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**The Influence of the EU on the Asylum Process in Central
and Eastern Europe, with a focus on Slovenia and
Lithuania**

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CONTENTS

- 1. Introduction: Asylum in Europe - Development of the European Union..... 3
- 2. Decision Making in the European Union 5
 - 2.1. The debate of Eastern European asylum policies in the European Union 7
 - 2.2. The role of the German asylum policy..... 10
- 3. West-East cooperation..... 14
 - 3.1. Comprehensive treaties 14
 - 3.2. Institutional Cooperation..... 18
- 4. Asylum seekers in front of the European Union, e.g. Slovenia and Lithuania..... 22
 - 4.1. Instituting the basic right of asylum 22
 - 4.2. The practice 33
- 5. Comparison: a single European asylum policy and its effects on Eastern Europe 37

1. Introduction: Asylum in Europe - Development of the European Union

There are many research projects on the topic of EU expansion, but the aspect of migration and standardization of the asylum policy is largely missing. My interest with this research is exactly this topic, namely the development of asylum policies in Eastern Europe and their adaptation to the EU. In the field of asylum policies it is hard to criticise the development in the accession countries, because the phenomenon of the development of asylum policies in the accession countries is due to the enlargement of the European Union. Since the countries of the European Union have strengthened their asylum policies and have implemented the »safe third country« rule and the »safe country of origin« rule, the accession candidates have had to implement their own asylum laws and develop processing rules. The following phenomenon serves as basis of my research project: the sealing of the European borders has been done to prevent refugees from fleeing into their target countries – which are mostly countries of the European Union – and is financed by the target countries. Financial support is given for the building up of border controls, the education of border patrollers, and the education of people who work in the reception and detention centres as well as for the public sector. Reading the »Regular Report on Eastern European countries progress towards accession« one could surmise that human rights and asylum laws are one of the main political criteria to judge the progress of the accession countries. The »safe third country« rule leads to the phenomenon that by now all neighbouring countries of the European Union are said to be safe third countries and that therefore asylum seekers have to apply for asylum there. But these countries do have re-admission agreements with their neighbouring countries and do deport refugees further. This can lead to chain deportations and at the end the refugee may arrive back in the country he/she fled from. In this research I want to analyse the influence of the European Union, especially Germany, on the Asylum Policies in Central and Eastern Europe, particularly in Slovenia and Lithuania. The goal of my research is to get a better understanding of the European role and its impetus as well as its aims in this field. For this research, I used the results of my previous study visits to Eastern European countries as well as some interviews which I conducted with the UNHCR, some NGOs as well as with representatives of the governments in Slovenia and in Lithuania. By analysing the changes in these two countries throughout the past years and by comparing the situations in these two

countries, I hope to come to a better understanding of the European interests in Central and Eastern European asylum policies.

The thesis of my research is that the countries of the European Union have a deep interest in leaving responsibility for the admission of asylum seekers in the hands of the accession candidates. The accession candidates are under the pressure of the European Union, and are of course striving to gain admission, therefore they try to fulfil the expectations without any critique. In order to examine this hypothesis I looked at the situation of asylum seekers in Lithuania and Slovenia with a critical analysis of the political development in the last several years. Based on an analysis of the initial situation at the end of the eighties and the evolving of the asylum laws and integration policies in its historical context, I want to examine the influence of the European Union on the asylum policies in Eastern Europe. Research into the situation of asylum seekers in Slovenia and Lithuania, providing critical insight into the situation and the development in recent years, should serve as »sample case studies« for Eastern Europe. Following will be my primary questions:

- What is the asylum procedure in the accession countries like?
- What primary factors influence the day-to-day life of asylum seekers in Eastern Europe?
- What does that mean for the future?

To answer these questions, I am first looking at the **Decision making process in the European Union (2)** of the 15 member states and its democratic base. In a second step I will examine **The debate of Eastern European asylum policies in the European Union (2.1)** and in a third step **The role of the German asylum policy (2.2)**. These three chapters will give an impression of European asylum policies and main influences on them. In a second part of this research I will describe the **East-West co-operation (3)** at its different levels, the influencing **Comprehensive treaties (3.1)** and meeting of the European Council and the **Institutional Co-operation (3.2)** between the European Union and the accessing countries, here particularly Slovenia and Lithuania. The third part of this study will take a deeper look into the situation of **Asylum seekers in front of the European Union (4)**, the **Installation of the basic right of asylum (4.1)** and its **practice (4.2)**. Finally I am going to compare the various developments in the chapter: **Comparison: a single European asylum policy and its effects on Eastern Europe (5)**.

2. Decision Making in the European Union

The idea of the European Union contains the picture of a common, democratic Union that should be a serious partner for the other world powers. However, the structure of the European Union is said to be not as democratic as it »should« be.¹ Looking at the structure of the European Union it looks surprisingly simple at first glance. It is built on a system that is also called the »institutional triangle« including the European Parliament, the European Council and the European Commission.

The **European Parliament** is directly elected every five years by the citizens of the membership countries. It is structured in political groups which represent the major political national parties².

The problem of the parliament is the power it lacks. It only has advisory functions and cannot directly influence the Council's decisions. The parliament of the EU does not have the right to participate in the legislative process and the European Commission has not a single right of legislative processing. In some fields the European Council has to decide unanimously, in 2004 the Council has to decide unanimously whether to go back to the more democratic system of majority decisions or not. But by the end of 2004 the process of finding a community asylum and immigration law should be finished. At least that is the date given in the Treaty of Amsterdam.³

The **Council of the European Union** is the »main decision-making body. It is the embodiment of the Member States, whose representatives it brings together regularly at

¹ See: Ian Black, »Spain backs Blair over EU policy-making reforms. Proposals for slimmed down, better prepared summits and for decisions to be taken in public look set to win approval,« in: *The Guardian*, Friday June 14, 2002.

² »Parliament has three essential functions: It shares with the Council the power to legislate, i.e. to adopt European laws (directives, regulations, decisions). Its involvement in the legislative process helps to guarantee the democratic legitimacy of the texts adopted; it shares budgetary authority with the Council, and can therefore influence EU spending. At the end of the procedure, it adopts the budget in its entirety; it exercises democratic supervision over the Commission. It approves the nomination of Commissioners and has the right to censure the Commission. It also exercises political supervision over all the institutions.« (see: www.europa.eu.int/inst-en.htm.)

³ See Karl Kopp, »Flickenteppich Asylrecht,« in: *Die Tageszeitung*, 24. June 2002, Jürgen Blechinger, »Einmischung um die Menschenrechte willen tut Not,« in: *AK Asyl*, 14th Jg. Vol. 3, November 2001, p. 51 and H. Overbeek: »Globalisation, Sovereignty and Transnational Regulation: Reshaping the Governance of International Migration,« in Bimal Gosh, ed., *Managing Migration: Time for a New International Regime* (Oxford: Oxford University Press) (2000) 62.

ministerial level. According to the matters on the agenda, the Council meets in different compositions: foreign affairs, finance, education, telecommunications, etc.«⁴

For asylum and migration issues the council of justice and interior is the decision-making institution. It consists of the national ministers of justice and interior affairs, who have to reach unanimous decisions. In reality that leads very often to difficult discussions, the votes depend on the possibility to push through individual viewpoints. That very often leads to »agreements at the lowest common denominator.«⁵

The third main body, the **European Commission**, »embodies and upholds the general interest of the Union. The President and Members of the Commission are appointed by the Member States after they have been approved by the European Parliament«⁶.

In the field of asylum and migration the European Commission is responsible for developing directives for future community laws. The Commission presents these directives to the parliament that only has an advisory function. The parliament can write proposals for change to directives. The Commission can accept them and change the directive accordingly which will then be discussed in the European Council.⁷ The Commission is only in charge at the legislative level, so asylum policy in general is not their target. But still, it is seen as an important issue and therefor is the development of asylum laws monitored fairly well.

⁴ »The Council has a number of key responsibilities: it is the Union's legislative body; for a wide range of EU issues, it exercises that legislative power in co-decision with the European Parliament; it co-ordinates the broad economic policies of the Member States; it concludes, on behalf of the EU, international agreements with one or more States or international organisations; it shares budgetary authority with Parliament; it takes the decisions necessary for framing and implementing the common foreign and security policy, on the basis of general guidelines established by the European Council; it co-ordinates the activities of Member States and adopts measures in the field of police and judicial co-operation in criminal matters.« (see: www.europa.eu.int/inst-en.htm.)

⁵ See: Jürgen Blechinger, »Einmischung um die Menschenrechte willen tut Not,« in: *AK Asyl*, Vol. 14 No. 3, November 2001, p. 52, translated by the author.

⁶ »The Commission is the driving force in the Union's institutional system: It has the right to initiate draft legislation and therefore presents legislative proposals to Parliament and the Council;

- As the Union's executive body, it is responsible for implementing the European legislation (directives, regulations, decisions), budget and programmes adopted by Parliament and the Council;
- It acts as guardian of the Treaties and, together with the Court of Justice, ensures that Community law is properly applied;
- It represents the Union on the international stage and negotiates international agreements, chiefly in the field of trade and co-operation.« (see: www.europa.eu.int/inst-en.htm.)

⁷ For further reading, see Karl Kopp, »Von Maastricht bis Amsterdam« in: www.contrast.org/borders/kein/handbuch/amsterdam.html.

