

National Report on the situation of human rights of migrants at the borders



Slovenia

Human Rights Ombudsman
of the Republic of Slovenia



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Executive Summary

The Human Rights Ombudsman of the Republic of Slovenia is the Slovenian National Human Rights Institution (NHRI) accredited with A-status in January 2021 as in full compliance with the UN Paris Principles. The Ombudsman, in cooperation with selected non-governmental organisations, is also the Slovenian National Preventive Mechanism (NPM) under the Optional Protocol to the UN Convention against Torture. The Ombudsman makes use of both the NHRI and the NPM mandate to monitor the rights of migrants and handle complaints.

Returns and Violence at Borders

Since June 2018, following a growing number of allegations about illegal returns of migrants to Croatia, the Slovenian Ombudsman started carrying out unannounced visits at police borders stations to monitor procedures involving migrants. The Ombudsman's investigations found several violations, including a lack of individual examination and inadequate documenting of the procedures. The Ombudsman also uncovered an internal guidance which included an instruction to hand over to Croatian authorities any individual whose procedure was carried out by a mixed Slovenian–Croatian police patrol, even if they expressed the intention to file a request for asylum in Slovenia.

Most migrants are returned to Croatia and other neighboring countries by the Slovenian authorities without being issued a written decision, thus having no access to legal remedy to challenge their return or transfer. The legality of returns without a return decision is currently being challenged in front of the Constitutional Court of the Republic of Slovenia with a constitutional complaint initiated by the Ombudsman on behalf of a returned Moroccan national.

The Ombudsman also intervened with an *amicus curiae* submission in a case before the Administrative Court of the Republic of Slovenia concerning a Cameroonian national who had been chain-returned from Slovenia, through Croatia, to Bosnia and Herzegovina. As a result of these proceedings, the Slovenian authorities are now under a court induced obligation to allow the plaintiff to enter Slovenia and apply for international protection.

During the Ombudsman visits at the Postojna detention centre, talks with detainees revealed that the use of police dogs was common, which the Ombudsman has recommended against.

Fair and effective asylum procedures

Prior to mid-2018 several shortcomings were already known to affect border procedures in Slovenia, such as inconsistent quality (and sometimes lack) of language interpretation, lack of access to legal assistance, inconsistent application of the protocol for unaccompanied minors and cases of unaccompanied minors being returned without a return decision.

During its monitoring visits, the Ombudsman established that the time limit of six working days for registering asylum applications is often not respected, and recommended to the Ministry of the Interior that appropriate staffing, organisational and other necessary measures be adopted immediately to ensure timely registration.

Reception conditions and deprivation of liberty at the borders

Those who wish to lodge a request for international protection are held in the pre-reception area at the Asylum House, without free access to its other parts in conditions of overcrowding. In 2018, following an NPM visit to the Asylum Centre in Ljubljana, the Ombudsman established that due to the excessive duration of the placement, lasting up to 20 days, the pre-reception area in the Asylum Centre should be considered a *de facto* place of deprivation of liberty.

At the Postojna detention centre, in mid-2020 migrants were detained in containers with little daylight and not allowed any daily exits or outdoor exercise. The placement in containers was supposed to be a temporary measure to prevent the spread of COVID-19 and to last between 10 to 14 days. However, the Ombudsman's staff documented that detention in containers could last for more than a month and that no records were being kept of the duration of such placement, nor were other checks undertaken relating to how long individuals were being kept inside the containers.

The Ombudsman has also been advocating against the long-lasting practice of children awaiting return, including unaccompanied minors, being systematically detained at the Postojna detention centre rather than in suitable accommodations as prescribed by law.

Impact of the COVID-19 pandemic

Due to the COVID-19 pandemic outbreak, personal interviews of asylum seekers were suspended during the month of April 2020 and resumed in May 2020.

The Ombudsman found the measures adopted by the authorities to prevent the spread of the disease between detainees at the Postojna detention centre to be unsuitable,

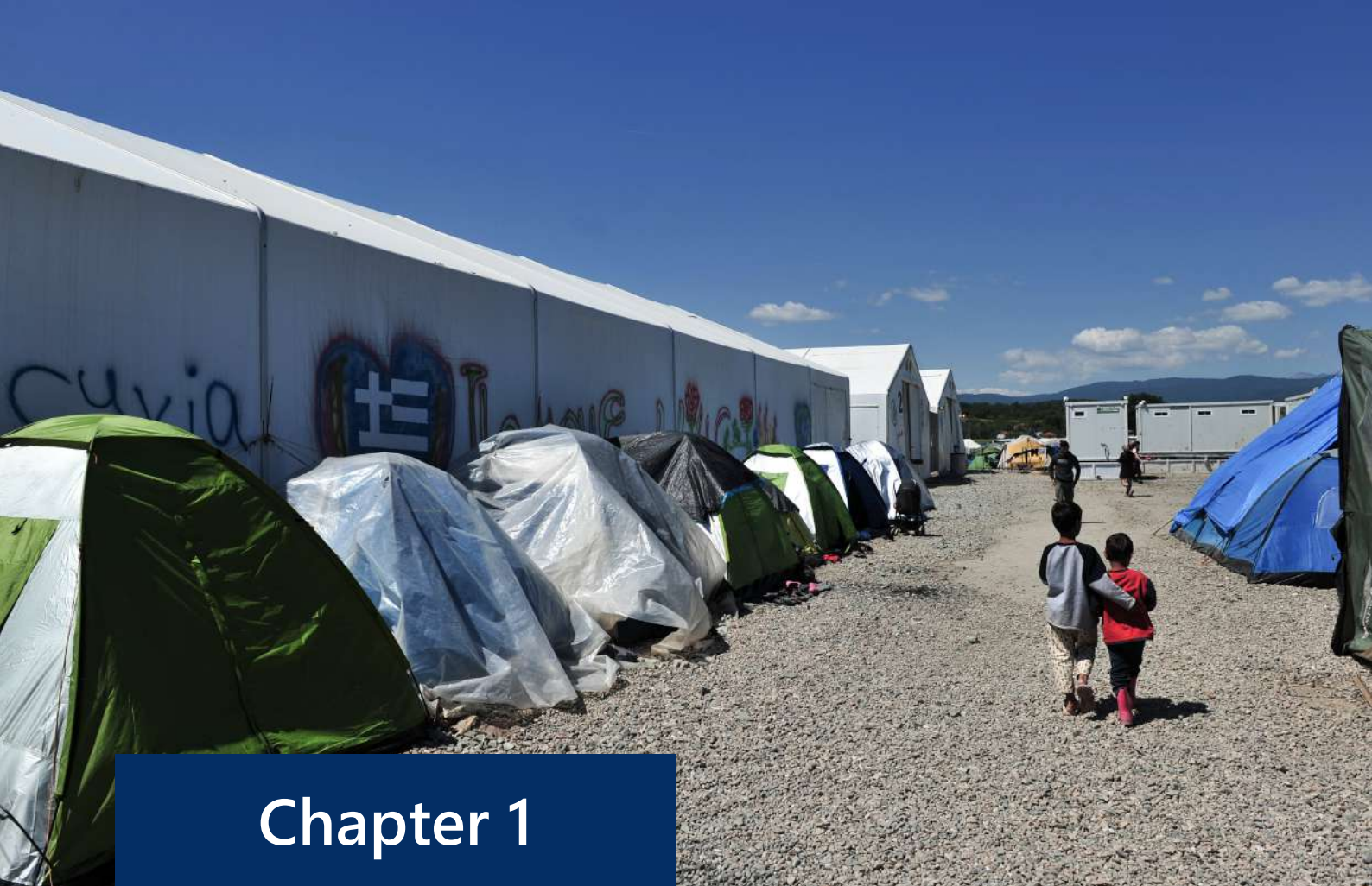
contravening the recommendations of the National Institute of Public Health.

