICIAL POSITION OF THE EUROPEAN UNION

© 2015 All rights reserved



# MADE-REAL: Practices Questionnaire

---



## MADE REAL REPORT –

### ALTERNATIVES TO DETENTION FOR ASYLUM SEEKERS IN THE EU

### NATIONAL REPORT

Member State	Slovenia
Name of researcher & organisation	Saša Zagorc, Institute for Legal Research, Education and Counseling (ILREC), <a href="http://www.ipris.net">http://www.ipris.net</a>
Email address	Saša Zagorc: <a href="mailto:sasa.zagorc@pf.uni-lj.si">sasa.zagorc@pf.uni-lj.si</a> ; Katarina Podlogar: <a href="mailto:katarinapodlogar@gmail.com">katarinapodlogar@gmail.com</a>

The aim of this questionnaire is to collect data on practices in your national context with regards to alternatives to detention. It will be completed by the national NGO project partner. The references in the questions to the Reception Conditions Directive concern the version of 2003 (Directive 2003/9/EC) unless your Member State has already transposed the recast Reception Conditions Directive (Directive 2013/33/EU)

# MADE-REAL: Practices Questionnaire

## Definitions<sup>1</sup>:

**‘Applicant’** (term used by the directive) or **asylum seeker (A/S)** (term employed by us but which we understand as synonymous): means a third-country national or a stateless person who has made an application for international protection in respect of which a final decision has not yet been taken;

**‘Detention’**: means confinement of an applicant by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement;

**‘Final decision’** means a decision on whether the third- country national or stateless person be granted refugee or subsidiary protection status by virtue of Directive 2011/95/EU and which is no longer subject to a remedy within the framework of Chapter V of this Directive, irrespective of whether such remedy has the effect of allowing applicants to remain in the Member States concerned pending its outcome;

**‘Minor’**: means a third-country national or stateless person below the age of 18 years;

**‘Third-country national’** means any person who is not a citizen of the Union within the meaning of Article 17(1) of the Treaty and who is not a person enjoying the Community right of free movement, as defined in Article 2(5) of the Schengen Borders Code;

**‘Unaccompanied minor’ (UAM)**: means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States;

**‘Returnee’**: Third country national subject to a return decision

✚ Concerning alternatives to detention, regardless of the definition that we will adopt later, this research should cover all schemes that are understood by governments as ‘alternatives to detention’, even if through our analysis we might conclude that some of them in fact do not satisfy our understanding of what can be considered an ‘alternative to detention’.

---

<sup>1</sup> The definitions used are taken by the recast reception conditions directive (Directive 2013/33/EU) and the returns directive (Directive 2008/115/EC). As we know that the first is not yet in force and both of these instruments not applicable in all Member States examined, if national law differs at any point from these definitions please specify it in your answers.

# MADE-REAL: Practices Questionnaire

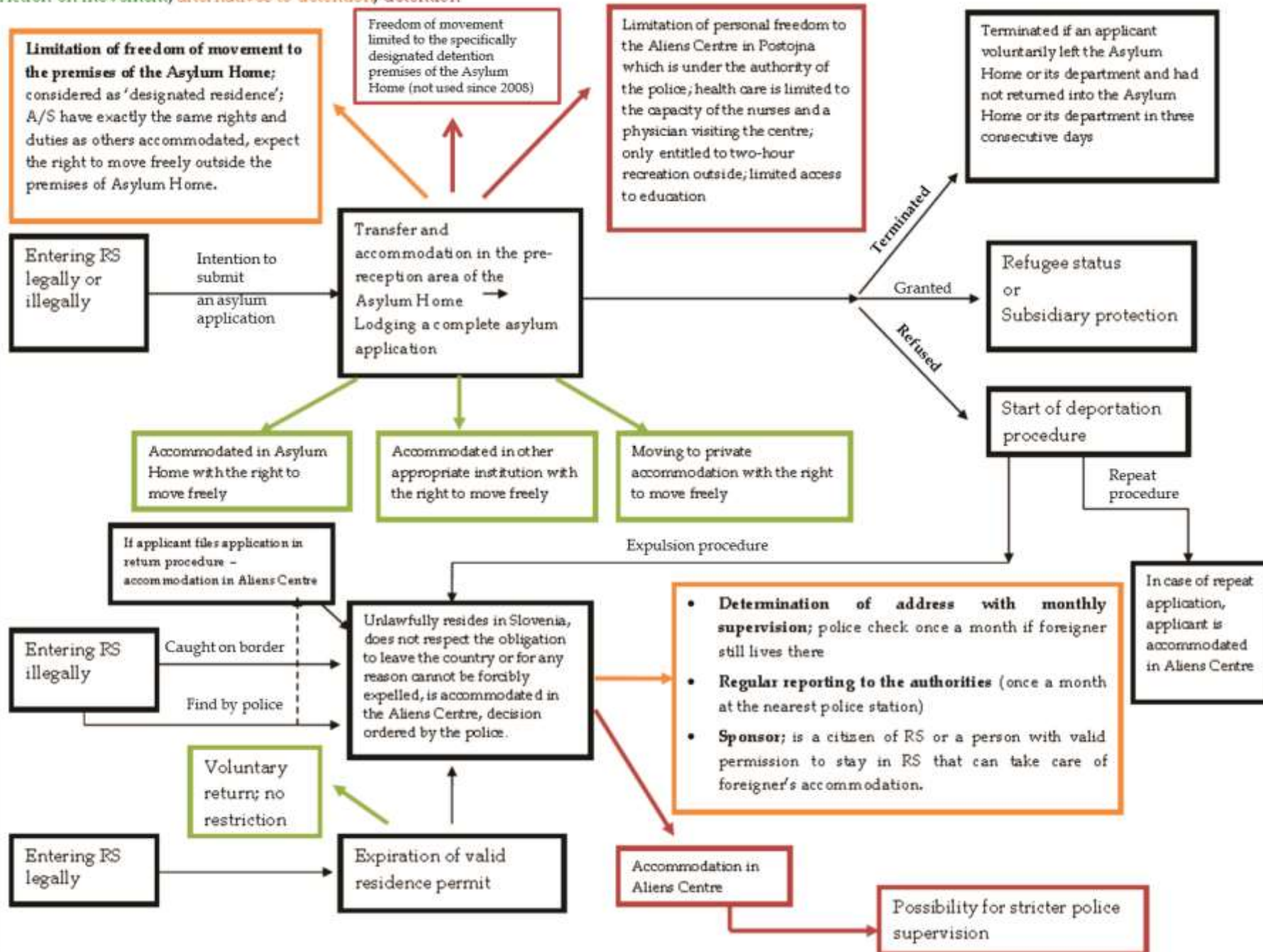
---

# MADE-REAL: Practices Questionnaire

No restriction on movement, alternatives to detention, detention

ASYLUM  
PROCEDURE

RETURN  
PROCEDURE



# MADE-REAL: Practices Questionnaire

---

## A. GENERAL

### Asylum seekers

Generally speaking, asylum seekers (A/S) have the right to move freely in the territory of the Republic of Slovenia (RS). There are exceptions to this rule in which detention or alternative to detention can be ordered (different terminology: International Protection Act uses the term '*limitation of freedom of movement*' to describe a situation of detention of A/S and also for situation of alternatives to detention of A/S) for the reasons set in Article 51 of International Protection Act adopted in 2011.<sup>2</sup> If necessary, applicants may be detained or put in the alternative scheme (for 3+1 months in maximum) on grounds of:

- establishing the identity of the applicant or
- suspicion on misleading and abuse of the procedure (especially for reasons mentioned in paragraphs 4, 5, 6, 7, 8, 9, 10, 12, 14 and 15 of Article 55 of this Act: if A/S falsely presented the reasons he or she is referring to, particularly when his or her statements are inconsistent, highly unlikely, insufficient or contradictory to the country of origin information; if A/S did not express, without a well-founded reason, the intention to lodge the asylum application as soon as possible, having had opportunity chance to do so; if A/S lodged the application merely with a purpose to delay or prevent deportation from the country; if A/S refuses to have his photograph or fingerprints taken; if A/S has grounded his or her application on false identification or forged documents or has withheld relevant information or documents with respect to his identity and/or nationality; if A/S has intentionally destroyed or alienated a travel document, an identity document with a photograph, revealing his identity or nationality or other document containing a photograph that would have helped establish his identity or nationality; if A/S has intentionally destroyed or alienated other documentation (documents, tickets, certificates etc.) that could bear significance in establishing his identity, nationality or eligibility for

---

<sup>2</sup> Relevant Slovenian legislation (Aliens Act and International Protection Act) uses the term limitation of freedom of movement (slo. *omejitev svobode gibanja*) without exception despite the fact that deprivation of personal liberty (slo. *omejitev osebne svobode*) would be more appropriate in many circumstances. Decision of the Constitutional Court Up-21/11 is instructive in this respect: "With regard to the intensity and manner of execution of the measure of restricting freedom of movement to the premises of the Aliens Centre (i.e. having to follow a schedule of daily activities, the mandatory wearing of clothing provided by the Centre, being under surveillance during all daily activities, the possibility to leave only with the special approval of the competent Centre inspector), such measure entails a restriction of the right to personal liberty determined in the first paragraph of Article 19 of the Constitution." Used terminology will be detention in cases where Aliens Act and International Protection Act use term limitation of freedom of movement.

## MADE-REAL: Practices Questionnaire

---

obtaining international protection; if A/S has filed another application for asylum stating, without justified reasons, other personal data; if A/S may pose a threat to national security or public order by committing a crime, or has been issued an executable decision on deportation as a side punishment, or if this punishment has already been carried out while the time limit prohibiting his or her entering into EU has not expired yet; or if A/S has withheld that he or she had previously lodged an asylum application in another country (multiple applications), particularly if by doing so he or she used false identification) or

- substantiated reasons of endangering lives or property of other people or
- to ensure transfer of A/S to a safe third country, if substantiated reasons exist that the A/S would like to evade the transfer (this does not concern Dublin transfers, that is subject of Article 59 of International Protection Act).<sup>3</sup>

Detention for A/S is foreseen in case of a Dublin transfer, an accelerated procedure and there is possibility of an isolation or quarantine due to public health concerns. However, detention for A/S is not foreseen in a border-cross related procedure because an alien is not considered A/S until a complete asylum application is filed to the Ministry of Interior at the Asylum Home. Hence, person is not yet considered an A/S in premises of the border police. Detention of a person who intends to cross or has already crossed the border line is allowed under Article 29 of the National Border Control Act only for the period of time which is absolutely necessary (which requires the border police to take into account the principle of proportionality), but for a maximum of forty-eight hours. If an alien asks for asylum, he or she is transferred to the Asylum Home. According to the Border Police Division Police, officers in processing an alien who has unlawfully entered in the RS first fulfil a registration form after the alien gives a statement and accompany it by required attachments (handwritten statement of the alien with a translation, a report on findings during the procedure, documents confirming alien's identity and any other evidence which are in alien's possession). If the alien is illiterate or for other reasons a statement cannot be handwritten by the alien, it is dictated to the translator by the alien. Alien signs the statement, if possible. An official confirmation is taken about all these facts, which is signed by a police officer, an alien and translator. Registration form is then

---

<sup>3</sup> This indent covers the concept of 'European safe third country', but Slovenian Constitutional Court issued a decision U-I-155/11 on Dec 18, 2013 that said: "Given the irreversible consequences if the applicant is subjected to torture or inhuman treatment, legislation which does not provide for suspense appeal against a rejection of an application for international protection due to the use of the concept of 'safe third country', is inconsistent with the right of effective judicial protection under the first paragraph of Article 23 of the Constitution and the right of an effective remedy under Article 25 of the Constitution." The Constitutional Court thus annulled Article 60 of International Protection Act, which covers concept of 'safe third country', and said that the concept of European safe third countries cannot be used in a given procedures until the legislator amends International Protection Act.



