

MIROSLAV ŽABERL\* – BENJAMIN FLANDER\*\* –  
SIMON KELENC\*\*\*

## Border Control and Migration in Slovenia: Border Protection in the Case of Persons Crossing National Borders Illegally

- **ABSTRACT:** *Protecting and controlling national borders are particularly important for preventing and combating irregular migration. Adequate police organisation, training, and exercise of appropriate statutory powers and measures are crucial in this context. This article discusses the role of the Slovenian Police in curbing irregular migration from three perspectives: (1) national normative regulations for border control; (2) the procedural regulation of the exercise of powers and measures by the police in controlling state borders; and (3) the compliance of the legal regulation of powers and measures with the provisions on the protection of human rights and fundamental freedoms laid down in the Constitution of the Republic of Slovenia and international conventions. We found that the national normative and procedural regulations governing the exercise of police power and measures for controlling state borders are consistent with the uniform regime in the Schengen Borders Code. In contrast, in assessing their compliance with constitutional and international standards that guarantee and protect human rights, we questioned the appropriateness of the normative regulations that allow the police to invasively search the body and belongings of persons, in addition to frisking them and their belongings, without a court order, in the context of border controls, where the standard of proof is low. Furthermore, we draw attention to the lack of clarity in the internal instructions and procedural provisions of the police, which allow the return of persons to foreign security authorities, disregarding*

\* Assistant Professor of Law at the Faculty of Criminal Justice and Security of the University of Maribor, Slovenia. Email address: miroslav.zaberl@guest.arnes.si.

\*\* Associate Professor of Law at the Faculty of Criminal Justice and Security of the University of Maribor and Senior Research Associate at the Law Institute of the Science and Research Center Koper, Slovenia. Email address: benjamin.flander@um.si; ORCID ID: 0000-0002-2738-1590.

\*\*\* Senior Officer at the Border Police Division of the Uniformed Police Directorate, General Police Directorate, Slovenia. Email address: simon.kelenc@policija.si.



*safeguards protecting persons seeking international protection. Moreover, the article focuses on the entry of the Republic of Croatia into the Schengen Area, which resulted in the Republic of Slovenia losing its external Schengen border. The new situation dictates the need for changes in the organisation, staffing, and tactics of the Slovenian Police.*

- **KEYWORDS:** irregular migration, state border control, police powers, compensatory measures, legal protection for asylum seekers

## 1. Introduction

In the Republic of Slovenia (hereinafter Slovenia), control of state borders is a task of the police that derives from its fundamental duty to ensure the security of people and property.<sup>1</sup> The protection and control of the state border is the subject of a separate strategic document (see below), and the control of the state border as a police task is defined in more detail under the Police Tasks and Powers Act.<sup>2</sup> Moreover, it regulates the general power of the police to perform this task. The key issues of the organisation and manner of conducting state border control, implementing of compensatory measures, and international police cooperation in state border control are regulated by the State Border Control Act.<sup>3</sup>

In practice, various factors can influence the guarantee of the right to security and feeling of security,<sup>4</sup> among which the issue of irregular migration has been at the forefront of the police's task of controlling national borders for more

---

1 Security is a fundamental human right expressly provided for by several international and regional human rights treaties, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights. In the internal law of Slovenia, the right to security is provided in Art. 34 of the Constitution of the Republic of Slovenia where it is stated that 'everyone has the right to personal dignity and safety.' While the Constitution primarily protects the individual's personal security in relation to (state) power, it also protects everyone's personal security in relation to other individuals and legal entities. See Flander and Tičar, 2019, pp. 422–424. The authors explore the right to security through the prism of its regulation within Slovenian law at the state and local levels.

2 Art. 4 of the Police Tasks and Powers Act (*Zakon o nalogah in pooblastilih policije* [PTPA]), Official Gazette of the Republic of Slovenia, Nos. 15/13, 23/15, 10/17, 47/19.

3 Art. 1 of the State Border Control Act (*Zakon o nadzoru državne meje* [SBCA-2]), Official Gazette of the Republic of Slovenia, Nos. 35/10 – officially consolidated text, 5/17, 68/17, 47/19, 139/20, 161/21, 29/22 and 76/23.

4 Aleš Bučar Ručman and Ada Šulc note that people's sense of security is largely influenced by negative media reports, which link the issue of migration to increased crime rates and danger to the 'native' population. Bučar Ručman and Šulc, 2019, pp. 5–20.

than a decade.<sup>5</sup> In the Schengen Area, the requirement for the free movement of people and goods has radically changed the paradigm of state border management and the control and protection of state borders. Traditional border controls are increasingly being replaced by compensatory measures, which are conducted in the interior of the country to compensate for the lack of traditional police control at the border. This is also true of Slovenia, which, similar to other EU Member States, has recently experienced a significant increase in illegal border crossings.<sup>6</sup>

This article discusses the role of the Slovenian Police in curbing irregular migration from three perspectives: (1) national normative regulations for border control; (2) the procedural regulation of the exercise of powers and measures by the police in controlling state borders; and (3) compliance of the legal regulation of powers and measures with the provisions on the protection of human rights and fundamental freedoms established in the Constitution of Slovenia and international conventions. This article aims to establish whether the national normative and procedural regulations governing the exercise of police power and measures for controlling state borders are consistent with the uniform regime in the Schengen Code and the constitutional and international standards for guaranteeing and protecting human rights. Furthermore, it focuses on the entry of the Republic of Croatia into the Schengen Area, which resulted in the loss of an external Schengen border for Slovenia. The new situation dictates the need for changes in the organisation, staffing, and tactics of the Slovenian Police.

## **2. State border control and control of the movement and residence of foreigners as one of the core strategic and statutory tasks of the Slovenian Police**

### **■ 2.1. Strategy for the Coherent Management of the State Border of the Republic of Slovenia**

Slovenia became part of the Schengen Area in 2006.<sup>7</sup> Since then, the government has addressed border controls and irregular migration through strategic

---

5 Karmen Medica distinguishes between irregular, illegal and undocumented migration. Irregular migration involves foreigners legally crossing a state border and staying in a country for longer than allowed. In illegal migration, foreigners illegally enter the country with forged documents. Undocumented migration involves the operation of international smuggling networks to smuggle foreigners who are economic migrants. Medica, 2007, p. 125.

6 From 1 January 2023 to 31 May 2023, 15,456 unauthorised entries were processed. During the same period in 2022, 5,108 unauthorised entries were recorded. See Policija, 2023.

7 For more on this and the history of the formation of the Slovenian state and the activities of the Slovenian Police, see Celar, 2021. The author draws attention to the difficult periods of Slovenia's convergence, accession and full membership of the EU, and difficulty of the requirements for joining the Schengen Area.

documents. The National Security Strategy<sup>8</sup> (ReNSS-2) is the primary strategic document in the field of security of Slovenia. It defines irregular migration as a threat and risk to national security. The Strategy states that Slovenia is primarily affected by irregular migration owing to migration flows across its territory. Since the mass migrations of 2015 and 2016, the external land border of Slovenia's section of the Schengen Area has been subjected to unceasing pressure from irregular migration. The vast majority of migrants applying for international protection in Slovenia leave the country before the process is completed, indicating an abuse of this institution.<sup>9</sup>

Based on the assumptions of ReNSS-2, the Strategy for the Coherent Management of the State Border of Slovenia<sup>10</sup> (hereinafter IBM Strategy) was adopted for the implementation of the Frontex Regulation.<sup>11</sup> The IBM Strategy determines the entities, primary risks, and basic purposes and objectives of state border management. It details the surveillance and protection of state borders, the production of risk analyses, and cooperation between agencies or authorities within and outside the state. Furthermore, it deals with compensatory measures and measures within the free-movement area and return procedures. It concludes by stressing the importance and forms of education and training, use of the latest technologies, respect for human rights, and fundamental freedoms in dealing with individuals. In compliance with the Strategy, the police perform tasks related to the control and protection of state borders, whereas the Financial Administration of the Republic of Slovenia (FURS) performs procedures related to the import control of the customs system. Slovenia adopted an Action Plan to implement its IBM Strategy.

