

PRESS RELEASE, INFOKOLPA CIVIL INITIATIVE, 11. 1. 2021

The Administrative Court, by judgment, no. I U 1686/2020-126 of 7 December 2020, established once again in the repeated procedure that the Republic of Slovenia violated the applicant's **right to prohibition of collective expulsions**, his **right to prohibition of torture** and his **right to access to the asylum procedure**, by following the abbreviated procedure on the basis of the Readmission Agreement between the Republic of Slovenia and the Republic of Croatia, by which it handed the applicant over to the Croatian security authorities in August 2019. It ruled that Slovenia must, after judgement is final, allow the applicant entry into Republic of Slovenia and the submission of an application for international protection.

It will be recalled that it is a matter of deciding in a retrial, after the Supreme Court annulled it due to the incomprehensibility of the previous judgment (issued in June 2020) and other procedural reasons and returned it to the Administrative Court for retrial. **The new decision is not yet final**, it will become final if the parties do not appeal.

Throughout the proceedings, since he was illegally deported to BiH by the Slovenian and Croatian police, the applicant has been caught in an increasingly inhumane situation, where the situation is deteriorating on a daily basis. It has been 21 months since he was expelled from Slovenia for the first time.

In the repeated proceedings, the Court pointed out the **misinterpretation and application of the Readmission Agreement between the Republic of Slovenia and the Republic of Croatia**. It should be used in compliance with the provisions of European Union law, which means that it should be strictly considered whether an individual who came to the territory of Slovenia needs international protection, which should also be evident from police documentation. The procedure in relation to an individual - a participant in the procedure - **cannot be carried out "without formalities" (as is the case at present)**, but an interview with a foreigner must be conducted and properly documented, also regarding a possible need or statement for international protection.

Also, the Court found that **the applicant was not considered individually**, the record of the interview is recorded as in the plural, there was no interpreter present, he had no legal aid, and **until the very moment when a bus full of migrants drove toward Croatia, he was not informed that he would be returned to Croatia at all**. Consequently, he could not explain that his extradition to Croatia could pose a serious threat that he would be subjected to torture or inhuman or degrading treatment or to be further exiled to a country where he would be forced to survive in inhumane conditions. At the time of his extradition to Croatia, there were already reports from international and non-governmental organizations on the situation in Croatia, which sufficiently indicated the possibility that the applicant would be subjected to inhuman treatment in Croatia or BiH due to a possible chain return. The Republic of Slovenia should have been aware of these reports.

The Court furthermore emphasized the systemic problem, namely that the Slovenian legislator **had not transposed** into national law the **provisions of the Procedural Directive concerning access to the asylum procedure**. This access must be *effective*, and individuals must be provided with adequate procedural guarantees; moreover, persons guarding land and sea borders or carrying out border controls must be adequately informed and trained to identify and process an application for international protection. **The applicant's request for international protection was overheard and was not recorded in the police file and he was not considered as an asylum seeker.**

The InfoKolpa team welcomes the decision of the Administrative Court and emphasizes that this is the story of one of the thousands of people who are still - almost every day - handed over to the brutal Croatian police. Last year alone, there were more than 10,000 such cases. We call on the Ministry of the Interior and the Police to stop practices that endanger human lives and directly expose people to violence perpetrated by the Croatian police and the inhumane living conditions in Bosnia and Herzegovina.

InfoKolpa is part of the Border Violence Monitoring Network . At the end of 2020, we jointly published a 1,500-page monograph on testimonies about chain returns and the brutal violence experienced by people on the Balkan refugee route, in which Slovenia also participates. The Black Book of Pushbacks was presented in the European Parliament, and the members of InfoKolpa also handed it over to the Ombudsman of the Republic of Slovenia.

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IZJAVA ZA JAVNOST, CIVILNA INICIATIVA INFOKOLPA, 11. 1. 2021

Upravno sodišče je s sodbo, opr. št. I U 1686/2020-126 z dne 7. 12. 2020, v ponovljenem postopku ponovno ugotovilo, da je Republika Slovenija s tem, ko je po skrajšanem postopku na podlagi Sporazuma med Republiko Slovenijo in Republiko Hrvaško o izročitvi in sprejemu oseb, katerih vstop ali prebivanje je nezakonito, tožnika, državljana Kameruna, ki je na begu pred preganjanjem in je želel v Sloveniji zaprositi za mednarodno zaščito, avgusta 2019 predala hrvaškim varnostnim organom, **kršila njegovo pravico do prepovedi kolektivnih izgonov, pravico do prepovedi mučenja in pravico do dostopa do azilnega postopka**. Odločilo je, da mora Slovenija po pravnomočnosti sodbe tožniku brez odlašanja dovoliti vstop v Republiko Slovenijo in vložitev prošnje za mednarodno zaščito. Glede odškodninskega zahtevka je tožnika napotilo na pravdo.

Spomnimo, gre za odločanje v ponovljenem postopku, potem ko je Vrhovno sodišče zaradi nerazumljivosti poprejšnje sodbe (izdane junija 2020) in drugih postopkovnih razlogov le-to razveljavilo in vrnilo Upravnemu sodišču v novo odločanje. Vsebinsko se Vrhovno sodišče do razlogov sodbe še ni opredelilo.

