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**REPORT ON FINDINGS AND OBSERVATIONS ON THE
IMPLEMENTATION OF RETURN PROCEDURES IN
ACCORDANCE WITH THE PRINCIPLE OF NON-
REFOULEMENT**

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Ljubljana, July 2018

The report summarizes the findings and observations from the field visit made by the Legal-informational centre – PIC to Velika Kladuša and Bihać in Bosnia and Herzegovina (BIH) in June 2018.¹

The report is prepared in the framework of cooperation with the European Council on Refugees and Exiles (ECRE). Katarina Bervar Sternad and Luka Štrubelj also participated in the preparation of the report.

¹ In the same period *Amnesty International* Slovenia was also conducting a mission.

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INTRODUCTION

Legal-informational centre for NGOs – PIC conducted a field visit from 26. 6. 2018 to 28. 6. 2018 in Velika Kladuša and Bihać (BIH) with the purpose to verify the information regarding the alleged illegal police practices during the return procedures of individuals, who express the intention for international protection, from the Republic of Slovenia (RS) to the Republic of Croatia (RH) and their subsequent return in BIH.

Simultaneously with the reports of the alleged illegal police practices we observed a marked decline in the number of newly lodged applications for international protection. The trend started in the beginning of June and continued during the preparation of this report. Moreover, the change of practice in processing the individuals in the return procedures is also indicated by the obtained statistical data. In June, 885 illegal border crossings were recorded,² while 652 persons were forcibly returned. According to the official statistics, 267 applications for international protection were lodged in June³, however it has to be noted that on 1. 6. 2018 there were 92 persons, who arrived in May, accommodated in the reception area of the Asylum Home and in the accommodation centre in Logatec waiting to lodge their application for international protection. Therefore, access to the asylum procedure in June was enabled to 175 individuals.

Statistical data therefore shows a 4, 5 time increase in the number of forced returns in June compared to May, when 1158 illegal crossings were recorded,⁴ and 148 individuals were forcibly returned. At the same time there were 365 applications for international protection lodged in May.

The purpose of this report is to provide a comprehensive and systematic overview of the return procedures in Slovenia and assess their implementation regarding the respect of human rights, especially in June 2018. For the purpose of preparing this analysis we conducted structured interviews with 20 persons, an assessment of the situation in Velika Kladuša and Bihać, reviewed the relevant legislation, case law and available statistical information. We also requested the competent authorities of the RS for the interpretation

²Source: The Police; available at: https://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2018/Januar-junij_2018.pdf.

³Source: Ministry of the Interior; available at: http://www.mnz.gov.si/si/mnz_zavvas/tujci_vsloveniji/statistika/.

⁴Source: The Police; available at: https://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2018/Januar-junij_2018.pdf.

and explanation regarding the implementation of the relevant legislation in practice, however at the time of preparation of this report we have not yet received all the requested statistical data and explanations.

On the basis of the findings obtained we prepared a list of identified violations and recommendations for the competent authorities of RS. The aim of the prepared recommendations is the immediate termination of unlawful practices, ensuring consistent respect of human rights and greater transparency in the procedures regarding aliens which can be achieved by establishing an independent monitoring system in these procedures.

RETURN PROCEDURES AND THE RESPECT OF THE PRINCIPLE OF NON-REFOULEMENT

According to Article 14 of the Universal Declaration of Human Rights everyone has the right to seek and enjoy, in other countries, asylum from persecution. The right to asylum is also guaranteed by the EU Charter of Fundamental Rights.

Each sovereign state has the right to exercise control in its territory and borders, in accordance with its national legislation and international obligations, while fully respecting fundamental human rights throughout the procedure.

Slovenia is obliged to ensure a fair and effective asylum procedure that enables the assessment regarding the protection needs of each person that expresses their intent to apply for international protection. Asylum seeker's application for international protection cannot be rejected without proper procedures being conducted or without a well-founded reason.

The principle of non-refoulement stems from the prohibition of torture or other inhuman or degrading treatment and represents an international principle that prohibits countries to send anyone, indirectly or directly, to a place, where a well-founded fear exists, that the person will face a serious risk of being subjected to torture or to other inhuman or degrading treatment. Slovenia agreed to comply with this principle with the adoption of the Aliens Act.⁵

⁵ Aliens Act (AA); Official Gazette of RS, no. 50/11 and subsequent changes.

LEGAL GROUNDS FOR RETURN

The Aliens Act-2 (AA-2) regulates two sorts of return procedures; first is the formal return procedure in which the foreigners, staying illegally in the RS, are issued a return decision. The second form of return procedures refers to cases, when the alien is apprehended at the illegal border crossing or in connection with the illegal border crossing, in which the return decision is not issued.⁶ In these cases an informal return procedure is carried out based on the Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia⁷ (hereinafter: The Agreement). The return procedures covered in this report were carried out on the basis of the Agreement.

In the first paragraph of Article 2 the Agreement states that a State Party, upon the request of another State, shall accept a third-country national or a stateless person who does not fulfil or no longer fulfils the requirements to enter or stay in its territory if it is proved or presumed that the person entered into the territory by crossing the other State Party.