Furthermore, the IBM Strategy stipulates that the police should cooperate with the Slovenian Armed Forces to protect state borders in accordance with relevant national legislation and applicable plans.<sup>12</sup> The Slovenian Armed Forces provide assistance in protecting the state border in accordance with the provisions

---

8 The Resolution on the National Security Strategy of Slovenia (*Resolucija o Strategiji nacionalne varnosti Republike Slovenije* [ReNSS-2]), Official Gazette of Slovenia, No. 59/19.

9 ReSNV-2, item 4.9.

10 The Ordinance of Integrated Border Management Strategy of Slovenia (*Odlok o strategiji skladnega upravljanja državne meje Republike Slovenije* [IBM Strategy]), Official Gazette of Slovenia, Nos. 162/21 in 120/22.

11 Regulation (EU) No. 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No. 1052/2013 and (EU) No. 2016/1624 OJ L 295, 14 November 2019, pp. 1–131.

12 Employing the army to protect the border could be problematic, controversial, and inconsistent with the notion of a democratic state whose borders are protected only by security authorities, such as the police or border guards. See also Celar, 2021, p. 410.

of Article 37 of the Defence Act<sup>13</sup> (DA), based on decision of the Government of Slovenia on the participation of the Slovenian Armed Forces in protecting the state border in the interior of the state territory and in protecting certain facilities or areas.<sup>14</sup> The Slovenian Armed Forces cooperate with the police for broader protection of the national border based on a joint operational and tactical plan.

If the security situation requires it, the National Assembly, acting on a proposal of the Slovenian Government, may, by a two-thirds majority of the votes of members present, decide that members of the Slovenian Armed Forces can exercise the exceptional powers referred to in Article 37a of the DA, exceptionally in the context of the broader protection of the national border and in accordance with the plans and prior approval of the government.<sup>15</sup> The measure may last for a maximum of three months, with the possibility of extension. To date, this exception has not been ordered.

Based on a government decision on measures for the effective management of threats, risks, and challenges, technical barriers (wire and panel fences) were installed in 2015 on certain sections of the external Schengen border, the state border with the Republic of Croatia. These technical barriers are gradually being removed. However, the police are responsible for regularly monitoring the security situation and adapting operational plans to protect state borders.

## ■ 2.2. *The normative framework for the protection and control of the state border*

The protection and control of the state border are important because it is one of the most important institutions that ensures the state's security in the face of international terrorism; illegal trafficking in arms, drugs, and stolen vehicles; irregular migration, smuggling, and trafficking in human beings; and the illegal entry and immigration of foreigners into Slovenia. The second dimension of border

13 The Defence Act (*Zakon o obrambi* [DA-UPB1]), Official Gazette of the Republic of Slovenia No. 103/04 Art. 37(4) provides that the Slovenian Armed Forces may cooperate with the police in the broader protection of the state border in the interior of the state territory. Furthermore, it contains the specific provision that in such cases members of the Slovenian Armed Forces do not have police powers when conducting these tasks.

14 The IBM Strategy, Para. 2.1.

15 The Act Amending the Defence Act (*Zakon o spremembi zakona o obrambi* [DA-E]), Official Gazette of the Republic of Slovenia, No. 95/15. Art. 37a provides that in these cases members of the Slovenian Armed Forces may exercise the following powers: warn, deploy, and temporarily restrict the movement of persons, and help control groups and crowds. They exercise all these powers under the conditions applicable to police officers and must immediately inform the police of the exercise of these powers. It may be concluded that this exceptional use of the army in protecting the state border, whereby members of the army act independently and, in accordance with the law, are allowed to exercise individual executive police powers, which in peacetime interfere with human freedoms and rights and raises a number of issues, such as the following: the use of the army to conduct police tasks, the independent exercise of police tasks without the supervision of the police, and the competence of army members to conduct police powers.

protection and control is the prevention of violations of state border inviolability. In Slovenia, the police protect and control the border to ensure the security of the country and all other Schengen Area Member States.<sup>16</sup> During peacetime, the police, an agency of the Ministry of the Interior,<sup>17</sup> are the only state authorities that control and protect the state border.<sup>18</sup>

The two key pieces of legislation governing the protection and control of state borders are the Police Tasks and Powers Act (PTPA) and State Border Control Act (SBCA-2). The PTPA defines the fundamental duties of the Slovenian Police, which are to ensure the security of individuals and communities, respect for human rights and fundamental freedoms, and to strengthen the rule of law.<sup>19</sup> The police provide security because of the 'public interest' in this. Public interest exists whenever it is a matter of averting a threat to an individual, unspecified group of people, or a community.<sup>20</sup> The law derives police duties and powers from fundamental duties related to this. Article 4 of the PTPA sets out eight core police tasks,<sup>21</sup> two of which are relevant to our study: 1. control of the state border and 2. tasks related to the movement and residence of foreigners.

With regard to conducting border control tasks, the police have general powers granted under the PTPA and specific powers under SBCA-2. Police physically control the state border to prevent and detect criminal offences listed in the Penal Code and offences stipulated in the legislation governing the protection of the state border. As a member of the Schengen system, Slovenia must comply with the provisions of the Schengen Borders Code when controlling its state borders.<sup>22</sup> The entry, movement, and residence of foreigners into Slovenia are generally regulated

---

16 The IBM Strategy also does this.

17 Regarding the position of the police in the structure of the state organisation, see the Organisation and Work of the Police Act (*Zakon o organiziranosti in delu v policiji* [OWPA], Official Gazette of the Republic of Slovenia, Nos.15/133, 11/14, 86/15, 77/16, 77/17, 36/19, 200/20, 172/21 and 141/22.

18 The Slovenian Police is centrally organised, which means that all police tasks are conducted by one authority. Specialised police units are generally involved in the work of border control and the problems related to foreigners.

19 Art. 1 of the PTPA. See also Žaberl, 2006, p. 16; Žaberl et al., 2015, p. 8.

20 Žaberl et al., 2015, p. 8.

21 Ibid. The PTPA prescribes the tasks of the police in vague legal terms, such as personal security, protection of people's property, public order, traffic regulation, control of the state border, protection of certain persons. Thus, the legislature provides the police with a general legal basis for action, however, these tasks are more precisely defined in sectoral legislation (e.g. procedural and substantive legislation in the field of detection and investigation of criminal offences and misdemeanours, ensuring public order, control and regulation of road traffic, control of the state border, tasks related to foreigners in Slovenia).

22 Regulation (EU) No. 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), *OJ L 77, 23 March 2016, pp. 1–52*.

by the Aliens Act (FA-2-UPB9).<sup>23</sup> FA-2-UPB9 determines the right of foreigners to enter the country, the conditions for refusal of entry, the conditions for foreigners' residence in Slovenia, and the conditions for the removal of a foreigner from the country. The International Protection Act also sets out important tasks and powers for the police connected with the movement and residence of foreigners.<sup>24</sup>

The control and protection of state borders is primarily conducted by the police through two forms or institutions of policing: control at border-crossing points and compensatory measures in the interior of the country. As both entail several measures by which the police encroach on human freedom and rights, we define and analyse them in more detail below.

### 2.2.1 Border control

Border control is the cornerstone of effective national and EU border control. In addition, border control (along with compensatory measures within the country) is an effective means of controlling irregular migration and other illegal practices.

SBCA-2 states that the purpose of protecting the state border is to protect human life and health; prevent and detect crimes and offences and their perpetrators; prevent unauthorised migration; ensure the safety of people, property, and the environment; and prevent and detect other threats to public security and order.<sup>25</sup> Based on the Schengen Borders Code,<sup>26</sup> the SBCA-2 stipulates that a police officer may, in the context of border checks, a) demand the presentation of valid documents required for crossing the state border and enter information on the circumstances of entry into and exit from the country in the documents for crossing the national border; b) conduct checks on people, vehicles and people's belongings; c) detain a person for the time strictly necessary, up to a maximum of 48 hours.

