



Human Rights Ombudsman
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Subject: Input for the Report on human rights violations at international borders: trends, prevention and accountability

Dear Mr. Morales,

The Human Rights Ombudsman of the Republic of Slovenia (hereafter: the Ombudsman) would first like to take this opportunity to congratulate you for the 2021 *Report on means to address the human rights impact of pushbacks of migrants on land and at sea (A/HRC/47/30)* and acknowledge the importance of the conclusions and recommendations expressed therein.

In response to the call for input for your forthcoming report to the 50th session of the Human Rights Council on the topic of human rights violations at international borders, the Ombudsman would further like to highlight the following developments in the Republic of Slovenia:

- a) In March 2021, the Slovenian National Assembly (parliament) adopted amendments¹ to the Foreigners act,² which came into effect in May 2021, and amendments³ to the International Protection Act,⁴ which came into effect in November 2021. Both of the laws have been extensively reformed.
- b) The amendments to the Foreigners Act include provisions on the possible suspension of the right to asylum in case of a migrant emergency (Articles 10a and

¹ The amendments have not yet been translated into English. Available in Slovenian at: www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2021-01-1153?sop=2021-01-1153.

² Official Gazette of the Republic of Slovenia No. 50/2011 with further amendments. Available in Slovenian at: <http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5761>.

³ The amendments have not yet been translated into English. Available in Slovenian at: www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2021-01-1052?sop=2021-01-1052.

⁴ Official Gazette of the Republic of Slovenia No. 22/2016 with further amendments. Available in Slovenian at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7103>.

10b); these new provisions are very similar to the provisions introduced into the Foreigners Act in 2017 and annulled by the Constitutional Court of the Republic of Slovenia in 2019 for violating the prohibition of torture from Article 18 of the Constitution of the Republic of Slovenia.⁵ In August 2021, the Ombudsman wrote to the European Commission notifying them of the new Foreigners Act provisions, as they also seem to represent a deviation from EU asylum law. In February 2022, four opposition political parties from Slovenia initiated a procedure in front of the Constitutional Court of the Republic of Slovenia to annul the new provisions as unconstitutional, as the court had previously done with the 2017 provisions.

Additionally, the Ombudsman would like to call attention to the fact that the 2021 Foreigners Act amendments did not include any provisions aimed at discontinuing the practice of returns of migrants without a return decision. Therefore, this problematic practice, described in the Ombudsman's submission for the Special Rapporteur from February 2021,⁶ is still in effect.

- c) As for the amendments to the International Protection Act, the Ombudsman notes that many of the changes represent a lowering of the standards for the protection of persons of concern and, in some cases, raise a question of conformity with the Constitution of the Republic of Slovenia and international human rights law as well as the EU asylum and migration acquis.

The revised Article 9 of the International Protection Act stipulates that a refugee lawyer⁷ will be permanently removed from his position:

“if it is established that he knows the true identity of the applicant, possesses the applicant's identification documents, he knows the actual age of the applicant, if he claims to be a minor, or he knows the facts on the basis of which the applicant is not eligible to refugee status or subsidiary protection, but does not inform the competent authority.” (Unofficial translation)

This new provision seems to be in violation of the constitutionally guaranteed lawyer-client privilege and could severely hinder the right of asylum applicants to challenge first instance asylum decisions.

Similar requirements to disclose information have also been imposed on guardians of asylum applicants who are unaccompanied minors (Article 18). In Ombudsman's view, this could, in practice, hinder the forming of a trusting relationship between the guardian and the child and therefore have negative repercussions on the pursuit of the best interest of the child.

Furthermore, pursuant to the revised Article 78 of the International Protection Act, all adult asylum applicants are now only allowed to move within the municipality of where they are accommodated (while before they were able to move throughout the territory of the Republic of Slovenia). This restriction raises questions from the

⁵ See also: National Report on the situation of human rights of migrants at the borders; Slovenia, Human Rights Ombudsman of the Republic of Slovenia, ENNHRI, July 2021, p. 17–18: <http://ennhri.org/wp-content/uploads/2021/07/Slovenian-National-Report.pdf>.

