



PERMANENT MISSION OF THE REPUBLIC OF SLOVENIA

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The Permanent Mission of the Republic of Slovenia to the United Nations Office and Other International Organisations in Geneva presents its compliments to the Office of the United Nations High Commissioner for Human Rights and has the honour to enclose herewith the response by the Republic of Slovenia to the joint urgent appeal from the Special Rapporteur on the human rights of migrants, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment.

The Permanent Mission of the Republic of Slovenia to the United Nations Office and other International Organisations in Geneva avails itself of this opportunity to renew to the Office of the United Nations High Commissioner for Human Rights the assurances of its highest consideration.

Geneva, 10 June 2016



Office of the United Nations High Commissioner for Human Rights

GENEVA

RESPONSE
of the REPUBLIC OF SLOVENIA to
the JOINT URGENT APPEAL FROM SPECIAL RAPPORTEURS

This is a response of the Republic of Slovenia (Slovenia) to the Joint urgent appeal (Appeal) sent by the:

- Special Rapporteur on the human rights of migrants;
 - Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and
 - Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment,
- addressed to Deputy Prime Minister and Foreign Minister of the Republic of Slovenia, Karl Erjavec.

The Appeal sets forth allegations of Slovenia's breach of its international obligations with respect to international human rights law and the principle of non-refoulement. The allegations specifically reference the Joint Statement of the Heads of Police Services of the Former Yugoslav Republic of Macedonia, Serbia, Croatia, Slovenia and Austria made on 18 February, 2016.

I.

On 9 March 2016 Slovenia has fully implemented the Statement of the EU Heads of State or Government (Brussels, 7 March) binding member states to implement the European Council Conclusions on migrations (18 February 2016). Accordingly, entry is granted to persons with valid travel documents and to persons on humanitarian grounds as determined on individual basis. Slovenia fully respects refugee law and grants entry to persons who have the intention to seek international protection in Slovenia regardless of their nationality.

Therefore, the Slovenian police does no longer enforce provisions of the above-mentioned Joint Statement.

II.

Responses of the Republic of Slovenia to the questions set forth in the Appeal:

1. *Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.*

From the very beginning of the migration crisis (referring to the unprecedented influx of both, migrants and refugees), which first affected our country in September 2015, and then to a much larger extent from October 2015 onwards, Slovenia has strived for common EU solutions for solving this crisis.

The influx of people that are part of the migration crisis consist of (a) individuals who are fleeing based on persecution or on humanitarian grounds, and (b) individuals who are seeking better (economic or personal) opportunities.

Slovenia has different obligations (under international law) based on the distinction above. While all must be accorded rights under international human rights law, only refugees enjoy protection under international refugee law (e.g. 1951 Geneva Convention).

Slovenia fully respects the provisions of the 1951 Geneva Convention to which it is a party. Therefore, we define a refugee as "an individual who is outside his or her country of nationality or habitual residence who is unable or unwilling to return due to a well-founded fear of persecution based on his or her race, religion, nationality, political opinion, or membership in a particular social group". **Slovenia has not denied protection to any refugee as defined above who sought our protection.** Anyone, **regardless of their nationality**, can apply for asylum in Slovenia and will enjoy protection under international law (including the principle of non-refoulement) pending his/her application.

As set forth in the Schengen Borders Code, entry is possible on humanitarian grounds, which Slovenia fully respects.

The Western Balkan countries have faced the some migration pressure and thus started to look for a joint solution to curb the influx of those not fleeing from persecution, danger, conflict, etc. but rather seeking better personal and economic opportunities (migrants), while at the same time provide a high level of protection to refugees.