The Agreement allows the State Parties to return and accept third-country nationals or stateless persons without formalities in the so called shortened procedure. The condition for return in the shortened procedure is that the State Party has to announce the return of the individual in 72 hours since the illegal border crossing took place. The shortened procedure is applicable only if the competent authority provides information that enable the conclusion that the person illegally crossed the common state border. If the admission of the individual in the shortened procedure or the procedure based on the Agreement is rejected by the State Party the aliens return can still be carried out on the basis of the Aliens Act-2.⁸ The State Party has to accept individuals returned in the shortened procedure immediately but no later than in 24 hours after receiving the return announcement.⁹

The procedure applied on the basis of the Aliens Act-2, differs significantly from the shortened procedure regulated in the Agreement as it is a formal return procedure in which an individual is issued a return decision. The alien has the chance to appeal against the return decision in 3 days, the right to free legal counselling in the procedure and the right to

⁶ Article 64(1) Aliens Act-2 (AA-2), Official Gazette of RS, No. 1/18 and 9/18.

⁷ Agreement between the Government of RS and the Government of RC on delivery and reception of persons, whos entry or residence is illegal. – International agreements, Official Gazette of RS, no. 8/06.

⁸ Article 3(3) of the Agreement between RS and RC.

⁹ Article 13(3) of the Agreement between RS and RC.

free legal representation before the Court.¹⁰ Thus, aliens whose return procedure is carried out under the Aliens Act-2 have more procedural rights guaranteed in the process. Since the shortened procedure under the Agreement is informal, individuals are not issued a return decision and they do not have the chance to appeal. Furthermore, the right to legal counselling and free legal aid is also not guaranteed in the procedure.

This raises the question of the scope in which the Agreement can be used. The Aliens Act-2¹¹ states that the return decision is not issued in case the alien is apprehended at the illegal border crossing or in connection with it. In this case, the police conduct the return procedure on the basis of the Agreement which raises the question how the phrase "in connection with it" is interpreted in practice. The abovementioned standard is rather broad and vague. Since the standard lacks a substantive content it is not clear which facts and circumstances are assessed, how they are assessed while applying the abovementioned standard and in which cases this part of the provision applies.

During the mission we recorded cases of individuals returned based on the Agreement and therefore without the returned decision being issued, although they were not apprehended at the illegal border crossing, on the border or nearby, but further inside the country. The Agreement allows the return of individuals under the condition that it is proved or presumed that the person has entered the state's territory by crossing the border of the other State Party,¹² while the shortened procedure is applicable only if the competent authority provides information that enable the conclusion that the person illegally crossed the common state border. The Protocol on the Implementation of the Agreement¹³ (hereinafter; the Protocol) stipulates, that the indirect evidence for the presumption may include, inter alia, official records of the authorities or institutions that were issued to the individuals during their stay or crossing through the State Party's territory, tickets, hotel invoice issued to the person, confirmation regarding money exchange, handwritten personal statements or oral personal statements made in the form of official minutes that can be verified, statement of witnesses, gathered by the competent authorities that can also be verified.¹⁴ According to

¹⁰ Article 64(1), 64(3), 64(4) and 64(5) AA-2.

¹¹ Article 64(1) AA-2.

¹² Article 2(1) of the Agreement between RS and RC.

¹³ Protocol between the Ministry of the Interior of RS and Ministry of the Interior of RC on Implementation of the Agreement between the Government of RS and the Government of RC on delivery and reception of persons, whose entry or residence is illegal. – International agreements 8/06, Official Gazette of RS, no. 33/06.

¹⁴ Article 5(1)(c,f,g,h,i,j), of the Protocol on the implementation of the Agreement.

the Protocol the crossing of a state border is considered to be illegal if the person crosses the common State Parties' border outside the designated border crossing point, at a designated border crossing without a valid travel document or avoids the border control at the border crossing.¹⁵ Illegal border crossing can be proven, inter alia, with personal statements and/or witness's statements, photographs, videos and thermo-visual images, official minutes containing the hearings of individuals or those who helped them in the illegal crossing of the state border, police patrol reports, other material evidence...

However, the question when the alien is "apprehended in connection" with the illegal border crossing and subsequently processed in the return procedure under the Agreement is still raised. The principle of legal certainty and the principle of the protection of legitimate expectations requires, inter alia, that the legislation's effect on the individuals whose position it regulates is clear and predictable. **The use of the Agreement in cases, when the aliens are already inside the country's territory, even near Ljubljana, while unequal practice is implemented in individual cases, does not guarantee sufficient legal certainty and raises the question regarding the legality of the abovementioned practices.**

¹⁵ Article 6(1) of the Protocol on the implementation of the Agreement.

RETURN PROCEDURE

During our visit to Velika Kladuša and Bihać we identified different positions of people returned on the basis of the agreement between RS and RC in the informal, shortened procedure of return. The position of individuals returned, on the basis of the Agreement, in terms of compliance of the procedure with applicable legal acts differs, based on the fact if the individuals expressed the intention to apply for international protection in the RS during the procedure and is connected to the issue of restricting the right to access the asylum procedure, to which a special chapter of the report is dedicated to. In order to identify the cases in which the right to access the asylum procedure was restricted, the questions on which this analysis is based were formed broadly in accordance with the guidelines for conducting interviews on the field. Therefore, we avoided closed types of questions and suggestive questions e.g. »Did you ask for asylum? «. Instead the question raised to the interviewees was: »What did you tell the police in the procedure? «.

During our visit in Velika Kladuša and Bihać we conducted structured interviews with 20 people. The cases identified among our interviewees were most often (in 18 cases), of third-country nationals who were processed for illegal entry onto the state's territory.

We also identified two cases, when the foreigners were returned on the basis of the Agreement after their procedure for international protection was concluded and cases when they were returned after the so called preliminary procedure but before they lodged the application for international protection.