Human Rights Accountability at the Borders

The Ombudsman is speaking against the practice of informal returns without a written decision which are making procedures difficult to monitor. Additionally, once a person is removed from the country, any potential violations are very difficult to address with legal remedies.

Following a case involving the return to Croatia of a large group of migrants who had been apprehended and detained by the Slovenian Police, the Ombudsman proposed to the Ministry of the Interior that the Police and Security Directorate take over the case. After requesting written explanations, the Directorate also found that the case was not handled appropriately by the police and that the rights of apprehended migrants were violated.

Organizations and initiatives whose work is related to migration seem to be under attack with spurious accusations, including that they represent foreign and anti-Slovenian interests, that their financing and work is questionable and non-transparent and that they are engaging in criminal activities (such as smuggling of migrants).



Chapter 1

ENNHRI's Project on Migrants' Rights at Borders

The European Network of National Human Rights Institutions (ENNHRI) brings together over 40 National Human Rights Institutions (NHRIs) across wider Europe. One of ENNHRI's thematic priorities is our work on "[asylum and migration](#)", which is facilitated through our Asylum and Migration Working Group, which brings together over 30 European NHRIs.

In order to support NHRIs' work to promote and protect the rights of migrants at borders, ENNHRI has initiated a project in 2019, supported in part by a grant from the Foundation Open Society Institute in cooperation with the OSIFE of the Open Society Foundations. The main objective of the project is to achieve a better promotion and protection of the

human rights of migrants at the borders through different capacity-building, advocacy, communication and reporting activities involving NHRIs in Europe.

Under this project, ENNHRI also has published several resources, such as the:

- Background Paper on "Protecting human rights of migrants at borders: evidence and work of European NHRIs", available [here](#).
- Guidance on "Monitoring Human Rights at Borders: building on the mandate and functions of NHRIs", available [here](#).
- Statement on "Stronger human rights monitoring at Europe's borders – why NHRIs are part of the solution", available [here](#).
- Complementary Guidance on "Monitoring human rights of migrants at borders during the

Covid-19 pandemic”, available [here](#).

- Article on “Protecting the rights of migrants during the pandemic: How have NHRIs responded?”, available [here](#).
- Recommendations on “Independent Human Rights Monitoring Mechanisms at Borders under the EU Pact on Migration and Asylum”, available [here](#).

In addition, under this project, five NHRIs - from Croatia, France, Greece, Serbia, and Slovenia – have developed national monitoring reports with the result of their human rights monitoring at borders. A comparative regional report will be published in July 2021, building on these findings and reflecting regional developments.

NHRIs work to promote and protect migrants’ rights at borders

NHRIs are State-mandate bodies, independent of government, with a broad mandate to promote and protect all human rights, including of migrants. They are periodically assessed against their compliance with the [UN Paris Principles](#).

European NHRIs use their unique mandate and full range functions to address the human rights of migrants, at the borders and beyond. In doing so, they also contribute to safeguarding democratic space and upholding the rule of law at borders.

Human rights monitoring is a crucial task of NHRIs, through which they gather, verify and use information to address the human rights situation of migrants at the borders. As highlighted in ENNHRI’s Background Paper, NHRIs have contributed to a growing body

of evidence indicating the existence of widespread violations of migrants’ human rights at the borders in Europe, in line with the concerns raised by civil society organisations, international and regional human rights bodies.

Among their many functions, NHRIs conduct monitoring on the respect of migrants’ rights on the ground, make recommendations to governments for reform of laws, policies and practices, and raise awareness of the rights of migrants, refugees and people seeking asylum by cooperating with regional and international human rights bodies and with civil society organisations. Some NHRIs also regularly monitor and report on immigration detention facilities and reception centres, may receive and handle individual complaints from migrants, and may be able to challenge the legality of a provision before Constitutional and/or lower courts.

During the Covid-19 pandemic, NHRIs have continued to monitor human rights violations at Europe’s borders documenting, among others, police violence and systematic pushbacks amid border closures and restrictive measures.

With this series of national reports written by NHRIs across the region, ENNHRI hopes to bring further visibility to their findings and recommendations. Mirroring the main areas identified in ENNHRI’s Guidance on Monitoring Human Rights at Borders, NHRIs report on:

- Returns and violence at the borders.
- Access to relevant procedures at the borders.
- Reception conditions and deprivation of liberty at the borders.

- Human rights accountability at the borders.

National reports presented under ENNHRI's project are authored by each specific NHRI, which are ultimately responsible for their content.

Human Rights Ombudsman of the Republic of Slovenia

The Human Rights Ombudsman of the Republic of Slovenia (hereafter: the Ombudsman) is entrusted by the Constitution of the Republic of Slovenia¹ and the Human Rights Ombudsman Act² with competences and powers aimed at protecting human rights and fundamental freedoms in relation to state authorities, local self-government bodies and bearers of public authority. Since January 2021 it was granted A-status by GANHRI's Sub Committee on Accreditation (SCA), attesting its full compliance with the Principles relating to the Status of National Institutions (UN Paris Principles).

The Ombudsman's core activity is handling complaints from individuals. Its work is not limited to violations of the human rights and fundamental freedoms stated in the Constitution, but includes any violation of any individual right committed by the authorities. In its interventions it may also invoke the principles of equity and good governance. Ombudsman's investigations can also be started at its own initiative.

The Ombudsman is an autonomous body in relation to other state bodies and possesses considerable investigative powers. However, its findings on individual violations as well as systemic problems, usually presented through written reports and recommendations,

are not binding.

In 2006, Slovenia ratified the Optional Protocol to the Convention against Torture, which establishes the National Preventive Mechanism (hereafter: NPM), a system of inspection of all places, where persons are or may be deprived of their liberty. Pursuant to Slovenian legislation, ratifying the Optional Protocol,³ the NPM was assigned to the Human Rights Ombudsman.

In connection to migration, places of deprivation of liberty investigated under the NPM include: (i) the Postojna detention centre⁴ (detention centre for migrants in irregular situation and asylum seekers), (ii) the Asylum Centre in Ljubljana (accommodation centre for asylum seekers) and its branch facilities and (iii) detention facilities at police stations.

Cooperation with other Human Rights Defenders

NGOs and other civil society actors collaborate with the Ombudsman by providing information on possible violations and as partners in research and advocacy activities.

Furthermore, pursuant to law,⁵ NPM activities are carried out jointly by specialized Ombudsman staff and members of human rights NGOs, chosen through a public tender. The Ombudsman is currently cooperating with nine NGOs, which provide around 40 staff members.⁶ The NGO participants are paid for their participation and reimbursed for their costs.