The law introduces a gradual (cascading) escalation of border control measures from a basic procedure that interferes with the privacy of information through a procedure that interferes with physical integrity to a possible procedure that interferes with freedom of movement or personal liberty, depending on the level of suspicion of the person intending to cross the state border. Thus, the legislature follows the principle of proportionality through normative regulation.<sup>27</sup>

Although the inspection of documents and the entry of certain data in documents for crossing the state border do not constitute an invasive and problematic

23 The Foreigners Act (*Zakon o tujcih* [FA-2-UPB9]), Official Gazette of the Republic of Slovenia, Nos. 91/21 – officially consolidated text and 48/23.

24 The International Protection Act (*Zakon o mednarodni zaščiti* [IPA-1-UPB1]), Official Gazette of the Republic of Slovenia, Nos. 16/17 – officially consolidated text, 54/21 and 42/23.

25 Art. 2 of the SBCA-2.

26 Art. 1(3) of the SBCA-2 stipulates that the activities and measures referred to in the Schengen Borders Code are relevant for the control of the state border under this law.

27 For more on the principle of proportionality, see Žaberl et al., 2015.

intervention, according to the authors, this is not the case when it comes to the control of people, vehicles, and belongings carried by people crossing the national border. Although the law, in accordance with the principle of *lex certa*, defines each procedure in a specific and clear manner, the existing regime is questionable in terms of the admissibility of such procedures considering the concept of 'legitimate expectation of privacy'. The law determines that in addition to document examinations, the checking of people may also include the need for a frisk search and even a body search, which is permitted in the event of suspicion of possession of prohibited goods or objects or for establishing identity.<sup>28</sup> A body search that admittedly does not involve a body cavity search<sup>29</sup> with such a low level of suspicion of possessing prohibited items or only for establishing identity could, in the authors' view, be constitutionally questionable.

A similar conclusion can be drawn concerning the provisions governing vehicle checks. The law determines that it includes an external and internal inspection of vehicles and vehicle search.<sup>30</sup> A search may be conducted if it is suspected that a person in the vehicle is carrying prohibited objects, which would help establish their identity or the identity of other passengers and prevent unauthorised entry into Slovenia. A search involves a detailed inspection of all parts of the vehicle, including the disassembly of individual parts.<sup>31</sup>

The law introduces a similar provision governing the inspection and search of objects carried by a person or vehicle. The legislature restricts the possible search of objects to cases where there is a suspicion that there are prohibited objects or objects that could help establish identity. A search involves a detailed inspection of all the parts, including the disassembly of individual parts.<sup>32</sup>

From the perspective of protecting human rights as guaranteed by the Constitution, these provisions could be controversial, particularly as they allow, at a low level of suspicion,<sup>33</sup> invasive and detailed search of persons, their belongings and vehicles. Under the Criminal Procedure Act<sup>34</sup> and misdemeanour legislation, a prior court order is generally required for search that involves detailed and invasive interference with legally protected values, however, this is not the case for border control cases under SBCA-2.

---

28 Art. 29(1) and (2) of the SBCA-2.

29 This is expressly prohibited by law in the above provisions.

30 Art. 29(3) of the SBCA-2.

31 Art. 29(4) of the SBCA-2.

32 Art. 29(6) of the SBCA-2.

33 Suspicion or grounds for suspicion is the lowest level of suspicion in criminal and misdemeanour law, where mere suspicion, including unverified and anonymous information, or even a mere feeling of a threat to security on the part of a representative of a particular authority, is sufficient. See the Decision of the Constitutional Court of the Republic of Slovenia No. UP-13/94, Point 10.

34 Arts. 214–217 of the Criminal Procedure Act (*Zakon o kazenskem postopku* [CPA -UPB16], Official Gazette of the Republic of Slovenia, No. 176/21 – officially consolidated text.



This dilemma has (at least apparently) been resolved by the Constitutional Court of Slovenia, which did not rule on the constitutionality and legality of the provisions of SBCA-2 but rather on the constitutionality of similar provisions contained in the Customs Service Act,<sup>35</sup> which permits customs officers to search a vehicle at border crossings. The Constitutional Court has taken the view that the expectation of the privacy of a person crossing the state border at a border-crossing point is low for two reasons. First, a private vehicle is not considered a dwelling in which an individual establishes a circle of intimate activity.<sup>36</sup> The second reason is that individuals wishing to cross a border are fully aware of the high probability of being subjected to checks, which simultaneously constitutes interference with their privacy.<sup>37</sup>

Although the Constitutional Court ruled that a vehicle search by a customs officer at a border crossing without a court order is not incompatible with an encroachment on the constitutionally protected right to privacy under Article 35 of the Constitution of Slovenia,<sup>38</sup> we are not convinced that it would have ruled in the same way in the case of the permissible search of a person under SBCA-2.

### 2.2.2 Compensatory measures and measures inside the free movement area

Owing to the abolition of internal border controls, the Schengen Borders Code sets out obligations and restrictions on the control of persons within the territories of related Member States. The fundamental premise of the free movement of people entails that, although countries may adopt certain security measures, they should not aim to conduct border controls in the interior of the country and should only involve random checks.<sup>39</sup>

Compensatory measures (*Slov. izravnalni ukrepi*) are necessary to replace border controls that are no longer in place on the internal borders of most EU Member States. They replace these controls and ensure the security of the EU Member States and other members of the Schengen area. The aim of the measures at the internal borders and in the interior of the country is to identify illegal entry, check the legality of residence in Slovenia, and detect and prevent irregular migration and cross-border crimes.<sup>40</sup> The IBM Strategy identified two core areas and

35 The Customs Service Act (*Zakon o carinski službi* [ZCS-1 -1-UPB1], Official Gazette of the Republic of Slovenia, Nos. 103/04 – officially consolidated text, 40/09 and 9/11.

36 The Constitutional Court of the Republic of Slovenia has already ruled so in Decision No. Up-32/94.

37 Decision of the Constitutional Court of the Republic of Slovenia No. Up-1293/08-24, of 6 July 2011, Point 25. The Constitutional Court emphasises that the State has the sovereign right to control persons and objects crossing the state border, to ensure its security and the security of its population. See also Mozetič, 2009, pp. 3–15.

38 The Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*), Official Gazette of the Republic of Slovenia, Nos. 33/91, 42/97, 66/00, 24/03, 69/04, 68/06, 47/13, 47/13, 75/16 and 92/21. See also Constitutional Court Decision No. U-I-272/98.

39 See Art. 21 of the Schengen Borders Code, which stipulates that the application of compensatory measures must not have the same effect as border controls.

40 IBM Strategy, Point 5.

forms of policing: 1. control of foreigners inside the country and 2. the random and non-discriminatory application of compensatory measures.

The supervision of foreigners in the country's interior is conducted by police units through direct access to the database on the compulsory registration of the address of residence for all foreigners entering and staying in Slovenia. By contrast, compensatory measures are ensured through the effective implementation of random police checks at internal borders, which must not take the form of systematic border controls.

In this respect, a particularly problematic provision was the previously applicable State Border Control Act, which stipulated that to prevent unauthorised entries and stay in Slovenia and to prevent and detect cross-border crime, police officers were allowed to conduct checks on persons, vehicles, and belongings in the interior of the country, in addition to international transport connections and facilities important for cross-border traffic.<sup>41</sup> The legal regulation here was certainly vague and inconsistent with the *lex certa* principle and even with the Schengen Borders Code, which does not allow for targeted controls in the interior of a country. Considering the size of Slovenia, the law did not limit such activities to a specific distance from the border, as other EU countries have done.

