



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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Committee against Torture

**Consideration of reports submitted by States
parties under article 19 of the Convention**

Slovenia

Addendum

**Follow-up information provided by Slovenia to the concluding
observations of the Committee against Torture (CAT/C/SVN/CO/3)***

[21 June 2012]

* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited.

Replies of the Republic of Slovenia to the recommendations contained in paragraphs 9, 12, 17 and 21 of the concluding observations of the Committee against Torture as of 20 June 2011

Fundamental legal safeguards

Reply to the recommendations contained in paragraph 9 of the concluding observations (CAT/C/SVN/CO/3)

Position of the Republic of Slovenia:

1. The Republic of Slovenia can report that the computerized records of detained persons, as existed already, have been supplemented with all relevant information on the implementation of detention. In addition to stating the legal basis for detention, the police annotates in police records all other circumstances that are important for consistent monitoring of the implementation of detention, namely:

- Time and place of order on detention, data on official person that ordered it and of the police unit to which the official person belongs;
- The name of the police unit, where detention is carried out, the name of the official person and the time of the entry into the detention of the person (bringing in the police unit and the placing in a cell);
- Details on the implementation of monitoring over the detained person and guaranteeing of rights;
- End time of detention.

Complaints, investigation and prosecution of the acts of torture

Reply to the recommendations contained in paragraph 12 of the concluding observations

Position of the Republic of Slovenia 2. To begin with, the Republic of Slovenia notes that the article 265 of the Criminal Code, which provides for a new criminal offence of torture, was effective as of 1 November 2008. As it is known, before that new Criminal Code, violations of human rights regarding the prohibition of torture and similar unlawful acts and their criminality were determined in articles 270 and 271 of the Criminal Code of 1994. As of 15 May 2012 the amended Criminal Code is in force, under the provisions of the Act on Amending the Criminal Code (KZ-1B, Official Gazette of the RS, No. 91/11) and the criminal offence of torture was transferred into the new article 135.a of the Criminal Code. Criminal offence of torture in the former article 265 of the Criminal Code was transferred because according to the description of the elements of the criminal offence does not fall within the Chapter of the Criminal Code on criminal offences against official duty and public authorizations, because the offence as a basic form can be committed by anyone, irrespective of their personal situation. Therefore, the transfer of this criminal offence was carried out in the Chapter on criminal offences against human rights and freedoms. With this action the Republic of Slovenia took into account the modern doctrinal approach to human rights violations committed by the acts of torture, which does not limit them to the status of the perpetrator, such a restriction also does not come from the first sentence of the article 18 of the Constitution of the Republic of Slovenia, which provides for an absolute ban on torture in connection with the fourth and fifth paragraph of article 15 of the Constitution of the Republic of Slovenia. The nature of these constitutional provisions justifies the transfer of this criminal offence into the Chapter on criminal offences against human rights and fundamental freedoms. Such an arrangement is properly associated with the provision of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which dictates in its article 15 the absolute exclusion of the evidence that emerged from torture, except against a "person" who obtained this evidence by torture.

3. The text of the elements of a criminal offence of torture has remained almost completely unchanged, except in the second paragraph, where the revision from editorial reasons corrected the text so that the term "silence" was replaced with a more appropriate term "by silent consent", and the provision on other person acting in official capacity was updated, a person acting with such authorization was added.

4. In the Republic of Slovenia in the period from 1 November 2008 to 24 May 2012, six cases of criminal offences under article 265 of the Criminal Code were conducted, of which there were three cases with final rulings of rejection, two are currently at the trial phase and one is in the phase of the investigation. Since this is a new criminal offence, it is therefore clear that the case law has not yet been formed, but it is only in the making. For these reasons it is not possible to perform the analysis by gender, age, ethnicity or origin of the victims, the number of complaints, investigations, prosecutions, convictions and sentences imposed, this will be done only in the event of final and publicized criminal judgments and only in accordance with information that shall be available in them, because these information were necessary for judicial decision, as decided by judicial review of the independent courts. The Republic of Slovenia may not collect and process other data, because there is no constitutional basis for such an action (arts. 41 and 61 of the Constitution of the Republic of Slovenia in connection with article 38 of the Constitution of the Republic of Slovenia). These provisions however do not restrict independent research activities of journalists or NGOs, to independently analyse or evaluate issues of personal characteristics of the victims of the criminal offence of torture.