This cooperation is considered to be a good practice, since it guarantees a wider pool of experts, participating in monitoring visits.⁷ NGOs members often possess additional information, obtained

through their work, and can share alternative perspectives, which can lead to more successful investigations.

Impact of COVID-19 on the work of the NHRI

The Ombudsman decided to limit face-to-face interviews and conversations with complainants and field visits from March 2020. All who needed help have been encouraged to send a written complaint to the Ombudsman via ordinary mail or e-mail. They can also call the Ombudsman office using a free telephone number. However, even during the COVID-19 pandemic the Ombudsman continued visiting detention centres for migrants and other places for deprivation of liberty, conducting interviews with detainees and handling their complaints, as well as checking the living and other conditions of detention. The Ombudsman has also been stressing the vulnerability of migrants during the pandemic. Lately, the Ombudsman encouraged the responsible authorities to grant them access to vaccination despite their possible irregular situation or lack of health insurance.

Despite the COVID-19 situation, the NPM visited 51 places of deprivation of liberty and performed two monitoring of the return of migrants in 2020. All visits (except for two cases of monitoring of return due to the very nature of these activities) were carried out without prior notice.

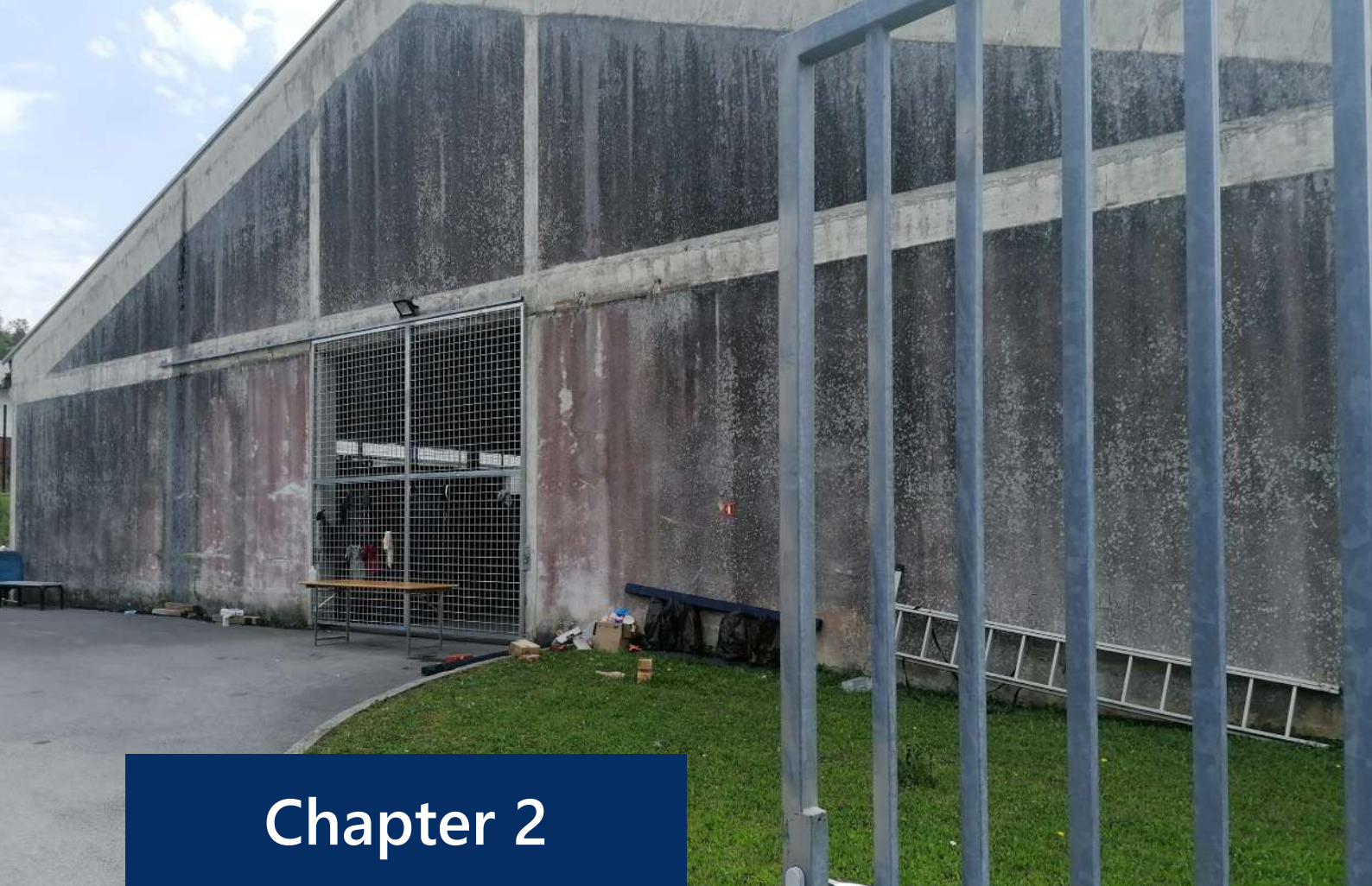
Content of this report

The report covers the work of the Ombudsman in the field of migration over the last three years. The report presents the findings and recommendations addressed to the Ministry of the Interior following investigations regarding police

procedures conducted on migrants at various locations. It includes the findings of the Ombudsman's visits at two border police stations of Črnomelj and of Metlika (June 2018), of an investigation into an incident at the border which included a visit to border police station of Ilirska Bistrica (October 2019), findings of an investigation at the Postojna detention centre (31 July and 3 September 2020) and of an NPM visit at the Asylum Centre in Ljubljana (2018) where the Ombudsman documented the living conditions of migrants.

The report also presents information on the legal submissions filed by the Ombudsman with national courts in cases concerning migrants, including a constitutional complaint initiated by the Ombudsman on behalf of a migrant returned to Croatian authorities at the border crossing on the basis of a Bilateral Agreement between Croatia and Slovenia, and an *amicus curiae* brief presented before the Administrative Court of Slovenia regarding a case of chain-return from Slovenia, through Croatia, to Bosnia and Herzegovina.

The report highlights recent developments in the Slovenian legislation on migration and asylum which may have repercussions on the rights of migrants and asylum seekers in the country.



Chapter 2

Overview of state of human rights at border in Slovenia

Around mid-2018, Slovenian NGOs and media first raised concerns that the Slovenian Police may have started with a practice of illegally returning individuals to Croatia, although they had expressed the intention to apply for asylum. Suspicions have been based on the sudden drop in the number of persons declaring their intention to apply for asylum to the police and an increase in the number of persons returned to Croatia, which occurred around May 2018. In 2017, 1,930 migrants were apprehended at the border and 1,476 persons applied for international protection (a ratio of 76%). A slightly lower percentage can be observed in the period between January and April 2018, when 1,303 migrants

were apprehended at the border and 798 persons applied for international protection (61%). This was followed by a considerable drop; between May and December 2018, 7,846 persons were apprehended at the border and only 2,077 persons applied for international protection (26%). Since then, the ratio of asylum applications remains similarly low; in 2019, 16,099 migrants were apprehended at the border and 3,821 persons applied for international protection (24%), and in 2020 14,592 migrants were apprehended at the border and 3,548 persons applied for international protection (24%).⁸

The allegations about the Slovenian Police ignoring requests for asylum have also been corroborated with several individual testimonies of migrants experiences, mostly collected by the grassroots activist organisations and the NGOs.⁹ Some individuals also filed complaints directly to the Ombudsman,

which together with information obtained from other sources led to Ombudsman's investigations into the situation at the Slovenian–Croatian border. Concerns that asylum requests are ignored by the Slovenian Police have persisted to the present, but the responsible authorities have so far denied all allegations.

