

**INPUT FOR THE REPORT "PUSHBACK PRACTICES AND THEIR IMPACT ON HUMAN RIGHTS OF MIGRANTS" OF THE SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS**

**Input by Legal Informational Centre for NGO's (PIC), Slovenia**

**30 January 2021**

*The Legal Informational Centre for NGO's (PIC) observations and recommendations below are based on its experience in representing migrants in return procedures and asylum seekers, and its research and advocacy work in the field of migration and asylum law.*

**1.** Slovenia as a signatory of the 1951 Refugee Convention and the European Convention of Human rights is bound by their provisions. As a member of the European Union it is also bound by the provisions of the Common European Asylum System. The right to seek asylum is a constitutional right enshrined in Art. 35 of the Constitution of the Republic of Slovenia.<sup>1</sup> The explicit right to claim asylum in Slovenia is stipulated in the International Protection Act<sup>2</sup> that states in Art. 42:

*"(1) A person declaring the intention to file may express the intention to file an application before any public authority or self-governing local community authority in the Republic of Slovenia, of which the police shall be informed.*

*(2) Persons referred to in the preceding paragraph shall be processed by the police, who shall establish his or her identity and the route by which the person entered into the Republic of Slovenia, and shall complete the registration document.*

*(3) When the procedure referred to in the preceding paragraph is concluded, the competent authority shall provide the person, upon his or her arrival in the Asylum Centre, with the information referred to in paragraph one of Article 5 of this Act, including information on the consequences of arbitrarily leaving the reception facilities, in a language he or she understands. The person shall acknowledge the receipt of such information by signature." (...)*

In Art. 36 (prohibition of removal) the IPA states:

*"(1) Prior to lodging an application, a person declaring the intention to file must not be removed from the Republic of Slovenia under the terms of the regulations governing the entry into, departure from and residence of foreigners in the Republic of Slovenia.*

*(2) The provisions of the preceding paragraph shall not apply to persons who, for unjustified reasons for which they are responsible, have not filed an application even though they have had an opportunity to do so."*

The IPA therefore contains explicit provisions on the right to asylum and the prohibition of removal of persons who expressed their intent for international protection. Art. 42/2 of the IPA contains the obligation of police to process the individuals that have expressed their intent

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<sup>1</sup> Constitution of the Republic of Slovenia, Official Gazette of RS, No. 33/91-I and subsequent changes, available in Slovene at: <http://pisrs.si/Pis.web/pregledPredpisa?id=USTA1>

<sup>2</sup> International Protection Act (IPA), Official Gazette of RS No. 16/17, available in English at: <http://www.pisrs.si/Pis.web/cm?idStrani=prevodi>.

for international protection in the 'preliminary procedure' after which they are accommodated in the Asylum Home.

Before they express their intent for international protection individuals are also protected by the *principle of non-refoulement* enshrined in Art. 72. of the Foreigners Act<sup>3</sup> (prohibition of removal of a foreigner) which stipulates:

*"The principle of non-refoulement in accordance with this Act and the principles of customary international law shall impose on the Republic of Slovenia the obligation to not remove a foreigner to a country in which his or her life or freedom would be threatened on account of his or her race, religion, citizenship, membership of a particular social group or political opinion, or to a country in which he or she would be subjected to torture and other cruel, inhuman or degrading treatment or punishment."*

The provision indicates that an individual assessment should be made for each foreigner to ensure that the principle of *non-refoulement* will not be violated in case of return.

**2.** Police is not conducting any identification of persons in need of protection in migration groups entering the Slovene territory.<sup>4</sup> The available statistics shows that in 2020 the police detected 14.592 irregular crossings of the Slovenian border. The most common countries of origin of people who were apprehended for irregular border crossing were: Pakistan (3.519), Afghanistan (3.038), Morocco (2.414), Bangladesh (1.508), Croatia (636), Algeria (627), Iraq (549), Iran (364), Turkey (304) and Syria (290).<sup>5</sup> According to the statistics only 4.008 individuals expressed their intention to apply for international protection.<sup>6</sup> The discrepancy in the number of irregular crossings and the number of people that actually enter the procedure for international protection supported by numerous reports on pushbacks<sup>7</sup> indicates that the

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<sup>3</sup> Foreigners Act, Official Gazette NO. 1/18 and subsequent changes, available in English at: <http://www.pisrs.si/Pis.web/cm?idStrani=prevodi>.

