

PRESS KIT FOR FOREIGN MEDIA

Introduction/Overview of situation:

Since the opening of the Balkan refugee corridor in 2015, Slovenia's role in the management of the influx of refugees has been one of a *gate-keeper*. A centrist government raised the razor wire fence on the southern border with Croatia as soon as November 2015. It continued with the policy of granting asylum to a low number of claimants. In total, Slovenia granted asylum to only 476 persons in the time period of 20 years (between 1995 and 2015), a number that is below average in comparison to other countries in the EU.

Despite the number of refugees slowly dropping, the Slovenian government continued to put up the fence. At the same time, it was conjuring new ways to obstruct any possibilities of refugees to pass through the country or claim asylum. Such new measures were the introduction of mixed police and army patrols, mixed patrols with Croatian police and new internal police protocols of dealing with foreigners introduced in May 2018. Among the signatories of the new police directives that resulted in current violations is also police officer Marko Gašprelin who is currently serving as the Chairman of the Frontex Management Board.

After the introduction of new protocols, which remain only partially available to the public, police started illegally denying the right to claim asylum and systematically falsifying official procedures at border police stations. Migrants who were taken to Slovenian police stations testify that they faced threats and in some cases physical violence if they tried to express the intention to seek asylum in Slovenia. Many were lied to that they were being taken to asylum camp in Ljubljana while they were in fact in the process of readmission to Croatia. A clear example of the coordinated change in police practice is Police station Črnomelj on the southern border where the number of intentions to seek asylum dropped from 371 in May 2018 to only 13 in June 2018 despite an increase in the number of border crossings.

Since the beginning of 2018, the Slovenian police have pushed back to Croatia almost 20.000 people, who were then as a rule ill-treated by the Croatian police. In the "best case" scenario they were simply thrown out of a van at the border between Croatia and Bosnia, just to try "the game" once more, in the worst case they were insulted, beaten, tortured, attacked by police dogs and even shot at. Though migrants' claims of misconduct by the Slovenian and Croatian police were soon proved as facts by large amounts of audio, photo and video material collected by activists, volunteers and international media, as well as reported by NGOs and MEPs, the Slovenian government and police didn't change their *modus operandi*. For example, InfoKolpa, who is part of BVMN, presented a 50-page report in May 2019 that details the denial of the right to claim asylum enforced by the Slovenian police. However, the report was ignored by all relevant institutions, competent to deal with such illegal activity conducted by the executive branch. For example, the Specialised State Prosecutor's Office who is tasked to deal with such internal illegal and corrupt activity did nothing that the public is aware of.

One of the organizations present regularly in the camps and forests of Northern Bosnian towns of Velika Kladuša and Bihač is Radio Študent, one of Europe's oldest student radio stations. During one of the visits two of its journalists, while reporting on testimonies of people being pushed back, met a then 23-years old Cameroonian J.D., who tried to claim asylum in Slovenia. All his attempts to claim asylum ended the same way as the attempts of thousands of others - with lies and deception by Slovenian police and a collective expulsion, *a push-back*, to Croatia, and eventually from Croatia back to hot-spots in Bosnia and Herzegovina.

J.D., a member of a persecuted English-speaking minority in Cameroon, wanted to apply for asylum in Slovenia, which he deemed a safe and organized country that respects human rights and upholds the law. Though he tried to ask for asylum at least three times during his brief 2-day stay at a police station in Slovenia, he was ignored and returned to Croatia and then to Bosnia. Consequently, he expressed his willingness to fight the battle from one of Bosnia's camps.

After regular contacts during the summer, finally, in September last year, he was interviewed again and a lawyer from Ljubljana, the Slovenian capital, was ready to take the case against the Slovene Ministry of Interior Affairs to the Administrative Court. The lawsuit focussed on the prevention by the Slovene police of the right to claim asylum, breach of the prohibition of torture and inhumane treatment and prohibition of collective expulsion. Also, the lawsuit wanted to bring J.D. back to Slovenia, where he could file the asylum claim as the legislation allows him to do.

After almost nine months and a few extra questions before the main hearing, the Administrative Court has made its verdict public. The judgement is not yet final, since there is an option of appeal to the Supreme Court.

The judgement:

The Administrative Court found that the Republic of Slovenia has violated the Applicant's **right to asylum** (Article 18 of the EU Charter of Fundamental Rights), the **prohibition of collective expulsions** (Article 19 § 1) and the **principle of non-refoulement** (Article 19 § 2). That *no one shall be removed, expelled or extradited to a State in which he or she is in serious danger of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment*. The latter is an absolute right that must not be restricted even in times of emergency. In a landmark decision, the judgment obliges Slovenia to allow the plaintiff to enter the Republic of Slovenia and file an application for international protection without delay after the judgment has become final. It must also pay the Applicant EUR 5,000 as just satisfaction.

In the 176 pages decision the Court found that the Slovenian legislator has not transposed certain articles of the European Procedural Directive 2013/32 / EU regarding informing aliens about the right to international protection into the International Protection Act (ZMZ-1).

