



SLOVENIA

20.01.2023

B. Quality of Justice

Accessibility of courts (e.g. court/legal fees, legal aid, language)

As pushbacks, by design, are attempts to remove people on the move from Slovenian territory, many survivors are outside of the territory. Instigating legal proceedings from abroad is challenging, hindered by lack of legal aid and the difficulties of obtaining admissible power-of-attorney and testimonies. Moreover, when victims return to Slovenia, they often cannot present themselves to the authorities for testimonies due to the risk of being arrested for irregular entry and pushed back again. In Slovenia, BVMN observes the systematic practice of chain pushbacks. After apprehension, people on the move are returned to Croatia by using the readmission agreement in place since 2006 (Št. 001-22-39/06; <http://bit.ly/3wiCwvK>). There, they are exposed to extreme violence and torture and inhuman and degrading treatment (see e.g. ECtHR judgement M.H. vs Croatia), before being pushbacked further either to Bosnia and Herzegovina or Serbia (<https://bit.ly/3GQvrqR>; <https://bit.ly/3ZlwJNq>). The risk of torture from returning a person to Slovenia and then to Croatia was proven by an Italian court in 2021 (N.R.G. 56420/2020: <https://bit.ly/33d0VnE>). Pushbacks take place without individual assessment of the asylum claim or the danger of torture and inhuman and degrading treatment despite Slovenia being obligated under its international and European ratified human rights instruments (<https://bit.ly/3GQvrqR>; Verdict I-Up-23/2021: <http://bit.ly/3QUjYez>). The way in which pushbacks take place does not leave any opportunity to initiate proceedings to challenge such a return. Furthermore, it constitutes lack of access to any safeguarding mechanisms. This leaves the survivors without access to effective legal remedies. According to InfoKolpa, a Slovenian BVMN member, people on the move are often returned to Croatia based on a regulation set in the readmission agreement that allows an informal procedure, up until 72 hours after the person crossed the border. In most cases, they do not get an official removal decision and are hence not able to effectively appeal against it (<https://bit.ly/3GQvrqR>; and Ombudsperson

<http://bit.ly/3QL0au9>). Even though numbers of illegal pushbacks from Slovenia decreased in the beginning of 2022, the systematic practice is still applied (<http://bit.ly/3CWQZkN>).

In addition, an amendment to the Law on Foreigners (ZTuj-2; Articles 10.a and 10.b) that entered into force in 2021 is perceived as having problematic consequences following its implementation. It establishes that in case of "a complex emergency" (<http://bit.ly/3QL0au9>) the access to asylum could be restricted, violating the 1951 Geneva convention. In such a case, any person asking for asylum can be rejected at the border, except specifically vulnerable cases (<http://bit.ly/3QL0au9>). A return to a neighbouring country would be especially problematic in the case of Croatia, where inhuman and degrading treatment against people on the move by border authorities is proven (see above).

C. Efficiency of the Justice System

Length of proceedings

The length of asylum proceedings in Slovenia are remarkably slow. This was already the case before the start of the war in Ukraine. Before the entailed influx of people on the move in the country, on average, asylum seekers had to wait between six months and one year for a positive decision, in some cases even longer (up to two years). While Ukrainian asylum seekers are, until the point of this submission, prioritised and receive their decision within one to two months, for nationals from all other countries the procedures were prolonged, thus they have to wait even longer than before for their first instance decisions (<https://bit.ly/3CWQZkN>). Claims to seek asylum from Ukrainian nationals fall under the Temporary Protection Directive (COM/2022/91; <http://bit.ly/3WnOeQb>). Even though this constitutes a different procedure, the same institution is undertaking the registration of Ukrainians and asylum seekers of other nationalities, leading to the increase in delays.

Moreover, in case of large numbers of arrivals, people have to wait up to 20 days to lodge an application for international protection. This constitutes a severe problem for several years, as people only have access to services and respective rights as asylum seekers once they are registered as such.

Other - please specify

Even in the case in which an individual manages to access courts and start a proceeding for the violations committed against them during an illegal pushback, survivors struggle with gathering the relevant evidence. According to ENNHRI "One of the key reported barriers to investigations into violations at borders stems from the difficulty in obtaining material evidence that can be regarded as meeting the threshold to trigger and sustain investigations. In cases of informal returns, individuals are often not registered as having entered the territory nor issued a return decision, despite the authorities' legal obligation to do so. This makes it difficult [...] to prove that their rights were violated [and] to show that they were even present within the state's territory or jurisdiction." (<https://bit.ly/3XilolG>). In Slovenia, this is particularly challenging, as pushback survivors are oftentimes not provided with a legal decision to be removed from the country's territory upon apprehension, which could be presented as evidence in case of an investigation (<https://bit.ly/3Ol0au9>).