One critical point is the non-transparency of the European Union. The national parliaments are often not even informed on what was decided at the European level. The bureaucratic efforts to organise this huge institution on a somehow democratic level is immense. The many hierarchical levels lead to a co-ordinating effort that causes a lot of bureaucracy and costs a lot of time. The British Prime Minister Tony Blair recently published proposals for EU policy-making reforms. With these proposals he voices some of the strongest criticisms on the democratic standards of EU decisions proposing that ministers would have to explain and cast their votes in public instead of behind closed doors, though only when adopting laws on which they share decision-making power with the European parliament. Britain has proposed that such sessions be televised. But sensitive issues such as immigration, foreign policy and defence, would still be held in secret. The thinking is that greater openness will make it harder for politicians to claim credit only for popular decisions and then blame »Brussels« for unpopular ones.⁸ All these procedures, especially the unanimity clause, show a deep mistrust between the member states. Especially in the asylum issues the fear of »masses of aliens« fleeing to the Union is incredibly high. That is the reason why Karl Kopp from *Pro Asyl*, the German refugee council, fears that the time schedule set by the treaty of Amsterdam will be delayed because the decision-making process is too strongly influenced by the power interests of the national states. As Christina Wille, Member of the Delegation of the European Commission in Slovenia, stated it in my interview on 17th September 2002, the main interest is power – how much of it will stay with the national governments and how much will go to the EU. And therefore the Western member states mistrust the others, fearing that others' borders will not be as closed as expected. And as the unanimity clause hinders the process enormously, the decision making process is trapped.⁹

2.1. The debate of Eastern European asylum policies in the European Union

The basis of the process of Budapest (see below as well) lies in the plans for the European Union expansion. In the early 1990s, with the changes in the former socialist countries, Western Europe had a great interest in preventing an ideological comeback of socialism and therefore provided economic support for these countries. The Eastern European markets

⁸ See: Ian Black: »Spain backs Blair over EU policy-making reforms. Proposals for slimmed down, better prepared summits and for decisions to be taken in public look set to win approval,« in: *The Guardian*, Friday June 14, 2002.

⁹ See: Karl Kopp, *Europäische Asylpolitik: Zwischen Liberalisierung und Abschiebung der Verantwortung*, p. 8.

became increasingly interesting for Western European economic welfare and the political power of a unified Europe became more and more real. With these changes, the representatives of the European Union were afraid of potential consequences of the Schengen agreement. The desire to control the then changing migration processes grew, and along with it the fear of uncontrolled migration. This thought led to the exertion of a stronger influence on the asylum policies in Eastern European countries and the encouragement of standardization processes.¹⁰ In October 1991, a conference took place in Berlin where for the first time representatives from 27 western, central and eastern European countries met to discuss the former »western« migration policy. They founded a working group (»Budapest Group«), dominated by German and Austrian representatives, that was to formulate a catalogue of measures in preparation for the 1993 conference in Budapest. The conference was to focus on the »smuggling of illegal immigrants« and formed the starting point of the so called »Process of Budapest«. Its main goal was for the Union of all European Countries to fight »illegal migration and smuggling«. Throughout this process the European Union wanted increased control of migratory movement, especially in Eastern Europe, and over border-crossing procedures. The topic of the accession negotiations was the starting point for the unification discussions. It was not by accident that Hungary and Poland submitted their application to join the European Union only a couple of months later (in April 1994).¹¹

One of the main topics of this enlargement of »fortress Europe« became the asylum and migration issue and with it the jurisdiction. After the conference in Budapest, the ministers of all European countries met repeatedly on the topic of migration, border control and asylum procedures. The main issues were: harmonisation of the fight against the smuggling of illegal immigrants, adaptation of the border control, re-admission of aliens who crossed the border illegally, the exchange of information about illegal immigration, professional and financial support for Central and Eastern Europe to deal with the fight against »illegal migration« and the »smuggling of illegal immigrants«.¹²

¹⁰ See: osteuropa-ag, berlin: »Den Osten kennen lernen,« in: *Jungle World*, Nr. 48/2000 and Christian Klos, »Rechtliche Problemkreise einer Migrationspolitik der Europäischen Union,« in: www.migration.uni-konstanz.de/german/internetpublikationen/Ckreraemp.html, p.1.

¹¹ About the procedure see: Adolf Kühnemann, »Regierungskonferenz 1996 und die Erweiterung der Europäischen Union,« in: *aktuelle ostinformation*. Vol. 28: No. 3–4/1996, p. 45.

¹² See: Kampf gegen illegale Migration und Schleuserkriminalität, in: *Innenpolitik, Informationen des BMI*, Nr. V/1997, 14 Nov. 1997, p. 3 and »Geschichte der Abschottungspolitik«, in: www.nadir.org/nader/archiv/Antirassismus/bgs_broschuere/t14a.html

In October 1997, another conference on this topic took place in Prague, this time with more countries participating. Even Canada, the US and a couple of international organisations joined the meeting. This meant a broader unification process on the issue of the fight against criminal migration processes and clearly also on legal migration. But there is also a regionalisation in the enlargement process. In 2001 the foreign ministers of the Czech Republic, Hungary, Slovakia, Slovenia, Austria and the deputy foreign ministry of Poland met for the first time at the Regional Partnership Conference in Vienna. The conference »examined the opportunity for regional co-operation between the invited countries in the light of their preparation for the entry into the EU. The Regional Partnership has two stages: prior to and after the entry of the candidates into the EU. Cooperation was proposed in the fields of security (the »Security Partnership« project - home affairs and justice, border protection, illegal migrations, fight against organised crime), culture (the »Central European cultures« project – common cultural centres, promotion of Central European Culture), education (exchange of graduates), language teaching, history, technology, information technology, infrastructure and telecommunications, and EU programmes (PHARE, INTERREG).«¹³ But the PHARE Horizontal Programme on asylum came to an end in November 2000 and »resulted in the adoption of national action plans. These plans aim to bridge the gap between current asylum laws and European Union standards (ACQUIS) on asylum, and to strengthen asylum institutions. (...) The pre-accession advisors play a key role in this process, as do other partners, such as the Council of Europe, as well as the European Council on Refugees and Exiles, which organises twinning of Central European NGOs with experienced Western European agencies.«¹⁴

The growing influence of the European Union can also be seen as concentric circles, the first forming the security wall around the EU, where the most intensive controlling measures are installed. The second circle is defined as encompassing the associating countries and perhaps the Mediterranean area. They are scheduled to get a similar security system; the Schengen standard is to be adopted soon and readmission agreements are signed, at least with some of the neighbouring countries. Anita Longo, from Amnesty International Slovenia, drew the following picture of the second circle: »If the harmonisation in the EU are still that far away, where are the standards we have to meet? We import restrictions without safeguard. If

¹³ See: 2nd Regional Partnership Conference, Bratislava, 29 November 2001 - Information, p. 1.

¹⁴ See: UNHCR Global Report 2000, New York 2001, p. 414 and Heinz Timmermann: *Die Reformstaaten Mittel- und Osteuropas und die euro-atlantischen Integrationsprozesse, Berichte des Bundesinstituts für ostwissenschaftliche und internationale Studien*, 18-1997, Köln 1997, pp. 13f..

Europe is a fortress, the candidate countries are the river around it« (Interview with Anita Longo, AIS, 18. 09. 2002).

The third circle is said to be the CIS, the Balkan countries (except Slovenia), Turkey and northern Africa. These countries have to control the transit routes and fight the organised smuggling of migrants. The fourth circle is the actual countries of origin, where the factors forcing movement should be diminished. To increase its influence on the countries that are said to belong to the fourth circle, the EU developed action plans for the different countries of origin such as Iraq, Afghanistan, Morocco, Somalia, Sri Lanka and Albania. Its aims are to prevent refugees from fleeing out of these regions, to fight the reasons why people have to flee and to promote better border security.¹⁵

2.2. The role of the German asylum policy

The German Republic used to be one of the main target countries of asylum-seekers. But over the past years, the government has done a lot to discourage this. The number of applications received was reduced in 2001 by about 17.4% compared to 2000 to its lowest level since 1987.¹⁶ But even if these numbers changed that much, considering that Germany only used to be on the highest position of applicants when looking at naked figures, when viewed in relation to its population, Denmark, Sweden and the Netherlands took many more asylum seekers comparatively. German politicians did a lot to stress the picture of the overcrowded German country and to reduce the incoming numbers. This might also be the reason for its strictness on the European level: »Germany has what is widely seen as Europe's toughest regime for asylum seekers. But its effectiveness in cutting the number of applicants has been remarkable. And, when Britain began to look for ways to tighten up its own rules, it turned to Germany for inspiration.«¹⁷ Beat Leuthardt traces the responsibility for the development of asylum policies in the accession countries directly to Germany as well, taking his interpretation even farther to assert that Germany wants to keep the migrants in the accession countries especially because then it does not have to feel guilty anymore. »Out of sight, out of

¹⁵ See e.g. »Action plan Iraq,« in: Helmut Dietrich, Harald Glöde: *Kosovo. Der Krieg gegen die Flüchtlinge*, Berlin 2000, pp. 70ff.

¹⁶ See: *Zuwanderung und Asyl in Zahlen, Bundesamt für die Anerkennung ausländischer Flüchtlinge* (ed.), Nürnberg 2000, pp. 22.

¹⁷ See: John Hooper: »Fortress Germany,« in: *The Guardian*, Wednesday May 23, 2001.

mind.«¹⁸ This thesis receives even more credence considering that when one takes a look at the homepage of the German Foreign Ministry under the topic: »What does expansion bring?« the economical reasons are the first mentioned, but the safety of the outer European borders and the prevention of illegal migration follows immediately behind.¹⁹

The pressure on the accession countries is high, the meetings of the European Council on this topic only increase it. The former chancellor of Germany, Helmut Kohl, is responsible for the unanimity clause. He pushed for it in 1999, forcing the council to act unanimously in all asylum cases for the coming five years.²⁰ This implies that, with the enlargement of the EU, all European laws decided up to then will apply for the accession countries as well. One could infer that asylum and migration matters are so important for the current fifteen states of the EU that these are only ready to accept expansion when a common law in this issue has been agreed upon. All facts seem to strengthen this thesis.

But influence works both ways, and politicians know how to use the construct of the European Union for their ends. In 1999 a strategy paper on migration and asylum policy was published by the Austrian presidency. Its proposals were pushed back on the European level in Tampere, but afterwards its contents were discussed by the German public. The acceptance of the Geneva Convention that was reassured at Tampere got minimised in the German interior politics. And it was used in Germany to push through the new immigration law, at the lowest level of the European immigration standards. For example, the age of children who are allowed to follow for family reunification is as low as nowhere else in Europe (twelve years), the residence requirement for asylum seekers is still part of the law and Germany is the only country where this construct exists. But Germany pushed this in the European debates as well, and it will be part of the Community law, even if no other country enacts anything similar.²¹

For a long time the European standards on the asylum issue helped the German authorities to strengthen their own asylum laws and to reduce the refugees' possibilities to enter German territory. This has changed in the past three years. The directive proposals made by the European Commission were considerably more liberal than current German asylum law. This

¹⁸ See: Beat Leuthardt: *Europas neuer Pförtner*, Karlsruhe 1997, p. 8.