# MADE-REAL: Practices Questionnaire

sent to the Asylum Home, one copy is also given to the alien. If alien doesn't have financial means, the Police will take him/her to the Asylum Home.

**Table 1: Overview of illegal border crossings by citizenship**

	2009	2010	2011	2012
Afghanistan	13	54	215	296
Somalia	-	-	15	128
Algeria	-	-	4	122
Turkey	36	51	126	111
Croatia	110	94	81	86
Albania	47	85	44	76
Kosovo	95	33	35	69
Serbia	86	54	71	-
Pakistan	-	3	41	-
Bosnia and Herzegovina	208	162	-	-
Other	235	249	265	497
Total	830	785	897	1.385

(Source: *Illegal Migration, Annual report*, <http://www.policija.si/index.php/delovna-podroja/mejne-zadeve-in-tujci/622>)

In case of Dublin transfers, an applicant can be detained until the handover to other country, which does not mean that Slovenia has taken on the responsibility to process his application. According to Article 59 of International Protection Act responsible authority can order detention for A/S if on the basis of the criteria laid down in Regulation 2003/343/EC authority establishes that another Member State or acceding state to the EU Regulation 2003/343/EC is responsible for examining an application, the request (after following the procedure laid down in Regulation 2003/343/EC) is dismissed, and it is determined which EU Member State or acceding state to Regulation 2003/343/EC is responsible for the substantive examination of the application. In accordance with Article 51 and 59 of this Act the responsible body may detain A/S (until the transfer to the responsible Member state):

- who were issued a visa or a residence permit in another EU Member State, which is in accordance with the Regulation 2003/343/EC a reason for determination of responsibility of an EU Member State for processing an asylum application;
- for whom there is evidence or circumstantial evidence in accordance with the Regulation 2003/343/EC, including the data from the Chapter III of the Regulation 2000/2725/EC, that they unlawfully crossed the border of an EU Member State after arriving from the third-country;
- whose fingerprints are already in the Eurodac database in accordance with Regulation 2000/2725/EC;



## MADE-REAL: Practices Questionnaire

- for whom there is information in the VIS based on Regulation 20008/767/EC which, in accordance with the Regulation 2003/343/EC, is a reason for determination of responsibility of an EU Member State, or
- who have been issued a decision in accordance with Regulation 2003/343/EC that the RS is not going to assess their application.

According to information provided by Directorate for Migration, detention takes as little time as reasonably needed to carefully carry out all the administrative procedures to enforce the transfer. According to the International Protection Act, such action can last until termination of reasons or up to three months with a possible extension for another month, which is the maximum period of detention. The reasons for such detention are, according to the Directorate for Migration, risk absconding, repeatedly applying for international protection in the EU Member States and other circumstantial like if person has been in another EU Member State and has entered into Slovenia illegally, etc.

**Table 2:** Processing of applications for international protection under Regulation 2003/343/EC - Dublin procedure

	Admission 2010	Admission 2011	Admission 2012	Surrender 2010	Surrender 2011	Surrender 2012
Positive Response	177	118	136	22	44	58
Execution	87 (49, 15 %)	55 (46,61 %)	75 (55,15%)	24 (109,1 %)*	19 (43,18 %)	23 (39,66%)

\* Cases with positive responses received towards the end of 2009.

(Source: Internal Administrative Affairs, Migration and Naturalization Directorate,

URL: [http://www.mnz.gov.si/si/mnz\\_za\\_vas/tujci\\_v\\_sloveniji/statistika/](http://www.mnz.gov.si/si/mnz_za_vas/tujci_v_sloveniji/statistika/))

In 2013, there were 30 people returned under the Dublin procedure.

The Constitutional Court decided in the decision Up-21/11 that since the Republic of Slovenia consented to readmit the complainant into the country pursuant to the Dublin Regulation, an alien should have been treated as an international protection seeker from the time of his entry into the territory of the state onwards. In this regard, it was not admissible to order measures that are provided in law for aliens who are not international protection seekers. The complainant's freedom of movement could have been restricted only under the conditions that apply to restricting the freedom of movement of international protection seekers. The Administrative Court (the first instance court in the administrative dispute, adjudicating also in migration and asylum cases, with the seat in Ljubljana) in judgements I U 1591/2010, I U 1737/2010 and I U 1780/2010 expressed the view that returning A/S to Greece is not allowed due to protection of human rights and, therefore, ensuring the transfer to Greece cannot be considered a legitimate ground for detention. This means that if there is a 'hit' in Eurodac indicating that A/S fingerprints have already been taken in Greece, ensuring transfer to Greece

## MADE-REAL: Practices Questionnaire

---

according to Regulation 2003/343/EC cannot be the ground for detention. This also could apply to other countries with the same situation as Greece. In judgement I U 1564/2012, the Supreme Court (second instance judicial body in migration and asylum cases) reasoned that under Regulation 2003/343/EC each Member State has a possibility to transfer an A/S who already lodged an application for asylum in other Member State. A/S can argue that he/she wants his/her application to be examined in Slovenia unless the surrender would violate his/her human rights. In this case the applicant has not proved systematic violation of human rights in Italy because no competent institution (neither ECHR nor Commissioner for Human Rights nor UNHCR) has found it; an individual case of violation cannot be used in this case. In addition, A/S doesn't have any evidence that would prove inhuman treatment in Italy. Commonly known fact is that Italy has a huge number of applicants for international protection and that also in Italy (as well as in Slovenia) economic conditions are not favourable. This does not mean that in Italy automatically violates human rights. This was the last decision regarding prohibition on returning an alien to Italy. According to the Administrative Court judge, a more systematic approach in these cases depends on whether anyone will gather enough relevant information about the "systemic deficiencies and Asylum Procedures" in Italy or in any other country (Cyprus, for example, the return of refugees from Syria which would then be subjected to human rights violation) and in his opinion, also Hungary could be a problem, because they have not established yet the system of judicial control according to Article 5 of the ECHR for detained A/S, as ascertained by the ECtHR in the case *Lopko Toure*.

In judgement U-I 969/2012, the Administrative Court said that a mere fact of a 'hit' in the Eurodac database does not constitute sufficient grounds for detention of an A/S due to the necessity test required to be observed for such an action.

In an accelerated procedure A/S can be detained because of suspicion on misleading and abuse of the procedure (for exhaustive reasons see point two of Article 51 of International Protection Act mentioned above). According to the Directorate for Migration, a detention order may be issued first and the accelerated procedure takes place later.

Possibility of an isolation or quarantine due to public health concerns is held in a special area of the Asylum Home. An alien undergoes a sanitary-disinfection and preventive health check-up before filing a complete asylum application. If there is a suspicion that he/she has dangerous infectious disease, the alien will be put in the insolation room. If conditions are severe he/she is taken to ER. In the Asylum Home there is (in accordance with The Asylum Home rules, Off. Gazz. RS, n. 62/2011) an isolation area which comprises of physically separate rooms in sanitary-disinfectant tract designed for people with infectious diseases. If necessary, such person will be taken to hospital, with no special protection there. The Asylum Home workers escort patient to the hospital. Medical condition of such A/S is monitored by a nurse and a doctor.

## MADE-REAL: Practices Questionnaire

---

The freedom of movement may be limited to the premises of the Asylum Home or to the specifically designated detention premises of the Asylum Home which is under the authority of the Division for accommodation, care and integration within the Internal Administrative Affairs, Migration and Naturalization Directorate of the Ministry of Interior. Asylum Home is stationed on the outskirts of Ljubljana. Asylum Home is a set of four closely positioned functional buildings on a large area with green tree curtain. The objects situated on the area of 3388 m<sup>2</sup> of which 2215 m<sup>2</sup> is intended for accommodation facilities for A/S (rooms , lavatories , kitchen, club room). Capacity of Asylum Home is 203 people and in the administrative part is place for about 60 employees. The facility has also a sanitary-disinfectant tract, isolation, clinic, dining room, multipurpose room, room for religious activities and the work of NGOs. The accommodation part is divided into sections for single men, families , women, unaccompanied minors and a section where it is, in accordance with the International Protection Act, possible to enforce detention (according to the Ministry of Interior not used since 2008). Four rooms and accompanying facilities were adjusted to accommodate persons with physical disabilities. A/S are accommodated in rooms of size 15 m<sup>2</sup>, with two or four beds, depending on the category of A/S. Accommodation capacities are flexible, which means that in case of sudden increasing number of A/S accommodation facilities can be very rapidly rearranged (to up to 400 people), followed by adjustment of all accompanying facilities.

The Ombudsman, in its role as the National preventive Mechanism (NPM), visits the Asylum Home once per year without announcement to examine conditions of the facility. In its report from 2011 and 2012 it was said that the official capacity of facility had been significantly higher for several years than the actual number of persons accommodated. Living conditions are acceptable and persons to whom they talked did not raise any issues related thereto. Some items of the inventory or equipment of accommodation rooms indicate that replacement will eventually be necessary. The NPM particularly commended the practice which enables the applicants to carry out work (for example, taking part in painting) for which financial compensation is also awarded (however, only a small amount), as well as activities in various fields. It was proposed that options should be examined for the Asylum Home to provide work for even for more applicants. In its response to this recommendation, the Ministry of the Interior explained that applicants in the Asylum Home carry out those jobs for which the need arises. There is therefore a constant need to clean various rooms and the Centre's surroundings, making up beds, painting, etc. Occasionally this also included mowing the lawn, killing weeds, removing snow, as well as assisting in everyday communication between officials and other applicants, etc. In 2011, tasks of this kind were carried out by 41 applicants. It was stressed that applicants are informed about the opportunity to carry out maintenance work and that a suitable job is found for every applicant who expresses an interest in doing so.

## MADE-REAL: Practices Questionnaire

Additionally, freedom of movement of A/S may also be limited to the Aliens Centre<sup>4</sup> in Postojna which is under the authority of the Police, a body within the Ministry of Interior. In practice, in the last couple of years, freedom of movement hasn't been limited to the specifically designated detention premises of the Asylum Home. Who is subject to which measure is decided by an individual assessment in each case. After the interview with A/S and when all evidence is collected, an inspector makes a decision where they should accommodate A/S. According to The Directorate for Migration, Freedom of A/S may be currently restricted only to the premises of Asylum Home. A possibility in the International Protection Act to restrict movement to the "specifically designated area *within* the Asylum Home" is still in force, and there is no intention from the Government to delete this option from the Act.

Available statistics for International protection.

**Table 3: Number of new residents in Asylum Home seeking international protection by gender**

Applicants for international protection - gender	2009	2010	2011	2012
Men	160	197	285	255
Women	42	49	37	49

(Source: Internal Administrative Affairs, Migration and Naturalization Directorate,

URL: [http://www.mnz.gov.si/si/mnz\\_za\\_vas/tujci\\_v\\_sloveniji/statistika/](http://www.mnz.gov.si/si/mnz_za_vas/tujci_v_sloveniji/statistika/))

**Table 4: Number of new residents in Asylum Home seeking international protection by age**

Applicants for international protection - age	2009	2010	2011	2012
0 - 13	33	24	38	47
14 - 17	31	39	55	55
18 - 34	101	129	179	141
35 - 64	33	52	49	60
65 -	4	2	1	1

(Source: Internal Administrative Affairs, Migration and Naturalization Directorate,

URL: [http://www.mnz.gov.si/si/mnz\\_za\\_vas/tujci\\_v\\_sloveniji/statistika/](http://www.mnz.gov.si/si/mnz_za_vas/tujci_v_sloveniji/statistika/))

<sup>4</sup> A quick clarification, the Aliens Centre in Postojna acts in dual capacity. On the one hand, it only implements (without having any legal competence over the status of A/S) in its facilities detention decisions issued to A/S by Ministry of Interior's Division for accommodation, care and integration. On the other hand, as it will be shown *infra*, it also has a competence as a decision-making body for detention and alternatives to detention decisions concerning returnees.