<sup>4</sup> This was also noted by the Slovenian Ombudsman in his 2019 NPM report: *Poročilo Varuha človekovih pravic RS o izvajanju nalog državnega preventivnega mehanizma po Opcijskem protokolu h Konvenciji OZN proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju za leto 2019*, available in Slovene at: [https://www.varuh-rs.si/fileadmin/user\\_upload/pdf/DPM/Letna\\_porocila\\_DPM/DPM\\_19.pdf](https://www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/Letna_porocila_DPM/DPM_19.pdf).

<sup>5</sup> Official Police statistics available at: [https://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2020/Januar-december\\_2020.pdf](https://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2020/Januar-december_2020.pdf).

<sup>6</sup> *Ibidem*.

<sup>7</sup> Reports on pushbacks from Slovenia: PIC, *Report on findings and observations on the Implementation of return procedures in accordance with the principle of non-refoulement*, available in English at: <https://pic.si/porocilo-o-ugotovitvah-in-opazanjih-o-izvajanju-postopkov-vracanja-in-spostovanju-nacela-nevracanja-non-refoulement/>.

Amnesty International, *Push-backs and denial of access to asylum*, report in English available at: [https://www.amnesty.si/media/uploads/files/Slovenia%20-%20Push-backs%20and%20denial%20of%20access%20to%20asylum%2C%20Amnesty%20International\(1\).pdf](https://www.amnesty.si/media/uploads/files/Slovenia%20-%20Push-backs%20and%20denial%20of%20access%20to%20asylum%2C%20Amnesty%20International(1).pdf).

Border violence monitoring, individual testimonies and reports available at: <https://www.borderviolence.eu/>

Info Kolpa: *Report on illegal practice of collective expulsion on Slovene-Croatian border*, available in English at:

<https://push-forward.org/sites/default/files/2019-05/Report%20on%20illegal%20practice%20of%20collective%20expulsion%20on%20Slovene.pdf>

lack of screening and identification mechanisms is one of the key issues when it comes to systematic pushbacks from Slovenia.

The Asylum Procedures Directive stipulates in Art. 8/1:

*"Where there are indications that third-country nationals or stateless persons held in detention facilities or present at border crossing points, including transit zones, at external borders, may wish to make an application for international protection, Member States shall provide them with information on the possibility to do so. In those detention facilities and crossing points, Member States shall make arrangements for interpretation to the extent necessary to facilitate access to the asylum procedure."*

However, it is not evident from official police documentation from procedures with people apprehended for irregular crossing of the Slovenian border, if such indicators were detected and if detected, whether the police informed the individual of the right to asylum and how the person responded.<sup>8</sup> This issue was also highlighted by the Slovenian Ombudsman in his reports.<sup>9</sup>

Special guaranties apply for unaccompanied minors. The Foreigners Act stipulates in Art 82:

*(1) In cases of the removal of a foreign minor who is not accompanied by his or her parents or other statutory representative and is illegally staying in the Republic of Slovenia, the police shall immediately inform a social work centre, which must immediately assign a special case guardian to the foreign minor. The police shall issue the unaccompanied foreign minor a return decision after his or her special case guardian, having carefully considered all of the circumstances, establishes that this is in the best interests of the foreign minor.*