Furthermore, "in cases where the evidentiary threshold is met and investigations are initiated, authorities have demonstrated hesitation to gather and assess further evidence needed to identify perpetrators. Instead, many investigations and the allegations contained in them have been dismissed or discredited after the initial stages, without sufficient consideration." (<https://bit.ly/3XilolG>). For instance, even though the Slovenian Supreme Court found a violation of several rights of the applicant in case I U1686/2020, to our knowledge until the point of this submission, a criminal investigation into the incidents has not been initiated (<https://bit.ly/3GOvrqR>).

In November 2021, the legislative amendments to ZMZ-1A (International Protection Act) entered into force. Next to restricting essential rights of applicants of international protection (<https://bit.ly/3GOvrqR>), "Some of the changes raise questions about their impact on the fairness of procedures, and their constitutionality and conformity with EU and international law. 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)." (<https://bit.ly/3QL0au9>) These amendments are of relevance until today, as no further action was taken in order to assure the fairness of the procedures, their compliance with EU and international law and the attorney-client privilege.

▶ III. Media Freedom and Pluralism

C. Framework for Journalists' Protection, Transparency and Access to Documents

Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

In 2022, the Ombudsperson highlighted the need to improve and support press freedom in Slovenia. Among their remarks, they mentioned the fact that defamation is a criminal offence in Slovenian law (<http://bit.ly/3lWs8kA>).

This is relevant for organisations such as BVMN and its member organisations, as accusations of defamation can often be misused for the criminalisation of Human

Rights Defenders and organisations monitoring and reporting on access to human rights of minority groups (see also below, response to question D.1; <http://bit.ly/3CX1QLh>).

▶ IV. Other Institutional Issues related to Checks and Balances

B. Independent Authorities

Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

The most relevant institution related to checks and balances in the Slovenian context could be considered the Human Rights Ombudsperson of the Republic of Slovenia. In its mandate, the independent institution follows up on complaints received, initiates its own investigations and based on these issues, makes recommendations to the relevant authorities within the country. In addition, the office has a focus on education, research and political promotion of human rights e.g. through the publication of legal analysis. Notably, its work within the area of civil society is worth mentioning (<http://bit.ly/3QKdsXX>). For instance, it collaborates with different CSOs and carries out visits to detention centres and police stations in order to monitor the situations there. (<https://bit.ly/3XilolG>).

The most relevant publications by the Ombudsperson were: 1) the national report on the situation of human rights of migrants at the borders (2021), which elaborated on the lack of access to asylum at the border and the practice of non-voluntary returns, as well as the legal background that sets the obligation for the police to allow people on the move to ask for asylum and following that be allowed into the national asylum system (<https://bit.ly/3QL0au9>);

2) the Annual Report of 2021 (2022), in which the right to access asylum and the prohibition of non-refoulement and collective expulsions were discussed, as well as their foundation in national legislation (<https://bit.ly/3ku68TW>); and 3) their contribution to the European Network of National Human Rights Institutions' (ENNHRI) Report on Strengthening Human Rights Accountability at Borders, in which they pointed to the absence of an efficient monitoring mechanism at the border, and the lack of accessibility of justice and investigations (<https://bit.ly/3XilolG>).

Statistics/reports concerning the follow-up of recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years

In 2022, ENNHRI published a report that argued "inexistent or poor accountability for violations at borders impinges on several underlying elements of the rule of law, such as legal certainty, prohibition of arbitrariness, access to justice, non-discrimination, and equality before the law. It has also been demonstrated that independent public scrutiny of policies and practices at borders is lacking across Europe, indicating deficiencies in the system of checks and balances" (<https://bit.ly/3XilolG>). This aligns with the recommendations issued in the outputs of the Slovenian Ombudsperson concerning human rights violations and the treatment of people on the move at the country's borders. Despite the right to access asylum being clearly stated in both the 2021 and 2022 reports (see above), it is important to highlight that illegal pushbacks of people on the move without individual assessment of each claim and violations of the principle of non-refoulement were recorded in 2022 (<https://bit.ly/3GQvrqR>; <https://bit.ly/3CWQZkN>). This is contrary to the obligation clearly articulated by the Ombudsperson (<https://bit.ly/3QL0au9>), stating that police must not ignore people's asylum requests. Therefore, it is important to emphasise that the Slovenian police has the obligation to accept asylum requests and violates national as well as international law if they do not.