With the intent of confirming the gathered information we concentrated on individuals, who had proof of their entry onto Slovenia's territory or of their return from it. For the purpose of this analysis we gathered them into two groups: those, through the statements of which we could not confirm that they expressed their intent to apply for international protection in RS and those, who stated they expressed their intent clearly during the interview with the police. For the purpose of this report we focused especially on the latter. We identified 12 such cases. In addition to that we also identified 8 cases of people stating their return was carried out without any kind of procedure being conducted by the police. The latter were not included into the report, because it is extremely hard to confirm the validity of such declarations and statements, however they are the object of further monitoring and investigations.¹⁶

¹⁶ Monitoring of such cases is being enabled through the cooperation with foreign NGO's and international organizations in Croatia and in Bosnia.

With the purpose to identify illegal entry, prevent and detect illegal migration and cross-border crime the police can, in accordance with the State Border Control Act-2, carry out countervailing measures.¹⁷ Countervailing measures comprise the examination of a person, background check of the person and examination of their documents, means of transport and other objects.¹⁸ Police performs an examination of a person, which involves frisking the individual's clothes with their hands and examines the content of objects they have in their possession.¹⁹

As it follows from the statements of our interviewees the police conduct an examination of the point of entry, together with the aliens that are in the procedure of illegal entry, onto the state's territory. That means that in practice aliens (all of them or only one from the group) have to go with the police to the point of entry and describe the path by which they came. Because of the long-lasting path, people are often exhausted, dehydrated, confused and generally in a poor physical and mental condition. The police then take them to the police station, where they start the procedure by examining the individuals and their documents. Because of the lack of their identity documents and documents in general, the police can take and examine biometric data from the aliens. That means they can take their fingerprints, their handprints and other identifiable features if they stem out from data records that are intended for identifying individuals.²⁰

In the procedure of illegal entry onto the state's territory, the police conduct an interview with individuals, from which they make an official note about the gathered data that is a part of police minutes and the documentation of the procedure. During the interview they are asked about their personal data, about the objects and financial means they have in their possession, about the path they travelled, the country they are going to, the amount of money they spent on the road, ect. Police then issues an official note, which contains information, if the person's documents or possessions were temporarily taken and if they were, which ones did they take.

The continuation of the procedure depends on whether the individual in any phase of the procedure expresses his intent for international protection in any way. Such intent has to be

¹⁷ Article 35(1) of the State Border Control Act (SBCA-2), Official Gazette of RS, no. 35/10, 15/13, 5/17 and 68/17.

¹⁸ Article 35(2) of the SBCA-2.

¹⁹ Article 35b(4) in the connection with Article 35b(2) of the SBCA-2.

²⁰ Article 35a(4) of the SBCA-2.

appropriately documented in the police file. Based on the expressed intent the police have to conduct further applicable procedures.

Access to the asylum procedure

In order to determine which persons, need protection as refugees according to the Article 1 of the Geneva Convention or subsidiary protection, each applicant must have effective access to the asylum procedure. As can be seen from the preamble of Directive 2013/32/EU on common procedures for granting and withdrawing international protection (hereinafter: The Procedural Directive)²¹, in order to enable effective access to the asylum procedure, it is necessary to provide information about the possibility to apply for international protection at border crossing points and detention facilities.²²

According to the International Protection Act-1²³ a "person that expresses the intent" for international protection is a third-country national or a stateless person who is in the Republic of Slovenia and whose intention for international protection has been expressed before an official authority.²⁴ When a person expresses the intention to submit an application for international protection, he or she must be considered as an applicant and the police must carry out the so called preliminary procedure after which a person is transferred to the Asylum Home.²⁵ Return of individuals in the asylum procedure until a final decision is taken is also prohibited, in accordance with the IPA-1, by the Agreement.²⁶

The obligation to provide information on the possibility to apply for international protection exists before the person actually expresses the intention to apply since, according to the Asylum Procedures Directive, the police has to provide individuals with information on the possibility to apply for international protection, when the indication arises, during the course of the procedure, that a third-country national or a stateless person wishes to apply for it.²⁷ There are many ways in which individuals can express their intention to apply for international protection. It is unreasonable to expect from the applicants, who are legal

²¹ Directive 2013/32/EU of the European Parliament and of the Council, of 26 June 2013 from 26. of June 2013 on common procedures for granting and withdrawing international protection (recast).

²² Point 25 of the Preamble of the Asylum Procedures Directive.

²³ International Protection Act (IPA-1), Official Gazette of RS, Nos. 16/17.

²⁴ Article 2(10) IPA-1.

²⁵ Article 42(2) and 42(3) IPA-1.

²⁶ Article 3(E) of the Agreement between RS and RC.

²⁷ Article 8 of the Asylum Procedures Directive.

laymen with linguistic barriers between them and the authorities, that they would always use the words "asylum" or "international protection" when requesting international protection. This is also confirmed by the case-law according to which "from a person, who is persecuted to the extent that they fled their the country of origin and searched for security elsewhere, it is reasonable to expect nothing else but the fact that all their actions will be directed solely towards seeking protection and will submit the application as soon as they have been offered an opportunity to do so. It is not even expected from them to know the expressions asylum or international protection"²⁸ and that "the intention to apply for international protection does not constitute a formalized procedure, which could make it even more difficult for the applicants to express their need for protection, since the aliens express the intention to lodge the application for international protection orally, with simple words, and the task of the competent authorities is to carry out further procedures on this basis."²⁹ The General Administrative Procedure Act (GAPA) also states that it is up to the official body to ensure that the lack of knowledge of the applicant in the procedure is not detriment to their rights.³⁰