*(2) A foreign minor referred to in the preceding paragraph may not be removed to his or her country of origin or to a third country that is willing to admit him or her until admission to the respective country is ensured for him or her. Prior to removing a foreign minor, it needs to be ensured that he or she will be returned to a member of his or her family, an appointed guardian or adequate reception facilities in the country of return. In no case may an unaccompanied foreign minor be removed contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms, amended with Protocols Nos 3, 5 and 8 and supplemented with Protocol No 2, and its Protocols Nos 1, 4, 6, 7, 9, 10 and 11 (Official Gazette of the Republic of Slovenia – International Treaties [Uradni list RS – Mednarodne pogodbe], No. 7/94), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (Official Gazette of the Republic of Slovenia – International Treaties [Uradni list RS – Mednarodne pogodbe], No. 1/94), or the Convention on the Rights of the Child (Official Gazette of the Republic of Slovenia – International Treaties [Uradni list RS – Mednarodne pogodbe], No. 9/92) and the European Convention on the Exercise of Children's Rights" (Official Gazette of the Republic of Slovenia – International Treaties*

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<sup>8</sup> PIC, Report on findings and observations on the Implementation of return procedures in accordance with the principle of non-refoulement.

Amnesty International, Rush-backs and denial of access to asylum.

<sup>9</sup> Ombudsman, Vmesno (s)poročilo o aktivnostih in ugotovitvah Varuha o očitkih policistom, da zavračajo možnosti podajanja prošenj za mednarodno zaščito, 22 August 2018, available in Slovenian at: <https://www.varuh-rs.si/sporocila-za-javnost/novica/vmesno-sporocilo-o-aktivnostih-in-ugotovitvah-varuha-o-ocitkih-policistom-da-zavracajo-moznosti-p/> and

Ombudsman, Poročilo Varuha človekovih pravic RS o izvajanju nalog državnega preventivnega mehanizma po Opcijskem protokolu h Konvenciji OZN proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju za leto 2019.

[Uradni list RS – Mednarodne pogodbe], No. 26/99). A foreign minor shall be permitted to stay in accordance with the provisions of this Act until his or her removal.

(3) A foreign minor and a family with a foreign minor shall be accommodated, in agreement with the special case guardian, in adequate accommodation facilities for minors, where he or she will be guaranteed the rights referred to in the preceding paragraph. If this is not possible, an unaccompanied foreign minor and a family with a foreign minor shall be accommodated in the Centre.

(...)

Cases of unaccompanied minors being *pushed back* to Croatia were nonetheless reported.<sup>10</sup> In practice, Centres for Social Services are not regularly involved in the procedure with unaccompanied minors by the police or do not respond and do not carry out their duties when informed of the procedure by the police.<sup>11</sup>

Once the person efficiently expresses the intention to apply for international protection they are referred into the 'preliminary procedure' and after taken to the Asylum Centre as described above.

**3.** In addition to the relevant legislation outlined above readmission agreements between Slovenia and the neighbouring countries are in force.<sup>12</sup> Readmission agreements form a system outside the EU law and CEAS provisions and do not uphold the standards they require. The readmission agreements allow the return of migrants in informal procedures in which individuals are not issued a return decision, do not have the right to appeal and do not have the right to free legal aid nor representation.<sup>13</sup> In practice the assessment if the principle of *non-refoulement* could be violated with the return from Slovenia is not conducted<sup>14</sup> therefore individuals in the procedure do not have the possibility to argue the violation of the *non-refoulement* or challenge the decision of the police.

In 2020 the Slovenian police returned 10.025 of the 14.592 apprehended migrants to neighbouring countries based on the readmission agreements. 9.950 were returned to

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<sup>10</sup> See footnote 8. Cases were also reported by the Ombudsman: *Poročilo Varuha človekovih pravic RS o izvajanju nalog državnega preventivnega mehanizma po Opcijskem protokolu h Konvenciji OZN proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju za leto 2019.*

<sup>11</sup> PIC, *Report on findings and observations on the Implementation of return procedures in accordance with the principle of non-refoulement.*

Ombudsman, *Poročilo Varuha človekovih pravic RS o izvajanju nalog državnega preventivnega mehanizma po Opcijskem protokolu h Konvenciji OZN proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju za leto 2019.*

<sup>12</sup> All readmission agreements can be found in English and Slovenian at: <https://www.policija.si/o-slovenski-policiji/zakonodaja-in-dokumenti/mednarodne-pogodbe>.