# MADE-REAL: Practices Questionnaire

**Table 5: Number of new residents in Asylum Home seeking international protection by nationality**

<b>Applicants for international protection by nationality</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
<b>Total</b>	<b>202</b>	<b>246</b>	<b>322</b>	<b>304</b>
BIH	41	28	6	
Republic of Croatia	11	7	2	9
Republic of Kosovo	28	20	19	18
Albania	8		1	
Republic of Serbia	19	5	17	13
Iraq	4	10		
Pakistan	6		28	12
Palestine	2	10	7	
Sri Lanka	6			
Iran	9	11	11	
Republic of Moldova	2		3	
Turkey	15	32	51	27
Russian Federation	5	8	4	
Montenegro	2		2	
People's Republic of China	2	1		
Afghanistan	12	31	67	64
Macedonia	3	1		
Stateless	1		1	
Eritrea	1	3	1	
Ghana	2			
Cameroon	3		1	
Nigeria	11	11	6	
Guinea	2			
Liberia	1			
Georgia	1	3	1	
India	2		3	
Morocco	1	4	12	9
Sudan		8	5	
Somalia		7	20	20
Algeria		6	13	26
Syria		6	11	32
West Sahara		6	4	
Senegal		4		
Tunis		3	25	9
Congo DR		2	2	

## MADE-REAL: Practices Questionnaire

Ukraine		1	5	
Cuba		1		
Kirgizstan		1		
Guinea		1		
Bolivia		1		
Sierra Leone		2	1	
Mongolia		2		
Egypt			6	
Libya			6	
Gambia			4	
Yemen			1	
Kazakhstan			3	
Belarus			1	
Other				55

(Source: Internal Administrative Affairs, Migration and Naturalization Directorate,

URL: [http://www.mnz.gov.si/si/mnz\\_za\\_vas/tujci\\_v\\_sloveniji/statistika/](http://www.mnz.gov.si/si/mnz_za_vas/tujci_v_sloveniji/statistika/))

**Table 6: Number of people with international protection**

Recognized status	1995 - 2009		2010		2011		2012	
	M	W	M	W	M	W	M	W
Refugee status under the The Geneva Convention	48	28	16	5	7	6	18	1
	76		21		13		19	
Asylum on humanitarian reasons	56	33	0	0	1	2	0	0
	89		0		3		0	
Subsidiary protection	16	5	1	1	6	2	14	1
	21		2		8		15	
Total	186		23		24		34	

(Source: Internal Administrative Affairs, Migration and Naturalization Directorate,

URL: [http://www.mnz.gov.si/si/mnz\\_za\\_vas/tujci\\_v\\_sloveniji/statistika/](http://www.mnz.gov.si/si/mnz_za_vas/tujci_v_sloveniji/statistika/)).

Until the end of November 2013, 62 decisions on detention were issued to A/S, from which 49 cases of detention were carried out in the Aliens Centre in Postojna and 13 in the premises of the Asylum Home in Ljubljana. According to the source from the Division for accommodation, care and integration this is, compared to previous year, a normal statistic. Most decisions on detention were issued to A/S from Pakistan (12), then Afghanistan (8), Algeria (6), Kosovo (6), Tunisia (4), Morocco (3), Russia (3), Syria (3), Turkey (3), Somalia (3), Eritrea (2), Nigeria (2), Bosnia and Herzegovina (1), Montenegro (1), Iran (1), Cuba (1), Palestine (1), Serbia (1) and Ukraine (1). In 2013, there were 13 decisions ordering restriction of movement to the premises of Asylum Home. Eleven out of 13 A/S fled from the Asylum Home and voluntarily left it. One citizen of Kosovo has been transferred in accordance with the Regulation

## MADE-REAL: Practices Questionnaire

2003/343/EC and one citizen of Somalia is still in the Asylum Home. (Source: *Internal Administrative Affairs, Migration and Naturalization Directorate*).

Grounds on which an A/S can be detained during the asylum procedure:

Grounds		Comment
Identity verification, in particular if the persons have no or false documents	Yes	<p>An A/S cannot be detained on the sole ground that he or she does not have a valid identification document.</p> <p>According to the judgement I U 1369/2012 of the Administrative Court, the responsible authority should first determine a doubt in the A/S's credibility concerning claimed identity with another circumstance than just the fact that A/S does not possess an official document with an image in accordance with the Aliens Act. These additional circumstances should be such to allow the authority to substantiate a doubt in the credibility of identity. In judgement I U 1780/2010 of the Administrative Court, it was stressed that the fact that a person entered the country with or without a valid identification document should not be a sole reason for detention. This means that a responsible authority should, when deciding on detention, consider if an A/S had any chance to enter in RS with a valid identification document, or if the fact that A/S does not possess such documents indicates a sufficient doubt in credibility of claimed identity. If responsible authority finds a substantial reason to doubt the credibility with additional circumstance or circumstances, it should nevertheless explain why detention order is needed. This position was confirmed in the Supreme Court judgement I Up 400/2012. From Administrative court judgement I U 10/2012 follows that if an applicant does not possess any identification document together with the evidence that he or she changed identification data in the past and that he or she already left Slovenia twice before asylum procedure was finished constitutes grounds for detention. This was also confirmed in the Administrative Court</p>



## MADE-REAL: Practices Questionnaire

		judgement I U 187/2012.
Abuse of procedure and unfounded claims	Yes	Usually this ground is considered under suspicion on misleading and abuse of the procedure. In the Supreme Court judgement I Up 636/2011 it is said that an alien should file an asylum application as soon as he or she comes to Slovenia, a long delay can be a reason for suspicion on misleading and abuse of the procedure for delaying deportation. Elements used when assessing this ground are: fake presentation of the reasons, statements are contradictory or in contradiction with the publicly accessible information about country of origin; if A/S did not ask for asylum in the shortest time possible (usually this means the same day), rejection of taking fingerprints and photographing, stating fake data about themselves and submission of falsified documents.
Protection of public order or national security	Yes	The legislation allows detention on the ground of preventing the threat to other persons' life or property. In our view, the wording in national legislation may include protection of national security. No administrative practice has been identified in this regard though. Not fully related, but worth highlighting, national security is explicitly mentioned under Article 55 of International Protection Act as a ground for refusal of the application in an accelerated procedure is situation in which the applicant presents a danger to the national security or public order of the state, and due to these reasons, a title of execution of leaving the country has been served on him as a secondary sentence, or the title of execution for leaving the country has already been exercised, while the deadline for prohibiting him entry to the European Union has not yet expired.
Public health	Yes	In our view, normal routine checks amount to limitation of freedom of movement; however, longer treatment in isolation could be considered as deprivation of liberty. Before accommodated

## MADE-REAL: Practices Questionnaire

		in the Asylum Home, applicants have sanitary and disinfecting and preventive health check, sanitation and disinfection covers examination of the skin and scalp, followed by washing and changing clothes. In case of infection an applicant can receive a temporarily restriction of movement, he/she is placed in a special room where treated by nurse in the Asylum Home. If needed, nurse calls for doctor or, if necessary, an alien is taken to ER.
Risk of absconding	Yes	The fact that an applicant illegally crossed border cannot be sufficient reason to establish risk of absconding, but it can gain relevance together with other circumstances, <i>e.g.</i> further illegal crossing of the border, leaving the country before the end of asylum procedure. Such position was confirmed in the Supreme court judgement I Up 128/2013 (17.04.2013), A/S was without documents or other permission to stay or reside in EU, he crossed the borders of EU Member States, also left Slovenia between his first procedure for international protection and went to Switzerland and according to his statements he wants to go to Italy or Germany, the Court upheld the administrative authority that it is a high probability that he will leave Slovenia again, therefore, detention in the Aliens Centre was confirmed. However; the judgement does not provide an answer if one additional circumstance establishes a sufficient risk of absconding or should there be several (number of circumstances) or on the intensity and causal link with absconding (relevance of circumstances).

The Division for accommodation, care and integration of the Internal Administrative Affairs, Migration and Naturalization Directorate of the Ministry of Interior is responsible for assessing the above listed grounds in practice. According to the Ministry of Interior, they also examine other data related to applicant when deciding on detention, *e.g.* data from Eurodac, data from other country authorities (information from countries where applicant was before coming to Slovenia), all the information gathered in previous procedures, sometimes applicants change story and that can be reason for suspicion, and, if available, from applicant. Previous

## MADE-REAL: Practices Questionnaire

---

criminal activity, general behaviour, (un)willingness to cooperate and other factors influence the decision of the Ministry of Interior if the A/S should be detained at all and then in which facility (Postojna or Ljubljana) he or she will be placed. These elements are used when assessing the risk of absconding, abuse of procedure and unfounded claims and identity verification, in particular if applicants have no or false documents.

There is currently no prohibition to impose the measure of detention on minor children of asylum seekers or unaccompanied minors, who are asylum seekers, meaning that such measure can be imposed on them as well. However, since December 2010 when the amendments to the International Protection Act came into force, it is no longer permitted to detain unaccompanied minors in the Aliens Centre in Postojna during the time of determination of their international protection status. If this measure is imposed on them, their freedom of movement can be limited only to the premises of the Asylum Home in Ljubljana which is, according to Ministry of Interior, an alternative to detention. From the same source, unaccompanied minors are not detained at all in practice. But, on the other side, according to NGO PIC there are cases where restriction is ordered to unaccompanied minors and families. Other vulnerable groups of aliens are accommodated with regard to their needs if facilities are available; *e.g.*, elderly people and people with disabilities are accommodated on the ground floor (there is possibility to access all facilities on the ground floor with wheelchair) and pregnant women and other vulnerable groups who need a more peaceful and quiet environment are accommodated with less people in a room or in more peaceful parts of the Asylum Home, if the capacities are available. It happens very rarely that they are accommodated in other institution (elderly home, psychiatric institution). There is no protocol in which case A/S is accommodated in other institution, the responsible authority makes an *ad hoc* decision based on specific circumstances of the case.

In judgement I U 1218/2013, the Administrative Court stated that, in regard to Article 51 of International Protection Act, the responsible authority has discretion powers on the basis of the grounds outlined in the law when deciding on detention. Thus, the court can only check if limits of discretion were exceeded when reviewing administrative decisions taken at the first instance. In the administrative act, based on discretion, all circumstances for reaching decision (legal and actual) should be explained. The court also stipulates that a ground of risk of absconding should be used not only for decisions on what kind of limitation on freedom of movement will be applied (detention or alternative thereof) but also for the decision if limitation on freedom of movement should be applied at all. Furthermore, the Court said that the most lenient measure assuring presence of A/S in procedure should be always used. In another judgement I U 912/2010 the Administrative Court emphasized that, according to proportionality test, the responsible authority should give reasons why it used a specific limitation of movement and why more lenient measures cannot be applied. In I U 969/2012 judgement, the Court noted that, in spite of ECtHR use of arbitrariness test, stricter necessity test applies under EU legislation.

## MADE-REAL: Practices Questionnaire

---

The necessity test of proportionality applies also under Slovenian Constitution, a position confirmed with the decision of Constitutional Court Up-1116/09. Also, a strict necessity test should be always used when considering grounds of detention. For example, according to judgement I U 1396/2012 of the Administrative Court, the responsible authority did not comply with the necessity test of proportionality since it did not explain why detention in the Aliens Centre is more appropriate than similar limitation to the premises of the Asylum Home. Responsible authority did not take into consideration the fact that A/S has a problem with kidneys and has to walk a lot and the fact that he is a member of orthodox religion and that he cannot practice his religion in the Aliens Centre. In Administrative Court judgement I U 1353/2011 it was said that when responsible authority establishes that risk of absconding exists, they should nevertheless consider whether it would be possible to ensure with a less severe measure that A/S will be present for the asylum procedure. In judgement U 733/2007 of the Administrative Court it was stressed that the Asylum Act (now Article 51 of International protection Act) clearly defines that detention may be ordered if needed. This means, according to the Courts, that the responsible authority should always first consider a less severe measure.