Throughout the migration crisis, police forces of the Western Balkan countries have observed a number of ways in which the refugee flow was taken advantage of by migrants who may have seen the opportunity to easily enter EU without documents that are usually required. Concretely, the police noted the following acts which are consequently detrimental to the needs and protection of individuals truly fleeing war zones and other situations of danger and despair:

- attempts to mislead police officers in different countries by giving them false information on nationality (which was determined by means of a linguistic analysis and a test of knowledge of their "country of origin");
- misleading information as to their date of birth – different date of birth to the one stated in documents issued previously (in prior transit countries);
- some left their countries because of personal problems, disputes or in search of a better life;
- some have an entry ban alert in the Schengen information system;
- some do not know why they are travelling;
- some come from a safe country;
- some run away from being recruited into the army;
- some already have residence in Turkey (which is a safe country);
- some claim to be on their way for the purposes of study, family reunification and other reasons for entry or residence, such as economic;
- some claim that they travel on account of religious reasons in the sense of converting to another religion;
- and other false and misleading information that have nothing to do with humanitarian reasons.

In order to prevent the detrimental effects of the above-mentioned misrepresentations to the protection of refugees, police chiefs, at their meeting in Zagreb on 18 February 2016, adopted a joint statement on managing the migration flow which addressed these issues.

Pursuant to Article 5(4)(c) of the Schengen Borders Code¹, Slovenia also allows entry to third country nationals who do not fulfil one or more entry conditions, on humanitarian grounds. If it is established that a person who does not want to apply for international protection, does not fulfil the conditions for entry on humanitarian grounds, this person is refused entry in accordance with the provisions of the Schengen Borders Code. The refusal of entry is imposed on the basis of the Schengen Borders Code, which lays down that member states shall use it in accordance with the appropriate European Union law, including the Charter of Fundamental Rights of the European Union, appropriate international law, including the Convention relating to the Status of Refugees, adopted on 28 July 1951 in Geneva, the obligations as regards international protection, particularly non-refoulement, and fundamental rights.

2. *Please provide information regarding the measures to be taken to ensure the principle of non-refoulement as well as the right to life, physical, and mental integrity of migrants, in particular vulnerable groups such as unaccompanied children.*

The principle of non-refoulement forbids the expulsion of a person into a jurisdiction where that person might be subjected to persecution or danger.

¹ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (codification), <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1464689572539&uri=CELEX:32016R0399>

Article 33 of the 1951 Convention Relating to the Status of Refugees prohibits the "Contracting State to expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".

Article 3 of the 1984 Convention against Torture sets forth that "no State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture."

Therefore, the principle of non-refoulement, in accordance with the principles of international law and under the Aliens Act of the Republic of Slovenia, means a prohibition on the part of Slovenia to deport a foreigner to a country where their life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion, or to a country where they could be exposed to torture or other cruel, inhuman or degrading punishment or treatment.

Slovenia respects the principle of non-refoulement as defined above and has not returned a single migrant to whom this principle applies.

One of the measures to ensure the principle of non-refoulement is to inform the migrants and refugees of their rights under international law. With this in mind, Slovenia hands out leaflets to migrants and refugees informing them on how to apply for international protection in Slovenia. Migrants and refugees, regardless of their nationality, are also informed of the possibility of submitting an intention to apply for international protection during their registration procedure.

Furthermore, in procedures involving the increased number of migrants, the police devote special attention to vulnerable groups (children, the elderly, women, the disabled) and give them priority treatment.

Slovenia also devotes special attention to the medical condition of migrants, in particular of vulnerable groups. The administration of health care to migrants and refugees was organised both at reception and accommodation centres by staff of medical centres and hospitals as well as volunteers who were prepared to assist in the provision of medical care to migrants and refugees.

A network of Slovenian voluntary health workers (approx. 100 individuals) was set up to help out at reception/accommodation centres. Also helping in administering medical care to migrants and refugees at reception/accommodation centres were international voluntary health organisations such as Caritas Hungary (until the end of November 2015), Medecins Sans Frontieres from Switzerland, military medical staff - ROLE1 from the Czech Republic, Medecins Sans Frontieres from Belgium and other organisations providing aid in the form of medical services or medicines and medical supplies. On 1.12.2015 Caritas Hungary was replaced by a team from Slovakian St. Elizabeth University of Health Care and Social Work, and from 1.12.2015 onwards, the international organisation Women and Health Alliance (WAHA) International was also involved.

