



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Ref: CommHR/NM/sf 001-2017

Dr Milan BRGLEZ

President of the National Assembly
of the Republic of Slovenia

Strasbourg, 12 January 2017

Dear President of the National Assembly,

I am writing to express my concern about some amendments to the Slovenian Aliens Act which the government recently sent to the National Assembly for adoption under urgent procedure.

At the outset, I would like to acknowledge that Slovenia faced an unprecedented and difficult situation in the second half of 2015 and early 2016, when thousands of migrants, including asylum seekers, crossed its territory using the so-called "Balkan route" on their way to other European Union (EU) countries. Avoiding the repetition of such a chaotic situation in the future is a legitimate concern. This, however, must be done in compliance with Slovenia's human rights obligations, including those under the European Convention on Human Rights (ECHR) and the 1951 Convention Relating to the Status of Refugees.

Two of the proposed amendments to the Aliens Act would enable the implementation, for a renewable 6-month period, of exceptional measures in the event of a migration situation that "threatens public order and internal security". The parliament would activate these measures subject to a two-third majority vote. The amended law would allow police to refuse entry into Slovenia (effectively closing the border), and to arrest and summarily return foreigners who entered Slovenia irregularly to the country where they came from, even if they express their intention to apply for asylum in Slovenia.

These provisions raise serious issues of compatibility with a number of European and international standards by which Slovenia is bound, notably the prohibition of *non-refoulement* and of collective expulsions (Article 3 ECHR and Article 4 of Protocol No. 4 to ECHR), as well as with the fundamental right of every individual to seek and enjoy asylum.

I understand that under the proposed amendments, the exceptional measures would not apply when the life of the foreigner is in danger, when there is a serious risk that they will be tortured or ill-treated upon return, or in case of people who are sick and unaccompanied minors. It is difficult to see, however, how these safeguards can be implemented in practice in the absence of a process enabling individual assessments of any such claims.

It is important to stress that the obligation not to return someone to a country where they would face threats to their life, torture or inhumane and degrading treatment (*non-refoulement*), includes *indirect* refoulement, i.e. the possible onward expulsion by Slovenia's neighbouring countries without proper assessment of one's situation. As an illustration of this, in a third-party intervention I submitted to the European Court of Human Rights (ECtHR) in December 2015, I concluded that asylum seekers returned to Hungary were "exposed to a very high risk of being subject to deportation to Serbia and to onward chain *refoulement*, with the corresponding risk of treatment contrary to Article 3 of the European Convention on Human Rights".

According to a growing case-law at the ECtHR, state parties to the ECHR, in order to satisfy their human rights obligations, should ensure that migrants, including asylum seekers, on their territory and at their borders, have effective access to a procedure enabling them to put forward reasons not to be refused entry or returned, to have these scrutinized in light of their personal situation and to have an effective remedy against decisions taken in this regard.

I regret that the government is justifying the reform to the Aliens Act as “necessary to lower security risks to the Slovenian population”. This sends a negative message to the public in that it portrays migrants and asylum seekers as a threat, instead of emphasizing that many are fleeing conflicts and are in need of protection. Some security issues may exist, but an orderly process with individual interviews would actually increase the chances of identifying and investigating people who may pose security risks and thus provide better protection to the general population.

Upon gaining its independence from the Socialist Federal Republic of Yugoslavia in 1992, one of the first steps taken by Slovenia was to affirm its attachment to human rights and the rule of law by ratifying all major international human rights treaties. One might even say that the struggle for independence was intertwined with the struggle for human rights in Slovenia. It would be regrettable if Slovenia were to tarnish this legacy by taking a step that would undermine international human rights in such a pronounced fashion. Such a step would not only have negative consequences for Slovenia, which has heretofore taken its human rights obligations very seriously, and its image; it would also risk provoking a domino effect in the region.

I therefore encourage the Slovenian National Assembly to reject amendments to the Aliens Act that are contrary to international law and undermine human rights. Parliamentarians should instead ensure that any emergency measures addressing a migration influx include access to an effective, individualized assessment process. The National Assembly should also ensure that sufficient material and human resources are available. In this regard, I note and welcome the fact that the draft law for your examination creates an Office for Migrant Care, tasked with the accommodation and care of various categories of migrants, including asylum seekers, allowed to stay in Slovenia.

I stand ready to discuss this matter further with you at any time. I would also be grateful if you could ensure that all members of the National Assembly receive a copy of this letter.

Yours sincerely,

Nils Muižnieks

EMBARGO UNTIL 17 JANUARY 2017 AT 09:01 AM PARIS TIME