According to the Ministry of Interior, vulnerable groups of A/S are treated with a special sensitivity. They check all circumstances that may indicate that an A/S should be treated as vulnerable. Under Article 38 of the International Protection Act alien undergoes a sanitary-disinfection and preventive health check-up before filing complete asylum application which may already show some indications of vulnerability. Such information with elements of vulnerability is used also in a decision on alternatives to detention. According to the International Protection Act vulnerability is determined on the basis of an individual assessment. In Article 15, it is said that vulnerable persons with disabilities, especially children, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with children, victims of rape, torture or other forms of psychological, physical and sexual violence are guaranteed special attention, care and treatment. The specific needs and vulnerability under this Act shall be determined on the basis of an individual assessment of the needs of an applicant, a refugee or a person who has been granted subsidiary protection. In the case of accommodation of vulnerable people with special needs has to take into account the specific situation of these persons and bring them to adapt to material reception conditions, medical and psychological counselling and care.

In case there is a doubt on whether a person is a minor or not a physical exam (according to the Asylum Home, not 'bone screening'), may be ordered in accordance to the medical protocol in the Medical Home Ljubljana Vič, the closest medical centre to the Asylum Home in Ljubljana. In case the test does not show with certainty that a person is not a minor he or she would be regarded and treated as minor. During the whole procedure, a legal guardian has to be appointed to the person claiming he or she is a minor. So far, two examinations were ordered and both ended with a result that a person is minor.

## MADE-REAL: Practices Questionnaire

---

According to the Administrative Court judge, judicial branch reviews not only relevant information collected in procedure at the Ministry of Interior but also other circumstances and documents (in case something was overlooked by the Ministry, sometimes A/S presents or finds documents later or sometimes mental problems surface in the aftermath of first interview). One other relevant circumstance is if A/S should be accommodated in the Asylum Home rather than in the Aliens Centre.

According to the Ministry of Interior, they examine systematically alternatives to detention in each individual case before resorting to a detention measure. But according to the judge of the Administrative Court, Ministry of Interior examines them rarely; there are some indications (especially number of escapes from Asylum Home: 11 out of 13) that point out to a lack of proper evaluation of the facts on the side of authorities or to the possible conclusion that alternatives to detention are issued to those A/S who show greater risk of absconding than normally and they in fact should be detained and not put in the alternative scheme. As a consequence, one may assume that the Ministry of Interior wants (or, does not oppose actively, at least) them to flee in order to be able to halt proceedings for international protection for such A/S (after three days of a self-will departure from the Asylum Home, Article 50(2) of the International Protection Act). Such an assumption has been made on the basis of facts that according to the Ministry of Interior ratio of escapes is quite high for the last couple of years and that the Ministry of Interior had not addressed yet the issue to the full extent to lower the number of escapes. Also NGOs (PIC in particular) noticed this problem, but since there is a chance that the Ministry of Interior would apply detention measures more severely, they do not point out this problem as seriously as it should be. In the view of the Administrative Court's interviewee, on the other hand, some A/S who show *prima facie* a sincere willingness to cooperate with authorities in asylum procedure are detained. According to the same source, there were two such cases in 2013; the one where A/S was detained despite the full cooperation in asylum procedure and the other where all circumstances indicated a conclusion that A/S will escape as soon as he would have a chance. The underlying cause of abovementioned actions might be that for most of A/S Slovenia is not their country of destination. According to the Border Police, Slovenia is the destination country only to some citizens of former Yugoslavia countries (because of employment possibilities, language proximity and relatives); for others, it is only a transit country. Other reason might be that the percentage of successful applications for the status in Slovenia is very low, only 15% in 2012, a trend that has resulted in that there no relevant A/S communities have been established yet in Slovenia.

Alternative to detention currently used for A/S in RS is limitation of freedom of movement to the premises of the Asylum Home which is under the authority of the Division for accommodation, care and integration of the Internal Administrative Affairs, Migration and Naturalization Directorate of the Ministry of Interior. The nature of this type of alternative to detention is not completely clear. In the strictest way, we may consider it a detention with some mitigating measures (quasi-alternative to detention, alternative form of detention). On the other hand, it could be

## MADE-REAL: Practices Questionnaire

---

considered an alternative in the form of a 'designated residence' as A/S detained in the Asylum Home have exactly the same rights and duties as others accommodated in the same facility, except the right to leave the Asylum Home, for example, to go to the city center. In practice, the control of detention in the Asylum Home is not very strict. The Ministry of Interior compares it to the concept of house arrest (home detention) and therefore considers it as an A2D. There are also strong arguments contra this position (the same procedure is applied, the law regulates detention and does not explicitly mention alternatives, the Asylum home is hardly considered a familiar place, etc.).

There is no diversity between different groups; alternatives to detention can be applied to all A/S.

Alternatives to detention for A/S can be applied in case of Dublin transfers as well and in accelerated procedure. There is no diversity between different groups as well.

### **Returnees**

Every alien who entered the RS without a legal basis and/or no longer has a legal basis for staying in Slovenia has to leave the country immediately or in a time limit set by the competent body for leaving the country. A TCN, who unlawfully resides in Slovenia and does not respect the obligation to leave the country and for any reason cannot be forcibly expelled and his or her identity is not established, is 'accommodated' in the Aliens Centre in Postojna on the basis of a detention order issued by the Police. Even though Article 76 of Aliens Act uses the word 'accommodation', it is really a regime of detention that the alien is subject to, as the Aliens Centre is a Police facility of closed type. An alien can be detained in the Aliens Centre or detained under stricter police supervision which means further deprivation of liberty within the premises of the Aliens Centre (aliens are limited to one section of the Aliens Centre and are allowed to less time outside than others), in accordance with Article 77 of Aliens Act and the House Rules of the Aliens Centre. Under the Article 77 of Aliens Act, the Police issues a decision to impose a stay under strict police supervision in the following cases: if the alien has already attempted to avoid deportation through absconding or has actively resisted deportation; if the alien has infringed the rules of stay in the Centre or does not observe lawful orders and instructions of authorized officers; if the circumstances and the alien's actions indicate that the alien intends to avoid deportation.

From 2007 to 2012, 2623 returnees were detained in the Aliens Centre and on average they spent 16,3 days there. (*Source: Police*).



# MADE-REAL: Practices Questionnaire

**Table 7:** Number of detained TCN by ground for detention

Primary Reason	2008	2009	2010	2011	2012
Illegal entry, illegal stay	512	408	313	250	359
Accommodated - return according to bilateral agreement	133	131	141	156	59
<b>Total</b>	<b>645</b>	<b>539</b>	<b>454</b>	<b>406</b>	<b>418</b>

(Source: Aliens Centre)

**Table 8:** Number of detained TCN by Citizenship

	2009	2010	2011	2012
Macedonia	20	10	7	3
Moldova	5	8	11	3
Romania	5	5	6	3
China	3	3	4	3
Montenegro	9	9	4	2
Iraq	7	5	4	2
Georgia	3	2	2	0
Nigeria	11	7	5	5
Ukraine	6	7	5	7
Croatia	14	2	7	7
Serbia	32	19	22	9
Albania	21	5	4	11
Russia	1	5	4	11
Syria	0	1	2	15
Bosnia and Herzegovina	53	27	25	16
Turkey	14	10	9	17
Kosovo	85	68	35	20
Pakistan	25	0	10	22
Morocco	4	9	4	23
Somalia	0	1	1	24
Algeria	5	3	3	38
Afghanistan	21	23	23	81
Other countries	84	103	72	38
<b>Total</b>	<b>408</b>	<b>313</b>	<b>250</b>	<b>359</b>

(Source: Aliens Centre)



# MADE-REAL: Practices Questionnaire

**Table 9:** Percentage of detained TCN by gender

	2008	2012
Men	74	71
Women	9	9
Unaccompanied minors	8	15
Children	9	5

(Source: Aliens Centre)

**Table 10:** Number of voluntary returns, attempted forced returns and successful forced returns

	2008	2009	2010	2011	2012
Total number of voluntary returns	388	263	213	154	53
Total number of attempted removals (forced returns)	28	38	25	27	6
Total number of successful removals (forced returns)	28	38	25	27	6

(Source: Aliens Centre)

**Table 11:** Number of return decisions which were postponed

Primary Reason	2008	2009	2010	2011	2012
Non-refoulement	7	19	15	2	14
More lenient measures (Article 81 of Aliens Act)	28	12	8	4	3
Application for international protection	53	35	28	50	35
<b>Total</b>	88	66	51	56	51

(Source: Aliens Centre)

**Table 12:** Number of cases a TCN failed to return to relevant country within the given timeframe of the voluntary departure period and the primary reason for failure

## MADE-REAL: Practices Questionnaire

Primary Reason	2008	2009	2010	2011	2012
Absconding	5	3	5	0	12
Acquiring a residence permit	37	33	37	47	78
<b>Total</b>	<b>42</b>	<b>36</b>	<b>42</b>	<b>47</b>	<b>90</b>

(Source: Aliens Centre)

**Table 13:** Number of people returned or accepted on the basis of international agreements

	People, who foreign security bodies returned to Slovenian police officers				People, who Slovenian police officers returned to foreign security bodies			
	2009	2010	2011	2012	2009	2010	2011	2012
Italy	79	48	108	118	64	68	62	21
Austria	44	28	15	20	17	25	15	17
Croatia	46	46	54	48	506	429	513	1.005
Hungary	13	10	11	15	94	54	20	21
Airport	112	120	82	110	27	29	38	25
<b>Total</b>	<b>294</b>	<b>252</b>	<b>270</b>	<b>311</b>	<b>711</b>	<b>605</b>	<b>648</b>	<b>1.089</b>

(Source: Aliens Centre)

In 2013 IOM-Ljubljana carried out 20 voluntary returns from which 2 persons were accommodated outside the Aliens Centre under more lenient measures. They met and arranged the return at the IOM office in Ljubljana; otherwise IOM is present in the Aliens Centre once or twice per month.

All aliens who are in the process of voluntary return have no restriction of movement. On the other hand, all 'forced' returnees can be detained; no category of returnees is exempted. There are no explicit exemptions provided by law for a particular vulnerable group, such as unaccompanied or separated children, families with children, persons with disabilities, persons with (mental) health issues, victims of torture or trauma, victims of human trafficking. Exceptionally, returnees can be accommodated in a medical facility or a social-care centre due to a health situation. Exceptions are made in case of a poor health situation of an alien if physician determines that he or she is not capable to stay in the Aliens Centre, but this happens very rarely. There are no specific rules when alternative accommodation for this category could apply, so *ad hoc* decisions are made by the Police based on circumstances in specific case and availability of the alternative accommodation.

In Article 82(2) of the Aliens Act it is set that an unaccompanied minor shall be accommodated in agreement with a guardian for special case at adequate accommodation facilities for minors and, only in case when that is not possible, in

## MADE-REAL: Practices Questionnaire

---

the Aliens Centre. The Social work Centre Postojna is on the basis of Article 82 of Aliens Act responsible for assigning a guardian for special case to unaccompanied minors. They also assign a guardian for special case to adult aliens without capacity to exercise their rights. They provide to them the following assistance: familiarization with their rights; representation before public authorities; cooperation in the return process and representation in legal proceedings e.g. in the case of physical assault.

According to Social work Centre Postojna, who usually acts as a legal guardian for special case, there are no alternative accommodation facilities available for minors. They are accommodated in the Aliens Centre, despite the fact that this is highly inappropriate for their needs and notwithstanding a mitigating factor that they receive a separate accommodation in a special section of the Aliens Centre. It is supported that if an unaccompanied minor moves freely outside the Aliens Centre, there is a possibility to become a victim of human trafficking. Social work Centre Postojna are trying to carry out procedures as quickly as possible, usually it takes 3 to 4 days and rarely longer than two weeks. Under the Article 18 of House Rules of the Aliens Centre, unaccompanied minors are given a permit to leave the Centre. However, in practice, it is not clear if an unaccompanied minor does or does not have a restriction on freedom of movement. In 2013, Social Work Centre Postojna lodged one application for Permit to Leave the Centre. If an unaccompanied minor does not come back to the Aliens Centre, Centre would notify Social Work Centre Postojna and police would revoke the permit and search him/her with the intention to bring him/her back to the Centre.

