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Amnesty International's Legal Assessment of the Proposed Amendments to Slovenia's Aliens Law.

Implications under International and EU law

The Aliens Law' amendments in the proposed form would contravene international, EU and Slovenian domestic law. If adopted, the amendments:

- Would allow authorities to automatically deny entry to migrants and refugees arriving at the borders, including those who indicate a desire to claim asylum;
- Could lead to unlawful collective expulsions of migrants and refugees who enter Slovenia irregularly, as they do not prescribe adequate due process protections, thus depriving migrants and asylum-seekers of essential substantive and procedural safeguards, such as the principle of non-refoulement or the right to an effective remedy;

Under international and EU law, individuals who are being transferred from the jurisdiction of one state to that of another have the right to both substantive and procedural safeguards. Substantively, the principle of non-refoulement prohibits states from transferring anyone, whether directly or indirectly, to a place where they would have a well-founded fear of persecution or would face a real risk of other serious human rights violations or abuses. Procedurally, states are obliged to give individuals concerned an effective opportunity to challenge the transfer.

Rejecting people at the border without due process and consideration of their individual circumstances – as prescribed by the proposed Article 10b – is a pushback and is prohibited in all circumstances under EU and international law. As soon as people are under the effective power and control the Slovenian authorities, they fall within Slovenian jurisdiction¹.

¹ UNHCR, the Human Rights Committee and the Committee Against Torture have confirmed that a state's human rights obligations toward an individual attach as long as that person is subject to the state's effective power and control. Also, *Hirsi Jamaa And Others v Italy*, App. No. 27765/09 (EUR. Ct. H.R. Grand Chamber), paras 74-75, 78-82, the Court stated that "whenever the State through its agents operating outside of its territory exercises control and authority over an individual and, and

Slovenia has an obligation to respect, protect and fulfill the human rights of everyone on their territory or under their jurisdiction². Furthermore, contrary to the rationale of the Slovenian government provided as an annex to the proposed bill, Slovenia cannot ignore or circumvent their obligations under the European Convention on Human Rights when implementing EU law or bilateral agreements aimed at returning asylum-seekers to another EU country³.

According to international and EU law, any person in need of international protection has to be identified as such when they reach the border. The request for asylum can be submitted at border crossings, and asylum-seekers cannot be rejected at the border. According to Article 2 (b) of the Asylum Procedures Directive, any expression of fear of suffering serious harm if returned to the country of origin constitutes an application for international protection⁴. In order to comply with the principle of non-refoulement set forth in the Charter of Fundamental Rights and restated in Article 3 of the Schengen Border Code, persons in need of international protection need to be identified when they reach the border⁵. It is not clear what procedures, if any, the Slovenian authorities would use under emergency measures to identify asylum-seekers and assess their individual circumstances.

As a result of their summary nature and the absence of due process, the pushbacks and summary expulsions - under the proposed Article 10b would be in breach of international instruments, including:

- Article 13 (expulsion decision has to be made pursuant to law and with guarantees of due process) of the International Covenant on Civil and Political Rights (ICCPR),
- Article 3 (principle of non-refoulement) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,
- Article 33, principle of non-refoulement, of the 1951 Refugee Convention,
- Article 31, non-penalization for irregular entry or stay, of the 1951 Refugee Convention,

thus jurisdiction, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section I of the Convention that are relevant to the situation of that individual.”

² Article 1 of the European Convention on Human Rights (ECHR), for example, establishes that the parties to the Convention “shall secure to everyone within their jurisdiction the rights and freedoms” enshrined in the Convention.

³ Sharifi and Others v. Italy and Greece, App no. 16643/09, (EUR. Ct. H.R. Second Chamber). See <http://www.asylumlawdatabase.eu/en/content/ecthr-sharifi-and-others-v-italy-and-greece-application-no-1664309>

⁴ See Asylum Procedures Directive (2013/32/EU) and Schengen Handbook.

⁵ FRA, Fundamental Rights at Land Borders: findings from selected European Union border crossing points (2014).

- Article 3 (prohibition of torture or other inhuman and degrading treatment) and Article 13 (right to effective remedy) of the European Convention on Human Rights (ECHR),
- Article 4 of Protocol 4 and Article 1 of Protocol 7 to the ECHR,
- Article 14 (right to seek asylum) of Universal Declaration of Human Rights,

They are also in violation of EU legislation, such as:

- Article 13 (refusal of entry with a substantiated decision and guarantees of due process) of the Schengen Borders Code⁶,
- Asylum Procedures Directive⁷ that prescribes minimum standards on procedures for granting and withdrawing international protection,
- Chapter III of the Returns Directive (2008/115/EC) on procedural safeguards and effective remedies available to those who face removal decisions,
- Articles 18 (right to asylum), 19 (protection in the event of removal, expulsion or extradition), and 47 (right to an effective remedy and to a fair trial) of the Charter of Fundamental Rights of the European Union.

When they affect children, they are also in breach of:

- Convention on the Rights of the Child: Article 3 (best interests of the child principle), Article 22 (protections for refugee children) and Article 37 (ban on torture and other cruel, inhuman or degrading treatment or punishment). Also see the General Comment of the Committee on the Rights of the Child, which said that “states shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child, such as, but by no means limited to, those contemplated under articles 6 and 37 of the Convention” and that “the assessment of the risk of such serious violations should be conducted in an age and gender-sensitive manner and should, for example, take into account the particularly serious consequences for children of the insufficient provision of food or health services”⁸.

⁶ Article 13. Refusal of entry, prescribing a reasoned decision and the right to appeal. Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

⁷ Council Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on minimum standards on procedures in Member States for granting and withdrawing international protection (recast).

⁸ General Comment no. 6, 1 September 2005, para. 27. Article 6 protects the right to life and Article 37 of the Convention deals mainly with the prohibition of torture and other cruel, inhuman or degrading treatment and the right to liberty and security of the person.

Proposed Article 10b states that the emergency measures would not apply if they would constitute a direct threat to life or health of a person, against unaccompanied minors or when there is a serious risk of torture or ill - treatment in the country to which that person would be send back.

In addition, since the amendments do not prescribe specific procedures to identify vulnerable groups or provide for individualized assessment of each person's circumstances, it is not clear how the Slovenian authorities would ascertain the age of minors or assess circumstances that would indicate that life or health of the person would be at risk as a result of the application of these measures.