The Ministry of Interior Affairs misunderstands the *principle of mutual trust* between EU Member States, which has the property of being rebuttable. Therefore in situations where it is not possible for a Member State not to be aware of the systematic shortcomings of the system of the asylum procedure and conditions for receiving asylum seekers in the receiving MS and that this is a valid reason to believe that the applicant would be exposed to a real risk of inhuman or degrading treatment within the meaning of Article 4 of the EU Charter of Fundamental Rights, the Member State is obliged not to deport such asylum seeker. In the present case of prevailing ill-treatment of migrants in Croatia, there exist numerous reports of torture and inhumane treatment by different NGOs and international organisations such as Council of Europe, UNHCR etc., which are all summarized in the judgement. In light of said, the Court is of the opinion that the illegal practices of Croatian police could not have stayed unknown to Slovenian police.

From the judgement:

“The question whether the plaintiff in the present case was in a situation at the time of the contested act in which his legally protected interest in the removal was not manifestly unfounded and the authority should have complied with the above prohibition standards, depends on where the signatory state of the ECHR and the EU member state (Slovenia) wanted to remove the alien and also removed him, and if at the time of removal there were sufficient and sufficiently reliable reports on possible risks from the point of view of Article 3 of the ECHR in this country, ie in Croatia - also from the point of view of chain return in BiH and consequently the living conditions for such aliens in BiH, and if these reports match each other, if the state (defendant in this administrative dispute) that removed the alien should have known about these reports.”

Furthermore, the Ministry of Interior Affairs misunderstands the standard of “*strict assessment*” from the point of view of Article 19 (2) of the Charter (non-refoulement), according to which an administrative body or court are obliged to accurately, comprehensively, objectively, ex officio assess legally relevant circumstances and must also take into account information on the situation in the country of origin when deciding on possible return. And it does not mean (as understood by the Ministry of the Interior Affairs) that the competent body makes restrictive decisions regarding prohibition of torture.

Slovenia therefore breached the procedural component of non-refoulement by not investigating whether there is a real risk for the applicant to be subjected to torture or inhuman treatment, when returned to Croatia, in light of all the evidence of ill-treatment by Croatian police.

Furthermore in the context of possible breach of prohibition of collective expulsion, the Court considered that the applicant had no real possibility to fight his expulsion with arguments that would have to be considered by the police, that the applicant was not sufficiently informed about the intention of the procedure of which he was a part of, since he was not even informed that he would be expelled and that the applicant did not receive a translator or legal help. It took into account the facts that the applicant did not contribute to his destiny with his actions whatsoever. Therefore the Court found that Slovenia breached the prohibition of collective expulsion.

Lastly the Court found Slovenia breached the applicant's right to ask for asylum, since there is no official record of the applicant being informed about his right to international protection and no record of him refusing to use his right. The Court therefore did not dive into the question, whether the applicant did in fact ask for asylum three times, because it does not follow from the official records or the submissions by the Ministry of Interior Affairs that the applicant would be even informed about his right, even though the Procedural Directive directs every state institution to inform foreigners about their right to international protection, when it is possible to conclude that the foreigner might be in need of it.

Here it is important to highlight that the main response to any allegations about treatment of migrants by the Ministry of Interior Affairs is that the asylum seekers are "abusing" their right to asylum in Slovenia and therefore should not be given a chance to enter proceedings. The Court explicitly noted that it is for the competent authority to decide who receives international protection and who does not, not the police! While Ministry of Interior Affairs tries to "prove" their stance by quoting the (relatively high) number of asylum seekers that do not wait until the Ministry's decision about their right to asylum. But the MIA forget to disclose that asylum seekers in Slovenia have to wait for more than a year on the decision, sometimes up to three years, with no right to work during first 9 months and 18 EUR monthly stipend from the government.

Slovene Ombudsman, who participated in the trial as an *amicus curiae*, stated that the bilateral agreement between Slovenia and Croatia from 2006, which the Ministry of Interior Affairs takes as a legal basis for this practice, is "*against the European legal order*". It is important to stress that most of the pushbacks in Europe today are justified with similar bilateral agreements that could all be challenged in courts. As a matter of fact, PIC, the legal information centre of Slovene NGOs is already addressing this particular agreement and is most likely going to take it to court.

It is also important to point out that in its defence, the Ministry of Interior Affairs stated not just that they see no problem in acting in this illegal manner, but that "*other European countries (like Austria) are also doing the same.*" Such claims by the Ministry of the Interior show that pushbacks are part of a broader European strategy for migration management and that other bilateral agreements adopted by countries for return under the abbreviated procedure could also be challenged.