Social work Centre Postojna also takes care of adults aliens without capacity to exercise their rights due their mental illness. Unlike in case of unaccompanied minors, there are no specific criteria about who will take care of accommodation (in our view, a competence issue), therefore they have lots of problems finding the right accommodation for them.

Families with children are usually accommodated in the Aliens Centre as well, they can be accommodated sometimes in the Student dormitories in Postojna and they usually don't have the restriction on freedom of movement. As an unaccompanied minor, they can get a Permit to Leave the Centre, but they have to report to the aliens Centre as ordered with the permission once a day or every week. In the Aliens Centre there is a separate wing for families as well.

According to the Police, most of returnees are detained on the ground of establishing identity (there is no official statistic, only personal estimate of the interviewee). Beside that returnees are detained on the ground of risk of absconding, failing to depart from the country by the deadline and for any other reason resulting in that they cannot be removed immediately (e.g., arrangement of travel documents and/or travel preparations, such as route choice and police authorities cooperation), Latter are usually reasons for extension of detention.

Detention in the Aliens Centre, accommodation outside the Centre or detention under stricter police supervision is ordered by the Police. According to them, they

## MADE-REAL: Practices Questionnaire

---

collect relevant data from Eurodac, from other country authorities, from embassies, from returnee and they also check returnee's history, for example, if he or she has already been in a return procedure, if he or she has been convicted previously and if she or he changed identification data during previous procedures.

Similarly to judicial review of A/S proceedings, judicial branch reviews not only relevant information collected in the Police procedure or by Ministry of Interior but also other circumstances which may show that returnees should not be accommodated in the Aliens Centre but were overlooked by competent authorities. In judgement of the Administrative Court I U 1562/2011, it is said that authorities should first give an alien a chance for voluntary return and if he or she does not follow this obligation they can initiate a deportation procedure and accommodate him or her in the Centre. In judgement I U 799/2012, the Administrative Court reasoned that the Aliens Act does not allow any discretion on detention decision (*i.e.* the Police *shall* order restriction of movement, Article 76 of the Aliens Act) and that detention is allowed only for the purpose proscribed with the law. Competent authority has a duty to examine grounds for detention in accordance with the proportionality test.

Police is an authority responsible for adopting decisions on accommodation at the Aliens Centre and decisions to stay under strict police supervision (first instance administrative level). Administrative Court provides a judicial review of decisions imposing detention issued by the Police (first level judicial instance). Supreme Court provides a judicial review of decisions made by Administrative Court (second level judicial instance). According to the Aliens Centre, they have a conversation with each person before deciding on detention, during this interview it is also examined if a person should be treated as vulnerable. They check if circumstances indicate a victim of human trafficking, for example, the circumstance if a family is the genuine one not just a cover for trafficking. Returnee also undergoes a sanitary-disinfection and preventive health check-up which may show some indications of vulnerability. All gathered information is used in a decision on alternatives to detention.

According to the Aliens Centre, they examine alternatives to detention systematically in each individual case before resorting to a detention measure. However, according to the source from the Administrative Court, the Aliens Centre examines alternatives to detention rarely; however, no firm position could be made due to lack of adjudicated cases. The biggest problem seems to be that returnees do not have a legally guaranteed access to legal information before the decision on alternatives or detention and do not have free legal assistance at the first level of judicial control. Number of cases before the Administrative Court related to detention and alternatives to detention of returnees is significantly smaller than the number of cases related to A/S, despite the fact that number of aliens in return procedures in Slovenia exceeds the number of A/S. Therefore, one would expect the contrary, but in practice there have been only few applications filed by returnees so far.

## MADE-REAL: Practices Questionnaire

---

According to the Aliens Centre, a determination of address with a monthly supervision is usually used as an alternative to detention, but also regular reporting to the authorities occasionally (once a month at the nearest police station) and determination of sponsor (guarantor). A measure of determination of address does not mean a restriction on freedom of movement within the premises at this address (e.g., in the sense of a house arrest), but that Police checks approximately once a month if an alien still lives there. Sponsor is a citizen of RS or a person with valid permission to reside in RS and shows that he or she can take care of alien's accommodation and daily subsistence.

An interesting aspect in practical implementation and official understanding of the alternatives has been offered by the Aliens Centre. They hold that the tolerated stay (leave to remain, similar to German *Duldung*) that may be issued in the return proceedings as a special decision of any Police Station in Slovenia or the Aliens Centre in Postojna is one of the alternatives to detention. Permission to stay in the Republic of Slovenia shall be granted to an alien to remain temporarily in Slovenia, but it does not cancel or in any way change the alien's obligation to depart from the country. It is granted by the Police at the request of the alien or ex officio for a period of six months due to one or several grounds in Article 73 of the Aliens Act. The permission may be renewed at the alien's request or ex officio for as long as the conditions exist. In our view, the tolerated stay as such is a specific legal ground to stay and remain in Slovenia in the capacity of a free individual despite the possibility that circumstances may change and the returnee will be returned to designated country at any time. The reasons provided by the Return Directive in order to detain someone are not fulfilled and at the same time the person is given some kind of status. Since tolerated stay may be issued even after expiry of 12 months of return proceedings, i.e. maximum amount of time for detention of a returnee, this renders the position of the Aliens Centre inconsistent. Nevertheless, the position of the Aliens Centre has beneficial effects to some extent for returnees with the alternative to detention in the form of »tolerated stay« since it guarantees them basic monthly allowance. However, additional obligations, such as regular reporting, deposit, submission of documents, etc., may be also put on someone who has been issued an alternative to detention due to the abovementioned position of the Aliens Centre and Article 73(5) of Aliens Act. The latter provided that if there are reasons to suspect that the alien with tolerated stay decision would attempt to avoid deportation, certain obligations such as regular reporting to the nearest police station, deposit of an adequate financial guarantee, submission of documents or the obligation to stay at a certain place may be imposed on him or her. In 2013, the Aliens Centre issued permission to stay in 23 cases. Permission to stay is independent from the detention period. It can be ordered before maximum detention period is over and after this period expires. It is issued as soon as the grounds from Article 73 of the Alien Act are given. Together with permission to stay some additional obligations are given to alien, like an obligation to report or a stay at designated address.

# MADE-REAL: Practices Questionnaire

---

In 2013, detention in the Aliens Centre was replaced with the alternative in 4 cases (Source: the Aliens Centre). Due to lack of statistics concerning alternatives to detention, it is hard to draw any firm conclusions concerning possible differential treatment of returnees in this regard. Since many of the returnees are over-stayers predominantly with the citizenship of one of ex-Yugoslav countries and over-stayers are normally given either tolerated stay or a decision on alternative to detention, this could be an indication of a preferential treatment according to nationality or ethnic origin. But such treatment can be justified, in our experience, with pre-existing accommodation of returnee, well established relations with relatives in Slovenia, language proximity, etc. We may, therefore, fairly assume that there is no illegitimate diversity between different groups in ordering detention or alternatives to detention.

A border procedure, Dublin transfer and an accelerated procedure are not regulated with the Aliens Act. They are covered by International Protection Act since all these situations are reserved for A/S procedures.

## **B. Functioning of the alternatives to detention**

### **Asylum seekers**

According to the Directorate for Migration, alternative to detention in use for A/S in the RS is a limitation of freedom of movement to the premises of the Asylum Home (as the only alternative scheme). In their view, this could be considered as a 'designated residence' since A/S with limited scope of freedom of movement in the Asylum Home have exactly the same rights and duties as others accommodated there in the same facility, except the right to leave the Asylum Home, for example, to go to the city centre. Other applicants accommodated in the Asylum Home get a document verifying their status as A/S and with this document they can leave the premises. On the other hand, A/S put in the alternative scheme does not get this document in possession at any time; document is stored in the Asylum Home at the reception. They can move around only within premises of the Asylum Home with obligation not to leave the Asylum Home. In practice, even aliens with the limited freedom of movement can easily exit the premises of the Aliens Centre. There is no data what sanctions are inflicted on the A/S upon his/her return within three days of self-will departure. After three days of self-will departure, proceedings for international protection are halted. In our view, these (mostly factual) circumstances cannot have influence on the (legal) question whether there are alternatives for detention for A/S in Slovenian legislation or not. In our view, there are compelling arguments that there is only an alternative form of detention provided in the legislation (the same procedure is applied, the law regulates detention and does not explicitly mention alternatives, no distinguishing criteria for detention and



## MADE-REAL: Practices Questionnaire

---

alternatives to detention are provided in the legislation, the Asylum Home is hardly considered a familiar place, etc.).

The Division for accommodation, care and integration of the Internal Administrative Affairs, Migration and Naturalization Directorate of the Ministry of Interior is the institution in charge of deciding which individuals should be submitted to this alternative, only in cases of unaccompanied minors they have to cooperate with Social Centre Vič who looks after the best interest of a child. They are also responsible for implementing/running this scheme, not NGOs.

According to Ministry of Interior, special needs of particular vulnerable groups are taken into account in the implementation of alternative and vulnerable people are usually completely free to move around the Asylum Home, but there is no explicit legal provision that would ensure respect for special needs of vulnerable individuals and vulnerable groups. General constitutional principles, such as respect of human dignity, may apply in such cases. According to the Administrative Court judge, the Ministry of Interior should also put special attention on elderly aliens and aliens in risk of committing suicide. According to NGO PIC, psychiatric care is not functioning well in Asylum Home; authorities are incapable of finding psychiatrist with adequate knowledge for the work in the Asylum Home. Since most of the A/S need psychiatrist due to harsh life experiences, this is a big problem in the Asylum Home. The Ombudsman, in its role as the National preventive Mechanism (NPM) points it out that Asylum Home still cannot provide the assistance of a psychiatrist who could be present in the Asylum Home. Such assistance is currently provided as an emergency medical aid in Community Health Centre Vič or at the University Medical Centre Ljubljana. The Ministry of the Interior explained that they were aware of the importance of regular psychiatric assistance provided to applicants within the scope of the Asylum Home since numerous applicants accommodated there had adaptation issues and some even experienced serious medical conditions (schizophrenia and similar). Owing to this issue, the proposal for the Act amending the International Protection Act envisages explicitly including a psychotherapeutic treatment within the additional scope of health care services since lack of such treatment had proved to be a deficiency in practice. In the Ministry's opinion, this option would enable A/S to be suitably treated.

There is no diversity between different groups; alternative to detention can be applied to all A/S, if conditions are met.

Under Article 50(2) of International Protection Act, asylum procedure can be terminated if the competent authority establishes that an applicant left voluntarily the Asylum Home or its department and has not returned into the Asylum Home or its department within three consecutive days. With termination of asylum procedure all orders on detention or alternative to detention for A/S cease to have any legal effect. Such sanction corroborates the conclusion that no real alternatives to detention are in place in the Slovenian legislation since the normal sanction for infringing the



## MADE-REAL: Practices Questionnaire

---

conditions of alternative to detention would be a stricter measure, *i.e.* detention, and not halting the main proceedings.

### Returnees

Determination of address with monthly supervision means that the Police officer checks if a returnee still lives in the said address. Returnees have an obligation to notify the Aliens Centre if they moved to new address. Under regular reporting to the authorities returnees have an obligation to go and report at the nearest Police station approximately once a month. There are no specific standards on the manner and time intervals for reporting. According to the Police practice, interval for reporting is one month with a tolerance of one or two days; for example, if decision was made on 15<sup>th</sup> of March, returnee should report to the nearest Police station between 13<sup>th</sup> and 17<sup>th</sup> of April. If returnee is sick or for other excusable reason cannot report to the Police, he/she should make a phone call, explain the situation and report to the Police as soon as she/he can. If returnee does not comply with the obligation, detention can be ordered. Police station where a returnee should report notifies the Aliens Centre and the latter issues a detention order.