Apart from problems connected with access to asylum procedures, several shortcomings have been reported in relation to the human rights situation at borders in Slovenia even before mid-2018, such as inconsistent quality (and sometimes lack) of language interpretation during procedures, a lack of access to legal assistance, inconsistent application of the protocol for unaccompanied minors and cases of unaccompanied minors being returned without a return decision in contravention of legal provisions.

The majority of asylum applicants in Slovenia abscond before the completion of the procedure (93% in 2020). In 2020, of those who remained and whose procedures were completed with an on-merit decision, the overall refugee recognition rate at first instance was 29%, which represents a noticeable drop from 38% in 2019.¹⁰

The Slovenian Ombudsman used its mandate throughout the past years to investigate allegations of human rights violations at borders and provided several recommendations to national authorities that would lead to better respect for the human rights of migrants at borders. This report, read in conjunction with other publications and recommendations from the Slovenian Ombudsman, points to persisting human rights concerns at borders.

1. Returns and violence at the borders

1.1 Returns / pushbacks at the border

Following allegations of asylum request being ignored by the Slovenian Police, the Ombudsman first carried out **unannounced visits to two border police stations in June 2018** (police station of Črnomelj and police station of Metlika). The findings were presented to the public through an interim report in August 2018 and a final report in February 2019.¹¹ While the alleged violations had not been conclusively proven, the findings strengthened the concerns that access to asylum had been restricted and the Ombudsman made several recommendations to the authorities on how to better implement border procedures. The Ombudsman recommended the Ministry of the Interior to more consistently document all circumstances of police procedures involving migrants (including migrants' statements), to ensure that the implementation of return agreements will not promote the adoption of disputable decisions on summary returns, and to adopt measures for appropriately informing migrants about international protection procedures and their position within the return procedure. These recommendations have so far not been sufficiently implemented by the Slovenian authorities (NPM visits show that the quality of border procedures in this respect varies between visited police stations).

The investigation also uncovered internal guidance of the Police Directorate of Novo Mesto dated 25 May 2018, which included an instruction to all police stations within its jurisdiction (including the two visited) to hand over to Croatian authorities any

individual whose procedure was carried out by a mixed Slovenian–Croatian police patrol, even if they expressed the intention to file a request for asylum in Slovenia. In the Ombudsman’s view, such practice is clearly contrary to the law, which guarantees access to asylum procedure to every individual on the territory of Slovenia (as presented in Section 2.1.).

In July 2019, the Ombudsman investigated another case, which concerned a police procedure at the police station of Ilirska Bistrica involving a larger than usual group of apprehended migrants (108 persons).¹² According to the authorities, only seven of them filed a request for asylum, while the rest were returned to Croatia. The Ombudsman’s investigation uncovered several violations, including a lack of individual examination (only seven minutes were available on average for a procedure with each individual) and inadequate documenting of the procedures, which again raised concerns about accessibility to the asylum procedure. The investigation also showed violations in terms of deprivation of liberty (see Section 3.1.)

Similar issues in connection with border procedures have also been detected over the years by the Ombudsman in its role as the NPM and presented in its annual reports.¹³ For example, in 2019 the Ombudsman (as NPM) reminded the Ministry of the Interior that group interviews with migrants do not enable the recognition of individuals who may need international protection or are victims of human trafficking, and do not enable the establishment of circumstances requiring the observance of the non-refoulement principle. For this reason, the Ombudsman stressed as necessary that police officers record in their documentation all important

findings from the procedure with an individual migrant. If such records do not exist it is not possible to subsequently examine what the police procedure with an individual migrant entailed.

In 2020 the Ombudsman handled a complaint from a Moroccan national (unsuccessful asylum seeker) returned at the border crossing to the Croatian authorities on the basis of the **Agreement between the Government of the Republic of Slovenia and the Government of the Republic of Croatia on the readmission of persons whose entry or residence is illegal (hereafter: Bilateral Agreement)**.¹⁴ The complaint related to the fact that the individual concerned was not permitted to make a statement on his reservations against his return to the Croatian authorities, and that no decision was issued on the return; he also did not have any legal remedy or judicial protection at his disposal against the decision of the Ministry of the Interior to return him to the authorities of the neighbouring country. The authorities are basing this practice on paragraph 1 of Article 64 of the Foreigners Act¹⁵ in conjunction with paragraph 3 of Article 6 of the Return Directive¹⁶ and the Bilateral Agreement with Croatia. After the plaintiff was returned to Croatia, the Croatian authorities took him to the border with Bosnia and Herzegovina and directed him to this country. All of this raises several important constitutional/conventional questions and the Ombudsman decided to challenge the relevant authoritative acts before the Constitutional Court.

In its submission, the Ombudsman also suggested to the Constitutional Court to ask the European Court of Justice to give a preliminary ruling on the applicability of the Bilateral Agreement.

At the time of the publishing of this report, the Constitutional Court has not yet decided whether the case will be admitted into in-merit procedure.

The key question in the case is whether the part of the Bilateral Agreement that regulates the informal transfer of illegally staying third-country nationals or stateless persons to the authorities of a neighbouring country (Articles 2–4) is an agreement or arrangement between Member States in the sense of Article 6(3) of the EU Return Directive, which stipulates that Member States may refrain from issuing a return decision to a third-country national staying illegally on their territory if the third-country national concerned is taken back by another Member State under bilateral agreements or arrangements existing on the date of entry into force of this Directive.

The Ombudsman believes that the Bilateral Agreement cannot be placed under provision 6(3) of the Return Directive for several reasons.

Firstly, when the Bilateral Agreement was drafted and came into force, Croatia was not yet an EU member state. Secondly, the Return Directive

should only apply to countries that are members of Schengen area. Thirdly, the Bilateral Agreement does not stipulate an obligation, and therefore provides no guarantee, that the receiving state will issue a return decision).¹⁷ And lastly, the Ombudsman believes that the Bilateral Agreement should provide a possibility to challenge the principle of “mutual trust” between the parties, if there is concern that a return would violate the principle of non-refoulement.

Transferring of an individual to the security authorities of another country without issuing a written reasoned decision about the circumstances of the individual case denotes, with regard to the Ombudsman’s assessment, a violation of the right to equal protection of rights under Article 22 of the Constitution of the Republic of Slovenia. The subsequent absence of a legal remedy also means a violation of the right to legal remedy under Article 25 and the right to judicial protection under Article 23.