The National Institute of Public Health set up a round-the-clock epidemiological service, which operates in the entire territory of the country. The service draws up reports and instructions for employees and volunteers at reception/accommodation centres, based on risk assessments.

Everybody involved in working with migrants had an opportunity to get a flu shot and given the risk assessment also a hepatitis A and typhoid vaccine.

The following medical conditions were most frequently observed among the migrants and refugees: dehydration, chest pain, urinary tract infections, respiratory infections, minor injuries and exhaustion, hypothermia and fatigue. Care was provided to a number of pregnant women. In 2015, more than 20,000 migrants received medical care (of who one third were children).

Additionally, with a view to implementing the Red Cross' public mandate of family reunification, the police had a meeting with their representatives to establish cooperation in family reunification. All police units were informed of the mandate and given instructions on what to do if they come across a

separated family. Red Cross had access and could work at all reception and accommodation centers. The Police came across few cases of separated families, when family members were separated before reaching our country or in our country. In those cases, appropriate action was taken in cooperation with the Red Cross, and several successful cases of family reunification were recorded. The goal of the Slovenian police is to have as few cases of separated families as possible or ideally none at all. In this connection, we are especially careful when carrying out transport of migrants and refugees from reception to accommodation centers, which is when separation is most likely to occur.

3. *Please provide information on how, during the implementation of this agreement with the former Yugoslav Republic of Macedonia, will (you) continue to comply with (the) international obligations to protect individuals from non-refoulement pursuant to the Convention against Torture and the 1951 Refugee Convention.*

This question is partly answered in answer to question 1 and is no longer relevant with regard to the implementation of the joint statement, which is no longer enforced.

However, in order to provide clarification, the joint statement of heads of police services of Austria, Slovenia, Croatia, Serbia and Macedonia signed on 18. 2. 2016 in Zagreb, **did not refer to the deportation/expulsion of foreigners to countries of origin where they might be in danger.** The joint statement outlined the need to **reduce illegal migration of migrants, not refugees or anyone fleeing for humanitarian reasons** and on conditions for entry. The international refugee law was fully respected but the attention was on the need to prevent persons abusing the migration flow to reach their destination EU countries for economic reasons without actually fulfilling the requirements needed for such migration. We need to reiterate that migrants enter Slovenia from a safe country (Republic of Croatia).

4. *Please provide information with regard to how mass expulsions – particularly of specific nationalities – will be prevented from being carried out?*

Refugee protection in conditions of mass influx is challenging. However, mass influx does not alleviate state's obligation to accord protection to refugees and those fleeing based on humanitarian grounds. Slovenia understands that and accords such protection.

Slovenia has not and will not carry out mass deportations. When removing foreigners, a lot of emphasis is put on their cooperation and their decision to return. **Every person is treated individually.**

As soon as it is established that a foreigner cannot be deported or **in cases of foreigners to whom non-refoulement principle applies, he or she is issued a permission to stay, which means that they stay in Slovenia temporarily.** A permission to stay is issued by the police for a period of six months. The permission may be extended on a foreigner's request or ex officio, while there are still reasons for it. A foreigner may also apply for a permission to stay during his or her accommodation at the Centre for Foreigners. **Deportation from the country is not possible pending the final decision on the application for a permission to stay.** In the decision allowing a foreigner to stay in Slovenia temporarily the police may also determine the place of residence at a particular address. A foreigner that is allowed to stay in Slovenia temporarily is entitled to emergency health care in accordance with the law governing health care and health insurance, to the basic care, while children of school age are also entitled to primary education.

