

Asylum in Slovenia: A Contested Concept

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1 Introduction

The asylum and migration legislation in Slovenia is a field subjected to frequent and rapid changes. The harmonisation with the European Union law required fast-paced legislative activities. Since Slovenia entered the European Union (EU) on 1 May 2004, the almost yearly enactment of amendments to one law or another in this field has occurred as a result of the transposition of the obligations accompanying the EU accession. Before 1999, Slovenia did not have proper asylum legislation in place, apart from a few very general provisions on refugees that were included in the alien legislation. Since the enactment of the first comprehensive Asylum Act in 1999, which was a direct result of the beginning of the EU accession negotiations, this Act has been amended four times. In 2007, it was replaced by the International Protection Act that has also been amended four times: in 2009, 2010, 2012 and 2013.¹ In 2016, the act was again replaced by an entirely new International Protection Act that is currently in force.²

The changes in the national asylum legislation have very closely followed the EU legislative developments. The authorities regard EU law as an unchallenged framework that is interpreted in a very restrictive way. In the transposition process the most restrictive options are usually selected. The authorities very rarely decide to adopt standards that will deviate from the EU minimum, even if this is made possible by the EU instrument in question. Accordingly, the levelling-down effect of the EU law has been very evident in Slovenia. In few cases would the EU law be looked at with a critical perspective; if this happens, it is usually done by the courts.

1 See the consolidated version of the International Protection Act, Official Gazette of the Republic of Slovenia, no. 11/11, with amendments published in Official Gazette of the Republic of Slovenia, no. 83/12, 111/13. It has also been impacted by three Constitutional Court decisions published in Official Gazette of the Republic of Slovenia no. 98/11, 114/13 and 82/15.

2 International Protection Act – Official consolidated text, Official Gazette of the Republic of Slovenia, no. 16/17.

At the same time, these fast legislative developments have not been accompanied by proper academic studies of the laws and their implementation. There have been very few studies as to how the asylum law in Slovenia has been implemented.³ Academia and scholarship have not paid much attention to problematic issues concerning the asylum procedure, the qualification for asylum, or more general asylum law concepts. In fact, most of the studies that have been done are university diploma theses that have addressed, for example, *non-refoulement* or fundamental procedural rights within the asylum procedure.⁴ On the domestic level, research on asylum has also never been a priority area for donors.⁵ On the EU level, research projects focusing on asylum in Slovenia are scarce, presumably because this country has never had a high numbers of asylum seekers and refugees, with the exception of those received during the wars in Croatia and Bosnia and Herzegovina when 70 000 refugees fled and found temporary refuge in Slovenia.⁶

In the period between 1 January 1995 and 31 December 2016 (eleven years), a total of 564 people were granted international protection in Slovenia, a country with a total population of about two million.⁷ The number of applications reached its maximum in the year 2000, when 9 244 asylum applications were received by the Ministry of Interior. Since 2000 until 2015, the applications have decreased to a couple of hundred per year. In 2008, for instance, 260 applications for international protection were lodged, 202 in 2009, 246 in 2010, 358 in 2011, 304 in 2012, 272 in 2013, 385 in 2014, and 277 in 2015.⁸ The reasons

3 The only comprehensive study was done within the UNHCR project ASQAEM – Asylum Systems Quality Assurance and Evaluation Mechanism Project in the Central and Eastern Europe sub-region (2008–2010), <<http://www.unhcr.org/protection/operations/4e60a4549/asqaem-summary-asylum-systems-quality-assurance-evaluation-mechanism-project.html>>. The last and only commentary to asylum law was written in 1999. See Slobodan Rakočević, 'Predpisi o tujcih in azilu s komentarjem' (Uradni list RS, Ljubljana, 1999).

4 However, by definition, as university theses, these analyses have rarely achieved an advanced level. This scarcity of scholarly engagement can be explained with the limited possibilities for funding. In Slovenia, research in this field could be undertaken with the support of two sources – either EU funds or domestic mechanisms.

5 It has to be acknowledged that there are projects funded by the EU Asylum, Migration and Integration Fund (AMIF); however, they focus on provision of services, legal aid, and integration support. The Slovenian Research Agency, whose main task is to distribute resources for basic research projects, has also not yet recognised this field as an important one, as none of the projects funded so far has focused specifically on asylum. The Agency has funded some projects focused on migration more generally, though.

6 European Parliament, Migration and Asylum in Central and Eastern Europe: Slovenia, <http://www.europarl.europa.eu/workingpapers/libe/104/slovenia_en.htm>.

7 Statistics of the Ministry of the Interior of the Republic of Slovenia, <http://www.mnz.gov.si/si/mnz_zavaz/tujci_v_sloveniji/statistika/>.

8 *ibid.*