With the 2009 amendment of the State Border Control Act (SBCA-2), the country's compensatory measures were redefined. These measures are no longer equated with similar measures taken at border-crossing points when a crossing of the national border is intended or has already been conducted but are set out separately and explained in accordance with the principle of clarity. A police officer may use the prescribed measures to uncover unauthorised entry, check the lawfulness of residence and prevent and detect irregular migration and cross-border crime only against a person who is reasonably likely to have crossed the state border. These measures include checking documents and checking the person, vehicle, and belongings. These measures are implemented on a random and non-discriminatory basis.<sup>42</sup>

---

41 Art. 35 of the State Border Control Act (*Zakon o nadzoru državne meje* [SBCA-1]), Official Gazette of the Republic of Slovenia, No. 110/06 – officially consolidated text. This law expired on 21 July 2007, that is, when SBCA-2 entered into force. The radical change in the level of legal protection of privacy in EU countries, manifested in the deterritorialised, unpredictable and diffuse implementation of compensatory measures and police controls in the interior of the country, is highlighted by Mozetič, 2009, pp. 3–15.

42 Art. 35 of the SBCA-2; In this point we can mention the case (No. 215/19) *Basu v. Germany*, where the European court of human rights (ECHR) held that there has been violation of Art. 14 (prohibition of discrimination) taken in conjunction with Art. 8. The applicant is a German national of Indian origin who lives in Berlin. The police allegedly conducted an identity check on him only because of his skin colour. He was travelling on a train which had just passed the border from the Czech Republic. When asked, the police told him that it was a random check. ECHR observes that it has found a breach of ECHR because the administrative courts declined to examine the merits of the applicant's complaint about having been treated in a discriminatory manner by the identity check.

To implement compensatory measures, police units prepare periodic risk analyses in accordance with the methodology outlined in the Common Integrated Risk Analysis Model 2.1 (CIRAM).<sup>43</sup> Based on Article 29 of the Frontex Regulation,<sup>44</sup> the CIRAM provides a common methodological framework for analysing irregular migration in EU Member States and Schengen Associated Countries. The results of the risk analyses, which are presented in the form of recommendations for responding to the identified threats, are used by police units to plan their activities to prevent irregular migration using compensatory measures. This considers the geography of the area in which the police unit operates, infrastructure in the area, human resource capabilities of the police unit, equipment available, and operational findings of the police unit.

In addition to the above recommendations, police units prepare risk profiles describing the most frequent or new methods and areas of unauthorised border crossings and most frequent means of transport for irregular migrants. Profiles are also being prepared to identify the most frequently stolen or newly stolen vehicles and other items that may be the subject of cross-border crime, such as illegal drugs and weapons. Risk profiles are only tools for targeted police action and, in no way, constitute an obligation to act in all cases where police officers encounter persons or objects listed in the risk profiles.

When checking a person as part of a compensatory measure, a police officer should run their hands over the person's clothing and examine the contents of any objects in the person's possessions, under their control, or in the vehicle.<sup>45</sup> Examination of a vehicle comprises an external and internal inspection of the vehicle, including its hidden parts.<sup>46</sup>

Compensatory measures are more adequately regulated than measures implemented in the context of border controls. The requirement of a reasonable likelihood that someone has crossed the state border and the further requirement of suspicion of a prohibited act to conduct a check on a person, their belongings, and vehicle, exclude the possibility of systematic and discriminatory police action. In the context of these measures, the law does not allow for greater encroachment on personal rights, such as body search or search through belongings and vehicles by disassembling individual parts. However, in the event of the discovery of objects that may be confiscated under the law governing criminal proceedings or the law governing misdemeanour proceedings, the law refers to the continuation

---

43 European Border and Coast Guard Agency (FRONTEx): Common Integrated Risk Analysis Model 2.1. [Online]. Available at: <https://prd.frontex.europa.eu/document/common-integrated-risk-analysis-model-2-1/> (Accessed: 17 July 2023).

44 Regulation (EU) No. 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard and repealing Regulations (EU) No. 1052/2013 and (EU) No. 2016/1624, *OJ L 295*, 14 November 2019, pp. 1–131.

45 Art. 35b(4) of the SBCA-2.

46 Art. 35b(5) of the SBCA-2.

of proceedings under these laws, thus satisfying formal procedural requirements and safeguards in misdemeanour and criminal proceedings.

When conducting police tasks within the free movement zone, the police not only have powers under the SBCA-2 but also all the general powers under the PTPA, as the control of the state border and foreigners is one of the general tasks of the police under this Act. Some general police powers under the Act have also been specifically adapted to the problem of dealing with foreigners in the interior of the country.

Thus, pursuant to Article 57 of the PTPA, the police may bring foreigners who do not fulfil the conditions for entry into, transit through, or exit from a country or territory party to the Convention implementing the Schengen Agreement to official police premises, to the official premises of another authority, or to a specified place.<sup>47</sup> Such an arrest is a temporary restriction of movement. The same law further suggests that police officers may detain for up to 48 hours a person who is to be handed over to foreign security authorities or who has been received from foreign security authorities and is to be handed over to the competent authority.<sup>48</sup> As detention constitutes primary interference with the right to freedom of movement, the detained person is entitled to all the rights of a person deprived of their liberty.<sup>49</sup>

One of the compensatory measures arising from the commitments of the Convention implementing the Schengen Agreement is the power of covert recording and targeted controls. According to the PTPA, this measure, which is ordered by the public prosecutor if there are reasonable grounds for suspicion of catalogued offences, applies to persons and vehicles.<sup>50</sup> Covert recording refers to finding a person or vehicle against whom measures have been ordered and gathering certain information. This information includes details of the person or vehicle; the place, time, and reasons for the control; the route and planned destination; the people accompanying the person being searched for; the vehicle used or the items carried by the person; and other relevant circumstances communicated to the authority that ordered the alert.<sup>51</sup> Targeted control involves a body search and thorough vehicle search based on the national law governing the search procedure. If the national law does not allow such a search, only a covert recording is made.<sup>52</sup> Thus, the legal provision is correct as it only allows such a measure to be conducted if there is a sufficiently high standard of proof, if there are reasonable grounds for suspecting the catalogued serious crimes have been committed, and if the public prosecutor has issued a written order to that effect. The provision

---

47 Art. 57(2) indent 4 of the PTPA.

48 *Ibid.*, Art. 64 indent 4. For more on this, see: commentary by Senčar, A. in Žaberl et al., 2015.

49 For more on this see Klemenčič, Kečanović and Žaberl, 2002, pp. 121–126.

50 Art. 45 of the PTPA.

51 Art. 44(1) and (4) of the PTPA.

52 Art. 44(3) of the PTPA.

that the search of a person or vehicle may only be conducted in accordance with national law provides for both *ex ante* and *ex post* judicial protection.

### **3. Police procedure and measures in the event of unauthorised crossing of the state border**

The procedures and police measures in border controls and compensatory measures in the interior of the country differ depending on how the border is crossed and the status of foreigners crossing the state border: a) the procedure followed by police officers when dealing with foreigners who enter Slovenia legally; b) the procedure followed by police officers when dealing with foreigners who enter Slovenia illegally; c) the procedure followed by police officers when dealing with foreigners applying for international protection.

The Aliens Act (FA-2-UPB9) sets out rules for entry and exit for all non-citizens of Slovenia. In addition to the conditions and forms of entry at internal and external Schengen borders, it determines what constitutes unauthorised entry into the country. Article 12 of the Aliens Act provides that foreign entry into Slovenia is deemed illegal if: a) they avoid border checks at the border-crossing point when it is in operation; b) they avoid border checks outside or at border crossing point when it is not in operation; c) when entering Slovenia, they use foreign, forged or otherwise altered travel and other documents required for entry, or provide false information to border control authorities, or deliberately omit information regarding an altered name or a new document issued at the time when a valid measure is published in the Schengen Information System or national registers; d) they enter Slovenia at the internal Schengen border without an appropriate travel document or other travel document or do not have an entry permit; e) they enter Slovenia at the internal border, although the period for which they were prohibited from entering the country has not yet expired.

Police publish annual and biannual activity reports on their website.<sup>53</sup> The 2022 Work Report lists, among other things, the number of people processed for illegal border crossings over the last ten years.<sup>54</sup> The number of unauthorised border crossings has increased significantly over the past two years.