5. *Please provide information regarding how the proper identification and protection of all potential protection needs, including individual assessments, claims for asylum and other vulnerabilities (are met), regardless of the nationality or place of residence in a "safe third country".*

Refugee status is recognized to a person that provides justifiable and authentic proof that he or she is endangered in his or her home country due to race, religion, nationality, political belief or affiliation to a special social group.

Subsidiary protection is granted to a person that does not meet conditions for the recognition of refugee status but provides justifiable and authentic reasons that serious damage would be caused to him or her upon return to the home country (death penalty or execution, torture or inhuman or degrading treatment). Subsidiary protection is also granted for serious and individual threats against life or freedom of the applicant due to indiscriminate violence in situations of international or internal armed conflict in the country of origin.

After the receipt of the application for international protection, the person is accommodated in the asylum home, where he or she has a right to food, clothing and footwear. The refugee is entitled to three meals a day. Upon accommodating the refugee in the appropriate department, he or she receives an accommodation package, which contains all necessary sanitary products and bedding.

The Rules on the rights of applicants for international protection stipulate in more detail the rights and obligations of the applicants for international protection:

- right to reside in Slovenia;
- right to follow the procedure in a language that the applicant understands;
- right to information;
- right to basic care if accommodated in an asylum home;
- right to financial aid if accommodated in private accommodation;
- right to free-of-charge legal aid in the procedure before an Administrative Court or Supreme Court until the final decision;
- right to health care;
- right to education;
- right to work and employment;
- right to humanitarian aid.

Applicants for international protection have the right to reside in Slovenia from the date of filing the application for international protection until the final decision on the application. This right enables the applicant to move freely throughout the entire territory of the Republic of Slovenia. Immediately after the filing of the application, an official issues an international protection applicant card, which serves as a temporary residence permit.

6. *What happens to irregular migrants who are refused entry once the daily quota of irregular migrants arriving into the country is met?*

Quotas refer to Austria's announcement that they would only admit those migrants who expressed an intention to apply for international protection in Austria and Germany. The police had prepared for this decision and started refusing those migrants at entry who did not intend to apply for international protection in Germany, Austria or Slovenia. **These measures do not impede the rights of refugees and those seeking protection on humanitarian grounds. This is only one of the measures for reducing the number of migrants, seeking a better life, to the level that the countries of destination are prepared to admit.** To prevent the arrival of large numbers of migrants, whom Austria would refuse to admit, the police also carried out the following activities:

- allowing entry to only those individuals who express a clear intention to apply for international protection in Slovenia, Germany or Austria,
- stepped-up control of the external Schengen border, both at border crossing points and at the green border.

As Slovenia is mostly just a transit country for migrants, they generally do not express the intention to apply for international protection in Slovenia. **We want to stress that none of the measures are aimed at limiting the right to apply for international protection in Slovenia.** It is just that the interest of migrants and refugees to reside in Slovenia is not high.

The EU heads of states and governments confirmed on 7 March, 2016, the conclusions of the European Council of 18th and 19th February, which outlined the need to put a stop to the wave-through policy and uncoordinated measures along this route, while taking into account humanitarian consequences for the member states affected.

The EU leaders also agreed that a fully functional Schengen area needed to be re-established, while providing full support to member states faced with difficult circumstances.

Slovenia refuses entry to third country nationals who do not satisfy the entry conditions or **have not applied for asylum even though they had an opportunity to do so**, while taking into account special characteristics of the sea border, also by implementing the EU-Turkey statement.

Foreigners who were refused entry due to non-fulfilment of entry conditions under the Schengen Borders Code are issued a *refusal of entry* form, which is annexed to the Schengen Border Code, and are **returned to Croatia**. During the influx of migrants Slovenia additionally informed Croatia of refused entry cases through the Crisis Management Team, and the Croatian police announced where and when they would readmit the refused individuals.

7. *Please provide information regarding how the Dublin III Regulation safeguards for applicants for international protection in Europe will be implemented especially for those seeking family reunification?*
8. *Please provide information regarding how this agreement is not in contravention to recent European Court of Human Rights and European Court of Justice rulings to the effect that States should no longer transfer any applicants to Greece.*

Dublin III Regulation is activated in the **case of an application for a declaration as a refugee**.