The persons transferred to the neighbouring country without a legal procedure and a written decision do not participate in the decision-



making procedure and cannot raise objections, such as considering systemic deficiencies in the country, due to which their transfer could be in contravention of the prohibition of torture and inhuman treatment, or raise other individual circumstances, such as that the return would violate their right to family or private life. The Ombudsman emphasizes that such actions bear no elements of legality and are authoritative actions in which an individual is merely a subject in the procedure instead of a legal entity or a holder of rights and obligations.

1.2 Violence by State authorities at borders

The Ombudsman only rarely receives complaints with allegations of physical mistreatment of migrants by the Slovenian Police that could result in death or serious injury. However, considering the various reports from credible sources about widespread violations committed by Croatian authorities (including the report by the Special Rapporteur on the human rights of migrants from his official visit to Bosnia and Herzegovina in September 2019), the Ombudsman is additionally concerned with allegations of denial of access to asylum procedure in Slovenia and returns of migrants to Croatia.

The Ombudsman is also concerned that border regimes currently implemented by state authorities (of Slovenia, Croatia and other countries in the region) are pushing migrants into increasingly dangerous methods of travel. In recent years a considerable number of migrants (12 by June 2019, according to news reports) have drowned while trying to cross the river Kolpa, which separates Croatia and Slovenia, and several more have died in other incidents connected with crossing the border.

During the Ombudsman visits at the detention centre in Postojna on 31 July and 3 September 2020 (see Section 3.2.2.), several detainees mentioned that police officers with dogs had been entering the detention facilities (i.e. a roofed concrete structure with containers, where detainees were held) every evening and reportedly let the dogs to bark at the barred front door. At night, police patrols with dogs reportedly stayed among the containers. Talks with detainees revealed that the use of police dogs, which was also documented on some publicly released videos, were likely common, and the detainees complained of discomfort due to the presence of dogs both inside and outside the structure housing the containers. The Ombudsman therefore proposed to the Ministry of the Interior that the use of police dogs in the detention centre (e.g. during mealtimes) involving contact with the detainees be halted. The Ombudsman believes that employment of police dogs in detention institutions is justifiable only in exceptional circumstances and in individual cases and it is not appropriate for it to become routine practice.

2. Access to procedures at the Borders

2.1 Access to asylum procedures

2.1.1 Overview of national legislation

In the Ombudsman's view, the obligation of the state to refrain from returning asylum seekers without an individual examination of their protection needs is suitably provided for in Slovenian legislation. Pursuant to Article 42, paragraph 1, of the International Protection Act¹⁸ a person can declare their intention to apply for asylum to any public authority or self-governing local community authority. In practice, such intention is most

commonly expressed to the police upon apprehension at the border; if the declaration is made to another authority, the person is nevertheless referred to the police for processing (Article 42, paragraph 2). The role of the police is clearly limited to obtaining basic information on the person's identity, route of arrival and other information pertained in the "registration document" (i.e. a short statement on reasons for seeking asylum and a list of documents and other personal belongings).¹⁹ When the procedure is concluded, the competent authority refers the person to the asylum authority, before which they can lodge an asylum application (Article 42, paragraph 3).

Furthermore, the **principle of non-refoulement** is explicitly laid down in Article 72 of the Foreigners Act. The same law also sets out additional protection for unaccompanied minors, who cannot be returned without being appointed a legal guardian, who determines, upon a careful examination of all circumstances, that a return is in the minor's best interest (Article 82).²⁰

Despite the clear legal framework which leaves little ambiguity about the correct course of action for the authorities when encountering persons declaring an intention for asylum, its implementation in practice is less certain, especially considering that most migrants are returned to Croatia and other neighbouring countries by the Slovenian authorities without being issued a written decision, thus having no access to legal remedy to challenge their return or transfer to Croatian authorities, as presented in Section 1.1. However, according to NGOs and grassroots activist organisations, the majority of migrants who have been taken back by the Croatian authorities (under the Bilateral Agreement) are in

need of international protection.²¹

2.1.2 Violations of law confirmed in a recent court case

Apart from the case in front of the Constitutional Court, discussed in Section 1.1., another recent court case concerns access to asylum in Slovenia. The case has been concluded with a final decision during the preparation of this report and may have important impact on future policy and practice. The lawsuit was filed by a plaintiff from Cameroon, who alleged to have been chain-returned from Slovenia, through Croatia, to Bosnia and Herzegovina. The Ombudsman intervened in the proceedings with an *amicus curiae* submission. In the first trial, the Administrative Court of the Republic of Slovenia found violations of Article 18 and 19 of the Charter of Fundamental Rights of the European Union, ordered the government to allow the plaintiff re-entry into Slovenia and apply for asylum, and awarded him 5,000 EUR in damages.²² The judgment was later reversed by the Supreme Court of the Republic of Slovenia and the case referred back to the first instance.²³ However, the Administrative Court, in a new trial, issued a similar decision as the first time, except without deciding on the damages (referring the plaintiff to civil litigation instead).²⁴ The government again appealed, but in April 2021 the Supreme Court upheld the decision of the Administrative Court. **Slovenian authorities are now under a court-induced obligation to allow the plaintiff to enter Slovenia and apply for international protection.**

2.1.3 Impact of COVID-19 pandemic

Based on the Act on provisional measures for judicial, administrative and other public matters to cope with the spread of infectious disease SARS-

CoV-2 (COVID-19),²⁵ **decision-making in administrative procedures was temporarily suspended in the first half of 2020** due to the epidemic, with the exception of urgent matters. The Ministry of the Interior did not consider asylum matters as urgent. Consequently, the asylum authorities did not conduct personal interviews to apply for international protection with persons that expressed the intention to apply for such protection. However, according to the Ombudsman, such matters should be considered urgent, since the formal application for international protection affects the individual's legal position by granting her/him additional rights.

2.1.4 Ombudsman's findings in Postojna detention centre

Following two visits at the detention centre in Postojna (on 31 July and 3 September 2020), which included talking to the detainees and examining their case files, the Ombudsman also established (in addition to the findings presented in Sections 1.2 and 3.2.2.) that the period from when a person at the centre expresses their intention of seeking international protection in Slovenia to when a personal interview to apply for international protection is conducted with that person was too long (lasting up to several weeks), even though the relevant EU law stipulates that such applications must be registered within a maximum of six days (Article 6(1), the Asylum Procedures Directive).²⁶ During that time, persons who had expressed their intention of seeking international protection and thus should have already been considered applicants for international protection continued to be detained as "illegal aliens", even though they should have been entitled to the reception conditions guaranteed to applicants for international protection.

The Ombudsman therefore proposed to the Ministry of the Interior that appropriate staffing, organisational and other necessary measures be adopted immediately to ensure that no more than six working days elapsed from the time an individual declared their intention to apply for international protection to an authority not competent to receive such an application to the moment a personal interview was arranged in which they formally lodged an application for asylum.