As a more lenient measure the Police may also determine an address for alien to stay. In case this is ordered *ex officio*, it is most likely that a returnee is not capable to be accommodated within the Centre, and then the Centre should find more appropriate accommodation (home for elderly persons, mental institution, or accommodation in agreement with the CSD). If ordered on a request of an alien, she/he should provide the address where he/she can stay until return. The Police require a consent of the owner of an apartment. Depending on the assessment of particular circumstances of each case, a decision on whether the alien shall be restricted to stay only at the place of residence can be made. Additionally, an obligation to report to the nearest police station may be added to the measure of determination of address.

Sponsor is a citizen of RS or a person with a valid permission to reside in RS and shows that he or she can take care of alien's accommodation and daily subsistence if the returnee does not have sufficient funds. Sponsor has to prove that he or she has enough financial means to support the alien. The sponsor may be asked to enclose documents with the letter of guarantee substantiating statements, for example, bank statements for the last 3 months. The sponsor with this letter guarantees that he/she will provide an alien with accommodation and/or cover all the costs of living in RS, including cost of medical expenses, cost of returning to country of return, potential cost of accommodating alien in the Aliens Centre or in the Asylum home and potential costs of deportation from the country. There are no provisions on administrative or criminal charges if the TCN absconds. This scheme can be combined with the reporting of the person to the authorities or visits of the Police authority to the sponsors place. This is ordered by the Police evaluating particular

## MADE-REAL: Practices Questionnaire

circumstances of each case. TCNs with sponsor are usually returnees with family connections in Slovenia.

The Aliens Centre is a special Police institution in charge of deciding which individuals should be submitted to these alternatives and they are also responsible for implementing alternatives.

Needs of particular vulnerable groups are taken into account in the implementation of these measures. In case of an unaccompanied minor, a guardian for special case is appointed. The Aliens Centre works in collaboration with the Social Centre in Postojna in case of an unaccompanied minor. An elderly alien or alien with severe health situation may be accommodated in an elderly Home (not a national institution) or a specialised medical institution. Costs of accommodation are always covered by the Aliens Centre.

If a returnee does not comply with obligations in the framework of the alternative to detention, stricter measures may be ordered. This happens when the returnee does not come to the Police station within one month or if the responsible authority carries out a control at the determined address and the returnee is not present. Police after noting of violation of alternative to detention measure, reports the violation to the Aliens Centre, which annul the alternative measure and order detention. The detention order can be appealed.

There is no diversity between different groups; alternatives can be applied to all returnees.

### C. ACCESS TO RIGHTS

#### Returnees

Returnees who are subject to an alternative to detention have access to healthcare, education and in some cases financial assistance

Right	Yes/No	Comment on the gaps
Healthcare	Yes	Basic healthcare issues may be addressed in the Aliens Centre by a competent medical staff. The Centre has a contract with two doctors who visit it on a regular base and they also have fully employed nurses who can offer medical assistance at any time. In case of emergency, aliens are treated in hospitals. Costs are born by public health care insurance

## MADE-REAL: Practices Questionnaire

		(publicly funded) system.
Education	Yes	Right to primary education is granted to children (a constitutional guarantee). Costs are born by state or local community budget. NGOs that work inside the Centre are PIC, IOM and Jesuit Refugee Association Slovenia. According to PIC, there is a problem with 'year' appropriate activities for aliens. E.g. they noticed that older minors colour pictures because there are no other activities. There were also NGOs who wanted to arrange seminars and activities for aliens, but were denied access by the authorities of the Centre.
Access to the labour market	No	There is no intention for granting returnees access to the labour market. It would definitely raise the living standard of returnees and more of them could afford to live outside the Aliens Centre.
In kind/financial assistance	Yes and no	If a returnee is put in Elderly home or other institution, the Aliens Centre takes care of the costs.  In practice, since returnees subject to alternative to detention are treated in the same way as returnees with tolerated stay, they receive a monthly basic allowance.

Returnees in alternative schemes have access to social and psychological assistance at all times through the Aliens Centre. According to the Aliens Centre, assistance is provided systematically and it is adequate. Aliens can get medical care that goes beyond emergency treatment, provided by civil doctors. According to NPM (Ombudsman as National Preventive Mechanism) 2011 report, NPM noticed the need for additional psychiatric support. After that the Aliens Centre entered into a contract with another psychiatrist, there are two psychiatrists working there now. According to NPM 2012 report it was specially commended that the issue of medical treatment is now recorded on special forms; that the clinic documents a medical history now (as in the general clinic) and that the Centre now also keeps a separate record which describes possible special events (self-harm, suicide attempts, etc.). Since the medical expert noted that not all aliens are examined by a doctor, NPM suggested in 2012 report that the Centre consistently implements in future Article 3 of Rules on Procedure for Accommodation in the Aliens Centre and on format and content of the identify card for permission to stay on the territory of the Republic of

## MADE-REAL: Practices Questionnaire

Slovenia (Official Gazette RS, no. 27/2012 from April 13, 2012) which defines a medical examination for every alien.

Returnees have access to information about the procedure concerning alternatives to detention throughout the procedure. They are informed orally (in a language they understand) about the reasons why they were submitted to these alternatives immediately after the decision on alternative to detention is ordered and within 48 hours in written form (in a language they understand) as well. According to the Administrative Court judge, authorities at the first level do not provide with a particular circumstances of each case, complete explanation of grounds for alternatives in the detention order, especially in case of detention order there is no explanation why a less coercive measure could not apply. Sometimes authorities do not follow previous court judgements and decisions, especially the Constitutional Court's decisions which have an *erga omnes* effect.

### Asylum seekers

Asylum seekers who are subject to an alternative to detention have access to healthcare, education, accommodation and financial assistance. According to judgement of the Administrative Court I U 1369/2012 they also have a right to practice religion or perform basic customs.

Right	Yes/No	Comment
Healthcare	Yes	Under the Article 84 of International Protection Act, A/S have the right to emergency health services, which include the right to emergency health care and emergency rescue transport as decided by the doctor and the right to emergency dental help; emergency treatment as decided by the treating doctor; female health care which includes contraception, abortion and health care of pregnant women and women during delivery. Emergency treatment includes: the functioning of vital functions, stopping severe bleeding and prevention of haemorrhage, prevention of further decline of health condition, which could cause long-term damage on individual organs or vital functions, treatment of shock, services for chronic diseases and conditions, which, if abandoned would cause handicap, other permanent health impairments or death,

## MADE-REAL: Practices Questionnaire

		<p>treatment of fever conditions and prevention of major infection, which might lead to septic condition, treatment or prevention of poisoning, treatment of broken and strained ones and other traumas, where medical intervention is necessary. Asylum Home employs one nurse, doctor comes to Asylum home if a request is made by the nurse.</p> <p>Vulnerable groups, that is, people with special needs and other applicants for international protection in exceptional cases have the right to access additional health services, which are determined and approved by a special commission. According to NGO source, the right is granted when necessary only. In case of a psychiatric assistance, it is rare since there are major problems with providing psychiatric assistance in general due to a lack of expert in domain of working with A/S. Minor asylum seekers are entitled to health care services under the same conditions as citizens of Slovenia.</p>
Education	Yes	<p>They have full access to all kind of educational programs organized in the Asylum Home; Slovenian language course, Slovenian history. Children of asylum seekers and unaccompanied minors have the right to elementary-school education. In practice, minors usually attend elementary school Livada which accepts appx. 10 to 15 minors from the Asylum Home each year (Source: Elementary school Livada). All asylum seekers have the possibility (while minor asylum seekers have the right) to access education in vocational and secondary schools under the same conditions as citizens of Slovenia. Asylum seekers are also entitled to access higher and university education under the same conditions as Slovenian citizens. The burden of proving the level of education obtained in the country of origin is on the asylum seeker. There are also some other courses organized in the Asylum Home</p>

## MADE-REAL: Practices Questionnaire

		<p>by NGOs. In 2012, the following programs for the A/S were financed: Programs for vulnerable persons (NGO - Jesuit Refugee Association Slovenia 50.090,00€ until June 2013); Assistance with accommodation and care (NGO - Institute of African Studies 236.072,00€ until June 2013); Information and legal advice (NGO - PIC 148.886,00 until June 2013); Learning Slovenian language in the Asylum Centre (NGO - Cene Štupar 54.972,00€ until June 2013) and PATS - Introducing mechanisms to identify, assist and protect victims of trafficking or sexual violence (NGO - Jesuit Refugee Association Slovenia 15.600,00€ until November 2013). A/S with the limitation of movement can visit all seminars that are organized in the Asylum home without any obstacles. For activities outside the Asylum Home, it depends on the type of activity. If A/S are limited to the premises of Asylum Home, aliens are accompanied by the worker of Asylum home (forth and back) in case of medical emergency or visiting other doctor (dentist, psychiatrist) or going to school (minors). If they need to stay in hospital, there is no special guardian for the risk of absconding.</p>
Access to the labor market	No	<p>Accesses to labour market, the rights of asylum seekers are limited. Only asylum seekers whose identity has been fully established and who have not been issued a first instance decision in nine months, without the delay being caused by them, have the right to acquire a work permit with a validity of three months. Since alternative measure can apply for 4 months in maximum, A/S in alternative scheme have <i>de facto</i> no access to the labour market.</p>
In kind/financial assistance	Yes	<p>They have right to basic care which includes food, hygienic items, clothes and shoes. They get allowance; in 2013 it was 16€ per month, in 2012 and 2011 it was 20€ per month.</p>

## MADE-REAL: Practices Questionnaire

---

Asylum seekers in alternative schemes have access to social and psychological assistance all the time in the Asylum Home. According to the Ministry of Interior, assistance is provided systematically and it is adequate. According to the NGO PIC and Ombudsman as National Preventive Mechanism), there is a problem with adequate psychologist help, there is an open vacancy for a psychologist in the Asylum Home but there is no appropriate candidate that would take this job.

Asylum seekers have access to information about the procedure concerning alternatives to detention throughout the procedure and, according to the NGO PIC, it is adequate and sufficient. They are informed orally (in a language they understand) about reasons why they were submitted to these alternatives immediately after decision on alternative to detention is ordered and within 48 hours in a written form (in a language he or she understands) as well. Decisions on detention and on alternative to detention are the same in procedural aspect. According to judgement I U 635/2012 of the Administrative Court, a four days delay of serving a decision in a written form is not sufficient reason for annulment of the decision on limitation of freedom of movement. This position was confirmed by the Supreme Court judgement Up 313/2009. According to the Administrative Court judge, authorities at the first level do not provide with complete explanation of grounds for alternatives in the order. Additionally, in case of detention order there is no explanation why lenient measure could not apply instead of detention. Administrative Court judge argues that Ministry should explain why less lenient measure could not apply in each case of detention order for A/S.

A/S have an access to NGO's PIC for legal counselling and information. PIC is present at the Asylum Home every day. A/S can also contact PIC by phone. On the second instance (Administrative court) and third instance (Supreme Court) of decision-making, a consultant for refugees may also provide support and legal assistance to A/S in connection with proceedings for international protection. Upon the arrival to the Asylum home, A/S receives a list with the names and telephone numbers. A/S calls the consultant by himself/herself, with help of social service or representative of non-governmental organizations. Assistance is sufficient and adequate. Counsellors for refugees get payment from the Ministry of Interior. Their work is free of charge for the asylum seekers.