Based on the interviews with individuals who crossed the Slovene-Croatian border, it can be concluded that they expressed the intention to apply for international protection and also stated the reasons for leaving their country of origin during the procedure at the border. That the individuals stated the reasons for leaving their country of origin was in two cases evident from the official minutes made in the procedure regarding the the illegal crossing of the state border that contains an objection made by the applicants in which they state that they left their country of origin because they were persecuted as members of a particular social group and because of armed conflicts. Even if in such cases individuals would not clearly express their intention to apply for international protection, the police should, in accordance with the Asylum Procedures Directive, give them at least information on the possibility of doing so. It can be concluded from the interviews that the latter did not happen. It is alarming that despite the individuals's expressed intention to apply for international protection, they were not considered as applicants, although they were told by the police that they will be able to lodge the application for international protection and will

²⁸ Decision of the Administrative Court I U 161/2013 from 31. 1. 2013.

²⁹ Decision of the Administrative Court I U 1751/2011 from 13. 10. 2011.

³⁰ Article 7(4) of The General Administrative Procedure Act (GAPA), Official Gazette of RS, Nos. 24/06, 105/06, 126/07, 65/08, 8/10 and 82/13.

be accommodated in the Asylum Home.³¹ In some cases, individuals did not know until the last moment that they would actually be returned to Croatia, while some of them were told by the police that they can not apply for asylum in the Republic of Slovenia.

Since the police did not carry out the preliminary procedure in accordance with Article 42 of the IPA-1 with individuals who expressed the intention to apply for international protection in the procedure, in our opinion, their access to the asylum procedure was limited which lead to the violation of the right to asylum.

This raises the question how the procedure was conducted, especially how the individuals are acquainted with all the facts and circumstances that are relevant to the procedure and whether they were given the opportunity to enjoy and protect their rights and legal benefits in accordance with the provisions of GAPA. If individuals were acquainted with all the facts and circumstances and were given the opportunity to make a statement about them, it should all be properly recorded, including the information on whether the individual in the proceedings had expressed the intention for international protection.

From the obtained documentation and some of the cases it follows that the information on the basis of which the decision to return an individual was taken, does not correspond to the statements of individuals in the procedure. Thus, we observed in some cases, the police stated, as a reason for leaving their country of origin, that individuals were economic migrants, even though they came from conflict areas and made a statement for the record, that they had left the country because of war or persecution.

Interpretation

As evidenced by the testimonies gathered in the interviews, the question how the procedure is conducted is closely related to interpretation.

Basic communication necessary to enable the competent authorities to understand that the person expressed the wish to apply for international protection in the procedure is ensured through interpretation.³² Individuals who do not understand the language in which the procedure is conducted have the right to follow the course of the procedure through an

³¹ Such statements on the course of the procedure were made by individuals with whom we conducted interviews on our joint mission and on whose cases this analysis is based, as well as by individuals whose cases we saw in the media reports, on the basis of which we decided to conduct a joint mission.

³² Point 28 of the Preamble of the Asylum Procedures Directive.

interpreter. The authority is obliged to inform them about this right.³³ Such legal instruction must be properly recorded, as well as the way in which the individual has waived the right.

In compliance with the IPA-1 each person in the process must be provided with interpretation and translation into a language that the person understands.³⁴ This is not necessarily the individual's mother tongue, and it is up to the police to judge whether an individual understands the language.

As it was evident from the interviews the interpretation was not guaranteed in all return procedures. In the procedures of our interviewees, the police performed the interviews in English instead of providing interpretation. Some individuals pointed out that they did not understand the language enough to be able to follow the procedure, while others did not have any problems with the language in which the procedure was conducted.

However, in some cases, when interpretation was ensured in the procedure, the question of appropriate translation and professionalism of the interpreters was raised by some individuals. They pointed out that they felt they had not received all the information that the police wanted to transfer to them, or that the information they wanted to pass on was not forwarded to the police. In few cases individuals reported that the interpreters mocked and insulted them as well as threatened them that they would be returned to Croatia.

Since there is no systematic control over the conduct of proceedings by the police and the work of interpreters, recording should be introduced in the procedure, which would provide a comprehensive supervision over the course of the procedure. This way overthrowing the potential doubts in the conduct of the procedure could be achieved faster and at the same time it would make it easier to detect any possible violations in the procedure.

In order to ensure easier working conditions and a greater insight into the quantity, quality and content of work and thus ensuring the quality of interpreters' work, the legal basis for their cooperation should be changed and contracts of employment should be concluded with the interpreters. Although their work is officially based on cooperation contracts, the question arises as to whether the scope and the way of cooperation already meets the conditions which constitute employment.

Due to the lack of use of modern technology when providing interpretation and translation services, translators/interpreters are subject to (long) transportations from one police station to another and consequent fatigue. Furthermore, this means that each individual

³³ Article 62(7) of the Administrative Procedure Act (APA).

³⁴ Article 4 and Article 6(1) IPA-1.

translator participates in fewer procedures than they could otherwise. **It should be made possible to translate through secure video conferencing with the use of information and communication technology (ICT), which would relieve the burden imposed on interpreters in case of increased workload and enable them to work better.** This would also increase the performance of interpreters, as it would increase the number of procedures in which they could participate. Not only would the use of such technology create the conditions for regular employment of interpreters, but also enable the police to select and hire only the best interpreters on the market.