⁶ Input for the Report on means to address the human rights impact of pushbacks of migrants on land and at sea (A/HRC/47/30), section 3.g: www.ohchr.org/Documents/Issues/Migration/pushback/NHRINIOmbudsmanRepublicofSloveniaSubmission.pdf; see also: National Report on the situation of human rights of migrants at the borders; Slovenia, p. 13–15: <http://ennhri.org/wp-content/uploads/2021/07/Slovenian-National-Report.pdf>.

⁷ Refugee lawyers provide free legal assistance and representation to asylum applicants in appeals procedures and are paid for their work by the government (transposition of Article 20 of the Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection).

point of view of the principle of proportionality, considering it seriously impedes the freedom of movement of asylum applicants, while it is not clear what legitimate goal (if any) it is supposed to pursue; such explanation has also not been given in the government's explanatory note to the draft amendments.

All of the provisions of the International Protection Act listed so far have also been challenged in front of the Constitutional Court with the procedure initiated in February 2022, mentioned under section b) (together with Articles 10a and 10b of the Foreigners Act).

Furthermore, the Ombudsman is concerned about several other changes to the International Protection Act, including the:

- significant shortening of the timeframes for submitting legal remedies (Article 70);
- broadening of the grounds for implicit withdrawal of an asylum application, which can have dire consequences for an applicant (Article 50);
- shortening of the duration of rent subsidies for beneficiaries of international protection from three to two years (Article 97) and several other instances of curtailing of integration assistance in the revised Chapter VIII of the act.

- d) The Ombudsman would further like to highlight the outcome of an important domestic court case relating to the issue of pushbacks. In April 2021, the Supreme Court of the Republic of Slovenia confirmed the judgment of a lower court, which found that the plaintiff, a Cameroonian national, had been illegally returned from Slovenia to Croatia (which resulted in a chain return to Bosnia and Herzegovina).⁸ The Ombudsman intervened in the proceedings with an *amicus curiae* submission. The court found violations of Article 18 and 19 of the Charter of Fundamental Rights of the European Union and ordered the government to allow the plaintiff to re-enter Slovenia and apply for asylum.⁹

However, while the discussed judgment can be seen as a positive development, it also demonstrates potential gaps in accountability for human rights violations at borders due to relevant authorities' poor implementation of court decisions. In the present case, despite the ruling, the authorities failed to implement the judgment for months, and the individual concerned was forced to undertake another uncertain and dangerous irregular journey to eventually re-enter Slovenia and apply for asylum.

- e) Finally, the Ombudsman is providing the following answers to questions 3 and 4 from the Special Rapporteur's call for input.

The safe third country concept was employed in Slovenia for returning asylum seekers to Croatia, before its accession to the EU in July 2013. So far, this is the only country to have been declared a safe third country by the Slovenian authorities and the concept has not been used since. Slovenia is also not a party to any bilateral or multilateral agreements on collective/automatic re-admission of migrants; the authorities must individually examine every person's circumstances before they can carry out a return.

⁸ Supreme Court of the Republic of Slovenia, judgment I Up 23/2021, available in Slovenian at: [www.sodnapraksa.si/search.php?q=Sklep%20X%20Ips%2021/2019&database\[SOVSI\]=SOVS&submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=3&id=2015081111448095](http://www.sodnapraksa.si/search.php?q=Sklep%20X%20Ips%2021/2019&database[SOVSI]=SOVS&submit=i%C5%A1%C4%8Di&rowsPerPage=20&page=3&id=2015081111448095).

⁹ See also: National Report on the situation of human rights of migrants at the borders; Slovenia, p. 16: <http://ennhri.org/wp-content/uploads/2021/07/Slovenian-National-Report.pdf>.

The Ombudsman is not aware of any advances in developing independent border monitoring mechanisms at the national level. To an extent, the border monitoring role is performed by the National Preventive Mechanism, established under the Optional Protocol to the Convention against Torture (OPCAT) and implemented by the Ombudsman and partner civil society organizations. In 2021, the National Preventive Mechanism staff carried out visits to seven police stations, which conduct procedures with migrants, and a visit to the country's main asylum reception center and its auxiliary facility.

Yours sincerely,

Peter Svetina
Human Rights Ombudsman
of the Republic of Slovenia