¹⁹ See: www.auswaertiges-amt/www/de/eu_politik/vertiefung/#7.

²⁰ See Karl Kopp, »Flickenteppich Asylrecht,« in: *Die Tageszeitung*, 24.June 2002 and Jürgen Blechinger »Einmischung um die Menschenrechte willen tut Not,« in: *AK Asyl*, Vol. 14 No. 3, November 2001, p. 51.

led to the vote mentioned above of the former chancellor Helmut Kohl against the majority decisions in the debates on asylum and migration. The German delegation is now said to regularly hinder the consensus, because for them the proposals of the Commission are still too liberal. And looking at the public discussions, one gets the impression that, especially in the asylum issue, Germany *is* the European Union: »The breathtakingly speedy and encompassing revision of the results of the second World War, which also implied the limiting of German imperialism to behind the Oder and Neiß, will find its next stage in 2002. All signs indicate that at that time Poland, Hungary, the Czech Republic and Estonia will enter the EU. What the NATO eastern expansion started on a military level will be completed economically and politically. This implies a wide-reaching power shift empowering Germany at the expense of Russia, and, in the medium term also the USA.«²²

This change of the balance of power is also evident in financial aid that the countries of the EU give to the accession countries: »Although most governments have stressed **stabilization and promotion of democracy** as their primary objective, they have spent very little money on it. This fact is partly due to the relatively low cost of projects fostering democracy (e.g. in comparison to balance-of-payments support or infrastructure) and partly to the argument that democracy is best served by promoting the prosperity of the underlying society/economy – that is, by economic assistance. Germany has been by far the biggest donor, even after subtracting some aid flows to the USSR which were the price for the agreement on the German unification and for the withdrawal of Soviet troops from Germany. Between 1990 and 1994 Germany gave or committed 145 billion DM to CEE recipients. The large size and the distribution of the German assistance reflects the foreign policy preoccupations of unified Germany, the disproportionate German exposure to all risks resulting from developments in CEE, and the economic interests of the CEE's major trading partner and investor.«²³ This impression was supported when I talked to Bojan Bugarič, State Secretary of the Ministry of the Interior in Slovenia (Interview on 20. 09. 2002). He confirmed that the counselling of the asylum legislation was done by Austrian and especially by German experts. This is due to the somehow equal legislation systems, but, as I suggest, also to the great impact Germany has in this issue. »I have analysed the position of Germany to be strong but embedded in the

²¹ See Herbert Leuninger: »Festung Europa oder Gastland Europa?« in: *Der Schlepper*, Nr. 13, autumn 2000, p. 24 and Karl Kopp, *Protokoll des Seminars: Harmonisierung von EU-Asylrecht und Einwanderungsrecht*, 28-29 June 2002, p. 3.

²² In: Lutz Eichler, »Den Osten entdecken,« in: *Jungle World*, Nr.47/2000 15 November 2000; translated by the author.

European context. As stated before, any uniquely German solutions are unlikely. However, there are indications that point to the continuation of historical roots. (...) German policy has sought and continues to seek to exploit conflicts among so-called 'border-line peoples', primarily in the Balkans. The purpose was and continues to be to be portrayed as the force protecting ethnic groups.«²⁴

²³ See: Michael Dauderstädt, »A Comparison of the Assistance Strategies of the Western Donors,« in: www.fes.de/organisation/europe/info/donor.html, pp. 2.

²⁴ See: Georg Lutz, »Außen und Sicherheitspolitik der EU im Mittelmeerraum und in Osteuropa.« Eröffnungsreferat im Rahmen des BUKO-Seminars: *Migrationssteuerung und Fluchtabwehr durch die EU*, 11-13 May 2001 in Wuppertal; translated by the author.

3. West-East cooperation

3.1. Comprehensive treaties

In 1985, five European countries (France, Germany, the Netherlands, Luxembourg and Belgium) agreed in **Schengen** about the safeguarding of their outer borders and the harmonisation and opening of their inner borders: Thus the basis of the European Union was founded. With the **Dublin Agreement** in 1990 (ratified in 1997), the countries that belonged to the European Union (twelve at that time) made the first step towards a harmonised asylum law. They agreed that every asylum seeker who enters the European Union is only allowed to apply for asylum in the country he first enters. Their goal was to keep refugees in their countries of origin or in the neighbouring regions.

In **London** in 1992, the interior and justice ministers of the member states agreed on a model of »safe countries of origin« and »safe third countries.« They made up this new terminology to hinder refugees from entering the European Union, with this model, asylum seekers are sent back to these safe countries because it is said that they have the possibility to apply for asylum there and entering the EU is not necessary to ensure their safety. In London the ministers also introduced a new, abbreviated asylum procedure, the so-called »accelerated procedure«. Refugees are subject to this procedure if they are said to apply for asylum because of »manifestly unfounded reasons.« In this Treaty on the European Union, which was signed in Maastricht in February 1992 and went into force in November 1993, the member states formulated for the first time the co-operation on the policies of the interior and justice.²⁵ Currently the European Union has 15 member states and is preparing for the accession of 13 eastern and southern European countries. At the **Copenhagen European Council** in 1993 the member states confirmed the legitimacy of Central and Eastern European applications and agreed on criteria for their accession²⁶.

²⁵ Karl Kopp: *Asyl*. Hamburg 2002, p. 74.

²⁶ The criteria established by the council which applicants would have to meet before they could join the Community are laid out as follows:

»These Criteria concern:

- the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities (political criterion).
- the existence of a functioning market economy as well as the capacity to cope with competitive pressure

The **Treaty of Amsterdam 1997** integrated Schengen into the European Union. The EU called for accession negotiations to begin in 1998 and decided that the asylum and immigration policies should be harmonised by 2004, both among the member states and the accession countries. The national level should have been reduced by then, to meet the standards of a common European asylum law. This means that the minimum standards which are defined in the treaty of Amsterdam should be accepted and implemented by all participating countries by 2004. 2004 is also the date for the final accession of the Eastern European countries, who have to have fulfilled the Schengen standards by then²⁷.

With the coming into force of the Treaty of Amsterdam on 1 May 1999 the policy on asylum, the free movement of persons, visa policy, rules governing the crossing of the external EU borders, immigration policy and the rights of nationals of third countries became a full community responsibility.

At the **Luxembourg European Council** in December 1997 the European Union members admitted the applications from ten countries and decided with which countries they are going to move forward in this process of application for membership. They implemented the association agreement with Slovenia in February 1999 and with Lithuania in February 1998. This Council dealt with the future asylum policy as well; among other items it discussed a new action plan for readmission agreements between the Schengen countries and Turkey, the Czech Republic, Slovakia, Hungary and Slovenia. A 'task force' on immigration and asylum policies was to be entrusted with the task of monitoring and developing measures aimed at reducing migratory pressure. The asylum topic was especially important for the six main member states which are targets of refugees and migrants, each of which should send one representative to this task force.

and market forces within the European Union (economic criterion);

- the ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union (criterion concerning adoption of the Community acquis).«
(see: www.europa.eu.int/scadplus/leg/en/lvb/e40001.htm.)

²⁷ The main points of the Treaty of Amsterdam are:

- additional protection (treaties such as EMRK, Anti-torture-convention etc., human rights conventions);
- definition of the term »refugees«;
- minimum standards in the asylum procedure;
- minimum standards of the admittance requirements;
- organised family reunion;
- freedom of movement for citizens of non-member countries in the European Union;
- common deportation practices. (see: www.europa.eu.int/scadplus/ug/en/lvb/e40001.htm.)

The European Union published the **AGENDA 2000** on July 1997 and expanded with it the PHARE-programme on the accession countries. In October 1997 the foreign ministers implemented the **European Conference**, a multilateral committee to discuss the association agreements which cover the main areas in which the Community *acquis* is to be adopted (see above). The Conference met first in London in March 1998 and convenes yearly.

On 1 July 1998, the then-Austrian EU Presidency presented the »Strategy Paper on Asylum and immigration Policy.«²⁸ In this paper the Geneva convention was thoroughly criticised for the first time since its founding. It demanded the prevention of refugee masses from entering the EU and to battle the reasons for migration. This fear was expressed so openly in this paper that the politicians began to neglect it at the extraordinary Council at **Tampere** in October 1999. Perhaps this Austrian paper was the reason for the very liberal guidelines of the European Asylum and Immigration Policy that were developed in Tampere. Still, this Austrian paper is said to be a first step towards the »abolishment of the right of asylum in the EU.«²⁹ The special meeting of the European Council held at Tampere was dedicated to the establishment of an Area of Freedom, Security and Justice, and elaborated the political guidelines for the next years, including in regard to the field of asylum and immigration.

In 2004 the European Union will comprise of 25 countries if the accession countries fulfil all the criteria that were defined at the **Helsinki European Council (1999)**. »The Helsinki European Council stressed the need for the candidate countries to share the values and objectives of the European Union as set out in the treaties. It called on the candidate countries to settle any border disputes (and other matters) in accordance with the principles of the United Nations Charter (...) The candidate countries are measured by the ‘regular reports on the progress toward accession’.«³⁰ The first of these reports was published in November 1998, and they are to be published annually on each accession country.

Throughout all the meetings that took place in the context of Amsterdam, the goal of harmonising the European asylum policies did not get much closer. There have been efforts to set minimum standards and the Commission has developed directive proposals for a common asylum law. The EU-Commissary Antonio Vittorino from Italy, who was responsible for the harmonisation of the asylum law, did not want to formulate the proposals giving the most

²⁸ See: www.contrast.org/borders/kein/hintergrund.

²⁹ Karl Kopp, *Asyl*, Hamburg 2002, p. 74 and Nicholas Busch, *Fortress Europe*, in: *peace news for non-violent revolution*, No. 2437 Dec. 1999-Feb. 2000, London, p. 19.

³⁰ See: www.europa.eu.int/scadplus/ug/en/lvb/e40001.htm.

minimal rights possible, but to set safe standards. On the 12th of September 2001 he presented his packet of proposals, but so far the European Council has only decided on one of them.³¹

Especially the member states targeted by asylum seekers do not want to lose control of the accelerating procedures. Germany, one of these states, could not accept the liberal proposals and repeatedly modified them. These »target member states« still have the most influence on the harmonisation procedure and Germany, as Christina Wille, member of the Delegation of the European Commission in Slovenia confirms, is the country that played the greatest role in stopping a liberal development in the asylum issue. On the national policy level Germany is currently trying to implement very strict asylum and immigration laws to prevent a feared liberalisation in the harmonisation process. The guideline decided upon by the Commission took the minimum standards of the admittance requirements and is compatible with the newly-implemented German immigration law.