---

53 The website of the Slovenian Police is [Online]. Available at: [www.policija.si](http://www.policija.si).

54 Ministry of Interior, Police, 2023, p. 142. Statistics in the annual and biannual reports on illegal migration also include: the number of total violations of the FA-2-UPB9; the number of violations of SBCA-2; nationality and number of persons turned away at border crossing points; number, type and country of origin of forged documents detected at border controls; nationality of persons attempting to misuse documents at border crossing points; the number of unauthorised stays detected; the number and nationality of persons processed for evading border controls; the number and nationality of persons issued with return decisions; the number and nationality of persons accommodated in the centre for foreign nationals; and the number and nationality of persons removed from the country.

**Table 1:** The number of persons processed for illegal border crossings<sup>55</sup>

Year	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Number	895	731	452	1,110	1,944	9,263	16,260	14,639	10,197	32,025

### ■ 3.1. Police procedure

In accordance with Article 40 of the PTPA, the police first conduct a procedure to establish the identity of a person they suspect has entered the country illegally. After the unauthorised entry has been established, an initial information interview is conducted in a language or manner that the person can understand, followed by a security check, as provided for in Article 51 of the PTPA, and the person is brought to police premises, as provided for in Article 57 of the PTPA.<sup>56</sup> A person who has illegally entered the country is interviewed at police premises to establish the facts and circumstances of unauthorised entry. The findings are used in procedures involving migrants and form an integral part of all subsequent decisions made by the police.

At the beginning of the interview, the police determines which language the person speaks and whether a translator is required. The police have contracts with translators for most languages understood and spoken by people who have most often been processed for illegal entry in the past or who the police expect to need in their dealings with foreigners. If the police do not have a contract with a translator for a particular rare language, they can avail the services of another translator who can translate that language and pay for the service according to the criteria applicable to contract translators. If a translator is required, the police will stop the interview and wait for the translator to arrive.

After the interview, the police make an official record of the person's statement. The official record is signed by the police officer who conducted the interview, the foreigner interviewed and the translator, if present, during the interview. The official record is used as an annex in all subsequent procedures involving the person.

### ■ 3.2. Legal protection for irregular migrants

#### 3.2.1. Legal advice and the return procedure

At the beginning of the procedure, police inform the person who has illegally crossed the border about the possibility of receiving legal advice in the return

55 Source: Ministry of Interior of the Republic of Slovenia, Police [Online]. Available at: <https://www.policija.si/o-slovenski-policiji/statistika/mejna-problematika/nedovoljene-migracije-na-obmocju-republike-slovenije>.

56 The second paragraph of Art. 57 of the PTPA provides, among other conditions, that a police officer may conduct a warrantless arrest of a foreigner who does not fulfil the conditions for entry into, transit through or exit from a country or territory party to the Schengen Implementing Convention.

procedure. Legal advice is provided by a contracted NGO or another service that provides advisors with appropriate legal expertise. The person is provided an information leaflet with basic information on how to follow the procedure and the contact details of the contracted NGO. Furthermore, the person is informed that they may express their intentions to apply for international protection.

The obligation to provide legal advice in EU law is laid down in Article 13/3 of Directive 2008/115/EU (hereinafter the Return Directive).<sup>57</sup> In Slovenia, it is implemented directly based on the above directive. The police will select, by public tender, a suitable NGO or other service that can be present during the return procedure and provide legal advice to the person undergoing the procedure at request. A contract is concluded with the selected NGO or other service for a three-year period. Six months before the contract expires, the police reissue a public call for tender for a new contract service. There are no restrictions, either statutory or otherwise, on selecting the same contracting party. In addition to the NGO's duty and contractual obligations, the contract determines the payment of the costs of independent observation of the proceedings, which is the obligation of the police.

A representative of the contracted NGO or other service may provide legal assistance during the procedure and ensure that the person's fundamental human rights under the Constitution, international conventions, and procedural rights under FA-2-UPB9 are guaranteed. When a person decides to have a representative of the NGO present, the police procedure is suspended until the arrival of the representative of the contracted NGO. A representative of the NGO is present in the police unit dealing with the person at all times during the proceedings or as long as the person concerned wishes. A contracted NGO or other service prepares an annual report on its activities and findings, which it is obliged to submit to the police.

Within the scope of their powers under the Ombudsman Act,<sup>58</sup> the Ombudsman periodically visits police stations where migrants are apprehended and detained. During these visits, regular checks concerning the provision of legal advice to migrants who illegally entered the country and are the subject of police proceedings are performed. The Ombudsman publishes the findings of direct visits to various police forces in the country in the form of recommendations in the annual activity report.

---

57 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, *OJ L 348, 24 December 2008, pp. 98–107.*

58 The Human Rights Ombudsman Act (*Zakon o varuhu človekovih pravic [HROA-UPB2]*) Official Gazette of the Republic of Slovenia, No. 69/17.

### 3.2.2. *Specifics of the procedure for unaccompanied minors*

During the procedure, if the person is an unaccompanied minor, the special provision of Article 82 of the FA-2-UPB9, which prescribes the mandatory involvement of a guardian for the specific case, is immediately applied. For this purpose, a protocol for cooperation between Social Work Centres and police in providing assistance to unaccompanied minors has been established. The Protocol regulates the specificities of procedures against unaccompanied minors who are being processed by the police for unauthorised entry into the country.

The police inform the nearest competent Social Work Centre, whose duties are laid down in the Social Assistance Act.<sup>59</sup> Although FA-2-UPB9 does not include this in its provisions, in practice, the return procedure for unaccompanied minors is suspended until a guardian is appointed for the specific case. The guardian is appointed by the competent Social Work Centre through an official decision. The decision is prepared in accordance with the provisions of the General Administrative Procedure Act,<sup>60</sup> which is the *lex generalis* for the implementation of administrative procedures in Slovenia.

### 3.2.3. *International protection*

In Slovenia, international protection is regulated by the International Protection Act (IPA-1-UPB1). The IPA-1-UPB1 regime essentially constitutes a normative concretisation of the constitutional right to international protection (i.e. the right to asylum) by specifying the content and procedure for obtaining refugee or subsidiary protection status.

Under the provisions of IPA-1-UPB1, refugee status is granted to a third-country national who, owing to a well-founded fear of being persecuted for reasons of belonging to a particular racial or ethnic group, religion, nationality, membership of a particular social group or political opinion, is outside the country of his or her nationality and is unable or, owing to fear, is unwilling to enjoy the protection of that country, or to a stateless person who is outside the country of their habitual residence and, owing to well-founded fear, is unable or unwilling to return to that country.<sup>61</sup> Subsidiary protection status shall be granted to a third country national or stateless person who does not qualify for refugee status if there are substantial grounds for believing that they would, on return to the country of origin or, in the case of a stateless person, the country of last habitual residence, be at real risk of suffering serious harm.<sup>62</sup>

59 The Social Assistance Act (*Zakon o socialnem varstvu* [ZSV-UPB2]), Official Gazette of the Republic of Slovenia, Nos. 3/07 – officially consolidated text, 57/12, 39/16, 29/17, 54/17 and 28/19.

60 The General Administrative Procedure Act (*Zakon o splošnem upravnem postopku* [GAPA-UPB2]), Official Gazette of the Republic of Slovenia, Nos. 24/06 – officially consolidated text, 126/07, 65/08, 8/10 and 82/13.

61 Art. 20(2) of the IPA-1-UPB1. See also Klemenčič, Kečanović and Žaberl, 2002.

62 Art. 20(3) of the IPA-1-UPB1.



IPA-1-UPB1 stipulates that a person who expresses the intention to apply for international protection in Slovenia and has illegally entered the country or illegally prolonged their stay must do so as soon as possible.<sup>63</sup> However, at any stage of the procedure for dealing with a person who has entered the country illegally, the police are obliged to establish facts and circumstances indicating that the person may be a refugee under the Geneva Convention.<sup>64</sup> At any time during the procedure, a person may express their wish to apply for international protection. In this case, the police will stop the return procedure and conduct a preliminary procedure under Paragraph 1 of Article 42 of IPA-1-UPB1.