Nova sodba torej še ni pravnomočna, postala bo pravnomočna, če se stranki ne bosta pritožili. V nasprotnem primeru bo o zadevi odločalo Vrhovno sodišče.

Tožnik je ves čas tekom postopka, odkar je bil s strani slovenske in hrvaške policije nezakonito izgnan v BiH, tam ujet v vedno bolj nečloveških razmerah, kjer se situacija vsakodnevno slabša. Odkar je bil iz Slovenije izgnan prvič, je minilo že 21 mesecev.

V ponovljenem postopku je sodišče izpostavilo **napačno razlago in uporabo Sporazuma med Republiko Slovenijo in Republiko Hrvaško** o izročitvi in sprejemu oseb, katerih vstop ali prebivanje je nezakonito. Le-ta bi moral biti uporabljen ob upoštevanju določb prava Evropske unije, kar pomeni, da bi moralo biti dosledno upoštevano, ali morda posameznik, ki je prišel na ozemlje Slovenije, potrebuje mednarodno zaščito, kar bi tudi moralo biti razvidno iz policijske dokumentacije. Postopek v razmerju do posameznika – udeleženca postopka – **ne more biti izveden »brez formalnosti«**, ampak mora biti s tujcem izveden in ustrezno dokumentiran razgovor, tudi glede morebitne potrebe oziroma izjave za mednarodno zaščito.

Prav tako je sodišče ugotovilo, da **tožnik ni bil obravnavan individualno**, zapisnik o razgovoru je zapisan kar v dvojini, ni bilo prisotnosti tolmača, ni imel pravne pomoči, tožnik do samega trenutka, ko je avtobus poln migrantov odpeljal v smeri proti Hrvaški, **ni bil obveščen o tem, da bo sploh vrnjen na Hrvaško**. Posledično ni mogel obrazložiti, da bi njegova izročitev na Hrvaško zanj lahko pomenila resno nevarnost, da bi bil tam izpostavljen mučenju ali nečloveškemu ali ponižujočemu ravnanju oz. da bi bil naprej izgnan v državo, kjer bi mu to grozilo. V času njegove izročitve Hrvaški pa so že obstajala poročila mednarodnih in nevladnih organizacij o stanju na Hrvaškem, ki so v zadostni meri kazala na možnost, da bo tožnik zaradi vrnitve na Hrvaško podvržen nečloveškemu ravnanju na Hrvaškem ali v BiH zaradi morebitnega verižnega vračanja, za katere bi Republika Slovenija morala vedeti.

Izpostavilo je tudi določbo, ki izhaja iz Zakona o mednarodni zaščiti (ZMZ-1), ki pravi, da se neregularen vstop osebe, ki želi zaprositi za mednarodno zaščito na ozemlje Republike Slovenije, če ta oseba v najkrajšem času izrazi namero za podajo prošnje za azil, njen vstop ne obravnava kot nezakonit vstop na ozemlje. Ta določba namreč upošteva plejado situacij, v katerih se znajdejo ljudje na begu pred preganjanjem.

Poudarilo je tudi sistemski problem, in sicer da slovenski zakonodajalec v nacionalno zakonodajo **ni prenesel določb Procesne direktive, ki se tičejo dostopa do azilnega postopka**. Ta dostop mora biti *učinkovit*, posameznikom morajo biti zagotovljena ustrezna procesna jamstva; osebe, ki varujejo kopenske in morske meje ali opravljajo mejne kontrole pa bi morale biti ustrezno informirane in usposobljene za prepoznavanje in obravnavanje prošnje za mednarodno zaščito. **Tožnikova prošnja je bila preslišana oz. ni bila zabeležena in ni bil obravnavan kot prosilec za mednarodno zaščito.**

V kolektivu InfoKolpa pozdravljamo odločitev Upravnega sodišča in poudarjamo, da je to zgodba enega izmed tisočih ljudi, ki so na zgoraj opisane načine še vedno – skoraj vsak dan – izročeni v roke brutalni hrvaški policiji. Samo v lanskem letu je bilo takšnih primerov več kot 10 000. Ministrstvo za notranje zadeve in Policijo pozivamo, da prenehata s praksami, ki ogrožajo človeška življenja in ljudi direktno izpostavljajo nasilju, ki ga izvaja hrvaška policija ter nečloveškim bivanjskim razmeram v Bosni in Hercegovini.

InfoKolpa je del mreže Border Violence Monitoring Network. Konec leta 2020 smo skupaj izdali 1500-stransko monografijo pričevanj o verižnih vračanjih in brutalnem nasilju, ki ga doživljajo ljudje na Balkanski begunski poti in v katerem sodeluje tudi Slovenija. Črna knjiga nezakonitih vračanj (Black Book of Pushbacks) je bila predstavljena v Evropskem parlamentu, člani InfoKolpe pa smo jo predali tudi Varuhu človekovih pravic Republike Slovenije.

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