### D. REMEDIES

#### Asylum seekers

In practice, the maximum period during which an asylum seeker can be submitted to the alternative is 3 months, which may be prolonged for a further one month. That



## MADE-REAL: Practices Questionnaire

corresponds to the maximum period of detention. Alternatives are usually prolonged on ground of difficulties with establishing identification. In judgement of Administrative Court I U 2306/2011 it was stressed that the main question in a decision on extension of the alternative is if legal grounds for detention still exist. If not, A/S should be immediately relieved from any form of alternative to detention.

An applicant has a right to appeal the decision on alternatives. In practice that happens on average in half of the cases; for example, in 2013, 6 cases of the administrative dispute (*i.e.*, request for judicial review in administrative matters) were filed at the Administrative Court out of 13 decisions on limitation of freedom of movement to the premises of the Asylum Home. In the year 2013, the Administrative Court set aside detention decision and remanded the case for re-examination in 9 cases. Ministry of Interior responded immediately and transferred an applicant from the Aliens Centre to the Asylum Home. In two cases the Administrative Court indicated that an applicant should be accommodated in the Aliens Centre instead of the Asylum Home and in one case that there was no legal ground for limitation of freedom of movement to the premises of Asylum Home. On average, the Administrative Court needed little more than 3 days to decide (3, 17 days). (Source: Ministry of Interior).

An appeal may be lodged at the Supreme Court against a judgement or an order of the Administrative Court. The Supreme Court needed 18,72 days on average to issue a decision. In 2013, in one case the Supreme Court decided that there is no legal ground to limit freedom of movement to the premises of Asylum Home. According to the Supreme Court judgements Ips 327/2012 and Ips 245/2011, an asylum seeker has a duty to prove that he or she has legal interest throughout the court proceedings (in the sense that the Court positive judgement would improve A/S's legal position). According to the Administrative Court, major criteria in the judicial review are mostly the necessity test (proportionality test), complete explanation of grounds for detention or alternative to detention and test of coherence of argument. The Court does not often have a possibility to engage into substantive review of grounds for detention or alternative to detention, because the application does not meet the procedural requirements, applicants are in most cases missing legal interest, so Court has to discard the appeal without checking the substantive reasons for detention.

**Table 14:** Applications for international protection – decisions on I. Instance, II. Instance and III. Instance.

Application for international protection	2005	2008	2009	2010	2011	2012
Filed	1674	260	202	246	358	304
Considered*	2.157	409	308	357	495	428
Solved	1.848	325	228	239	392	328
Recognized status	26	4	20	23	24	34
Adjudicate **	1120	164	96	120	177	110

## MADE-REAL: Practices Questionnaire

Rejection	38	12	23	27	40	57
Third safe country	3	0	0	14	73	52
Rejected applications	661	145	89	55	78	75
Complaint to Administrative Court of RS – II. instance****	/	/	77	42	78	/
Granted the appeal and returned to re-process	/	/	23	32	20	/
Ministry appealed to the Supreme court of RS III. instance	/	/	23	17	25***	/
Granted the appeal	/	/	12	9	13	/

\* Filed + pending from previous year + returned to re-process

\*\* In most cases procedure stops because applicants for international protection voluntarily leave the Asylum Home and not wait for the first decision on his application.

\*\*\* Appeals against decisions issued in 2010, a complaint filed in 2011

\*\*\*\* In the case where an application for international protection was rejected in 2011 in 80% (2010 in 79%, 2009 86%) of all cases an administrative dispute was filed.

(Source: Internal Administrative Affairs, Migration and Naturalization Directorate, URL: [http://www.mnz.gov.si/si/mnz\\_zavaz/tujci\\_v\\_sloveniji/statistika/](http://www.mnz.gov.si/si/mnz_zavaz/tujci_v_sloveniji/statistika/))

Asylum seekers have access to legal counselling for the whole procedure, but they have to apply for it (application only, no other requirements). On first instance at the Ministry of Interior, representatives from NGOs (for example, PIC) are responsible for offering legal assistance and at later stages, also attorneys and counsellors for refugees may offer legal assistance at the Administrative court and the Supreme Court. Legal assistance is free of charge if an applicant can't afford it.

For the whole asylum procedure, an applicant has in possession a document certifying his or her status as applicant for international protection. But in case of limitation on freedom of movement to the premises of the Asylum Home, the document (the document certifying that he has asked for asylum right) is kept by the authorities.

### Returnees

The maximum period during which a returnee can be submitted to an alternative to detention is 6 months, which may be prolonged for further six months. Alternatives are usually prolonged on ground of difficulties with obtaining the documents for return. The total amount of 12 months corresponds to the maximum period of detention. According to the Aliens Centre, average number of days living in the centre in 2013 is 16,3 days.

## MADE-REAL: Practices Questionnaire

---

Under the Article 81 of the Aliens Act, the Police may, *ex officio* or at the request of an alien, replace the measure of obligatory accommodation at the Centre with less coercive measures provided that this also enables deportation of the alien from the country. No appeal is permitted against a decision by which an alien's request for a more lenient measure was refused. However, aliens can appeal against decisions on detention, claiming that the detention measure is too strict and lenient measures should apply. Returnees have a right to appeal the decision on alternative to detention if a decision was made *ex officio* by the Police, *i.e.* in case where an alien argues that no restriction on freedom of movement is needed. In practice, that has not happened yet. One reason is that until now there was no free legal counselling available for returnees and the other that measures are really lenient and applicant do not file complaints.

There is no free legal counselling offered to returnees at the first instance (Police inspector in the Aliens Centre, administrative body), it is provided only for appeals on return decisions (but not on detention decisions) at the second and third level (both judicial levels) before the Administrative Court and before the Supreme Court. The draft legislation, currently discussed in the national parliament, provides that free legal counselling will be offered to returnees concerning return decision (but again, not on detention decisions) also at the first instance. Free legal aid could be provided by other state authorities, national NGOs and international NGOs. According to the Ministry of Interior, national NGOs responsible for offering legal advice are supposed to be PIC and IOM Slovenia. No firm conclusions on how effective such legal aid could be may be made at this point; however, in our view, effective access to justice for returnees could provide for an improvement of standards and legal argumentation in detention and alternative to detention proceedings as well, in particular if the return decision is accompanied with detention decision.

### E. COST EFFECTIVENESS AND EVALUATION MECHANISMS

#### Asylum seekers

Bearing in mind a possibility of different interpretations, the only alternative to detention currently in use for A/S in RS is limitation of freedom of movement to the premises of the Asylum Home. It could be considered as 'designated residence' since A/S detained in the Asylum Home have exactly the same rights and duties as others accommodated there in the same facility, except the right to leave the Asylum Home for example to go to the city centre. There were no other alternatives operationalized in the past.

Until the end of November 2013, 62 decisions on detention were issued to A/S, from which 49 to the Aliens Centre in Postojna (detention *stricto sensu*) and 13 to the

## MADE-REAL: Practices Questionnaire

---

premises of the Asylum Home (alternative to detention); it is a normal statistic in comparison to previous year. Disappearance rate among people submitted to the alternative measure is very high, 11 out of 13 A/S fled last year through a loose fence or front door when security guards is on a walk around the Asylum Home.

The main difficulties/obstacles in the implementation of the alternative is non-compliance. Most A/S flee; control over them at the Asylum Home is insufficient. According to NGO PIC, authorities advised security guards to wear handcuffs to look stricter with intention to make this scheme of work more effective.

Costs of alternative to detention and detention are more or less the same, since A/S are accommodated in the same facility in Ljubljana or in the Police institution in Postojna and have more or less the same scope of cost-sensitive rights inside the these facilities. The resources put into the alternative scheme are low; only regular administrative costs and cost of translating a decision (30€ per 1.500 characters) apply, other costs are the same as for those in the Asylum Home without any restriction. The amount of cost per day for A/S in the Asylum Home is 7,20€ + 18,00€ allowance per month per A/S.

These schemes are not evaluated on the basis of cost effectiveness systematically or regularly and no other alternatives have even been tested for A/S.

### Returnees

Alternatives to detention apply usually for over-stayers or returnees with legally residing relatives in Slovenia. The Police does not collect data how many decisions were made, but according to them, there are currently more returnees in the alternative scheme than in the Aliens Centre. Most commonly (appx. half of the cases), a determination of address with monthly supervision is ordered as an alternative. Regular reporting to the authorities and determination of a sponsor are sometimes used as well. According to the Police, the determination of address is the most lenient measure and they consider it a successful control mechanism of a returnee until his or her return. There were no other alternatives operationalized in the past.

Rate of disappearance among returnees submitted to one of the alternative measures is, according to the Police, very low and does not differ among different schemes. We assume that a strong promotion of voluntary return has a positive influence on such outcome.

According to the Police, main difficulties/obstacles observed in the implementation of these alternatives are costs. Detention in the Aliens Centre costs 15,10€ per day/person (information from 2013 provided by Aliens Centre). Alternatives cost practically nothing since only returnees with permission to stay are granted social help 260€, other returnees are without any financial support from state. Ombudsman

## MADE-REAL: Practices Questionnaire

---

warns in its report that this may result in illegal work. There are also some practical difficulties with assuring basic medical assistance since it is provided in the Aliens Centre in Postojna. If a returnee is accommodated elsewhere, he or she must come to the Centre which may lead to transportation and costs for travel difficulties which are all covered by the alien himself or his sponsor. No subsidiary system of basic medical assistance in nearby towns to the place of accommodation of a returnee is envisaged. According to the Aliens Centre, they can arrange a doctor visit for returnees from Ljubljana since the doctor, under contract with the Aliens Centre has also a dispensary in Ljubljana. In case of a sponsor, he or she is responsible to cover all costs incurred in connection with the stay and accommodation (including health cost) of an alien in the Republic of Slovenia and also for the return/deportation to their home country.

The resources put into each of schemes are low; it takes appx. 5 minutes for all activities concerning regular reporting to the Police authorities and monthly supervision at an address. The supervision if a returnee still lives on the address is usually done simultaneously with other Police work in the area. It basically does not take any extra time or cost. According to the Police estimates, such activities cost on average 15€ per case.

These schemes are not evaluated regularly, more lenient measures were adopted in Slovenian legislation in 1999 and the only change in content since then was that since 2011 no appeal is permitted against a decision by which a returnee's request for a more lenient measure was refused.

### F. OTHER

#### Recommendations for a better application of A2D

On a systemic level, legislation on detention in international protection proceedings should explicitly set up rules on alternatives to detention and introduce a variety of them in order to delineate alternative forms of detention from alternatives to detention better. In particular, obligation of A/S to report daily to the authorities at the Asylum Home would address better some shortcomings of the current system.

The Administration Court judge suggested that the Ministry of Interior should consistently use the strict necessity test when deciding on detention of asylum seekers or returnees and more systematically examine alternatives in each individual case before resorting to detention measures. Minors should never been detained in the Aliens Centre and other more appropriate facilities for accommodating unaccompanied minors and families with child should be guaranteed to them. It was also stressed by the judge that civil society should actively collaborate in procedures, in particular due to poor knowledge of A/S or returnees about their rights in

## MADE-REAL: Practices Questionnaire

---

asylum/return procedures as well as detention procedures. Effective legal assistance should be provided to asylum seekers and, in particular due to non-existent legislation in this regard, to returnees.

Strengths of the system of alternatives to detention in Slovenia are its relative flexibility and less intense interference with human rights standards. Promotion of a voluntary return accompanied with alternative to detention diminishes an inclination of a returnee to engage in legal proceedings.

Good practice in return procedure is determination of address with monthly supervision of returnees because it is the most lenient measure with low disappearance rate.