In case a person applies for international protection in Slovenia his or her international protection application is received and processed in line with applicable rules of Dublin procedures. Following the decision of European Court of Human Rights in case *M.S.S. v. Belgium and Greece*, return in the framework of Dublin procedure is not implemented in case of Greece. In all cases the applicants have the right to file an appeal against the first instance decision with judicial authorities; therefore not a single case can be incompatible with the legislation or ECHR case law, or recent rulings of the European Court of Justice.

In practice we have a lot of Dublin cases. In all cases protection measures are respected for international protection applicants. Family reunification cases are given due priority.

9. *Please provide information with regard to whether the police officers being deployed at the border have human rights protection at borders training.*

Education:

Human rights are part of compulsory curriculum for police officers and constitute a starting point for most of the topics covered in addition to separate Ethics and Human Rights class (36 hours)

As the mission of the police is to serve people, it is logical that **human dignity and human rights are included in virtually every topic** of the education program for police officers, especially of the course on ethics and human rights (36 hours). Some topics that are covered **in addition to the basic class on human rights** are as follows:

- role and image of police/police officer in a democratic society,
- positive image of police officer,
- importance of supervision of policing,
- policing in a multicultural society,
- stereotypes, prejudice, discrimination, homophobia, sexism, racism, chauvinism, xenophobia, ethnocentrism, Romaphobia...,
- treatment of vulnerable groups,
- mobbing,

- human rights and fundamental freedoms, documents, institutions,
- codes of conduct (international and Slovenian),
- police working environment, subculture,
- corruption and other anomalies,
- police integrity,

The above topics are taught as a combination of theoretical classes and experiential learning (workshops), discussions and panels, and in addition to various international and national documents, students also have at their disposal other literature on ethics and human rights.

Training:

Within the Police, in the period 2010-2014, internal training courses were carried out in accordance with the EU and national standards of human rights protection for police officers and other Police personnel. Individual programs on the protection of human rights and freedoms are laid down in the Police Organization and Work Act. The protection of human rights and freedoms is included in programs of internal training for community policing, criminal investigation, police powers and practical police procedure, state border protection and dealing with foreigners, work of the Security and Protection Centre, secondment of officers to peacekeeping missions and social skills programs.

These programs are carried out by specially trained experts: pedagogues, psychologists, social pedagogues and other internal experts with adequate competences (post-graduate studies, work in appropriate institutions, participation in national projects, training and/or work abroad). Sometimes experts from other educational institutions or NGOs are invited to give presentations and lectures.

III.

In March 2016 the National Assembly of the Republic of Slovenia adopted a new International Protection Act (ZMZ-1).

The main reason for the adoption of a new International Protection Act is the obligation for the transposition of the EU legislation into national law, in particular transfer of two directives, which lay down common procedures for granting and withdrawing international protection and standards for the reception of applicants for international protection. Act also defines detailed implementation process of Dublin and EURODAC Regulation. Guidance in the preparation of new International Protection Act was also timely response on migrant crisis and on potentially newly created situation. New legislative framework enables rapid and effective decision procedures in case of applications for international protection. The Act provides a good legal basis to ensure to those who really need protection a quick and easier way to successfully integrate into Slovenian society and on the other side a legal base for effective return policy of those who are not eligible for international protection. International Protection Act also defines the procedures at borders, airports and ports, which have also been provided for in Directive 2013/32/EU (Procedures Directive) with the provisions of which the Act is fully harmonized. The purpose of the border procedures is to ensure faster processing of those who obviously don't need protection and in that manner to prevent the abuse of the system of international protection. The level of rights of applicant for international protection remains the same, but it decreased the level of rights of persons with recognized international protection in sections where they exceeded the minimum standards, imposed by the European legislative framework in the field of international protection. "