2.1.5 Legalized restrictions on access to asylum

In early 2017, Slovenia adopted **amendments to the Foreigners Act** which allowed for a future restriction on the right to asylum. According to the new provisions, the National Assembly (Parliament) could vote on suspending access to asylum procedure in case migration posed "a threat to public order and internal safety in the Republic of Slovenia". The provisions were later declared unconstitutional and annulled by the Constitutional Court in a procedure initiated by the Ombudsman.²⁷

In 2021, further amendments to the Foreigners Act introduced a similar option in case of "a complex migration emergency" (Articles 10.a and 10.b). If a complex emergency is declared under deteriorating migration-related conditions, the National Assembly can suspend the implementation of the International Protection Act and restrict the access to asylum in Slovenia. If this took place, **police officers would be able to reject all intentions from migrants to submit applications for international protection**, except in specified cases (individual circumstances or systemic shortcomings that could put the individual under risk of torture,

inhumane and degrading treatment in the country where they are being returned to, health reasons or being an unaccompanied minor). Possible appeal against such rejection would not suspend the execution of the decision. The passage of the legislation in parliament was marked by warnings and criticism from NGOs that the criteria for declaring a “complex crisis” had not been clearly defined, that the police cannot be asked to decide who to allow or reject access to asylum procedure based on their protection needs, that no restrictions can be put on prohibition of torture and that the amendment is therefore unconstitutional in much the same way as the annulled amendment from 2017.²⁸

2.2 Effective, fair and transparent asylum procedures

If the police follows the procedure described under Section 2.1.1., asylum seekers are taken to the Asylum Centre in Ljubljana.²⁹ Initially, they are placed in the pre-reception area of the Asylum Centre and are *de facto* detained (see Section 3.1). After the **lodging of the asylum application** (first interview) the applicants are moved to the main accommodation area of the Asylum Centre or one of its branch units (all open facilities), or they are issued a detention decision and detained in the Postojna detention centre.

The International Protection Act does not guarantee free legal assistance and representation in the first instance procedure. However, from 2007 to 2020, extensive free legal assistance and representation was provided to all asylum seekers by a non-governmental organisation, through a project financed under EU’s funds for asylum and migration. Unfortunately, the government decided not to renew the project and the activities were

terminated in April 2020. Since then, the organisation is providing legal assistance and representation on a much smaller scale. Additionally, in the scope of the terminated project the organisation also carried out information sessions with asylum seekers prior to the lodging of the asylum application, informing them about their rights and obligations, the asylum procedure and other relevant information; this has since been replaced by a video recording shown to asylum seekers.

Pursuant to the International Protection Act (Article 47) the determining authority has to take a decision in the shortest time possible but no later than six months from the lodging of the application (or 2 months in accelerated procedures). However, in practice, the time limits are often not respected and **duration of the procedure is seen as one of the biggest shortcomings of the Slovenian asylum system and often criticized in the Ombudsman’s annual reports.**

Rejected asylum applicants can appeal their decision at the Administrative Court of the Republic of Slovenia. Pursuant to the International Protection Act,³⁰ they are represented in these court procedures for free by specialized asylum lawyers. In 2020 the Administrative Court annulled the decision and returned the case to the first instance 151 times, and in 8 cases the court replaced the decision of the Ministry with its own and granted refugee status to the applicant.³¹ Compared to the total of 215 first instance rejection decisions issued in 2020, this also raises questions about the quality of decision making of the first instance authority.

In April 2021, the Slovenian Parliament adopted **changes to the International Protection Act**, which generally lowered

the standards and rights for persons in asylum procedure. Some of the changes raise questions about their impact on the fairness of procedures, and their constitutionality and conformity with EU and international law.³² For example, legal counsellors will be required to disclose personal information about asylum seekers to the Ministry of the Interior under threat of being prevented from representing asylum seekers in future cases (including when they are aware of the facts on the basis of which the applicant is not entitled to refugee status or subsidiary protection, but does not inform the competent authority). Further, the amended International Protection Act introduces restrictions of the freedom of movement for all asylum seekers, automatically limiting them to the municipality where they are accommodated, without the possibility to appeal and without any specified time limitation.

3. Reception conditions and deprivation of liberty at the borders

3.1 Deprivation of liberty and *de facto* detention at the borders

In 2019 and 2020 the Ombudsman investigated a case involving **108 migrants from Afghanistan, Pakistan and Bangladesh apprehended by the Slovenian police in Šembije (near Ilirska Bistrica) on 19 July 2019**. Out of 108 migrants, only 7 (five of them unaccompanied minors) applied for international protection, while the others were returned to the Croatian authorities under the Bilateral Agreement. After reviewing the documentation in the police procedure, the Ombudsman concluded that out of 108 adult individuals, **101 were illegally detained by the police after being apprehended, since the police did**

not issue them detention orders that could be challenged with an appeal.

The Ombudsman also noted that the police did not conduct individual procedures with the apprehended foreigners. The investigation showed that only seven minutes were available on average for a procedure with each individual. Although required by law, there was no documentation that would show the individual statements of migrants in the police procedure and no documentation regarding their irregular border crossing. The lack of documentation showed that the police did not determine the individual circumstances, which is also a prerequisite for return, pursuant to the Bilateral Agreement. This alone may have represented a violation of the right to effective access to the asylum procedure. Since the police did not conclude individual procedures with apprehended migrants and did not give them a chance to make a statement in the procedure or argue that the return would violate the principle of non-refoulement the foreigners in the police procedure could not express their intention to apply for asylum in Slovenia.³³

3.2 Living conditions in reception centres

3.2.1. Asylum Centre in Ljubljana

Upon arrival in the Asylum Centre, applicants are held in the pre-reception area of the building without free access to its other parts. According to the AIDA Country Report, the authorities started to lock up this area due to a high number of people absconding from the procedure prior to lodging applications and giving fingerprints under the Eurodac Regulation.³⁴ Until 2017, people were detained for short periods, rarely exceeding one day. However,

throughout 2018 and 2019, due to an increase in the number of asylum seekers and organisational difficulties such as the unavailability of interpreters and doctors, persons, including families and unaccompanied children, had been reported to be held in the reception area for five-six days on average and even longer in some individual cases. In 2020, individuals were detained up to 20 days while waiting to lodge the application, partly due to the obligatory quarantine. The rooms in the pre-reception areas were often overcrowded and did not guarantee sufficient privacy.³⁵

In 2018, following an NPM visit to the Asylum Centre, the Ombudsman established that the **pre-reception area in the Asylum Centre indeed functions as a *de facto* place of deprivation of liberty**. The NPM report³⁶ and the Ombudsman's Annual Report³⁷ noted that the facilities were locked and under video surveillance. It was especially highlighted that minors were also detained in the pre-reception area. The detention in the pre-reception area is not set out in law, individuals are not issued a detention decision and there is therefore no possibility for appeal.

3.2.2. Postojna Detention centre

Migrants undergoing return procedures are detained in the **Postojna detention centre** (2,050 persons in 2020), which is a completely closed facility. This practice also includes detention of children, which warrants particular attention from the Ombudsman. Pursuant to Article 82 of the Aliens Act, unaccompanied minors or families with minors, who are in return procedures, are to be accommodated, in agreement with an appointed guardian, in a suitable institution for the accommodation of minors; only if this is not possible, they are to be detained in the

Postojna detention centre. However, **despite the long-standing advocacy by the Ombudsman and other stakeholders, the authorities have failed to implement accommodation of minors in a suitable institution** and practically all minors in return procedures are detained in the Postojna detention centre. In 2020, 401 children were detained, of which 304 were unaccompanied, and 97 were detained with their parents. The majority of children were detained for less than one week, however in some cases detention lasted up to several months (six months in the longest recorded case).