But all countries involved know that by 2004 they should, according to the treaty of Amsterdam, have developed a common asylum law. Up to now there is still no common resolution existing. For example, still missing is a common definition of the term »refugee« as well as common procedure and admittance requirements. There are also so-called »soft laws«, such as the London resolution, which, although it is still not binding for the EU countries, has nevertheless been adopted into their national jurisdiction by all member and accession countries.

At the **Nice European Council in December 2000** the main topic dealt with was EU expansion. They mainly discussed the institutional changes it will entail, such as the weighting of votes in the council and the composition of certain committees. These adoptions were the necessary basis for the continuing expansion process.

In December 2001 at the **European Council in Laeken** the council and the commission were instructed to work on a concept for the common protection of the outer borders. They mentioned efficient control of the outer borders to combat terrorism, trafficking and smuggling. That also means better integration of the Schengen treaty. The main issue is the construction of a common European border police force.

³¹ Karl Kopp, »Flickenteppich Asylrecht«, in: *Die Tageszeitung*, 24 June 2002, translated by the author.

The last **European Council took place in Seville in June 2002**. The Spanish prime minister Aznar and the British prime minister Blair pushed the following topics for this meeting:³²

1. The community immigration policy and a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum
2. The European Border Police and the co-operation between the national polices: action programme for administrative co-operation in the fields of external borders, visas, asylum and immigration (ARGO)
3. How to deal with countries of origin and transit countries if they do not follow the immigration contracts and the readmission agreements
4. Expansion of the visa policy
5. Treaty of Dublin 2, which deals with the definition of the jurisdiction of the country entered first and, among other things, the right to family reunification
6. Conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities
7. Common policy on illegal immigration.

The European governors in Seville also put stress on the enlargement of the EU. The accession negotiations with ten countries – Cyprus, Malta, Hungary, Poland, the Slovak Republic, Lithuania, Latvia, Estonia, the Czech Republic and Slovenia – shall be finished by the end of the year 2002. In 2004 these countries are to take part, as full members, in the election of the European Parliament. These plans were strengthened at the informal meeting of the Ministers of Justice and Home Affairs in Helsinki in September 2002. This meeting, as Bojan Bugarič related to me, was especially conducted to the harmonisation of integration policies.

3.2. Institutional Cooperation

As early as 1985, the inter-governmental consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC), known as informal consultations, were founded. Its aims are to co-ordinate on an international level the refugee policies of its sixteen member states (Australia, Belgium, Denmark, Germany, Finland, Great-Britain,

³² See: presidency conclusions. Seville European Council, 21 and 22 June 2002, [www.//ue.eu.int/newsroom/load.doc](http://ue.eu.int/newsroom/load.doc) and : Polly Toynbee: »We need a fortress. Mass migration is a fact of life,

Ireland, Italy, Canada, the Netherlands, Norway, Austria, Sweden, Switzerland, Spain and the US) and two international organisations (UNHCR and IOM). The conferences organised by IGC discuss strategies for further asylum policies and they publish studies about migration in Europe, among other things. Their main interest is the exchange of information about new escape routes, »illegal migration« and border issues. Their main goal is the development of new concepts to prevent »uncontrolled« migration into the western world.³³

When travelling through the CEE countries, especially if one is sensitised by the expansion issue, it seems that officers from the EU countries are everywhere: Danish and German militaries in a riverside restaurant in Vilnius, representatives of the German Border police (BGS) in the Bulgarian mountains, German police officers (BKA) in the Kosovo region, and representatives of the Federal Bureau for the Recognition of International Refugees (*Bundesamt für die Anerkennung Ausländischer Flüchtlinge*), also in Vilnius. In official papers there is not a lot to be found about their activities; in Bulgaria the UNHCR handed me at least a paper about their training programmes for border police officers. When I met Diana Bartkute from the Lithuanian Red Cross in Vilnius on 12th of June 2002, she told me about these training programmes as well, and on June 11th Lyra Vysockiene, from the UNHCR Vilnius office, described the courses the »*Bundesamt*« (the above-mentioned federal bureau) offers for the development of the new asylum law in Lithuania. The newly published statistical material of the »*Bundesamt*« contains a passage about the department on »international issues, that co-ordinates the contacts to the central and Eastern European states, especially to support the partner offices.«³⁴

The homepage of the German foreign ministry informs about the co-operation between the accession countries in general. Most of it shall be on the level of the police co-operation. »Officers of documents, training programmes and transfer of know-how« are listed there. It also mentions the training on the asylum law and border issues, the co-operation with the UNHCR, and the above-mentioned *Bundesamt*.³⁵ The first discussions about a deeper co-operation on the European and bilateral level took place during the process of Budapest in the 1990s. The common target they formulated at that time was the uniting of all European countries to fight illegal migration and criminal smuggling of migrants. Especially the

and the defence of Europe's borders is essential for a fair society«, in: *The Guardian*, Friday June 21, 2002.

³³ See: www.igc.ch, Helmut Dietrich, Harald Glöde: *Kosovo. Der Krieg gegen die Flüchtlinge*, Berlin 2000, pp. 17.

³⁴ See: *Zuwanderung und Asyl in Zahlen*, Bundesamt für die Anerkennung ausländischer Flüchtlinge (ed.), Nürnberg 2000, p. 74, translated by the author.

³⁵ See: www.auswaertiges-amt.de/www/de/eu_politik/aktuelles/e_raete/sevilla_html.

Central and Eastern European countries should be integrated and supported in this process. For example, German and Polish border police officers have conducted patrols together since 1998.³⁶

The Slovenian government reports about the Salzburg declaration they signed at the end of August 2001: »The document will form the basis for the formation of further bilateral co-operation in the fields of the police, border patrols, illegal migrations, asylum and an exchange of experiences.« In this press release they also talk of the good experience with trilateral projects, especially the good co-operation with Germany, Austria and Croatia on the issue of organised illegal migration.³⁷ This form of co-operation also takes place in the countries of origin, where border police officers and counsellors on documents meet regularly to »counteract the illegal migration.«³⁸

On the European level, the EU started the PHARE program in 1989, first only for Poland and Hungary, later for CEE countries as well. In 1991 the EU added a second major program, TACIS, covering the former Soviet Union (except the Baltic states) and Mongolia. Both programmes originally solely consisted of grants for technical assistance. EU assistance focuses on human resources, food, infrastructure, development of the enterprise sector, and nuclear safety. Since 1992, there are special »Democracy Programmes « within both PHARE and TACIS to promote the development of democratic institutions. These two programmes are also used for the training courses and the aid in developing immigration and asylum laws.

Another point of institutional co-operation is the international financial support. Here, not only do Germany and the European Union, as mentioned above, give money to speed up the development progress in Central and Eastern Europe but many of the multilateral organisations take part in this as well, however, mostly in the form of technical assistance, industrial development and infrastructure.³⁹ In Lithuania UNHCR and the Nordic donors channelled the biggest support for building up of national asylum system and not those financial institutions listed above. Dauderstädt sums it up like this: »International financial

³⁶ See: »Kampf gegen illegale Migration und Schleuserkriminalität,« in: *Innenpolitik, Informationen des BMI*, Nr. V/1997, Nov. 14, 1997, p. 3 and »Weniger Menschen reisten unerlaubt ein«, in: *Innenpolitik a.a.O.*, p. 8.

³⁷ See: *Press releases: Foreign affairs: five central European States sign Salzburg declaration*, Government public relations and Media Office (ed.), August 1, 2001.

³⁸ See: »Weniger Menschen reisten unerlaubt ein,« in: *Innenpolitik, Informationen des BMI*, Nr. II/00, May 2000, p. 2

institutions such as the IMF, the World Bank, the EBRD and the European Investment Bank (EIB) have, as a rule, a clearly defined set of instruments and policies at their disposal. Their actual performance tends to reflect their basic, traditional capacities (e.g. bank lending for big infrastructure projects, IMF supporting policy reforms), even when their rhetoric stresses new needs in the case of CEE.⁴⁰ In Lithuania the UNHCR and the Nordic donors channelled the biggest support for building up of national asylum system. The UNHCR sees its role in capacity building work as well.⁴¹

The NGOs who work in the field of migration and refugees can only look with envy on existing governmental networks. On the European level there is not much co-operation, and this seems to be one of the only points where they could learn something from the institutional level. ECRE, the European Council on Refugees and Exiles, works mainly on the legal issues of asylum laws in Europe, but is building a network between larger national NGOs and seeks to exchange information on the asylum topic.⁴² United for Intercultural Action is another European NGO, which focuses especially on antiracist work and the racist impact the asylum policies have on the European level.⁴³ The Red Cross does have a working group on asylum and refugees, PENCUM, and there is also a structure of Helsinki Committees at least in Eastern Europe, both of which are dealing with the social welfare of asylum seekers. Maja Pilih, lawyer at the Slovenian legal foundation for the counselling of refugees, GEA 2000, also spoke of a European network of information about the countries of origin, »Accord – Austrian Centre for Country of Origin and Asylum Research and Documentation« working with various European NGO (Interview on 18. 09. 2002).

³⁹ See: Michael Dauderstädt: »A Comparison of the Assistance Strategies of the Western Donors,« www.fes.de/organisation/europe/info/donor.html, pp. 7.

⁴⁰ Ibid.,

⁴¹ »In 2000, UNHCR remained committed to building the capacity of those state institutions directly responsible for receiving asylum-seekers, processing their applications and determining refugee status. Training efforts concentrated on improving curricula at training institutes, rather than on workshops conducted by UNHCR and partners. Asylum and human rights training modules, developed in conjunction with UNHCR, were added to the curricula of police academies in several countries. The UNHCR Handbook on Procedures and Criteria for Determining Refugee Status and other key legal text were translated into several of the Central European and Baltic languages and are being used more consistently. As a result of UNHCR's efforts, many countries of the region now have local experts on refugee and asylum issues and are developing best practice.« (...) »Progress was also made in improving the quality of national asylum procedures. Governments such as Lithuania recognised the right for free legal aid during all stages of the asylum procedure. « (...) »Moreover, asylum-seekers had access to interpreters free of charge. In March 2000, a co-operation agreement was signed between the Migration Departments of Estonia, Latvia and Lithuania on the training of interpreters and the exchange of information on their availability.« (see: *UNHCR Global Report 2000*, New York 2001, pp. 416.)