The weaknesses of the system of alternatives to detention are adequacy and effectiveness in asylum procedure and risk of assessment abuse in both procedures. Absconding rate of A/S from the Asylum Home is abnormally high. This research demonstrates a doubt in good intentions of Slovenian alternatives to detention scheme for A/S, based on (1.) high rate of absconding from Asylum Home (more than 80% in 2013), (2.) low rate of recognized status (in less than 15% in 2012) and (3.) high rate of halted procedures due to self-will departure of A/S from the Asylum Home (36% in 2012 and 50% in 2011). Additionally, Slovenia is not the country of final destination and not many TCN' communities, with exception of ex-Yugoslav countries and Albanians, are well established in Slovenia. Combined with no active policy from government towards changing the rates of absconding, this indicates that absconding is implicitly tolerated. Therefore, we support the change in public policy on detention within the scope of the legislation in order to guarantee the full effectiveness of the EU and national law.

Another weakness is lack of any rules on access to legal information concerning detention in return proceedings. EU legislation in this regard has not been transposed yet, a fact that makes judicial review of detention decisions virtually inexistent.

Indications of bad practice in the asylum procedure are cases where an alternative to detention is issued to that A/S who shows greater risk of absconding than normally, and therefor they should be detained rather than put into alternative scheme. Similarly, indications of bad practice are opposite cases where some A/S who show *prima facie* a sincere willingness to cooperate with authorities in asylum procedure are detained, in these case it would be more appropriate to put them into alternative scheme or even not limited at all.

Weakness of some alternatives to detention solutions in return proceedings is their limited application *ratione personae*. For example, there are not many third-country nationals' communities in Slovenia and for this reasons returnees have less chances to get a sponsor or to find a designated place to stay.

Alternative to detention should always apply when dealing with children with family or unaccompanied minors, which is not the case in all return proceedings.



## MADE-REAL: Practices Questionnaire

Government should also strive to provide more appropriate accommodation facilities for vulnerable people than at the Aliens Centre currently. In particular, closed Police facility like the Aliens Centre is not appropriate for minors and people with mental disorder. According to NGO PIC, an protection seeking family with small children were detained in the Aliens Centre this year. These occurrences contrasts with the view of responsible authorities that alternatives to detention are applied in all cases if possible and cannot applied more broadly. But according to Administrative Court judge and NGOs, alternatives to detention are not widely applied, mostly due to a weak sensitivity of the competent authorities for protection of human rights and not consistent application of the necessity test. Disrespect of special needs of certain vulnerable groups in the Aliens Centre needs to be emphasized, in particular since the legislation obliges the Ministry of Interior to provide for separate accommodation in specific cases.

People interviewed for the research:

<b>Name of the organisation/institution</b>	Administrative Court of the Republic of Slovenia
<b>Name of individual contacted</b>	Boštjan Zalar, PhD
<b>Position/function of the individual</b>	High Court Judge
<b>Email address</b>	<a href="mailto:bostjan.zalar@sodisce.si">bostjan.zalar@sodisce.si</a>

<b>Name of the organisation/institution</b>	Aliens Centre, Slovenia
<b>Name of individual contacted</b>	Aleksander Bračko
<b>Position/function of the individual</b>	Assistant Head of the Aliens Centre
<b>Email address</b>	<a href="mailto:aleksander.bracko@policija.si">aleksander.bracko@policija.si</a>

<b>Name of the organisation/institution</b>	Internal Administrative Affairs, Migration and Naturalization Directorate, Slovenia
<b>Name of individual contacted</b>	Matjaž Dovžan
<b>Position/function of the individual</b>	Director of the Office for Migration
<b>Email address</b>	<a href="mailto:Matjaz.Dovzan@gov.si">Matjaz.Dovzan@gov.si</a>



## MADE-REAL: Practices Questionnaire

<b>Name of the organisation/institution</b>	Internal Administrative Affairs, Migration and Naturalization Directorate, Slovenia
<b>Name of individual contacted</b>	Peter Škrlič
<b>Position/function of the individual</b>	Public employee at the Asylum Home
<b>Email address</b>	<a href="mailto:peter.skrlic@gov.si">peter.skrlic@gov.si</a>

<b>Name of the organisation/institution</b>	Non-affiliated counsellor
<b>Name of individual contacted</b>	Mojca Nadles
<b>Position/function of the individual</b>	Consultant for refugees
<b>Email address</b>	<a href="mailto:mojcanadles@gmail.com">mojcanadles@gmail.com</a>

<b>Name of the organisation/institution</b>	Pravno informacijski center (PIC); Legal-informational centre for NGO's, Slovenia
<b>Name of individual contacted</b>	Miha Nabergoj
<b>Position/function of the individual</b>	Legal consultant
<b>Email address</b>	<a href="mailto:miha.nabergoj@pic.si">miha.nabergoj@pic.si</a>

<b>Name of the organisation/institution</b>	The Border police Division,
<b>Name of individual contacted</b>	Melita Močnik, Robert More
<b>Position/function of the individual</b>	Head of the Border police Division and Senior Police Inspector in Border police Division
<b>Email address</b>	<a href="mailto:robert.more@policija.si">robert.more@policija.si</a> , <a href="mailto:melita.mocnik@policija.si">melita.mocnik@policija.si</a>

<b>Name of the organisation/institution</b>	The Social work Centre Ljubljana - Vič
<b>Name of individual contacted</b>	Štefan Lepoša
<b>Position/function of the individual</b>	Director of the Social work Centre
<b>Email address</b>	<a href="mailto:stefan.leposa@gov.si">stefan.leposa@gov.si</a>

# MADE-REAL: Practices Questionnaire

<b>Name of the organisation/institution</b>	The Social work Centre Postojna
<b>Name of individual contacted</b>	Patricija Može, Valentina Sedmak
<b>Position/function of the individual</b>	Director of the Social work Centre and Legal assistant in Social work Centre Postojna
<b>Email address</b>	<a href="mailto:valentina.sedmak@gov.si">valentina.sedmak@gov.si</a> , <a href="mailto:patricija.moze@gov.si">patricija.moze@gov.si</a>

<b>Name of the organisation/institution</b>	International Organization for Migration, Slovenia
<b>Name of individual contacted</b>	Iva Antončič
<b>Position/function of the individual</b>	Project Assistant at IOM
<b>Email address</b>	<a href="mailto:iantoncic@iom.int">iantoncic@iom.int</a>

## 1 BIBLIOGRAPHY

1. Aliens Act (ZTuj-2), Official Gazette of the Republic of Slovenia, No 50/2011 of 27 June 2011.
2. Draft amendments of the Aliens Act: <http://imss.dz-rs.si/imis/95f083b4cd81952f1720.pdf>.
3. International Protection Act (ZMZ), Official Gazette of the Republic of Slovenia, No 11/2011 of 21 February 2011.
4. Draft amendments of the International Protection Act, [http://e-uprava.gov.si/e-uprava/zakonodajalskanje.euprava?zadeva\\_id=3809](http://e-uprava.gov.si/e-uprava/zakonodajalskanje.euprava?zadeva_id=3809).
5. Asylum Centre House Rules, Official Gazette of the Republic of Slovenia, No 62/2011 of 5 August 2011.
6. Decision establishing an allowance for applicants for international protection, Official Gazette of the Republic of Slovenia, No 1/2013 of 4 January 2013.
7. Rules Amending the Rules on the rights of applicants for international protection, Official Gazette of the Republic of Slovenia, No 68/2011 of 31 August 2011.
8. Kogovšek Šalamon, Neža. 'Slovenia'. In International Encyclopaedia of Laws: Migration Law, edited by Dirk Vanheule. Alphen aan den Rijn, NL: Kluwer Law International, 2011.
9. JRS website. Financial cost of detention, country report. [http://detention-in-europe.org/index.php?option=com\\_content&view=article&id=176&Itemid=210](http://detention-in-europe.org/index.php?option=com_content&view=article&id=176&Itemid=210).

## MADE-REAL: Practices Questionnaire

---

10. Constitutional Court of the Republic of Slovenia, Decision Up 1116/09 of 3. March 2011.
11. Constitutional Court of the Republic of Slovenia, Decision Up 21/11 of 10. October 2012.
12. Supreme Court of the Republic of Slovenia, Judgement I U 482/2008 of 8. October 2008.
13. Supreme Court of the Republic of Slovenia, Judgement I U 313/2009 of 27. August 2009.
14. Supreme Court of the Republic of Slovenia, Judgement I Up 636/2011 of 16. November 2011.
15. Supreme Court of the Republic of Slovenia, Judgement I Up 652/2011 of 17. November 2011.
16. Supreme Court of the Republic of Slovenia, Judgement X Ips 245/2011 of 26. April 2012.
17. Supreme Court of the Republic of Slovenia, Judgement X Ips 327/2012 of 10. October 2012.
18. Supreme Court of the Republic of Slovenia, Judgement I Up 203/2013 of 5. June 2013.
19. Administrative Court of the Republic of Slovenia, Judgement U I 733/2007 of 26. April 2007.
20. Administrative Court of the Republic of Slovenia, Judgement U I 912/2010 of 12. July 2010.
21. Administrative Court of the Republic of Slovenia, Judgement U I 1591/2010 of 8. November 2010.
22. Administrative Court of the Republic of Slovenia, Judgement U I 1737/2010 of 30. November 2010.
23. Administrative Court of the Republic of Slovenia, Judgement U I 1780/2010 of 10. December 2010.
24. Administrative Court of the Republic of Slovenia, Judgement U I 1353/2011 of 28. July 2011.
25. Administrative Court of the Republic of Slovenia, Judgement U I 1561/2011 of 15. September 2011.
26. Administrative Court of the Republic of Slovenia, Judgement U I 2306/2011 of 30. December 2011.
27. Administrative Court of the Republic of Slovenia, Judgement U I 10/2012 of 6. January 2012.

## MADE-REAL: Practices Questionnaire

---

28. Administrative Court of the Republic of Slovenia, Judgement U I 187/2012 of 7. February 2012.
29. Administrative Court of the Republic of Slovenia, Judgement U I 635/2012 of 5. May 2012.
30. Administrative Court of the Republic of Slovenia, Judgement U I 602/2012-5 of 9. May 2012.
31. Administrative Court of the Republic of Slovenia, Judgement U I 799/2012-9 of 6. June 2012.
32. Administrative Court of the Republic of Slovenia, Judgement U I 969/2012 of 4 July 2012.
33. Administrative Court of the Republic of Slovenia, Judgement U I 1369/2012 of 18 September 2012.
34. Administrative Court of the Republic of Slovenia, Judgement I U 1459/2012 of 21. November 2012.
35. Administrative Court of the Republic of Slovenia, Judgement I U 1907/2012 of 24. December 2012.
36. Administrative Court of the Republic of Slovenia, Judgement I U 1217/2013 of 2. August 2013.
37. Report on the visit of the Aliens Centre in 2012, available at: <http://www.varuh-rs.si/o-instituciji/podrocja-dela-varuha/novice/detajl/center-za-tujce-2/?cHash=e180bd116b321f2f31ef62e1f2e45754>.
38. Seventeenth Regular Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for the Year 2011, available at: <http://www.varuh-rs.si/publications-documents-statements/annual-reports/?L=6>.
39. Report of the Human rights Ombudsman of the Republic of Slovenia on the implementation of the tasks of the National Preventive Mechanism under the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the year 2011, available at: <http://www.varuh-rs.si/index.php?id=1515&L=6>.
40. Report on the visit of the Aliens Centre in 2011, available at: <http://www.varuh-rs.si/o-instituciji/podrocja-dela-varuha/novice/detajl/center-za-tujce-1/?L=&cHash=f341d2da3f97dad30b108b2bab571797>.
41. Police Statistics: <http://www.policija.si/eng/index.php/areasofwork/bordermattersandaliens/86-centre-for-aliens-statistics>.
42. Police Statistics: <http://www.policija.si/index.php/delovna-podroja/mejne-zadeve-in-tujci/622>.

# MADE-REAL: Practices Questionnaire

---



europa.eu

The Project “MADE REAL” is coordinated by the Odysseus academic network

It is co-financed by the European Refugee Fund

The views expressed and information provided by the project and the partners involved do not necessarily reflect the point of view of the European Commission and in no way fall under the responsibility of the European Commission