The preliminary procedure is regulated in more detail in the rules on the procedure for aliens who wish to apply for international protection in Slovenia and on the procedure for accepting applications for international protection.<sup>65</sup> Through this procedure, the person's identity and the route by which they entered Slovenia are established. The police then fill out the registration form provided for in Paragraph 2 of Article 42 of IPA-1-UPB1 and accept the person's declaration of intention to apply for international protection. The declaration can be handwritten by the person in their own language and translated by a translator, or written by the police with the help of a translator; however, in this case, it must also be signed by the person concerned. When the declaration is written by the police on behalf of the foreigner, it is read aloud to the foreigner before they sign it. By signing, the person agrees to the contents of the declaration. These documents, together with any identification documents possessed by the person, are handed over to the competent authority for the reception and processing of applications for international protection. The police organise transport and escort the person who has expressed the intention to apply for international protection to the seat of the competent administrative authority. When several people express their intention to apply for international protection with a particular police unit and need to be transported to a competent administrative authority or to an accommodation facility for applicants for international protection, the police organise transport with a contracting party. Police pay for transport using funds earmarked for this purpose.

A person who has expressed an intention to apply for international protection may not be returned to or removed from Slovenia until the application has been lodged, except in the case of extradition owing to criminal proceedings against the person in other countries or before the International Criminal Court,

---

63 Art. 35 of the IPA-1-UPB1.

64 *Convention* relating to the Status of *Refugees* (189 U.N.T.S. 150, entered into force 22 April 1954). United Nations, 1951.

65 Rules on the procedure for aliens who wish to apply for international protection in Slovenia and on the procedure for accepting applications for international protection (*Pravilnik o postopku s tujcem, ki izrazi namen podati prošnjo za mednarodno zaščito v Republiki Sloveniji, ter postopku sprejema prošnje za mednarodno zaščito*), Official Gazette of the Republic of Slovenia, Nos. 173/21 and 131/22.

or if Slovenia would be in breach of its international obligations if it did not extradite the person.<sup>66</sup>

The procedure for recognising international protection begins when the preliminary procedure has been completed and the person lodges an application for international protection or subsidiary protection status with the competent administrative authority.<sup>67</sup> The application may be made by any person of legal age, individually, on their own behalf, or orally on the record. Exceptionally, applications can be lodged electronically or in writing.<sup>68</sup> The Ministry of the Interior is the administrative authority responsible for processing the applications.<sup>69</sup>

When applying, a person is informed of the possibility of legal aid provided in the form of a refugee counsellor. The refugee counsellor provides support and legal assistance in procedures for recognising international protection and legal remedy proceedings before the Administrative Court and Supreme Court of the Republic of Slovenia.<sup>70</sup> The Ministry of Justice prepares and publishes a public call for refugee counsellors in the Official Gazette of the Republic of Slovenia and appoints them for five years. Furthermore, the Ministry may dismiss a refugee counsellor if it is established that the person no longer fulfils the conditions for the post, if the refugee counsellor wishes, or if it is established that the refugee counsellor has concealed essential information about an applicant for international protection based on which the applicant is not entitled to international protection.<sup>71</sup> The Ministry maintains a directory of refugee counsellors containing personal data on refugee counsellors, the Ministry of Justice's record-keeping obligations, and the obligations of refugee counsellors to notify them of changes to personal data, including information on the counsellor's availability.<sup>72</sup> The refugee counsellor is entitled to a fee for the work they perform and to be reimbursed for the costs of legal assistance provided. The Ministry of Justice provides funds for fees and reimbursements.<sup>73</sup>

Since 2019, the Ministry of the Interior has been publishing monthly data on the number and nationality of people who have applied for international

---

66 Art. 36 of the IPA-1-UPB1. In his 2021 report, the Ombudsman noted that migrants were often returned to neighbouring countries, particularly Croatia, from which they entered Slovenia without being processed for asylum. He further stated that the failure to follow due process of law meant that appeals to the competent authorities were not enabled and that the competent authorities had not properly documented asylum applications. Migrants also had no access to legal aid.

67 Art. 44(1) of the IPA-1-UPB1.

68 Art. 45(1) of the IPA-1-UPB1.

69 Art. 7(2) of the IPA-1-UPB1. Within the Ministry, applications are handled by the Migration Directorate at the International Protection Procedures Division.

70 Art. 9 of the IPA-1-UPB1.

71 Art. 10 of the IPA-1-UPB1.

72 Art. 10 of the IPA-1-UPB1.

73 Art. 11 of the IPA-1-UPB1.

protection on its publicly accessible website. The data indicate that the number of applications almost doubled between 2020 and 2022.

**Table 2.** The number of applications for international protection<sup>74</sup>

Year	2019	2020	2021	2022
Number	3,821	3,542	5,301	6,787

Before deciding on the application, the competent authority conducts a personal interview with the applicant for international protection. During the personal interview, the authority responsible for examining the application for international protection re-establishes the applicant's identity and the reasons for lodging the application for international protection, although these circumstances have already been established in the previous procedure. Any other facts and circumstances that may be relevant to the decision in the procedure are also established. The applicant must mention all facts and circumstances that justify their fear of persecution or serious harm. Thus, the burden of proof for obtaining international protection is on the applicant for international protection.<sup>75</sup>

A person applying for international protection may have their movements temporarily restricted by the decision-making authority, in accordance with the conditions laid down in IPA-1-UPB1. A person's movement may be restricted if circumstances indicate that the person is likely to escape or leave Slovenia. Movement may be restricted to the accommodation area of the Asylum Centre. An appeal against the decision to restrict movement may be brought within three days before the Administrative Court of Slovenia. The Administrative Court must make a decision within three days of hearing a person whose movement has been restricted.<sup>76</sup>

They must provide all documentation and available evidence to support their applications. When verifying the conditions for international protection, the official considers, *inter alia*, the applicant's statements, the documents and evidence obtained, general information on the country of origin (in particular, on the state of human rights and fundamental freedoms, the sociopolitical situation, and the legislation adopted), and specific information on the country of origin (i.e. detailed and in-depth information related to the specific case). The fact that the applicant has already been subjected to persecution or serious harm, or has been directly threatened with persecution or serious harm, is a serious indication under IPA-1-UPB1 of the applicant's well-founded fear of persecution or risk of

74 Source: Ministry of Interior of the Republic of Slovenia [Online]. Available at: <https://www.gov.si/podrocja/drzava-in-druzba/priseljevanje-v-slovenijo/> (Accessed: 17 July 2023).

75 Arts. 21 and 46 of the IPA-1-UPB1.

76 Art. 84 of the IPA-1-UPB1. Pursuant to the provisions of FA-2-UPB9, movement may also be restricted for a person who is accommodated in an Aliens Centre and is in the process of being removed from the country.

serious harm owing to the applicant's membership of a particular race, ethnic or social group, nation, religion or political opinion. The entities that may conduct persecution or cause serious harm, as defined in Articles 26 and 27 of this Law, are the State, political parties or organisations controlling the State or a substantial part of its territory and, under certain conditions, non-State entities.<sup>77</sup>

The competent authority decides whether to accept or reject the application.<sup>78</sup> If the application is accepted, the person is granted international protection status (i.e. refugee or subsidiary protection status). If the application is rejected, the competent authority shall, in accordance with Paragraph 10 of Article 49 of IPA-1-UPB1, set a time limit of 10–30 days for voluntary departure by means of a single decision rejecting the application for international protection. Within this time limit, the person must leave Slovenia, the territories of the Member States of the European Union, and the territories of the signatory states of the Schengen Implementing Convention.<sup>79</sup>

If the applicant is already receiving assistance or protection from United Nations bodies and agencies (with the exception of the High Commissioner for Refugees), if there are reasonable grounds to suspect that they have committed a crime (against peace, a war crime, crime against humanity or serious crime of a non-political nature in another country before entering Slovenia), if reasonable grounds exist that they should be considered a danger to the security or territorial integrity of Slovenia (because of a threat to its sovereignty or constitutional order, if they pose a danger to Slovenia following a final conviction for a serious crime and for other reasons specified in the law), the competent authority may exclude the applicant from the procedure for international protection.<sup>80</sup>

If the person has already been granted international protection status by another EU Member State, or if another Member State is responsible for examining the application under the criteria set out in Regulation 604/2013/EU,<sup>81</sup> the application for international protection is inadmissible under IPA-1-UPB1.<sup>82</sup> In this case, the competent authority follows the procedures set out in Regulation

---

77 Arts. 21–27 of the IPA-1-UPB1.

78 Art. 49 of the IPA-1-UPB1.

79 Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, *OJ L 239*, 22 September 2000, pp. 19–62.