Payment orders for illegal entry onto the state's territory

Aliens Act-2³⁵ sets a fine from 500 to 1.200 euros, if an alien enters RS illegally which is carried out with a payment order based on Article 57 of the Minor Offences Act.³⁶ The payment order can be issued, if the official senses the offence personally or has detected it with the use of technical means or devices or based on notices and other evidence.³⁷ Asylum seekers are an exception, because they, in case they express the intent for international protection in the shortest possible time, are not fined for illegal entry into the state.³⁸

During our mission, we found out that people, who entered Slovenia illegally, were most often sanctioned with a fine of 500 euros. In accordance with the first paragraph of Article 112 of Minor Offences Act the police took into account the time spent in detention before issuing the decision on the minor offence and decreased the fine in the amount of 20 or 40 euros, depending, if the length of the detention was greater than 12 hours. From the decisions on the minor offences, it was clear the fine was further decreased by the right of the offenders to pay only half of the fine. The final amounts of fines were either 230 or 240 euros. From the decisions that were submitted to us by the interviewees as evidence to support their claims, it could be seen, if they actually paid the fines. They have stated that many did not have sufficient funds to pay. The ones that paid the fines told us, the fines were financially severely encumbering for them, since these were the only financial means they had to buy food and other necessities. Especially worrisome is the fact that they often have not even realized they would be returned until the fine was issued and sometimes even after it was. One of the interviewees even stressed, that he told the police he will pay

³⁵ Article 145(1) AA-2.

³⁶ Minor Offences Act-1, Official Gazette of RS, no. 7/03.

³⁷ Article 57(1) and 57(2) of Minor Offences Act-1.

³⁸ Article 35 of IPA-1.

the fine because he wants to be considered as an asylum seeker. In two different minutes it was evident from the statement of the offender that they expressly stated they left their country because of persecution and that their goal was to reach any safe country in the EU. Such statements are according to the Asylum Procedural Directive enough to invoke the duty of the police to inform the person about the possibility to apply for international protection³⁹ although the opinion of PIC is such statements should already be considered as making the application for international protection. In accordance with Article 35 of the International Protection Act-1 a person that shows such an intent cannot be fined for illegal entry onto the state's territory.

In the procedure of minor offences special rules apply for minors.

The responsible authority responsible has to notify the person responsible to take care of the minor about the procedure regarding the minor offence and when that is appropriate, considering especially the nature and the severity of the act, it should also notify the social services.⁴⁰ They cannot initiate the procedure against children, who are not yet 14 years old. If they are already 14 years old, but still have not reached 16 years, they can only sentence them with educational measures. Minors that are between 15 and 18 years old can also be sentenced with educational measures and in exceptional cases they can also be issued a fine.⁴¹ They can do that, if a minor could, in the time of committing the offence, understand the severity of the offence and if, considering his economic situation, he is capable of paying it. The fine can only be issued because in case of severe consequences of his offence or his higher level of responsibility for the offence and an educational measure would not suit the situation.⁴²

During our mission we have not noticed any cases, where a paying order would be issued to a unaccompanied minor. Even though, we would like to emphasize the opinion of our organization that payment orders should not be issued to unaccompanied minors,⁴³ since such fines disproportionately financially encumber families with children and unaccompanied minors and additionally enlarge their vulnerability.

³⁹ Article 8 of the Asylum Procedures Directive.

⁴⁰ Article 30(2) of the Minor Offences Act-1.

⁴¹ Article 30(1), 31(1) and 31(2) of Minor Offences Act-1.

⁴² Article 39(1) and 39(2) of Minor Offences Act-1.

⁴³ Concept of a child in this context represents a person younger than 18 years old. In accordance with Minor Offences Act it means a person younger than 14 years old.

Detention

The police can detain a person on the basis of Article 64 of the Police Tasks and Powers Act,⁴⁴ if it has to extradite the person to foreign national authorities. The duration of the detention can only last as long as it is necessary, but not longer than 48 hours.⁴⁵ We found out from the interviews that people were detained in average for one day until the return procedure to the foreign national authorities could be completed.

In six hours since the start of the detention the detainee has to get a written decision on detention. During the detention period the person has the right to appeal. The policeman, who is enforcing the detention, has to make sure the appeal is sent immediately to the responsible court, which has to decide on it in 48 hours.⁴⁶

Regarding the detention procedure, the question of the correct conduct of the procedure and the information given to the detainee about his rights, arises. During the procedure with our interviewees, the interpreter was not always present. At the same time their statements clearly show the course of the procedure was not explained to them sufficiently. The decision on detention says that they received a pamphlet which contains their rights in the procedure. However, our interviewees said that they nonetheless did not understand they have the right to an appeal. In some cases, they did not even know they signed the decisions on detention. Such confusion can severely endanger the individual's right to an effective legal remedy. If we also take into account a short time limit to file the complaint and that people, who get returned on the basis of the Agreement, do not have the right to free legal consulting in the procedure, the right to an effective legal remedy is even more hindered. Some of the interviewees stated that they had expressly asked to speak to an attorney during the procedure but were denied the opportunity to do so.

⁴⁴ Police Tasks and Powers Act (PTPA, Official Gazette of RS, no. 15/13, 23/15 – corr. and 10/17.

⁴⁵ Article 64(2) of PTPA.

⁴⁶ Article 67(5) and 67(6) of PTPA.

PROCEDURE WITH FOREIGN MINORS

Children are an especially vulnerable group, for which special attention and care in the procedure has to be guaranteed. In the procedures that involve unaccompanied minors, the main principle is the principle of the best interest of the child that has to be respected in every phase of the return procedure.