⁴² See: www.ecre.org.

⁴³ See: www.unitedagainstracism.org.

4. Asylum seekers in front of the European Union, e.g. Slovenia and Lithuania

When I started working on the topic of asylum policies in Central and Eastern Europe in the early nineties, I was impressed by the sudden changes that took place in this area. Before the political changes asylum seekers did not exist. In Poland, the Caritas in Zgorzelec told me that they never heard or thought of immigrants coming from the south, looking for a safe haven. The first who arrived were treated as other homeless people. There was no status for them and so nobody took notice of them. Then the Western European countries took notice; when the first refugees entered through the now-open borders they became afraid of the »masses« that could come and started first to study the escape routes, then discussed readmission agreements and finally with the planning of the EU expansion they stressed the implementation of asylum policies and laws in all accession countries. Arriving in Lithuania for the first time in 1999, on a study trip about the situation of asylum seekers in Lithuania, I found the process further developed, but still strange for the population. And the routes asylum-seekers travel by are so interesting for the EU that they have even become part of the interview asylum seekers have to go through when they apply for asylum in Lithuania as well as in Slovenia: »When they interview you will have to submit all the documents and travel tickets you have in possession, all your personal data, the motives for submission of application to grant refugee status and information on the travel route«, as stated in a leaflet from the Lithuanian Red Cross in co-operation with the Migration Department at the Ministry of Interior of the Republic of Lithuania and UNHCR, published with the financial support of the European Union and the UNHCR.⁴⁴

4.1. Instituting the basic right of asylum

Slovenia

The expulsion of thousands of refugees out of Bosnia-Herzegovina at the beginning of 1992 became the greatest such expulsion in Europe since World War II. With the outbreak of the war in Bosnia-Herzegovina Slovenia, as did Croatia, became suddenly one of the main target countries for refugees. Approximately 70,000 Bosnian refugees from Croatia and Bosnia-

⁴⁴ See: Information on asylum procedure in the Republic of Lithuania, see above.

Herzegovina arrived at that time, approximately half of whom were children. At that time the Union met monthly at refugee conferences in Vienna, Zagreb, Ljubljana and Geneva to discuss the implementation of refugee contingents and the acceptance of numbers of Bosnian refugees in their countries. The politicians actively hindered this process, preferring instead to help the refugees on the spot in Croatia. The situation in Bosnia and the half a million Bosnian refugees searching for rescue in the border area between Bosnia and Croatia led to the development of the law of asylum and especially the law on temporary protection in Slovenia, even if it took till 1997 to implement. It finally got implemented because of the pressure of the EU, as Mirko Vaupotič, Deputy Director of the Governmental Office for Immigration and Refugees, stated. Even if its final implementation took until July 1999, and entered into force the 14th of August 1999, it has been discussed since 1992. By now, there remain only 2,457 Bosnian refugees in Slovenia, the others having resettled in Western Europe, Canada or the USA or returned to Bosnia-Herzegovina. Now there are mostly refugees from the Republika Srpska left in Slovenia. For them the law has been changed now – after 10 years and they will get permanent residence status. »Due to the pressure of the EU, they will get EU standard now«, as Mirko Vaupotič told me⁴⁵. This is due to a EU directive stating that the temporary protection status should not last longer than two years. Afterwards the status shall end or be changed to a more secure one. Kosovo refugees got the same status, but most of them had to return after one month of temporary protection status in Slovenia.⁴⁶

From January 1995 to December 2003 13,655 have applied for asylum. The following is the breakdown of asylum applications on annually basis (numbers cover asylum applicants):

- * 6 asylum applicants in 1995;
- * 35 asylum applicants in 1996;
- * 72 asylum applicants in 1997;
- * 337 asylum applicants in 1998;
- * 744 asylum applicants in 1999;
- * 9244 asylum applicants in 2000;
- * 1511 asylum applicants in 2001;

⁴⁵ An interview on the 16th of September 2002.

⁴⁶ See: Marjeta Doupona Horvat, Jef Verschueren, Igor Ž. Žagar, *The Rhetoric of Refugee Policies in Slovenia*, Ljubljana 2001, pp. 13ff., Helmut Dietrich, Harald Glöde: *Kosovo. Der Krieg gegen die Flüchtlinge*, Berlin 2000, p. 13 and Danish Refugee Council: *Legal and Social Conditions for Asylum Seekers and Refugees in Central and Eastern Europe*, Copenhagen 1999, »Persons with temporary protection status in the Republic of Slovenia, Information sheet by the office for Immigration and refugees«, Sept. 2001, p. 1.

- * 640 asylum applicants in 2002;
- * 1066 asylum applicants in 2003.

On December 31th, 2003, there were in total 79 recognised asylum seekers in Slovenia.
(data from the Ministry of the Interior of the Republic of Slovenia, February 2004)

Slovenia is the most prosperous of all former Yugoslavian countries. It is one of the first of the list of candidates for accession to the EU. But this involves many problems with its former Yugoslavian neighbouring countries; at the end of the year 2000 the EU put stress on the safety of the borders to the east. That also meant the need to implement a new visa regime, to prevent migrants to enter the soon-to-be-EU from here, and to educate the border police as well as to give substantial financial support for the technical development of the border security.⁴⁷ The Slovenian government talks about this border issue on its homepage: »For Slovenia, the protection of the external Schengen border is one of the most pressing aspects in the chapter on justice and home affairs. However, it is expected that checks on the borders with other EU members will be dropped in 2005, which would make the country fully integrated into the Schengen regime. (...) Slovenia is involved in the network of co-operation between police and customs bodies, on both European and regional levels. In September (2001) the country hosted the exercise, High Impact Operation, involving 35 countries and several thousand police officers from Finland to Greece, the main purpose of which was precisely to strengthen the future Schengen border. Slovenia co-operates closely with the neighbouring states of Italy, Austria, Hungary and Croatia in the area of the exchange of information, in the early warning system and in the area of co-operation between police forces and asylum bodies of the countries. Not least, Slovenia was the first state candidate to have signed the Agreement on Cooperation with Europol, in September 2001.«⁴⁸ Slovenia signed many readmission agreements, especially with its neighbouring countries. The bilateral agreements are ratified with Austria and the Benelux countries, as well as with Bulgaria, Canada, Croatia, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Macedonia, Poland, Romania, Slovakia and Switzerland. The weakness of these readmission agreements is that their implementation is not subject to any administrative supervision and that they usually do not include any consideration for the

⁴⁷ See: Viktor Meier, *Jugoslaviens Erben: die neuen Staaten und die Politik des Westens*, München 2001, p. 21 and about the influences of the European Union also: Mojca Pajnik, Petra Lesjak-Tušek, Marta Gregorčič: *Immigrants who are you? Research on immigrants in Slovenia*, Ljubljana 2001, pp. 133.

specific situation of asylum seekers.⁴⁹ Slovenia also classified Croatia as a safe third country, whereby the Slovenian Border Police can return migrants to Croatia before they could ask for asylum. This probably reduced the applications in Slovenia immensely and, because Croatia does not have any recognised asylum system at all, this was criticised greatly by the EU. So the consideration of Croatia as a safe third country was changed in June this year under strong pressure of the EU. As Anita Longo from Amnesty International Slovenia commented: »It is the EU that defines our laws.« The above mentioned PHARE Programme gave financial support to the issue of justice and home affairs in Slovenia. It paid 9.3 million EURO for the police surveillance equipment at the borders, a refugee and a deportee centre and for border crossing facilities with Croatia.⁵⁰ The surveillance of the border(s) is one of the main interests of the EU. This is evident in the above-mentioned report: »Enhanced border control is especially important, as Slovenia has increasingly become a transit country for illegal immigrants, mainly over the borders with Croatia and Hungary. About 36,000 illegal border crossings were reported in 2000 – this represents a 91% increase from the year 2000.⁵¹

An interesting point of the discussions about asylum seekers in Slovenia is also the terminology used in this topic. As stated in a book published by the Slovenian Peace Institute, even if the Bosnian refugees were titled by terms like »refugee tide«, »illegal immigrants« and »illegals«, in our days in the media they are called refugees. That means, the Bosnian refugees in the beginning of the 90s are now told to be the good ones, while the bad ones, people who had to flee their home countries are described with the terms mentioned above: »Bosnian refugees, whom eight years ago the media and some state institutions described using the same disqualifying terms as they use for illegal immigrants in Slovenia today, suddenly turned into ‘our people’«. Of course they are ours – after all, we used to share the same country. (...) But they became so much »ours« that the media virtually never use the term »refugees« for the illegal immigrants in Slovenia today, regardless of the fact that the use of the term is in accordance with the UN Convention on refugees and the definitions in the Geneva Convention. Suddenly, only Bosnian refugees deserve to be called ‘refugees’, that

⁴⁸ See: EU: Open Issues and Perspectives, Government public relations and media office, www.uvi.si/eng/new/background-information/eu-open-issues.

⁴⁹ Danish Refugee Council: *Legal and Social Conditions for Asylum Seekers and Refugees in Central and Eastern Europe*, Copenhagen 1999.

⁵⁰ See: *Regular Report on Slovenia's Progress towards Accession 2001*, Brussels 13 Nov. 2001, SEC (2001) 1755, p. 10.

⁵¹ *Ibid.*, p. 79.

is, only those who fled from the war in Bosnia-Herzegovina.«⁵² Interesting is not only the definition of the Bosnian refugees as the only ones thus defined, it is also the use of racist terminology like »illegals« for all the others. The same terminology is to be found in the media all over Europe, as well as in booklets published by the governments. People without papers who did not get asylum mostly do not stay in Slovenia but try to get west. At least that is what all of my interview partners told me. »Illegal people do not exist really in Slovenia« stated Tamara Jerman from UNHCR (Interview 19. 09. 2002). Refugees with a different skin colour are so rare in this country, that probably they would have no chance to stay here without papers, there are also only few of them staying when they got recognised asylum seekers. My interview partner referred this also to a xenophobic atmosphere in Slovenia, Gregory Garras spoke of a »wall of silent disapproval« people of different colour meet here. But this phenomenon is not typical Slovenian, you can find it in many societies who do not have much experience with other cultures, but for sure it is something with a racist basic. And somehow this basis is supported by the EU policy, because »the EU suspects that every refugee flow because of economic reasons. Suspicion is always behind it«, as Neža Kagovšek from the Slovenian NGO Legal Information Centre stated but her colleague, Mirjana Miličić added »it will take time to get used to the other colours of people, but we will get used to it« (Interview on 19. 09. 2002).