Apart from housing foreigners in return procedures, the Postojna centre also serves as the detention facility for asylum applicants, who are imposed with detention by the asylum authority (216 persons in 2020). However pursuant to the International Protection Act Article 84 this only applies to adults, while children can only be imposed with a softer measure of "mandatory stay in the area of the Asylum Centre", which is rarely applied in practice.

Following news of overcrowding and other violations in the Postojna detention centre, **the Ombudsman carried out two on-site visits on 31 July and 3 September 2020**.³⁸

According to allegations the authorities, instead of using their main detention facility, had started to detain foreigners in living containers, placed outside under a roofed concrete structure. During the visit the Ombudsman was able to confirm that these new facilities provided little daylight and that the detainees were not allowed any daily exits or outdoor exercise. According to the explanation received from the Ministry of the Interior and the Centre's management, the described placement of newly detained persons in containers

was introduced to prevent the spread of the COVID-19 virus, and persons were supposed to be kept inside the containers for a maximum of 10 to 14 days. However, as the Ombudsman's staff could determine during the visits, some detainees were kept inside the containers for more than a month, and also apparently no records were being kept of the duration of such placement, nor were other checks relating to

how long individuals were being kept inside the containers undertaken. The Ombudsman considered the containers to be inappropriate for the long-term placement of detainees and proposed to the Ministry of the Interior that such placement cease immediately and that a set of rules providing for short-term-only placement in containers, and particularly for safeguards preventing arbitrary action, be adopted.

When investigating detention of migrants in the Postojna detention centre, the Ombudsman also detected problems related to the COVID-19 pandemic. The measures adopted by the authorities to prevent the spread of the disease between detainees were found to be unsuitable, even contravening the published recommendations of the National Institute of Public Health, which specifically address the situation of migrants.⁴² The Ombudsman therefore proposed that the competent authorities and epidemiological experts prepare appropriate expert basis for the most suitable organisation of the detention regime at the detention centre.

4. Human Rights Accountability at the Borders

4.1 A system for human rights accountability at the borders

The practice of informal returns without a written decision (see Section 1.1.) is making procedures difficult to monitor. Additionally, once a person is removed from the country, any potential violations are very difficult to address with legal remedies (only one court case, described under 2.1.2., has so far been successfully initiated in this way).

On the request of the Specialised State Prosecutor's Office³⁹, the Ombudsman submitted some of its findings and materials from investigations described in this report that could be used in possible criminal investigations against the individuals allegedly responsible for

the human rights violations. According to the Ombudsman's knowledge, no such criminal indictment has been filed so far.

Individuals who are dissatisfied with the (in)activity of police officers are also encouraged by the Ombudsman to actively utilise the complaint channels pursuant to the Police Tasks and Powers Act,⁴⁰ with which they may submit their reservations and comments about specific police proceedings.

After the Ombudsman established several irregularities in the police dealing with a large group of foreigners apprehended in Šembije (see Section 3.1.), it proposed to the Ministry of the Interior that the Police and Security Directorate (hereafter: the Directorate) take over the case for consideration

within their supervisory powers and study the legality and professionalism in the implementation of police tasks and powers. In December 2019, the Ministry of the Interior informed the Ombudsman that the Directorate, within its powers, requested written explanations from the police regarding the implementation of the police proceedings in the case in question and that they would send a response to the Ombudsman when the Directorate completes the procedure. Finally, the Directorate agreed with the Ombudsman that the case was not handled appropriately by the police and that the rights of apprehended migrants were violated.

For now, the Ombudsman has not experienced any difficulties in accessing necessary data, documents or individuals detained when carrying out its mandate.

4.2 Enabling environment for work of other human rights defenders at the borders

In recent years, negative discourse in Slovenian media and politics, aimed at civil society, has become much more commonplace than before. Organizations and initiatives whose work is related to migration seem to be under attack with spurious accusations, including that they represent foreign and anti-Slovenian interests,⁴¹ that their financing and work is questionable and non-transparent and that they are engaging in criminal activities (such as smuggling of migrants). Organizations and individuals are often named in the media with an apparent attempt to rile up the public against them. The attacks in the media seem to be centred around populist right-wing news outlets. However, negative narratives and spreading of misinformation on NGOs has also been appearing in

more mainstream media. In May 2019, apparently based on media allegations, a criminal complaint was lodged by a Member of Parliament against the directress of an NGO, responsible for providing legal assistance to asylum applicants (later dismissed as unfounded).

Notes

¹ Official Gazette of the Republic of Slovenia No. 33/91-I with further amendments. Slovenian text available at: <http://pisrs.si/Pis.web/pregledPredpisa?id=USTA1>.

² Official Gazette of the Republic of Slovenia No. 71/93 with further amendments. Original Slovenian text alongside an English translation available at: www.pisrs.si/Pis.web/cm?idStrani=prevodi.

³ Act ratifying the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Official Gazette of the Republic of Slovenia - International Treaties, No. 20/06.

⁴ The Slovenian name of the institution is "Center za tujce", while "Aliens Centre" or "Centre for Foreigners" are usually used in English translations.

⁵ Ibid., Articles 4 and 5.

⁶ Based on the public call, the following non-governmental organisations were selected at the beginning of 2019 for cooperation until 31 December 2021 with the possibility of a one-year extension: Novi paradoks, Humanitarno društvo Pravo za VSE, Caritas Slovenia, SKUP – Community of Private Institutes, Legal-Informational Centre for NGOs – PIC, the Peace Institute, the Slovenian Federation of Pensioners' Associations (ZDUS), Spominčica – Alzheimer Slovenija and the Slovenian Foundation for UNICEF.

⁷ Border Police Monitoring in the OSCE Region, A discussion of the need and basis for human rights monitoring of border police practices, available at https://www.osce.org/files/f/documents/a/4/486020_0.pdf

⁸ Cited numbers are drawn from official police and asylum authority statistics available (in Slovenian) at: www.policija.si/o-slovenski-policiji/statistika/mejna-problematika/nedovoljene-migracije-na-obmocju-republike-slovenije and <https://podatki.gov.si/dataset/stevilo-prosilcev-za-mednarodno-zascito>.

The number of asylum applications shown is the total number submitted in the Republic of Slovenia. The applications are mostly submitted by migrants apprehended at the border, however a smaller portion of them are also submitted by other third country nationals (e.g. legally arriving migrants).