<sup>13</sup> See for example: 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, Official Gazette of RS, no. 8/06., available in English at: <https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2006-02-0042?sop=2006-02-0042>.

<sup>14</sup> PIC, *Report on findings and observations on the Implementation of return procedures in accordance with the principle of non-refoulement.*

Ombudsman, *Poročilo Varuha človekovih pravic RS o izvajanju nalog državnega preventivnega mehanizma po Opcijskem protokolu h Konvenciji OZN proti mučenju in drugim krutim, nečloveškim ali poniževalnim kaznim ali ravnanju za leto 2019.*

Croatia.<sup>15</sup> Out of 10.025 returned migrants 3.025 were from Pakistan, 2.100 from Afghanistan, 1.378 from Bangladesh, 1.304 from Morocco, 386 from Algeria, 359 from Iraq, 249 from Iran, 216 from Turkey and 183 from Syria.<sup>16</sup>

Reports show that migrants while in the police procedure were not able to effectively access the asylum procedure. According to testimonies given upon their return to Bosnia misinformation during the police procedure was given to migrants by the police, e.g. that there is no asylum in Slovenia, that they are not entitled to asylum or that they will be placed in Asylum facilities but were in fact returned to Croatia.<sup>17</sup>

**4.** Reports<sup>18</sup> show that pushbacks have been systematically occurring since June 2018. Due to lack of systematic border monitoring gathering information on instances of pushbacks is difficult.

In this report we would like to highlight the collective pushback of 108 foreigners. The Slovenian police apprehended 123 foreigners near Šembije on 19. 7. 2019 from Afghanistan, Pakistan and Bangladesh.<sup>19</sup> Out of 123 foreigners only 14, mostly unaccompanied minors, were able to apply for international protection.<sup>20</sup> The circumstances of the return and the police procedure with the foreigners was reviewed by the Slovenian Ombudsman as part of the National Preventive Mechanism.

After reviewing the documentation in the police procedure, the Ombudsman concluded that out of 108 individuals, 101 individuals were illegally detained by the police after being apprehended, since the police did not issue the foreigners detention orders that could be challenged before the court. The foreigners subsequently could not appeal against the detention order which is in violation of Art. 5 of ECHR. The Ombudsman also noted that the police did not conduct individual procedures with the apprehended foreigners. Although required by law there was no documentation that would show the individual statements of foreigners in the police procedure. The Ombudsman also noted that there was also no police documentation regarding their irregular border crossing. The lack of documentation showed that the police did not determine the circumstances of the foreigners' irregular border crossing, which is a prerequisite for return, based on the readmission agreement. By the Ombudsman's opinion this alone could constitute the violation of the right to effective access to the asylum procedure. Since the police did not conclude individual procedures with foreigners and did not give them the chance to make a statement in the procedure or argue that the return would

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<sup>15</sup> Official Police statistics available at: [https://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2020/Januar-december\\_2020.pdf](https://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2020/Januar-december_2020.pdf).

<sup>16</sup> Official statistics provided by Police.

<sup>17</sup> See footnote 7.

<sup>18</sup> Reports on pushbacks from Slovenia: *PIC, Report on findings and observations on the Implementation of return procedures in accordance with the principle of non-refoulement.*

Amnesty International, *Push-backs and denial of access to asylum.*

Border violence monitoring, individual testimonies and reports.

Info Kolpa: *Report on illegal practice of collective expulsion on Slovene-Croatian border.*

Supported by: statistical data available in Slovene at: <https://www.policija.si/o-slovenski-policiji/statistika/mejna-problematika/nedovoljene-migracije-na-obmocju-republike-slovenije> and reports made by the Ombudsman and available in Slovene at: <https://www.varuh-rs.si/porocila-projekti/publikacije-gradiva/letna-porocila-priporocila-dz-odzivna-porocila-vlade/>.

<sup>19</sup> A video of apprehended foreigners by the police is available at: <https://siol.net/novice/slovenija/policija-pri-ilirski-bistrici-prestregla-vecjo-skupino-migrantov-video-502980>.