The Aliens Act-2 stipulates that police have to, in the event of a return of an unaccompanied minor, notify the social service centre that have to appoint a specialised guardian to the case. Police can only issue a decision on return of the minor after the guardian makes the decision, on the basis of a thorough assessment of all circumstances, that this is in the best interest of the child. **That means the Aliens Act-2 excludes the return of foreign minors on the basis of the Agreement.**

The Aliens Act-2 additionally stipulates that a foreign unaccompanied minor cannot be returned to the country of origin or to a third-country that is prepared to receive him until the reception in that country is not guaranteed. Before the return, the state has to make sure the minor will be returned to a member of his family, to a chosen guardian or to a suitable centre in the destination state.⁴⁷ **Return on the basis of the Agreement is therefore not legal because the children are handed to the Croatian national authorities (the police) without any guarantees being given regarding their appropriate care in lines with the obligations stipulated in the Aliens Act-2.**

That foreign minors are excluded from the scope of the Agreement is also confirmed by the Protocol on cooperation of the social services centres and the police concerning the help to unaccompanied minors, as it stipulates the duty of the police station, which detains a unaccompanied minors because of the illegal entry onto the state's territory, to immediately notify the responsible social service centre, if they detain him during their work hours, or the emergency social service centre, if the social service center is not working at that time of the day.⁴⁸

In accordance with the Protocol the social service center or its emergency service centre has to ensure an expert and send him to the police station. He has to do an interview with the minor, offer him first social assistance and get his statement on appointing a specialised

⁴⁷ Article 82(1) and 82(2) of AA-2.

⁴⁸ Protocol on cooperation of the social services and the police, point a, first alinea.

guardian. If needed, he has to accompany the child to his accommodation facility.⁴⁹ Even though the Aliens Act-2 stipulates a foreign minor and his family should be accommodated in accommodation facilities suitable for minors, it can happen, if there is no other possibility, that they are accommodated in the Centre for foreigners. For unaccompanied minors, which do not express the intent for international protection, there is no other accommodation in Slovenia provided on a systematic level. Slovenia has already been warned a few times about the lack of appropriate accommodation for minors from the international institutions for safeguarding human rights. Because of this we sincerely hope the systematic changes will be introduced as soon as possible, so the appropriate accommodation will be guaranteed to all unaccompanied minors, no matter their legal status, and that their accommodation in the Centre for foreigners will stop in the shortest possible time.

Regardless the provisions of the Aliens Act-2 and the before-mentioned Protocol we have detected cases, during our mission, of unaccompanied minors being returned in an informal shortened procedure.⁵⁰

We have detected cases of unaccompanied minors being detained during the return procedure. Because they did not possess the decisions on detention, we could not see, what was the legal ground for their detention, but we assume it was based on Article 32 of State Border Control Act. It stipulates that the police can detain a person for the shortest possible time, but never longer than 48 hours, that is necessary to assess all relevant facts and circumstances regarding the illegal entry or the denial of entry of an alien that does not meet the demands for entering the state's territory. When they are detained on that legal ground, detainees have all the rights of the persons detained on the basis of the Police Tasks and Powers Act.⁵¹ This Act obliges the police to notify the social service centre in case of detaining a minor and enable them unimpeded contact and discourse with the employee of the body.⁵²

The other possibility is that they are detained based on the first paragraph of Article 64 of the Police Tasks and Powers Act that allows the police to detain a person that has to be

⁴⁹ Protocol on cooperation of the social services and the police; point a; second, third and fourth alinea.

⁵⁰ While writing this report we have not yet received the statistical data we requested about the return of unaccompanied minors. After receiving the data we will update the report.

⁵¹ Article 32(2) PTPA.

⁵² Article 65(1) and 65(2) PTPA.

extradited to the foreign national authorities. **Because the return of foreign minors on the basis of the Agreement is not possible, such detention would be illegal.**

The statements of unaccompanied minors that were gathered in Bosnia show that they have not had contact or any other access to the employees of the social service centre. That raises the question, if the responsible body was even notified about their detention, or their return on the basis of the Agreement.

The police have to follow the provisions of the Aliens Act-2 consistently, which means they have to, in the procedure with an unaccompanied minor, notify the responsible social service centre, issue the decision on return and make sure, he will be returned to a family member, guardian or to any other appropriate accommodation centre. At the same time the best interest of the child has to be considered.

According to the Convention on the Rights of the Child families with minor children also have to be excluded from the Agreement's procedure. The Convention demands that states adopt the measures to combat illicit transfer and non-return of children from abroad.⁵³ This provision concerns all children, no matter if they are accompanied or not. That means all children have to be treated equally and the return of families with minor children can be done only in a formal procedure in accordance with the Aliens Act-2.

⁵³ Article 11(1) of the Convention on the Rights of the Child.

RETURN TO CROATIA

From the statements of our interviewees, we also got an insight into the actual return procedure to the territory of Croatia. After the Slovenian police brings people to the Slovenian-Croatian border, it hands them over to the Croatian national authorities. They also hand over the documentation about the procedure and the objects and money that they seized from the detainees. Croatian police then take them to the Croatian-Bosnian border where they drop them off. We detected only one case in which the Croatian police took the interviewee to the police station, where they took pictures of him and wrote down his personal information i.e. in which they carried out a formal procedure of accepting a returned person from Slovenia.

Although we did not detect from the statements of our interviewees any systematic physical or psychological violence from the Slovenian national authorities, the same can not be said for the Croatian police, since the individuals reported systematic violence was carried out against those who were returned from Slovenia.

