

AMNESTY INTERNATIONAL PUBLIC STATEMENT

4 March 2016
AI Index EUR 68/3580/2016

Slovenia: New asylum legislation would violate the rights of refugees and asylum seekers

The National Assembly of Slovenia is debating a comprehensive rewrite of the country's International Protection Act (*Zakon o mednarodni zaščiti*); the draft, to be considered and potentially voted on at the third plenary hearing today would in its current form represent a significant step back from guaranteeing all asylum seekers the right to have their asylum application effectively determined.

The proposal, introduced by the governing coalition, is aiming to reduce the arrival of asylum seekers to the country and limit their stay in Slovenia. In addition to widening the scope of the application of "safe country of origin" and "safe third country" notions, the amendments seek to introduce admissibility procedures at borders, increasing the risks of *refoulement* and exposing vulnerable refugees and asylum seekers to potentially inadequate reception conditions.

Amnesty International is concerned that the proposed restrictions on access to asylum procedures and a fair and individual consideration of protection needs, if adopted, will go against the obligations of Slovenia as stipulated in international law. The organization is concerned that this draft is an attempt to shift the responsibility for providing access to a prompt and effective asylum procedure to third countries, and to relieve Slovenia from its international obligations.

Amnesty International urges the members of the Slovenian National Assembly to reject the draft International Protection Act in its proposed form, and to ensure that any necessary amendment to the current asylum legislation is compatible with international human rights and European law.

"Safe country of origin" and "safe third country" notions

Article 51 of the draft specifies criteria for "inadmissible" applications, which would allow the asylum authority of the Ministry of Interior to reject applications by asylum seekers who arrived to Slovenia through a "safe first country of asylum". It is currently being discussed whether applications could also be rejected on the basis that the applicants entered Slovenia from a "safe third country" or another EU country. Further, article 52 determines as "manifestly unfounded" any application submitted by an asylum seeker coming from a "safe country of origin".

Amnesty International is firmly against the notion of "safe countries" because the need for international protection must be determined on the basis of individual circumstances. Slovenia has an obligation to ensure that those who wish to apply for asylum in the country are allowed to do so and that each application is determined on its merits and on a case-by-case basis. Any blanket refusal of asylum applications submitted from people who are nationals of, or who have travelled through, countries deemed "safe" is discriminatory and will result in instances of *refoulement*. Additionally, Amnesty International is concerned that the possible expansion of the application of "safe first countries of asylum" and "safe third countries" categories to direct admissibility procedures will generate or perpetuate prejudice against asylum-seekers travelling through countries designated as "safe".

A particular concern is that the right to appeal decisions based on "safe countries" categories is being challenged in the current debate before the National Assembly and appeals may ultimately not have a

suspensive effect on the execution of deportation orders if related to inadmissible or unfounded applications. At the same time, the current proposal would require asylum seekers to appeal within an extremely short time frame of eight days (15 days for decisions issued in regular procedures).

Statements by government officials suggest that asylum seekers arriving to Slovenia are coming through a “safe first country of asylum” or “safe third country” (namely Croatia)¹; others, the government said, came from a “safe country of origin” and have taken advantage of the Western Balkans route and are not allowed entry to Slovenia². It is likely that under the proposed new regime, most applications would similarly be rejected in admissibility procedures or as manifestly unfounded.

Expedited border procedures and asylum detention

Article 43, which seeks to introduce expedited procedures at borders, airports and marine ports, would allow the authorities to decide on any claims submitted at borders within the timeframe of 14 days. Amnesty International is concerned that personnel at borders would not have the legal expertise required to decide complex asylum cases, resulting in the rejection of individuals with genuine protection needs. Border procedures cannot lead to superficial and ineffective asylum decisions.