80 Art. 31 of the IPA-1-UPB1.

81 Regulation (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), *OJ L 180*, 29 June 2013, pp. 31–59.

82 Art. 51 of the IPA-1-UPB1.

603/2013/EU,<sup>83</sup> which lays down the criteria for determining the Member State responsible for examining an application for international protection. An application for international protection may also be unfounded if the person has arrived through countries that are considered first safe countries of entry.<sup>84</sup> The competent authority has drawn up a list of such countries, including all EU Member States and certain third countries.

A person whose application for international protection has been rejected is addressed in the subsequent procedure, in accordance with the provisions of FA-2-UPB9. IPA-1-UPB1 also provides for the possibility of reapplying for international protection, which is open to all persons whose application for international protection has been rejected or whose procedure for obtaining international protection has been suspended for various reasons. The competent authority examining applications for international protection is obliged to make decisions on any renewed application.<sup>85</sup>

In addition to the number of applications for international protection, the Ministry of the Interior publishes statistics on applications that have been resolved, renewed, granted international protection status, rejected, discontinued or refused on its public website.

**Table 3:** The number of applications, renewed applications, resolved applications, approved applications, rejected applications, discontinuation of procedure and refused applications for international protection<sup>86</sup>

Year	Applications	Renewed applications	Resolved applications	Approved applications	Rejected applications	Discontinuation of procedure	Refused applications
2019	3,821	56	3,838	85	128	3,273	352
2020	3,548	29	3,636	89	215	2,875	457
2021	5,301	23	5,008	17	151	3,445	1,390
2022	6,787	24	6,900	203	141	3,983	2,573

83 Regulation (EU) No. 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No. 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No. 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (recast), *OJ L 180*, 29 June 2013, pp. 1–30.

84 Art. 53 of the IPA-1-UPB1.

85 Art. 64 of the IPA-1-UPB1.

86 Source: Ministry of Interior of the Republic of Slovenia [Online]. Available at: <https://www.gov.si/podrocja/drzava-in-druzba/priseljevanje-v-slovenijo/> (Accessed: 17 July 2023).

### ■ 3.3 *The return procedure*

The continuation of the procedure with a person who has illegally entered the country depends on the legal possibilities and circumstances for returning the person. The person may be returned under a bilateral agreement between two neighbouring countries or by direct return to the country of origin.

For readmission to a neighbouring country under a bilateral return agreement, the police inform the security authorities of the country of return and announce the return of the person. A person can be returned according to informal procedures between the security authorities of neighbouring countries at the level of the local police forces of both countries. During the informal procedure, the authorities of the country of return either accept or reject the person. This procedure can also be conducted in less than 12 hours after the unauthorised crossing of a state border. If the authorities of the country of return accept the person, the procedure is completed by the Slovenian Police.

If the security authorities of the country of return refuse to accept persons during the informal procedure, the evidence collected is forwarded at the national police level, and a formal notification is sent to the country of return for the persons concerned. If a formal return announcement receives a positive answer, the security authorities agree on a time to receive the persons at the border. The location where people are handed over is written in the bilateral agreement on the return of persons. If the response to the formal return notice is negative and/or if the police do not collect sufficient evidence of unauthorised entry into Slovenia from a neighbouring country, the police will conduct an offence procedure under the Minor Offences Act by issuing a payment order.<sup>87</sup>

The Human Rights Ombudsman of Slovenia has expressed various concerns related to the Slovenian authorities' readmission process. In the context of the European Network of National Human Rights Institutions (ENNHRI) project, the ombudsman draws a national report on the human rights situation of migrants at the border,<sup>88</sup> where it is stated that the majority of migrants returned to Croatia and to other neighbouring countries in readmission procedures have no legal remedy or judicial protection at their disposal. Therefore, the Slovenian Constitutional Court was suggested to ask the Court of Justice of the European Union (CJEU) to provide a preliminary ruling on the applicability of the Bilateral Agreement.

In relation to the current situation in Slovenia, where all land borders are considered Schengen internal borders, the CJEU in the *Arib*<sup>89</sup> case considered whether an internal border where border controls were reintroduced pursuant to the Schengen Code could be equated to an external border for the Return Directive. The CJEU noted that the Return Directive would continue to apply if a Member

87 The Minor Offences Act (*Zakon o prekrških* [MOA-1-UPB8]), Official Gazette of the Republic of Slovenia, Nos. 29/11 – officially consolidated text, 21/13 and 111/13.

88 National Report on the situation of human rights of migrants at the border, 2021.

89 CJEU, C-444/17, *Préfet des Pyrénées-Orientales v. Abdelaziz Arib* [GC], 19 March 2019.

State reintroduces border controls on its internal borders. The Court ruled that the concepts of internal and external borders are mutually exclusive and that internal borders at which border controls are reinstated cannot be considered external borders. The CJEU concluded that opting out of the application of the directive in border cases does not cover the situation of migrants in an irregular situation, who were apprehended at an internal border where border controls have been reintroduced.<sup>90</sup>

A person who cannot be returned to their country of origin or a third country is issued with a return decision by the competent authority. The decision sets a deadline between 10 and 30 days for a person to leave voluntarily. The number of days of voluntary departure depends on personal circumstances and the findings of the procedure. A person who has been given a deadline for voluntary departure may apply to extend the deadline for voluntary departure. The request must state the reasons for extending the voluntary departure deadline. There is no limit to the number of extensions of the voluntary departure deadline, however, the number of days for voluntary departure is limited (up to a maximum of 30 days). The voluntary departure decision also determines the conditions for a ban on entry into Slovenia. The ban on entry also applies to the territories of the Member States of the European Union and signatory states of the Schengen Implementing Convention. However, the ban on entry does not take effect if a person leaves Slovenia in accordance with the deadline set for voluntary departure. The person proves this by declaring they have left Slovenia and crossed the EU's external border by implementing a voluntary departure decision and obtaining the relevant exit stamp from border control.<sup>91</sup>

### ■ 3.4 Accommodation in the Aliens Centre

If a person who has not been granted voluntary departure by a return decision is in danger of escaping, they are banned from entering Slovenia for one to five years.<sup>92</sup> They are accommodated in the Aliens Centre by the Police, where they are placed under restriction of movement by a decision pursuant to Article 76 of the FA-2-UPB9 to prepare for or effect the removal, handover or extradition of the person to be removed from the country. The restriction of movement in the Aliens Centre may last for the minimum period necessary to remove a person from the country, but no longer than six months. The restriction of movement can be extended for an additional six months if the person does not cooperate in the procedure or if there is a delay in obtaining travel documents. However, the police must reasonably expect that it will be possible to remove the person from the country within the extended period of restriction of movement. A person

90 Handbook on European law relating to asylum, borders and immigration, Edition 2020.

91 Arts. 65–67 of the FA-2-UPB9.

92 Art. 68 of the FA-2-UPB9.

whose movement has been restricted by the police has the right to bring an action with the Administrative Court against the detention decision within three days of the service of the decision. Foreigners do not have the right to free legal help to prepare for such actions or be represented in court. The appeal does not stay the enforcement, therefore, the Administrative Court must rule on the action within six days.<sup>93</sup>

In 2015, the Administrative Court initiated a procedure before the Constitutional Court, claiming that detained migrants did not have fast and effective access to judicial remedy regarding detention. However, the Constitutional Court dismissed the case without reviewing the constitutionality of the relevant regulation.