Croatian non-governmental organizations also report about systematic violations of Croatian national authorities and push backs, which include violations of the principle of non-refoulement and limiting people's access to the asylum procedure.⁵⁴

The interviewees told us that Croatian police, during the return procedures, destroyed their mobile phones either by shattering the glass of the phone or with destroying the charger port with a screwdriver. They also told us the police took their documents and destroyed them together with the ones given to them by the Slovenian police. At the same time, they also took their money that was amidst the seized property. During the procedure they were often insulted and humiliated. In one case the police put on the heating making it unbearably hot in the car during the transportation that lasted several hours. Pleads from the people in the car to turn down the heating were intentionally ignored.

The physical violence, according to our interviewees, usually happens close to the Croatian-Bosnian border. Croatian police most oftenly uses the batons. In some cases, they used electric paralizators. Kicks in the legs, in the back or in the stomach were also commonly reported.

⁵⁴ More information available at: <https://www.borderviolence.eu/the-croatian-case/>; <https://www.ecre.org/push-backs-and-police-violence-on-the-rise-at-croatian-border-report-finds/>; <https://www.borderviolence.eu/the-croatian-case/>.

It is clear from the statements that the Croatian police, in contrast to the Slovenian national authorities, do not hand over the individuals directly to the Bosnian authorities. They only take them in the vicinity of the Bosnian border, which then has to be crossed by the returned individuals on their own.

The Aliens Act-2 stipulates that the principle of non-refoulement means the duty of RS not to return a person to a country, where his life or freedom would be endangered because of his race, religion, nationality, ethnicity or his political standing or **to a country in which he could face torture or any other cruel, inhumane or degrading sanctions or treatment.**⁵⁵

When there are multiple sources of information available about a person facing a danger of treatment that amounts to torture or any other cruel, inhumane or degrading treatment in a specific country after their return, the state has a clear obligation to check, if such a danger exists. If they return a person to a country in which the conditions of the reception and the legal procedures of granting the status of international protection are not appropriate, the state that returns them to such a country infringes the principle of non-refoulement.⁵⁶

During their procedure of returning a person on the basis of the Agreement, the police should make an assesment, if the return of a person could infringe the principle of non-refoulement. During the assesment, they should take into account the statements of the persons involved and all the other accessible information and reports.

⁵⁵ Article 72 of AA-2.

⁵⁶ ECtHR decision Ilias and Ahmed v. Hungary.

LIVING CONDITIONS IN VELIKA KLADUŠA AND BIHAĆ

In accordance with the principle of non-refoulement no country can in any way deport or forcibly return an individual to a territory, where his life or freedom could be endangered because of his race, religion, nationality, ethnicity or his political belief. Besides the prohibition of directly returning a person into the country of origin, non-refoulement also includes the prohibition of indirectly returning a person or chain non-refoulement.⁵⁷ That means prohibition of returning a person into a country, where there is risk for the individual to be deported to a country, where there is a danger of violation of Article 3 of the European Convention on Human Rights (ECHR).⁵⁸ Indirect return is prohibited even if the intermediate state is a contracting state to ECHR or if it participates in a common system, e.g. the Dublin system.⁵⁹

Article 3 of ECHR prohibits torture, inhuman and degrading treatment and punishment. The threshold of inhuman or degrading treatment can also be reached with bad living conditions in accommodation centres and in other similar housing facilities.

It is practically impossible to access the asylum procedure in Bosnia in this time since all of their official accommodation capacities are full (officially there is only places for 154 people in the entire state)⁶⁰ which is why most foreigners lose their asylum seeker status, since the procedure cannot be conducted, if they do not have a specific place of residence, where they can be located. Although the asylum seeker's status formally does make them entitled to certain basic services, actual access to those services is questionable even for registered asylum seekers. That is why people live in extremely bad and dangerous conditions.⁶¹

In Velika Kladuša the official authorities have accommodated the foreigners in tents placed on a field. Because the tents can not efficiently protect the individuals before the changing weather conditions, improvised tents and wooden structures covered with protective materials, are being build with the help of foreign volunteers. In the "camp" 4 pipes with cold water are available while the municipality is providing electricity for the street lights in

⁵⁷ H. Battjes, *European Asylum Law and International Law*, Martinus Nijhoff Publishers, Leiden/Boston 2006, p. 438.

⁵⁸ Decision of the Constitutional Court of RS, U-I-155/11.

⁵⁹ UNHCR manual on the Case Law of the European regional courts, p. 190.

⁶⁰ United Nations Country Team (UNCT) Operational Update– Refugee/Migrant Situation BiH 2018; available at: <https://data2.unhcr.org/en/documents/download/63098>.

⁶¹ More information available at: <https://refugeeaidserbia.org/wp-content/uploads/2018/04/Report-on-Migration-related-Context-in-BiH-RAS.pdf>.

that part of the "kamp". Portable toilets are also set up. 4 improvised showers with cold water are composed from a gardening water hose and separated with a thin polyvinyl cover are available outside the "camp". The showers do not provide the individuals any privacy so the volunteers organize the showering schedule for families and other vulnerable groups.

During our stay in Velika Kladuša there was no NGO or any other humanitarian organization permanently present in the camp. Providing clothes, basics hygiene necessities and building of improvised tents were all done by volunteers. A foreign NGO brings food to individuals a couple of times a week. As the volunteers and some individuals from the »camp« told us, the biggest part of help comes from the local residents. People can get a free lunch in two local restaurants, which also provide people with access to electricity for charging their mobile phones. Some locals also provide free accommodation in their own houses, while a smaller number of other foreigners took refuge in abandoned buildings.

The most vital problem in the »camp« is safety. There is no permanent security in the »camp«. Because of bad accommodation and hygienic conditions, it is not taken care for the safety of families and other vulnerable groups such as unaccompanied minors, single women and older people.