Even though the judgement is a massive win and a testament to the efforts of countless asylum seekers who were brave enough to speak up, to the efforts of activists and investigative journalists to bring to light this systemic illegal practice, it leaves a bitter taste in the mouth. Firstly, it is almost impossible for a person-on-the-move to find justice as the legal procedures are not tailored for people in such precarious positions as the one of migrants in Bosnia. Secondly, after almost a year since the infamous push-back, the applicant is still stuck in Bosnia, at least until the judgement becomes final. With him there are thousands of other souls in Bosnian limbo, not able to move back or forth. The situation is becoming more precarious every day. Since the global pandemic the camps had turned into prisons and there is less and less help from locals or volunteers. The European Union is pressuring

Bosnia to up its game, hiding that is in fact the European policy to keep people from the Global South to die on its shores and fenced borders, where Slovenia, Croatia and Bosnia are only in the role of executors.

Statement of the Applicant J. D.

"Well I went into the lawsuit because even though I know I have a little chance, I know and believe that the judgement will help those that come after me. I may not have a direct solution for me, but I know that we are creating awareness and you give more trust to the law of the country. Slovenia was always a country I have admired, ever since I first read about it." — J. D., Bosnia, 17th July 2020

Statement of the lawyer Dino Bauk for Slovene newspaper Dnevnik, 17th July 2020

"The importance of this ruling of the administrative court is that it does not establish human rights violations in some excessive, individual conduct of border police officers, but in conduct that is part of the systematic and routine treatment of asylum seekers who, instead of legal proceedings, receive collective expulsions and chain returns to Bosnia and Herzegovina"

"With this judgment, the Administrative Court clearly stated that inhuman and degrading treatment is not in line with either Slovenian or European acquis, no matter how practical and effective it is in closing European borders and how well it works in the tacit interest of countries of nuclear Europe, for which more or the less dirty part of the business was carried out by the repressive authorities of peripheral countries at its external borders, such as Slovenia and Croatia. However, the proceedings and the verdict in question would never have taken place without the uncompromising efforts of non-governmental activists, independent journalists and young legal professionals who took up the lion's share of the workload. I'm glad to stand by and help them."

Some translations from the article in Dnevnik, written by Uroš Škerl Kramberger, titled "Slovenia must pay 5000 EUR to an asylum seeker, unlawfully deported to Croatia", published on 18th July 2020

"The treatment of migrants at the southern border by Slovenian police officers has reached a groundbreaking court decision. In the case of an asylum seeker from Cameroon, the court ruled that Slovenia must allow a 24-year-old who was expelled from Croatia to Bosnia and Herzegovina to return to Slovenia, allow him to apply for asylum and pay compensation in the amount of 5,000 euros. The judgment is not yet final."

"The ruling of the administrative court in the case of a 24-year-old asylum seeker from Cameroon, issued on June 22, is a turning point for the Slovenian Ministry of Interior Affairs, the Slovenian police, their relations with the Croatian police and migrants seeking asylum. The court legally defined the position of police officers and migrants or asylum seekers on the southern border on as many as 176 pages. So far, the Slovenian police have claimed that none of the thousands of foreigners arrested at the border every year for illegal crossing and returned to Croatia has applied for asylum. They claim to have returned "economic

migrants". In later conversations with journalists, including Dnevnik journalists, and with researchers from non-governmental organizations and European institutions, many foreigners pointed out that they had in fact applied for asylum in Slovenia, but their applications had not been recorded."

"About Croatian police:

Among other things, the court also discussed the conduct of the Croatian police. They emphasized that it was Slovenia's duty to check whether neighboring Croatia respected the rights of persons extradited by Slovenia. The burden of proof is not only on migrants, but also on the state. It also follows from *Acquis communautaire* that it must be proven that it is safe for vulnerable people to be deported, wrote the judges.

So far, the Slovenian police and the Ministry of Interior Affairs have not proved that reports of beatings, robberies, torture and violent expulsions of migrants to Bosnia and Herzegovina through forests where there are no official border crossings are not true. They merely claimed that they were not officially aware of the reports of violence, footage and photographs of the abuses, and that Croatia was a member of the European Union and that the *acquis* was respected in the EU. However, according to the court, this is not enough, as this kind of trust between countries needs to be checked regularly by checking what is happening on the ground."

Link to the Dnevnik article

https://docs.google.com/document/d/108EeuhhyCn6OQw-R_Lbh8IHJ1GpOo2hN2JEEs2Xlc5s/edit?usp=sharing

Statement of the Ministry of Interior Affairs for Dnevnik, 17th July 2020:

"Given the scope of the verdict, we are still thoroughly studying the content, but we can announce that we will appeal against it," the Ministry of Interior Affairs announced yesterday. "As usual, the ministry will respect and implement the final and enforceable decision of the court," they assured.

Statement of Slovene Ombudsman for Dnevnik, 17th July 2020:

"The Ombudsman is pleased to note that the Administrative Court has largely taken into account our findings and warnings. At the same time, we believe that it is encouraging that court decisions are being made regarding the treatment of individuals at the border and access to the international protection procedure (albeit relatively slowly)," the Office of the Ombudsman Peter Svetina announced today. "Based on the case law formed in this way, it will be possible to conclude in more detail what the procedures at the border should be with strict respect for human rights and fundamental freedoms, as well as what the consequences of established violations may be, such as compensation. Otherwise, as is known, the judgment of the Administrative Court is not yet final," they notified.

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