In addition to an appeal against a decision to restrict movement, the law provides for an examination of the grounds for restricting movement at the Aliens Centre. Fifteen days before the end of the three-month period of restriction of movement, the police must provide the person with all available documentation related to the person's return. Before three months have expired after a restriction of movement is imposed, the Ministry of the Interior must, *ex officio*, determine the validity of the restriction of movement for a person whose movement has been restricted for three months. The Administrative Court shall, *ex officio*, determine the grounds for restriction of movement against persons who have been restricted for more than three months. If the authorities examining the grounds for restriction of movement determine that the conditions for restriction of movement are no longer met, they shall order the police to immediately release the person from the Aliens Centre.<sup>94</sup>

Restriction of movement is not the only option available to police in situations where people need to be removed from the country; however, this is not possible because of objective circumstances. *Ex officio*, as soon as possible, after the restriction of movement is imposed, the person concerned may be subjected to less restrictive measures of residing outside the Aliens Centre by being assigned a place of residence, being obliged to report regularly to the nearest police station, and having to present their identity documents to the police for safekeeping. A person can also apply for such a measure, and the police are obliged to consider all the circumstances of each case before deciding on a more lenient measure.<sup>95</sup>

During the return procedure, if circumstances arise while the person is staying at the Aliens Centre, making it impossible to return or remove the person from the country, the police will issue a decision that allows the person to stay. This decision allows the person to stay temporarily in Slovenia. Such permission to stay is issued for a period of six months and may be extended *ex officio* for as

---

93 Arts. 78–79 of the FA-2-UPB9.

94 Art. 79a of the FA-2-UPB9.

95 Art. 81 of the FA-2-UPB9.



long as there are reasons why the person cannot be removed from the country. There is no limit to the number of times the permission to stay may be extended, only to the period of validity of the provision (up to a maximum of six months).<sup>96</sup> A person who is allowed to stay temporarily in Slovenia has the right to receive emergency healthcare and basic social care. Minors also have the right to attend primary schools. Police are liable for costs incurred.<sup>97</sup>

Unaccompanied minors or families with minors who are in return procedures, are to be accommodated in agreement with an appointed guardian in a suitable institution for the accommodation of minors.<sup>98</sup> Only if this is not possible are they detained at the Aliens Centre. However, despite the long-standing advocacy by the Ombudsman and other stakeholders, the authorities have failed to accommodate minors in a suitable institution, and practically all minors in return procedures are detained at the Aliens Centre.<sup>99</sup>

#### 4. Conclusion

An analysis of strategic documents and legislation in the field of police operations and the prevention of irregular migration revealed that Slovenia has a satisfactory framework in this area. Strategic documents and national legislation are aligned with EU law. The basic police legislation and the sectoral legislation on state border control and control over the movement and residence of foreigners in Slovenia provide the police with an adequate legal basis for action and effective implementation of police tasks in this area of police work.

We can be somewhat critical of the regime under SBCA-2, which allows the police to body search a person, their belongings and means of transport when conducting border control subject to the lowest standard of proof: suspicion. In such cases, the intensity of interference with personal human rights may require prior judicial review, at least in the case of a body search. Considering the substantial pressure owing to irregular migration in 2020, the Ombudsman also alerted the police to inconsistencies connected with the intentions of foreigners concerned with seeking international protection, which was not always and consistently respected. Consequently, those who should have been treated under the provisions of the International Protection Act (IPA-1-UPB1) were returned to Croatia.

As of 1 January 2023, the Republic of Croatia joined the Schengen Area, which means that Slovenia has become a member of the EU without internal border controls. This calls for a reanalysis of the security situation and an adaptation of the organisation of border surveillance and protection already being conducted

---

<sup>96</sup> Art. 73 of the FA-2-UPB9.

<sup>97</sup> Art. 75 of the FA-2-UPB9.

<sup>98</sup> Art. 82 of the FA-2-UPB9.

<sup>99</sup> National Report on the situation of human rights of migrants at the border, 2021.

by the Slovenian Police. It has begun to enact organisational and staffing changes, with the bulk of the staff guarding the external Schengen border redeployed to units tasked with compensatory measures.

This is particularly important, as analyses have indicated that the number of illegal border crossings has risen sharply in recent years. Although Slovenia is recognised as a migratory country that foreigners merely pass through on their way to other countries, it is obliged under the Schengen Borders Code to effectively prevent illegal and unauthorised migration.

Finally, the National Security Strategy appears correct in stating that the pressure of illegal migration flows on Slovenia will continue to significantly determine the future socioeconomic and political security situation, both globally and in the region. A further increase in illegal or mass migration poses a potential threat to the security and well-being of the population and a significant burden on the national security system of Slovenia. The increased migration pressure on Slovenia and the wider environment could indirectly lead to an increase in extremism, a deterioration of the security situation, and changes in internal and external policies.

## Bibliography

- Celar, B. (2021) *Slovenija in njene meje v treh zgodovinskih obdobjih: 1914-1920, 1941-1975, 1991-2021*. Ljubljana: Zveza policijskih veteranskih društev Sever.
- Flander, B., Tičar, B. (2019) 'The Right to Security - An Outline of the Legal Regulation at the State and Local Levels in Slovenia', *Revija za kriminalistiko in kriminologijo*, 70(5), pp. 422-424.
- Klemenčič, G., Kečanović, B., Žaberl, M. (2002) *Vaše pravice v policijskih postopkih*. Ljubljana: Založba Pasadena.
- Medica, K. (2007) 'Sodobne migracije in dileme varnosti', *Socialno delo*, 46(4), pp. 125-133 [Online]. Available at: <https://www.dlib.si/stream/URN:NBN:SI:DOC-1MADSF00/8e8880c7-150e-4abd-894d-dd4acb12ab0a/PDF> (Accessed: 20 June 2023).
- Ministry of Interior, Police (2023) *Letno poročilo o delu policije 2022* [Online]. Available at: <https://www.policija.si/images/stories/Statistika/LetnaPorocila/PDF/LetnoPorocilo2022.pdf> (Accessed: 17 June 2023).
- Mozetič, P. (2009) 'Nezakonite migracije in spreminjanje pojmovanja zasebnosti v družbi kontrole', *Revija za kriminalistiko in kriminologijo*, 60(1), pp. 3-15.
- Policija (2023) *Nedovoljene migracije v obdobju od 1. januarja do 31. maja 2023* [Online]. Available at: <https://www.policija.si/images/stories/Statistika/MejnaProblematika/IlegalneMigracije/2023/Maj2023.pdf> (Accessed: 26 July 2023).
- Ručman, A. B., Šulc, A. (2019) 'Medijsko (so)ustvarjanje begunske in varnostne krize in njen odsev na državni in lokalni ravni', *Revija za kriminalistiko in kriminologijo*, 70(1), pp. 5-20.
- Žaberl, M. (2006) *Temelji policijskih pooblastil*. 1<sup>st</sup> edn. Ljubljana: Fakulteta za varnostne vede.
- Žaberl, M., Nunič, M., Bobnar, T., Ferenc, R., Hudrič, G., Senčar, A. (2015) *Zakon o nalogah in pooblastilih policije s komentarjem*. Ljubljana: GV Založba.
- *Handbook on European law relating to asylum, borders and immigration*, 3<sup>rd</sup> edn. (2020) European Union Agency for Fundamental Rights [Online]. Available at: <https://fra.europa.eu/en/publication/2020/handbook-european-law-relating-asylum-borders-and-immigration-edition-2020> (Accessed: 24 September 2023).
- *National Report on the Situation of human rights of migrants at the borders, July 2021* (2021) Human Rights Ombudsman of the Republic of Slovenia, ENNHRI. [Online]. Available at: <https://ennhri.org/wp-content/uploads/2021/08/Slovenian-National-Report.pdf> (Accessed: 17 July 2023).