<sup>20</sup> Ibidem.



violate the principle of *non-refoulement* the foreigners in the police procedure could not express their intent to apply for asylum in Slovenia.<sup>21</sup>

**5.** In the context of COVID-19 epidemic the safety of police and migrants had to be ensured. The police did so by conducting health checks and testing everyone with possible COVID-19 symptoms.<sup>22</sup>

Stating that there is a lack of police personnel available at the border the Government tried to activate the provisions of the Defence Act<sup>23</sup> during the pandemic that would give the army additional powers at the border. The proposal however was not supported by the Parliament and was heavily opposed by NGOs since it would result in more human rights violations at the border. As pointed out by the NGOs the Slovene army is not undergoing adequate human rights training, especially not in the area of asylum and migration.<sup>24</sup>

**6.** NGOs in Slovenia are not present at the border or in the procedures with migrants at the border. Therefore, challenging readmissions is extremely difficult. After a person is returned to Croatia it is difficult to substantiate legal standing in procedures against the police.

In addition, NGOs working with asylum seekers and migrants face pressure from the authorities. PIC has faced civil defamation in the media and has been subjected to 2 criminal investigations in the past two years both with the intention to smear PICs reputation in response to the report on pushbacks. First was initiated by the former Minister of Interior, Vesna Gyorkos Znidar and the second was initiated by the right-wing party leader Zmago Jelinčič during the election campaign for European Parliament.<sup>25</sup> Both criminal investigations were dropped by the state prosecutors. In addition, PIC and the Peace Institute together with other NGOs working at Metelkova 6, a building dedicated by the Ministry of Culture to the work of cultural associations and NGOs, were notified by the end of 2020, by the Ministry, that their office contracts will be terminated prematurely and that they should leave their office spaces until the end of January. Since reconstruction on the building is planned for 2023 the NGOs strongly believe that this is retribution for the NGOs vocal opinions on violations of human rights and concerns regarding the governments conduct since the change of power during the COVID-19 pandemic.<sup>26</sup>

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### **About PIC:**

Legal-Informational Centre for NGOs (Pravno-informacijski center nevladnih organizacij – PIC) is a legal centre for the protection of human rights and environment, established in 1998. It

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<sup>21</sup> Ombudsman, *Končno poročilo o obravnavi policijskih postopkov s tujci na območju Policijske postaje Ilirska Bistrica 19. 7. 2019*, available in Slovenian language at: [https://www.varuh-rs.si/fileadmin/user\\_upload/pdf/Stalisca\\_in\\_ugotovitve/2020\\_7\\_22\\_-\\_Koncno\\_porocilo\\_o\\_prijetju\\_in\\_vracanju\\_migrantov\\_na\\_Hrvasko.pdf](https://www.varuh-rs.si/fileadmin/user_upload/pdf/Stalisca_in_ugotovitve/2020_7_22_-_Koncno_porocilo_o_prijetju_in_vracanju_migrantov_na_Hrvasko.pdf).

<sup>22</sup> <https://www.ostro.si/si/razkrinkavanje/objave/migranti-ne-pomenijo-tveganja-za-sirjenje-covida>.

<sup>23</sup> Art. 37.a of the Defence Act, Official Gazette of RS No. 103/04 available in Slovenian at: <http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO532>.

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<sup>25</sup> <https://www.sta.si/2648963/pic-z-usmerjanjem-migrantov-na-meji-po-oceni-tozilstva-ni-zagresil-kaznivega-dejanja>.

<https://www.delo.si/novice/slovenija/v-sns-zaradi-pomoci-migrantom-ovadili-direktorico-pravno-informacijskega-centra/>.

<sup>26</sup> <https://www.rtvlo.si/kultura/drugo/ministrstvo-za-kulturo-delozira-nevladne-organizacije-ki-pa-metelkove-6-ne-nameravajo-zapustiti/539717>.

provides professional legal support to individuals, vulnerable groups and non-governmental organizations in exercising and protecting their rights and strengthening their position in the society. Our activities aim at identifying gaps and advocating for systemic changes in human rights protection.