According to the Slovenian Law on Asylum no difference is made between refugees entering the Slovenian territory without documents and refugees who crossed the border legally. In § 8 it is read that »the persons mentioned in the previous paragraph shall not be punished for illegal crossing of the state border.« But to enter the country without permission is subject to prosecution. All refugees are allowed to apply for asylum directly after entering the Slovenian territory. Still, as in Lithuania you can find the terminology »illegal aliens« and in comparison »asylum seekers« in the practical realization of the law. But the number of people without papers in Slovenia is pretty low, as Christina Wille stated. There might be a couple of citizens of the former Yugoslavia, but not many more. A much bigger number she sees in refugees using Slovenia as a transit country heading west. But even these numbers got reduced by the introduction of a visa regime in Bosnia-Herzegovina.

In Slovenia you can find the »Centre for the removal of foreigners«, (this is the official term, normally it is just called Centre for Aliens or Centre for Foreigners) as well as the Asylum

⁵² See: Marjeta Doupona Horvat, Jef Verschuere, Igor Z. Zagar, *The Rhetoric of Refugee Policies in Slovenia*,

Homes. In Šiška, a suburb of Ljubljana you find one containing both categories: The Centre for Aliens and Asylum Home. The asylum seekers home is on the first three floors of this building, in the basement you will find the Centre for Aliens. The Centre for Aliens in Veliki Otok near Postojna is situated in former military barracks, used for this purpose since a couple of years. It is a high security alien detention centre under police supervision and a branch of the Centre for the Deportation of Aliens is situated there as well.

As in Lithuania, in Slovenia the Red Cross used to be the NGO involved the most in the field of refugee business. But here they stopped their involvement a couple of years ago. I use the word »refugee business«, because it seems, that in Slovenia the cooperation between the Red Cross and the government was much more uncritical than in Lithuania. »Though such cooperation between states and non-governmental organisations is not uncommon, the link that developed between the state and the Red Cross in this case was a particularly strong one. As a result, Red Cross officials did not refrain from making political statements that were hardly suitable for representatives of a humanitarian organization.«⁵³ On the level of legal advice there exists a network of lawyers who deal with the asylum process in Slovenia, it is called Asylum Lawyers Network (ALN) and provides professional support to all persons engaged in this field⁵⁴. But now there are approximately 10 NGOs working somehow on the refugee field. And as the UNHCR reported it is necessary that they form kind of a civil society that could also be a partner (even a critical one) for the government, especially talking about integration programmes. I had the impression that the NGOs in Slovenia need something like a refugee council only on NGO level, where they can discuss common problems and divide their work transparently. In Lithuania this will probably still not be possible because of a lack of NGO involvement.

The Slovenian refugee law is by now according to European standards, as you can see e.g. in the different status of refugees. There are »temporary refugees« with a temporary **refugee status** as proposed by the EU and there are two more permanent statuses, the humanitarian status according to the European convention of human rights and the convention status according to the Geneva convention. But with both last named statuses, asylum seekers have the same rights during their stay in Slovenia. Another point, that used to be very similar to the

Ljubljana 2001, pp. 13.

⁵³ See: Marjeta Doupona Horvat, Jef Verschuere, Igor Ž. Žagar, *The Rhetoric of Refugee Policies in Slovenia*, Ljubljana 2001, pp. 14 ff.

German standard was the limited freedom of movement, refugees were only allowed to leave the centres with a permit which they got from the guard on duty. This »Limitation of movement« was manifested in §27 of the Slovenian Asylum Act and got erased with the last change of the law. But they still have to leave a current address when they leave their residence for a longer time than three days. Otherwise they will get kicked out of the asylum system. By December 2003 there were 79 recognised refugees in Slovenia, mainly single male persons. Most of them got caught on their way west. Mirko Vaupotič describes it like this: »The system of the EU is not good because the asylum seekers only come to Slovenia because they passed through. They did not want to stay here and so they leave again as soon as they can«. One critical point should be the knowledge of the decision makers in the Slovenian asylum procedure. Most of them are not lawyers and the legal advisors of the Slovenian NGO's told me that, especially on the question of humanitarian status, they very often have the impression that they decide on the basis of feelings and have a very uncertain position.

Still the Slovenian government tries to develop an integration strategy, because there is still no integration law existing. To find their own way in Slovenia recognised refugees need at least language courses (even if the Slovenian Philanthropy provides language courses for all asylum seekers, it is due to voluntary work, not due to an official programme), support in finding any kind of employment and some anti-discriminating laws to help them to really integrate in the Slovenian society. The importance of the development of an integration programme in Slovenia was marked from the Peace Institute, Christina Wille and the UNHCR as well.

Lithuania

The point that impressed me the most in Lithuania, comparable to the Slovenian situation, was the terminology, strange for the Lithuanian citizens but imported by western European trainers. The still existing division of immigrants in Lithuania in »illegal migrants« and »asylum seekers« depends so much on western European logic as nothing else. All of them are migrants who had to flee from their home countries. The only difference is, the first ones arrived in Lithuania without passports, or they crossed the border illegally and therefore are treated differently when they want to apply for asylum. The second ones pled for asylum at the border and had a valid passport with them. The first ones are kept in the Foreigners

⁵⁴ See: Fundacija GEA 2000 »Information for persons seeking asylum in the Republic of Slovenia«, May 2000, p. 47.

Registration Centre in Pabrade, the worst prison I have ever seen (though people in Lithuania told me that other Lithuanian prisons are of comparable lack of standard). The second one is in the very nice and clean Refugee Reception Centre in Rukla, its construction financed by UNHCR and Nordic donor countries.⁵⁵

The process to this division started 11th of March 1990 with the Lithuanian proclamation of independence. The new constitution came into force at the 25th of October 1992 by a plebiscite. Beginning of the 90s Lithuania was said to be one of the transit countries for migrants heading to the west, and at least a safer refuge than the countries farther in the east. Pretty soon Lithuania became one of the safe third countries and an accession aspirant for the EU. The Scandinavian countries, as Lyra Vysockiene from the UNHCR Vilnius Office told us, are the main partners of the Baltic area, also in the field of asylum policies. »They accompanied the whole developing process on the asylum level.« Now their main target is competence building and networking.

In the beginning of the nineties Scandinavia helped in intensifying the border control, especially because the Baltic states for their part were said to form the »Baltic route«, heading from the east towards Scandinavia. This was very important in the early 1990s, when the borders in central Europe were increasingly closed. To avoid being detained in Lithuania, for example, »illegal« migrants hid themselves until they found a way to cross the Baltic Sea towards Scandinavia. Therefore IOM (International Organisation of Migration) and the Scandinavian governments gave financial support to improve border control.⁵⁶ But Estonia was always expected to join the EU earlier, which would have meant that Lithuania would have been a non-EU country sandwiched between EU countries, similar to Kaliningrad's current situation. But luckily these plans have been changed recently.

Lithuania has signed readmission agreements with Estonia, Latvia, Switzerland, Ukraine, Sweden, Slovenia, Finland, Italy, Poland and Spain. The discussions about agreements with Belarus and Russia have not yet been successful in the time of my visit. The concept of supporting the development of border control in Lithuania has worked – today few refugees find their way to the Baltic countries. On 16 December 1999 the Federal Republic of

⁵⁵ See: www.unhcr.ch/world/euro/lithuan.htm.

⁵⁶ See: *UNHCR Mid-Year Progress Report 2001*, New York 2001, p. 220, www.unhcr.ch/world/euro/lithuanian.htm and www.unhcr.ch/world/euro/lithuanian.htm and Odd Iglebaek, »Die baltische Route«, in: *Flüchtlinge - Brennpunkt: Asyl in Europa*, Nr.3, Sept. 1995, p. 28.

Germany signed a bilateral readmission agreement with Lithuania, Latvia and Estonia.⁵⁷ The current numbers give the all-clear.

As of 1 April 2002 some 1038 persons applied for asylum in Lithuania since the enforcement of refugee legislation. The following is the breakdown of asylum applications on annually basis (numbers cover asylum applicants):

- * 242 asylum applicants in 1997, when asylum procedure became operational;
- * 159 asylum applicants in 1998;
- * 143 asylum applicants in 1999;
- * 199 asylum applicants in 2000;
- * 256 asylum applicants in 2001;
- * 65 asylum applicants in first half of 2002.

July 1st of 2002, there were 41 asylum seekers in the Foreigners Registration Centre in Pabrade (20 from Afghanistan and 21 from Russia). At the same time there were 142 persons in the Refugee Reception Centre in Rukla (15 from Afghanistan, 1 Iraqi, 125 from Russia, and 1 Indian).

(data from UNHCR office Vilnius, July 2002)

The co-ordinator of the Legal Assistance for Asylum Seekers and Refugee Project of the Lithuanian Red Cross summarised the situation in 1999 like this:

»Lithuania's foreign policy priority for the next couple of years is full membership in the European Union. Lithuania, however, will not achieve the desired accession without strong state institutions guaranteeing human rights and their protection, which the European Council in Copenhagen in 1997 considered as one of the criteria for the membership. The European Commission in its Agenda 2000 prepared in July 1997, inter alia, stressed that Lithuania's administrative institutions must have the ability to deal effectively with asylum matters. Since that time Lithuania has adopted the necessary legal framework and established respective administrative structures to implement the

⁵⁷ See: *Arbeitskreis Asyl Baden-Württemberg, - aktuelle Informationen -* January-February 1999, interview with

procedure for determining refugee status. Since that time certain practice of granting asylum to foreigners in need of international protection has also evolved. Therefore at present Lithuania may well claim to have made a considerable progress in the asylum matters. Such conclusion may be drawn from the last report on Lithuania's progress submitted to the European Union.«⁵⁸

Lithuania signed the Geneva Convention and the Additional Protocol on 21 January 1997, and they came into effect on January 27th of the same year. The first Lithuanian Refugee Law was implemented in 1997 as well. The law on the Legal Status of Foreigners (Aliens Act) was adopted in 1998 and entered into force on July 1st, 1999. The Lithuanian refugee law was much criticised by the above-mentioned Legal Assistance Project, by the UNHCR, and, last but not least, by the European Commission in its regular reports on Lithuania's progress towards accession. The first Lithuanian refugee law was comparable to the European standard but deemed insufficient. In autumn 1998, a working group was established by the Lithuanian government to change the refugee law to meet the demands of the European Union. In 1999 a delegation from Lithuania reviewed the gaps analysis of UNHCR office, at a workshop, with the help of the Swedish and Danish EU experts and UNHCR representatives. They worked out a »National Action Plan outlining the gaps in the Lithuanian asylum procedure and suggestions on how to address these deficiencies,« as Lyra Vysockiene told us.