C. Accessibility and Judicial Review of Administrative Decisions

Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation

In 2020, the Slovenian Supreme Court case I U1686/2020 upheld the decision of the Administrative Court (I U 1490/2019) (<http://bit.ly/3QUjYez>), which found a violation on the prohibition of non-refoulement, collective expulsions, torture, and a violation of the right to an asylum procedure regarding the case of a Cameroonian national. In its ruling, the court ordered the state to bring the applicant to Slovenia and allow him to enter the asylum system. After the judgement, the Slovenian government did not grant permission for the applicant to enter Slovenian territory and lodge his claim. The applicant was forced to return to the country in hiding on his own initiative in the months following the judgement, and he was then accepted into the asylum system. Even though the judgement found several breaches of fundamental rights and international law, until the point of this submission, the start of an investigation regarding the criminal offences was not indicated (<https://bit.ly/3GQvrqR>; <https://bit.ly/3CWQZkN>).

Even though the court acknowledged the existence of pushbacks and the violation of several fundamental rights in its verdict, the systematic practice of illegal pushbacks through the readmission agreements continued. Despite a decrease in numbers in 2022, chain pushbacks which breach the principle of non-refoulement and the prohibition of inhuman and degrading treatment and torture continued to be perpetuated (<https://bit.ly/3CWQZkN>; see three pushback testimonies of BVMN from Slovenia in 2022: <https://bit.ly/3GSvzpM>; <http://bit.ly/3GRDXWz>; <http://bit.ly/3wgLwRK>). Moreover, up until the date of this submission, the police and the government ignored the Court's verdict and denied the

practice of pushbacks. When confronted with the case, state representatives pointed to the practice of "smugglers" (<https://bit.ly/3GQvrqR>). During InfoKolpa's meeting with the Rule of Law delegation of the LIBE Committee of the European Parliament (15. 10. 2022), the lack of implementation of the judgement was included in the resolution of the European Parliament on The Fundamental Rights and Rule of Law in Slovenia (16. 12. 2022) (<http://bit.ly/3ktmmwY>).

D. The Enabling Framework for Civil Society

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks - verbal, physical or on-line -, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

In January 2022, the Slovenian government accepted a new Action Plan on Countering Terrorism and Violent Extremism 2022-2024, which included the topic of surveillance of supposedly "criminal NGOs". This is a dangerous development as it could potentially legitimise the surveillance of CSOs publicly denouncing violence exerted against people on the move. In 2018, BVMN member organisation PIC did in fact face charges of assisting migrants in "illegal" border crossings. Back then, the State Prosecutor's Office dropped the case, as the charges were not substantiated (<https://bit.ly/3wgM2PG>). However, in the future, the imposed action plan could constitute a basis for the surveillance of CSOs monitoring human rights violations in Slovenia and contribute to an increasing climate of criminalisation of Human Rights Defender. Similar patterns can be observed in several

other countries within the region, such as Croatia and Greece (<https://bit.ly/3CX1QLh>; <https://bit.ly/3JexMPx>). In addition, in 2022, BVMN member organisation InfoKolpa observed that the Slovenian “government is keen to label any human rights concerns regarding border procedures of police with allegations of “smuggling” and “smugglers” against NGOs and civil rights activists.” (<https://bit.ly/3GQvrqR>).

This development is particularly concerning because the government is not providing protection for Human Rights Defenders, in particular those working on Migrant Rights. Rather, it contributes to negative narratives and defamation of NGOs and CSOs.

E. Initiatives to Foster a Rule of Law Culture

Measures to foster a rule of law culture (e.g. debates in national parliaments on the rule of law, public information campaigns on rule of law issues, contributions from civil society etc.)

In order to foster a rule of law culture, Slovenia should not only end the practice of illegal pushbacks and establish effective access to asylum, but also establish an independent border monitoring mechanism. This should be established particularly in the oversight of police conduct and practices because they are simultaneously the main body of enforcement of the law, the predominant perpetrator of illegal pushbacks in Slovenia, and the authority that must to be approached in order to get access for asylum (<https://bit.ly/3GQvrqR>; <https://bit.ly/3ZlwJNq>).

The need to establish accountability at borders aligns with the ENNHRI stating that “Independent investigations capable of identifying and sanctioning perpetrators are a vital element of the accountability system. [...] in practice very few investigations into human rights violations at borders are carried out.” (<https://bit.ly/3XilolG>).