Additionally, asylum seekers would be held at the border for this period, and only allowed into a “regular” asylum procedure and accommodation in a designated asylum centre if the authorities fail to make a decision in 14 days. Exceptionally, to manage cases of mass influx of asylum seekers over a short period of time, the law would allow the authorities to accommodate asylum seekers “near the border”, while their access to a full asylum procedure would still not be guaranteed, as they would be subject to an expedited procedure as if they were held in the border area (article 43 (2)). Amnesty International is concerned that holding individuals in need of international protection in a location they cannot leave amounts to detention. Any measure that restricts the right to liberty of refugees and asylum-seekers must be exceptional and based on a case-by-case assessment of the personal situation of the individual concerned.

Further, under the EU Procedures Directive, Slovenia must ensure free legal assistance and representation for those asylum-seekers who decide to appeal a decision and require legal aid. Such assistance must include at a minimum preparation for the hearing. Accessibility to legal aid in the border procedures must not be limited, and the period for submitting an appeal should be sufficient for a full examination of the case and the law, including an examination of the international protection needs of the applicant as required by EU law (EU Procedure Directive (Recast) 2013/32/EU, Article 46(3)).

The proposed expedited border procedures, in conjunction with the application of the “safe third country” notion, creates a real risk that individuals in need of international protection would be denied access to protection in Slovenia without effective access to remedy.

Background

Since October 2015, over 475,000 refugees and migrants have arrived and passed through Slovenia through the Western Balkans route. From mid-November, new border control rules implemented in the region have meant that refugees and asylum-seekers from countries other than Syria, Iraq or

¹ Government statement reported on 13 January 2016, available at: <http://www.planet.si/novice/slovenija/prenos-v-zivo-sefic-komentira-obvladovanje-begunskega-toka.html>

² “Slovenia, in cooperation with other countries along the so-called Balkan migration route, wants to exclude people coming from safe countries who have taken advantage of the wave of migration, but thereby limit access to protection to people who really need it.” Government statement, 15 February 2016, available at: http://www.vlada.si/en/media_room/government_press_releases/press_release/article/neighbouring_countries_can_control_the_situation_in_the_field_only_with_coordinated_cooperation_57588/

Afghanistan, were with a few exceptions refused entry to the country. The measure was rolled out simultaneously in countries along the route and resulted in large-scale renewed human rights violations, including collective expulsions and discrimination against individuals perceived to be economic migrants or refugees on the basis of their nationality.

On 18 February 2016, Slovenia agreed to extend the cooperation between its law enforcement officers and those of the “former Yugoslav Republic of Macedonia”, Serbia, Croatia and Austria³ to introduce unified procedures for registration aiming to reduce the flow of refugees and asylum seekers in the region. The measures have resulted in additional border closures with severe humanitarian consequences along the route, particularly in northern Greece. It appears that the cooperation also triggered further discriminatory border restrictions for Afghan nationals who are not allowed entry into Macedonia and Serbia anymore.

On 22 February 2016, the National Assembly approved the deployment of Slovenian Armed Forces personnel to assist in carrying out border policing tasks. The decision enables the army to assist the police for three months. According to government information, up to 200 members of the armed forces are currently deployed to perform such tasks.

As of 2 March 2016, 326 asylum seekers were accommodated and were staying in the country beyond the time necessary for transit; over 200 people were detained for irregular entry or unauthorized stay in the country. Although the government has not officially communicated a strict cap on the number of asylum seekers allowed entry to and transit through Slovenia, it said that 580 is the “total agreed number of persons on a single train from Croatia that the Slovenian police can check daily in accordance with the Schengen rules”⁴, meaning that access to territory is aimed to be *de facto* restricted to this number.

In addition to the devastating effects of “safe country” lists, attempts to reduce and stop the flow of people along the Western Balkans route by discrimination on the grounds of nationality or by placing a cap on the number of asylum applicants are contrary to international refugee law and European law.

/ENDS

³ Joint statement of heads of police services from the meeting held in Zagreb, Croatia on 18th February 2016, available at: http://www.mup.hr/UserDocsImages/topvijesti/2016/veljaca/migranti_sastanak/joint_statement.pdf

⁴ Government press release, 2 March 2016, available at: http://www.vlada.si/en/media_room/government_press_releases/press_release/article/sefic_austria_denies_entry_to_a_few_migrants_arriving_from_slovenia_57734/