The Refugee Law of 29th June 2000 eliminated many of the deficiencies of the previous law, including pro-screening procedure, providing regulations regarding the detention of asylum seekers, and allowing for family reunion for recognised refugees. The law restructured the asylum procedure introducing just two institutions involved in asylum procedure, the Migration Department and Vilnius' District Administrative Court, instead of the previous three-tier structure consisting of the Minister of the Interior, the Refugee Affairs' Council and the Vilnius District Court of general competence. »The first instance in the Lithuanian asylum procedure is the Migration Department at the Ministry of Interior. There is an Asylum Affairs Division in the Department responsible also for applications to issue temporary residence permit on humanitarian grounds. The second instance is Vilnius District Administrative

Linas Sesickas UN bulletin No 20, 1999, www.un.lt/bulletins/20/page6.htm.

⁵⁸ see: Legal Assistance Project for Refugees: »Asylum policy in the Republic of Lithuania: Doubts on Fairness and Effectiveness of the Refugee Status Determination Procedure«, Vilnius 1999, p. 1.

Court, while the final decision may be taken by Higher Administrative Court.«⁵⁹ The law also introduced an admissibility procedure at the border and an accelerated procedure within the nation's territory. The EU also expected the implementation of some new concepts such as the safe third country concept and the ideas of safe countries of origin. The Lithuanian government introduced the manifestly unfounded claims, as Migle Cirbaite from the Legal Assistance Project to refugees stated in our meeting on 12 June 2002. In the Regular Report on Lithuania's Progress towards Accession 2001 the missing points were expressed as follows:

»While Lithuania has achieved a good level of alignment with the European and international standards on asylum, a number of issues remain to be addressed, including the definitions for determination of the safe third countries and safe countries of origin. Cooperation and coordination among the various institutions involved refugee matters need to be improved, in particular through the establishment of a comprehensive registration system.«⁶⁰

Even if the PHARE programme no longer supports national aims, the PHARE National Programme Project on the Establishment of a Comprehensive Asylum and Migration Management IS/IT, including a Foreigners Register, will still be implemented.

»This programme fiche was submitted by the Lithuanian authorities to the EU in autumn 2001 and was approved in the beginning of 2002. Austria was selected as a twinning partner in spring 2002 and the project is due to start shortly. The project aims to improve asylum and migration institutions' internal working instructions and to establish a comprehensive IS/IT system in which asylum applications and recognitions can be registered as well as country of origin information collected, stored and disseminated. Such a system would also enhance Lithuania's future accession to and implementation of the EURODAC Regulation and future Regulation replacing the 1990 Dublin Convention.«⁶¹

⁵⁹ See: UNHCR Lithuania: *UNHCR observations on the Lithuanian asylum legislation, institutional structure and co-ordination and practitioner capacity in light of the EU aquis on asylum and related international standards*, June 2002, p. 1.

⁶⁰ See: *Regular Report on Lithuania's Progress towards Accession 2001*, Brussels 13 Nov. 2001, SEC (2001) 1750, p. 22.

⁶¹ See: UNHCR Lithuania: *UNHCR observations on the Lithuanian asylum legislation, institutional structure and co-ordination and practitioner capacity in light of the EU aquis on asylum and related international standards*, June 2002, p. 4.

4.2. The practice

Slovenia

On 7 May 2001 the Human Rights Ombudsman of the Republic of Slovenia paid an unannounced visit to the Alien Detention Centre in Veliki Otok at Postojna. The report on this visit is rather interesting, especially the fact that none of the staff members seemed to know the inhabitants of the centre. Even the social worker and the nurse could not give any details to the visiting delegation. »The person in charge of the shift referred us to the social worker who in turn directed us to the nurse when asked certain questions, while the nurse told us to talk to the caretaker and the housekeeper. The latter, who explained the system of taking showers in the shower room was dressed in her civilian clothes and high heel pumps, and did not convey the impression of being on duty at that particular moment.«⁶² Since the Ombudsman published his critique the situation in the centre has changed for the better. At least that was the report given by the Deputy Ombudsman France Jamnik, whom I met on October 16th. But in annual report 2001 they one can find some strange passages about the good will of refugees, that not only sound strange because of the terminology used. Talking of »aliens« but meaning refugees always implies some negative connotations: »From conversation with aliens those at the centre established that the majority of aliens understand the word 'asylum' as a kind of stopping-off place or shelter in the event that they are caught by the police while illegally crossing the national border. Aliens use the word 'asylum' in these cases so that the competent national authorities accommodate them, feed them and if necessary even clothe them.«⁶³

The detention centre in Ljubljana is still in the home for foreigners, formerly called the centre for deportation of foreigners. Detained are mostly refugees who for any one of several reasons did not apply for asylum or who were rejected and not able to be deported. But, according to the UNHCR office in Ljubljana, one can not call this centre really a detention facility because it is practically not a prison, but more an »open centre«.

Refugees entering Slovenia can apply for asylum everywhere – at the border, at police stations, at the Ministry of Interior or in the asylum centres directly. But the professionals I interviewed talked about rumours that some refugees got sent back by the officials, especially

⁶² See: Visit to the Alien Detention Centre in Veliki Otok at Postojna, www.varuh-rs.si/cgi/teksti-eng.cgi/Show?_id=voang19-6-01, pp. 1.

at the border, without getting the chance to apply for asylum or at least state a request, or were not informed sufficiently about their rights. »We assume that human rights are most violated at the borders«, was the sober observation of Mrs. Mirjana Miličić, from the Legal Information Centre (Interview on 19. 09. 2002). Here a kind of a border monitoring project would be quite helpful to supervise the situation and the capacity and capabilities of the police officers. The UNHCR office Ljubljana provides training for border police officers, but had heard these rumours as well. In this context a capacity building of NGO members would be also very helpful, because in the social and social-political sector increased professionalism should also be made possible. But here a lack of funds hinders, as in so many other fields.

One other main issue regarding the practical work in Slovenia is the lack of an integration policy. This was noted by all my interview partners. Mr. Bojan Bugarič from the Ministry of Interior, for example, stated that »integration is the weakest point in Slovenia« and all governmental and NGO representatives alike discuss how to develop an integration programme for those Bosnian refugees under temporary protection to be granted permanent residence in 2002 as well as for the recognised asylum seekers.

In 2002 there have been last year 53 unaccompanied minors in Slovenia. Five of them got asylum, the rest moved to the west. In 2002 there were seven but only one of them stayed in the country. In the centres one can not find any special rooms for minors, everything is pretty improvised as Franci Zlatař from the Slovene Philanthropy stated (Interview on 19. 09. 2002). But now a discussion about special shelters for minors started. In Lithuania in comparison unaccompanied minors are an interesting issue in view of the fact that e.g. in 2001 the number of separated children seeking asylum in Lithuania was, as in the EU, about 11%. That is a pretty high number, which shows certain tendencies.

Lithuania

Migle Cirbaite from the Red Cross in Vilnius informed us about changes that needed to take place in the detention facility in Pabrade. The Foreigners Reception Centre in Pabrade was founded in 1997 and falls under the authority of the Border Guard Service of the Ministry of Interior, which I visited in April 1999. It formerly gave refuge to asylum seekers as well as to those who entered the country illegally. This changed recently; all asylum seekers first enter

⁶³ Annual Report 2001, 2.6.3. Aliens, p. 4.

the Pabrade Centre – but only for the first 48 hours, although »illegal migrants« are still detained there for a longer time. The facility used to be a military complex and a new facility was put into use in 2000, constructed with the financial support of the UNHCR (for the living conditions) and the EU (for the construction).⁶⁴ All asylum-seekers can apply for asylum directly at the border, in local police commissariats, or in Pabrade itself. One of the problems the Red Cross told us about is the lack of knowledge of some border police officers, who sometimes do not know what to do with the applicants, even if the UNHCR office Vilnius has been »actively involved in helping the Government to develop the legislation on refugees, establish the infrastructure for refugee reception, improve conditions in detention and train the officials.«⁶⁵ But the officers change often and sometimes they just cannot understand the arriving migrants. In turn, this led to doubts about the access to asylum procedures, especially for asylum seekers on the transit trains running between the territory of the Russian Federation and Kaliningrad. They have been refused the right to disembark the train and therefore could not apply for asylum. »The potential asylum seekers have thus been forced to continue their journey to Kaliningrad as they have been prevented from exercising their right to seek asylum in Lithuania.«⁶⁶ As Lyra Vysockiene told us, UNHCR is trying to change this situation, but as of now, the lawyers of the legal assistance project of the Lithuanian Red Cross who are doing border monitoring, do not even have allowance to enter the transit zone at the Vilnius railway station. With regard to this issue the main concern of UNHCR Vilnius is that people are not allowed to submit their applications once they try to do so after having arrived with such trains. In practice, it lead to situation, that now they cross the border illegally and then report to Pabrade centre or police with asylum applications: »What we were told by the officials in a semi-official way, is that EU is pushing them to control these movement, which they understand as to stop the movements, here we see direct impact of EU strengthening its borders with effects on protection situation, because this is done without any balance«, so far Lyra Vysockiene.

All of the refugees who apply for asylum or are caught staying in the country illegally are brought to Pabrade, and this is just what it looks like: a refugee camp for »illegal migrants«. The conditions there were explicitly mentioned in the Regular Report on Lithuania's Progress

⁶⁴ Danish Refugee Council: *Legal and Social Conditions for Asylum Seekers and Refugees in Central and Eastern Europe*, Copenhagen 1999.