During our stay in the "camp" there was no medical care available. Emergency medical care was provided by the hospital in Velika Kladuša. Medical care is urgently needed in the »camp« since due to the bad living conditions, most people have problems with dehydration, malnutrition, colds, bad health state and unattended wounds caused by long walking, injuries or physical violence.

We also visited the »camp« in Bihać, located in an abandoned building in the outskirts of the city. The building is in a bad condition, as there are no windows, doors, no electricity or access to water. Inside the building there are only two containers with showers and few portable toilets. People sleep on mattresses that are put on the floor very tightly together. Some people have put up tents inside the building. The rooms are overcrowded, they do not enable any kind of privacy or safety and do not fulfill basic hygiene standards. We met families and older people that do not have access to basic personal hygiene products necessary for the care of children. Food is provided by the Red Cross that is taking care of daily meals and basic medical care of the accommodated people. The building is being secured by the police with the intent to prevent locals from entering. Since the building is not fulfilling any safety standards people can only enter on their own responsibility. Besides

the police and the Red Cross there is no other NGO or a humanitarian organization present there that would offer help to the accommodated people.⁶²

In our opinion the threshold from Article 3 of the ECHR was reached in Velika Kladuša and Bihać due to extremely bad living conditions that constitute inhuman or degrading treatment. Because the Slovenian national authorities did not assess the risk of indirect return from Croatia to Bosnia and the possibility that such return could cause the violation of Article 3 of the ECHR in Bosnia, before deporting people to Croatia, the RS is objectively responsible for indirect/chain returns i.e. the violation of the principle of non-refoulement.

⁶² <https://www.hrw.org/news/2018/04/24/bosnia-failing-protect-asylum-seekers>.

FINDINGS

On the basis of the conducted interviews with persons, which, during our visit, were still located in Bosnia and with persons that, until the release of this report, have already entered Slovenia's asylum system, on the basis of a thorough examination of the documentation, presented to us by the interviewees and on the basis of statistical and other data we got from the police and other (international and non-governmental) organizations, we believe:

- that the RS has restricted effective access to the asylum procedure to foreigners that entered Slovenia and with it, it has also hindered the right to asylum; Foreigners were not appropriately informed about their possibility to apply for international protection and were not included into the preliminary procedure that would enable them to lodge the application for international protection;
- police procedures with foreigners regarding their illegal entry onto the state's territory were not consistently conducted in a language they understand; they often had to sign documents they have not understood;
- foreigners have not been appropriately made aware of their rights, obligations and the course of the procedure; they got misleading information from the police, that they will be processed in the asylum procedure and later got returned to Croatia without any option to apply for international protection;
- foreigners, which expressed the intent for international protection, should not have been fined for illegal entry onto the state's territory;
- Children were, despite the provisions in the Aliens Act-2, returned on the basis of the Agreement; such returns are illegal and in addition the social services were not notified about the procedure;
- during the interviews we did not detect any systematic physical or mental violence conducted by the Slovenian national authorities or acts that would show disrespectful or insulting treatment;
- gathered information show us there is systematic violence against foreigners together with destruction and appropriation of their property conducted by the Croatian national authorities;
- living conditions in Bihać and Velika Kladuša have reached the threshold of Article 3 of ECHR and constitute inhuman and degrading treatment; Slovenia has the responsibility to assess the legality of returning foreigners into a country, where there is a possibility of further return and exposure to such conditions.

RECOMMENDATIONS

To ensure a more effective and better compliance with legal acts and human rights, that are binding the RS, we prepared the following suggestions for the responsible bodies of RS:

- to ensure full fulfilment of Slovenia's obligations determined by human rights law, refugee law and the principle of non-refoulement, the police has to inform individuals about their right to apply for international protection; providing information has to be appropriately recorded together with the individual's decision to make the application;
- during the procedure the assessment has to be made from the perspective of the principle of non-refoulement; potential statements about the prior physical or mental violence of foreign national authorities and other violations of human rights or illegal acts and the possibility of indirect refoulement to Bosnia have to be regarded by the police;
- the police have to conduct a strict assessment of the standard »a language the person understands«; during the procedure it has to be clearly recorded, how a person was informed about their right to a translator/interpreter and how they confirmed that they understand the spoken language.
- For ensuring better working conditions, as well as better overview of the amount of work, the content of work and consequently improve the work of translators, the legal grounds for their work should be changed so they can work on the basis of the employment contract;
- The process of choosing the translators and the procedures in which they work should necessarily involve mechanisms of control of their proficiency: preliminary tests of their language skills, personal adequacy for the job, personal training about the procedures and working with vulnerable groups.
- interpreting via safe video conferences should be established with the help of ICT, which enables systematic control over the conduct of the procedure and over the work of translators;
- the return of unaccompanied minors and families with children on the basis of the Agreement should stop immediately, because such conduct is not in accordance with the Convention on the Rights of the Child, the Aliens Act-2, its Protocol and the Agreement itself;
- the obligation to notify social services, when conducting the procedure involving unaccompanied minors, has to be strictly abided;

- police should not issue payment orders to unaccompanied minors and children traveling with their families, because the fines represent an unproportionate financial burden for them and increases their vulnerability;
- the police have to systematically collect statistical data regarding the return on the basis of the Agreements and appropriately differentiate it according to sex, age, nationality, vulnerability and other criteria that will enable the control of the procedures; that data has to be accessible as public information;
- police have to collect statistics of people that expressed the intent for international protection separately for every police station;