5. In view of the situation that the Committee against Torture urges the Republic of Slovenia to ensure prompt, impartial and effective investigation of all cases of alleged torture and ill-treatment, and to prosecute perpetrators of such acts, we state that the new State Prosecutor's Office Act (Official Gazette of the RS, No. 58/11), which applies from 6 November 2011, expanded the powers of a specialized department (Department for Investigation and Prosecution of Official Persons with Special Authorisations), which is now within a Specialized State Prosecutor's Office of the Republic of Slovenia and is competent to investigate and prosecute abuses of all kinds of official persons with official authorizations. Amongst others, the Department is now responsible for investigating and prosecution of criminal offences of relevant official persons of the intelligence and security services of the Republic of Slovenia. In 2012 the European Court of Human Rights issued a judgment, which otherwise applies to the situation prior to the adoption of the new State Prosecutor's Office Act. In this case of *Butolen v. Slovenia* (no. 41356/08, 26 April 2012), it was decided that there was a violation of article 3 of the European Convention on Human Rights concerning police conduct with the complainant and the effectiveness of the investigation into this matter. This judgment is in the process of translation into Slovenian language and will be used for training of police, State prosecutors and judges, since the decision and reasons of the judgment suggest that this area requires continuous efforts to detect, investigate and prosecute criminal offences in the area of combating torture and other similar forms of unlawful practices and to raise awareness of law enforcement bodies that such acts are absolutely inadmissible.

6. As a conclusion we state that Slovenian Police has not registered criminal offences of torture under paragraph 2 of previous article 265 of the Criminal Code (as in force until 15 May 2012) from 1 November 2008, after the entry into force of the Criminal Code, which would have been suspected of official persons employed in the police force. Nor did the Police receive information from potential victims of these criminal offences.

Asylum and non-refoulement

Reply to the recommendations contained in paragraph 17(a) of the concluding observations

Position of the Republic of Slovenia:

7. The Republic of Slovenia adopted a new Aliens Act in 2011 (Official Gazette of the RS, Nos. 50/11 and 57/11-corr.), which entered into force on 27 July 2011 and applies as of 27 October 2011. The Aliens Act in the fourth paragraph of article 3 provides that the Act does not apply to aliens who have applied for international protection (applicants for international protection), and persons who have been granted international protection. International Protection Act (Official Gazette of the RS, No. 11/11 - officially consolidated text and 98/11 - Decision of the Constitutional Court) states within article 36.a the prohibition of removal of an applicant with intentions (i.e. a person who has declared its intention to apply for international protection, but his request had not yet been formally adopted) from the territory of the Republic of Slovenia in accordance with the provisions regulating entry, exit and residence of foreigners in the Republic of Slovenia (Aliens Act). Furthermore, the first paragraph of article 78 of the International Protection Act provides to the applicant for international protection the right to reside in the Republic of Slovenia, which lasts until a final or enforceable decision in the proceedings for granting international protection, that is, for the duration of the status of the applicant for international protection. Against this background, the person who has declared its intention to apply for international protection and also the claimant for international protection cannot be removed from the territory of the Republic of Slovenia - with this the Act on International Protection fully establishes the prohibition of removal.

8. The principle of non-refoulement, as an international obligation and also a principle of the legislation of European Union, becomes important only if the person is in the territory illegally, therefore, when the claimant's application for international protection is finally rejected. International Protection Act provides in article 76, paragraph 1 that if a person at the time of enforceability of the decision does not leave the territory of the Republic of Slovenia, the provisions of the Aliens Act shall apply. The fact that such person's proceedings have been finally concluded is treated under the procedure under the Act regulating the entry, exit and residence of foreigners in the Republic of Slovenia (under the Aliens Act), non-refoulement is not particularly defined in the International Protection Act. The principle of non-refoulement, as an obligation of the Republic of Slovenia from international treaties and legislation of European Union, is defined in the Aliens Act, which regulates the procedures for removal of illegally staying foreigners in the country. With the implementation of Council Directive 2008/115/EC of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals in national legislation (the Aliens Act), the improvement of definition of non-refoulement principle was implemented as well as consistency with international standards, thus the systematic and full regulation of return procedures.