⁶⁵ see: leaflet of the UNHCR in Lithuania.

⁶⁶ see: UNHCR Lithuania: *UNHCR observations on the Lithuanian asylum legislation, institutional structure and coordination and practitioner capacity in light of the EU 'acquis' on asylum and related international standards*, June 2002, p. 2.

towards Accession in 1998 as causing concern. When the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Pabrade in February 2000 things seemed to have changed a bit.⁶⁷

This contradicts the information of the Lithuanian Red Cross in my interview, where they reported that there had not been substantial changes since my visit in April 1999. But in the 2001 Regular Report on Lithuania's Progress towards Accession, the situation in Pabrade was not mentioned, so perhaps the situation has really changed a bit. And it is mentioned as well, that »during the reporting period, the staff of the Asylum Division of the Migration Department have attended a number of training courses and seminars on asylum, organised by several international organisations.«⁶⁸

⁶⁷ They relate »that the delegation received some allegations of physical ill-treatment and verbal abuse of persons held at the Foreigners Registration centre. The CPT has recommended that the Director of the Centre inform his staff that no circumstances whatsoever can justify such acts. At the same time, the CPT has recognised that the staff of centres for the detention foreigners have a particularly onerous task. Consequently, it is essential to ensure that supervisory staff assigned to such centres are appropriately selected and trained. Material conditions of detention at the Pabrade Centre were, on the whole, of an acceptable standard, and accommodation facilities in a new three-level building were of a high standard. Further, efforts have been made in recent times to develop activities for residents at the centre.« See: *Report to the Lithuanian Government on the visit to Lithuania carried out by the European Committee for the prevention of torture and inhuman or degrading treatment or punishment from 14 to 23 February 2000*, www.cpt.coe.int/en/reports/inf2001-22en.htm, p. 43.

⁶⁸ See: Regular Report on Lithuania's Progress towards Accession 2001, Brussels 13 Nov. 2001, SEC (2001) 1750, p. 91.

5. Comparison: a single European asylum policy and its effects on Eastern Europe

As the Lithuanian Red Cross stated, who takes care for approximately 68% of the recognised refugees, most of the recognised refugees are going to leave Lithuania within the first year of the integration process. This is due to their status – most of them received temporary residence and with this status, they only get social integration help throughout the first year. So they can get social help the first year, but even this is only help to survive, nothing else.⁶⁹

This is comparable with the situation in Slovenia, but there is still no integration programme there, which is why most of the recognised refugees either live with family members in Slovenia or try to get to the west. In Slovenia it is the Caritas that helps with material help, in Lithuania the Red Cross gives material help to the refugees, and has a legal assistance programme, so every applicant should have the possibility to see one of their lawyers free of charge. The applicants are allowed to receive compensation for the use of public transport, to make use of interpreter services free of charge, and to receive a monthly allowance for minor expenses.⁷⁰ In Slovenia the refugees have the possibility of legal advice at GEA and the Legal Information Centre, both financed with the help of the Ministry of Justice and some other donors. The Slovene Philanthropy provides language courses and children day care. It is no institutionalised service, but due to the engagement of volunteers. On the 1st of October 2001, a new Social Integration Order for Foreigners granted Asylum entered into force in Lithuania. It provides a one year individual integration program which can be extended for another year for refugees with any kind of status and it increased the Lithuanian language lessons from 96 to 190 hours. The social integration help includes help in finding work, arranging education in the language, and health insurances. But regardless of whether the refugees find a job or not, after two years they will not be supported further.

The Lithuanian Migration Department should examine the applications to grant refugee status within a period of 2-12 months. A refusal from the migration department can be appealed to the Vilnius District Administrative Court within 14 days from the day of familiarisation. The

⁶⁹ Interview with Diana Bartkute and Migle Cirbaite, Lithuanian Red Cross, 12 July 2002.

⁷⁰ See: *Information on asylum procedure in the Republic of Lithuania*, leaflet from the Lithuanian Red Cross in co-operation with the Migration Department at the Ministry of Interior of the Republic of Lithuania and UNHCR.

procedure in Slovenia takes much longer, people sometimes having to wait up to five or six years. Especially the Bosnian refugees had to wait for ten years to get a permanent residence now. There does not exist any legal status for refugees who are rejected as asylum seekers but can not be expelled for practical reasons in either country.

In Lithuania I was told that the new law is very nice, similar to the German and Scandinavian ones, but the reality is still very, very different. The awareness about human rights is particularly low. There is no institution dealing with this issue on the immigration level. The UNHCR mentions the extensive use of detention against asylum seekers and the »lack of competence in the courts on detention of asylum seekers issue« especially critically.⁷¹ Lyra Vysockiene, UNHCR Vilnius, states that there is no NGO overseeing or promoting human rights standards in Lithuania and only one for asylum seekers; compared with this, the situation in Slovenia is better, as there are approximately 10 NGOs dealing with refugee matters and two who watch the human rights in Slovenia. Surely it could be more, but it is good to know that some people care at all.

One of the main differences between the asylum policy in Slovenia and that in Lithuania is certainly to be found in their history. Even if racist propaganda is to be found in both countries as well as all over the European Union and elsewhere, the first refugees arriving in Slovenia came from Bosnia, their former own country, while in Lithuania refugees arrived on the flight routes from everywhere, especially Afghanistan and Sri Lanka. In 1992 roughly 30,000 refugees from Bosnia arrived in Slovenia. In Lithuania, in its peak in 1996, 1,551 persons without documents and approximately 240 asylum seekers were counted. But Slovenia closed its borders in 1992 and the anti-refugee campaigns have not been any smaller (as far as such comparisons are valid) than in Lithuania.⁷²

The influence of the EU on the asylum policies in these two countries is immense. It provides the minimum standards for all asylum seekers, stresses the implementation of laws fulfilling human rights standards as well as legal assistance, but on the other hand, these are only minimum standards and, in some cases, inadequate ones. Sometimes the fear of the EU

⁷¹ See: UNHCR Lithuania: *UNHCR observations on the Lithuanian asylum legislation, institutional structure and co-ordination and practitioner capacity in light of the EU 'acquis' on asylum and related international standards*, June 2002, p. 5.

countries of too many foreigners has led to such a strict regime that, without its influence, refugees could have lived easier in Lithuania or Slovenia. The minimum standards discussed in the EU are a bare minimum, and neither country is willing at this point to formulate a European standard that is higher than the one in its own country.

A common asylum law for all EU countries will probably still take a while, but a harmonised one is likely to come in a couple of years and the jurisdiction system implemented in the East will form the standard that all western European asylum laws will be judged on.

The UNHCR plays a very important role, but its mandate, in that it does not cover people without papers, the so called »illegals« and the rejected ones, is too small to protect all migrants. One can also see that the EU countries do have special interest in their neighbouring countries – there is bilateral support, even if not very transparent. This can be also seen in the readmission agreements that exist with many countries, but are not really supervised by any particular institution. A person who is deported can unfortunately expect chain deportations without public scrutiny. And it also means that NGOs have to put more focus on the people who live in the metropolis without any legal status. Because (another conclusion) refugees will find a way to enter Europe anyway, and if they do not have any chance to apply legally for asylum, they will remain in an illegal status.

Knowing the number of asylum seekers in Lithuania and Slovenia, I also suspect that the whole asylum machinery is much more expensive than it would be to pay asylum seekers a set amount of money and let them live where ever they want. This solution has been rejected, even though the fear of the masses coming to Europe is much larger then the reality seems to justify, as indicated by the current decreasing refugee numbers. Even if the decreasing numbers are more due to the increasing control of the borders.

Somehow the amount of support given by the EU to the Eastern European countries to implement an asylum policy seems to indicate that the EU is very happy about the expansion not only for economic reasons but also because with this development it has found a solution for the migration issue. Refugees have no chance to apply for asylum in the current EU

⁷² See: Marjeta Doupona Horvat, Jef Verschuere, Igor Ž. Žagar, *The Rhetoric of Refugee Policies in Slovenia*, Ljubljana 2001, pp. 20f. and 26f. and Friedrich Burschel, «Das litauische Asylverfahren und das Prestige-Objekt Rukla,« in: *Litauen: Wartesaal 2. Klasse, Ergebnisse einer ESG-Studienfahrt im April 1999*, Berlin 1999, p. 19.

countries, because all of them have to apply before the »fortress Europe.« That is a very welcomed way of moving this so-called problem further east. Then it can still call itself humanitarian, without showing the responsibility for doings outside of its fortress. The main target is to fight illegal immigration anyway, and to prevent refugees from entering the EU. That might be a reason why integration programs seem to be forgotten in the accession countries – not that the EU countries all have a very high integration standard, but after my study trips I got the impression that there is a lot more that has to be done at the level of integrative support. Amazing is the contradiction, on the one hand we have the EU human right standards which must be implemented in the asylum sector; on the other hand, due to the EU the fortress Europe, with its inhuman consequences, is getting stronger and stronger. And in all the interviews I made throughout the last years in Central and Eastern Europe one can see the EU interest behind every single law implemented. Sometimes it helped maintain humanitarian standards, but very often it also hindered refugees from finding a safe haven to live in peace.

The influence of the European Union is very high, especially because it decided to implement a common asylum law before the accession candidates join the Union. Therefore they do not have any opportunity to influence the decision. As well as the structure itself, this must also be changed before accession. One can notice a tendency to strengthen the common laws by the conservative member governments (and not only by them), and especially by the German government, even if it has been social democratic these past few years. But the decision-making process in the EU supports the development of a less liberal design. This depends also on the country and its representatives which is in charge of the presidency of the council. His (or her) political viewpoint influences the atmosphere at the meetings even if it does not have direct influence on the decision at the end of the process. Especially because the process is not really open. The interest of the European governments can be clearly seen as preventing migration, illegal as well as legal, and pushing the so-called »problem« to the surrounding accession countries.

Looking at this development, especially in Eastern Europe, the importance of NGOs is greater than ever. Civil societies need NGOs to monitor their politics and the human rights standards. Here, Slovenia does give more hope because there are at least a couple of NGOs dealing with this topic, helping the human right standards to survive or even thrive.