⁹ See, for instance: Amnesty International Slovenia report from June 2018 on border procedures and pushback allegations, based on a field visit to Bosnia and Herzegovina: www.amnesty.si/media/uploads/files/Slovenia%20-%20Push-backs%20and%20denial%20of%20access%20to%20asylum,%20Amnesty%20International,%20July%202018.pdf; Pravno-informacijski center nevladnih organizacij – PIC report from July 2018 on border procedures and pushback allegations, based on a field visit to Bosnia and Herzegovina: <http://pic.si/wp-content/uploads/2018/07/1.-REPORT-ON-FINDINGS-AND-OBSERVATIONS-ON-THE-IMPLEMENTATION-OF-RETURN-PROCEDURES-IN-ACCORDANCE-WITH-THE-PRINCIPLE-OF-NON-1.pdf>; Info-Kolpa and Border Violence Monitoring: Report on illegal practice of collective expulsion on Slovene-Croatian border (May 2019): <https://push-forward.org/sites/default/files/2019-08/Report%20on%20illegal%20practice%20of%20collective%20expulsion%20on%20slovene-croatian%20border.pdf>; Border Violence Monitoring Network: The Black Book of Pushbacks (December 2020): www.borderviolence.eu/launch-event-the-black-book-of-pushbacks/

¹⁰ AIDA Country Report: Slovenia, 2020 Update, p. 25–26. In view of its author, »The lack of

legal representation and the new way of providing information through a video presentation are likely to be two of the key factors that affected this drop in the recognition rate of the refugee status.« Available at: https://asylumineurope.org/wp-content/uploads/2021/03/AIDA-SI_2020update.pdf.

¹¹ Available in Slovenian at: www.varuh-rs.si/fileadmin/user_upload/word/NOVINARSKA_KONFERENCA/2019_2_15_-_NOVKONF/Koncno_porocilo_o_delu_policije_na_meji_s_Hrvasko_-_VCP_RS_-_februar_2019.doc.

¹² Report available in Slovenian at: www.varuh-rs.si/fileadmin/user_upload/pdf/Stalisca_in_ugotovitve/2020_7_22_-_Koncno_porocilo_o_prijetju_in_vracanju_migrantov_na_Hrvasko.pdf.

¹³ English translations of the reports available at: www.varuh-rs.si/nc/en/about-us/organisational-units-and-hro-council/ombudsman-as-a-nmp/left-menu/npm-annual-reports/.

¹⁴ Official Gazette of the Republic of Slovenia - International Treaties, No. 33/2006, available in Slovenian and English at: www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2006-02-0040?sop=2006-02-0040.

¹⁵ »The police shall issue a return decision to a foreigner who is illegally staying in the Republic of Slovenia, except in cases where a foreigner is apprehended illegally crossing the state border or in connection therewith and has not been granted the right to reside [...]. If after a return procedure under a readmission agreement a foreigner was not admitted to a state party or if a foreigner who is the subject of a return or extradition procedure on the basis of a readmission agreement was not admitted to a state party within 72 hours, he or she shall be issued a return decision.«; Official Gazette of the Republic of Slovenia No. 50/2011 with further amendments. Original Slovenian text alongside an English translation available at: www.pisrs.si/Pis.web/cm?idStrani=prevodi.

¹⁶ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

¹⁷ Even if the Bilateral Agreement met the definition of an agreement from paragraph Article 6(3) of the EU Return Directive and migrants could be legally returned without Slovenia issuing them a return decision, they would still have to be issued a return decision by the receiving state, as clearly set out in the discussed provision of the Directive. However, based on reports on the situation in Croatia, including reports showing a routine practice of chain refoulement to Bosnia and Herzegovina, there are strong concerns that this obligation is not being applied.

¹⁸ Official Gazette of the Republic of Slovenia No. 22/2016 with further amendments. Original Slovenian text alongside an English translation available at: www.pisrs.si/Pis.web/cm?idStrani=prevodi.

¹⁹ The contents of the registration document are set out in a by-law of the International Protection Act: Rules on the procedure for aliens who wish to apply for international protection in the Republic of Slovenia and on the procedure for accepting applications for international protection, Official Gazette of the Republic of Slovenia No. 29/2017.

²⁰ Another feature of the Slovenian border management system that could be mentioned as a good practice is the Protocol on cooperation between social work centers and the police regarding provision of assistance to unaccompanied minors pursuant to the Foreigners Act, which has been in operation since August 2012. If the arriving migrant is an unaccompanied minor, the Protocol establishes an obligation for the police to contact the locally responsible social work center, which responds by sending their operative to the police station. Upon arrival, the operative conducts an interview with the minor, provides first social assistance, obtains a

statement for appointing a legal guardian and, if necessary, accompanies the minor during transport to an accommodation facility.

²¹ See reports listed in footnote 9

²² Judgment I U 1490/2019 of 22 June 2020, available in Slovenian at: www.sodisce.si/usrs/odlocitve/2015081111441579/.

²³ Decision I Up 128/2020 of 28 October 2020, available in Slovenian at: <http://sodisce.si/vsrs/odlocitve/2015081111441231/>.

²⁴ Judgment I U 1686/2020 of 7 December 2020.

²⁵ Official Gazette of the Republic of Slovenia No. 61/2020.

²⁶ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

²⁷ Decision U-I-59/17 of 18 September 2019, available in Slovenian at: www.us-rs.si/media/u-i-59-17.-odlocba.pdf.

²⁸ Amendments available in Slovenian at: www.uradni-list.si/glasilo-uradni-list-rs/vsebina/2021-01-1153/zakon-o-spremembah-in-dopolnitvah-zakona-o-tujcih-ztuj-2f.

²⁹ Main Slovenian asylum reception center.

³⁰ Articles 9, 10 and 11.

³¹ AIDA Country Report: Slovenia, 2020 Update, p. 28-29.

³² See ECRE: Slovenia: National Assembly Approves Legislation Eroding the Rights of Asylum Seekers, www.ecre.org/slovenia-national-assembly-approves-legislation-eroding-the-rights-of-asylum-seekers/.

³³ Report available in Slovenian at: www.varuh-rs.si/fileadmin/user_upload/pdf/Stalisca_in_ugotovitve/2020_7_22_-_Koncno_porocilo_o_prijetju_in_vracanju_migrantov_na_Hrvasko.pdf.

³⁴ Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice.

³⁵ https://asylumineurope.org/wp-content/uploads/2021/03/AIDA-SI_2020update.pdf (p. 70).

³⁶ English version of the Ombudsman's NPM Report for 2018, p. 40, available in English at: https://www.varuh-rs.si/fileadmin/user_upload/pdf/DPM/Letna_porocila_DPM/DPM_2018_ENG.pdf.

³⁷ Abbreviated Ombudsman's Annual Report 2018 in English, p. 134-135, available at: https://www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP_2018_ENG.pdf.

³⁸ Final report in English available at: www.varuh-rs.si/fileadmin/user_upload/pdf/Stalisca_in_ugotovitve/2020_11_10_-_Ombudsman_s_findings_and_positions_regarding_the_implementation_of_detention_at_the_Centre_for_foreigners.pdf.

³⁹ This office has exclusive territorial and subject matter jurisdiction over criminal offences committed by officials, such as the police.

⁴⁰ Official Gazette of the Republic of Slovenia No. 15/2013 with further amendments.

⁴¹ Similar to what the Ombudsman itself has been accused of: see pages 158–159 of the English version of the Annual Report for the year 2017, available at: www.varuh-rs.si/fileadmin/user_upload/pdf/lp/LP2017_VARUH_ENG.pdf.

⁴² Available in Slovenian at: www.nijz.si/sites/www.nijz.si/files/publikacije-datoteke/napotki_in_priporocila_covid-19_ranljive_skupine_final.pdf.



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