9. The new Aliens Act includes a non-refoulement principle in article 72, concerning the prohibition of deportation of an alien. In that provision it is provided that the principle of non-refoulement under the Aliens Act and in accordance with the principles of customary international law constitutes an obligation of the Republic of Slovenia to not remove an alien into the country in which his life or freedom would be threatened because of his race, religion, national origin, membership of a particular social group or political opinion, or into the country in which it could be subjected to torture and other cruel, inhuman or degrading treatment or punishment. For an alien whose removal from the Republic of Slovenia would be contrary to the principle of non-refoulement, the Aliens Act provides permission to stay in the Republic of Slovenia. Staying under the Aliens Act means a license for an alien, which must be removed, to remain temporarily in the Republic of Slovenia. For an alien, who is in the Republic of Slovenia with a permission to remain, the Aliens Act provides a right to emergency health care in accordance with the Act regulating the health care and health insurance, primary care, and for school-age aliens also the right to basic education. Under the new Act on Aliens an alien, who was allowed to stay for a minimum of 24 months - since his removal from the country under article 72 of the Aliens Act (non-refoulement principle) is not allowed - may obtain a temporary residence permit.

10. Besides that, the principle of non-refoulement and its content is also one of the fundamental ideas of procedures for granting international protection, since elements of the principles are included in article 28 of the International Protection Act - in the definition of serious harm as the reason for subsidiary protection. If these elements exist, the applicant has to be granted subsidiary protection with all rights and the consequences provided by the International Protection Act.

Reply to the recommendations contained in paragraph 17(b) of the concluding observations

11. By the new Aliens Act (Official Gazette of the RS, Nos. 50/11 and 57/11-corr.), which entered into force on 27 July 2011 and applies as 27 October 2011, the Slovenian legal order implemented the Council Directive 2008/115/EC, which is implemented primarily by the provisions of Chapter VI. on Voluntary Return and Removal of Aliens. The quoted Directive ensures to a third country national (hereinafter: the alien) who is residing illegally in the territory of a Member State of the European Union, that he/she may be returned through a fair and transparent process of return.

12. As one of the key novelties of the Aliens Act, which is due to the implementation of the quoted Directive, it is necessary to highlight the decision to return as an administrative decision of the Police, which is as a rule issued to any alien who illegally resides at the territory of the Republic of Slovenia. With the decision to return the Police determines that the alien's residing in the Republic of Slovenia is illegal and sets a deadline for voluntary return, which shall be not less than seven days and no longer than 30 days, and it thus imposes to her/him an obligation to leave the country within a determined deadline. The decision on return, by which an alien has a determined deadline for voluntary return, shall be issued in the prescribed form of a return decision, given by the Rules on the Form for Return Decision and on circumstances warranting an Extension of the Deadline for Voluntary Return (Official Gazette of the RS, No. 99/11). The imposition of the decision and legal notice of an appeal from the decision to return, issued on the prescribed form, are translated into at least five foreign languages, as required by the Directive, in order to ensure understanding of the nature of the decision to an alien to whom it has been issued.

13. In the case of an alien to whom the Police has not set a deadline in the decision to return for voluntary return and, where it is in decision a prohibition of entry in the country, the return decision shall not be issued in the prescribed form, but in writing as provided by the Act on General Administrative Procedure (Official Gazette of the RS, No. 24/06-UPB2, 126/07, 65/08 and 8/10). The deadline for voluntary return shall not be determined for an alien if there exists a risk of absconding, further, if his stay in Slovenia is a threat to public order, public or national security, and if he/she did not leave the country within the period specified for voluntary return. Consequence of a final decision on his/her return, by which an alien is not set a deadline for voluntary return, but she/he is prohibited the entry, is a removal of the alien from the country.

14. An alien who has been illegally staying in the territory of the Republic of Slovenia and has been issued a decision on the return due to this, has, regardless of whether the deadline for voluntary return has been set or not, the right to legal remedy through the appeal to be lodged within three days of receipt of the decision to return. The appeal is decided by the Ministry of Interior within eight days. The appeal has suspensive effect and shall suspend the decision to return. On the basis of the concluding decision to return is therefore the alien enabled to voluntary return or he/she can be removed from the country.

15. Against the concluding decision to return the alien has a right for administrative judicial review. Action may be filed within 30 days of receipt of the final decision - before the Administrative Court of the Republic of Slovenia. Against the decision of the Administrative Court a party may, within 30 days of service of a copy of the judgment, apply for a revision, which is otherwise permitted only in certain cases, determined by statute. The Act on Administrative Disputes (Official Gazette of the RS, Nos. 105/06, 62/10 and 98/11 - Decision of the Constitutional Court) exhaustively determines when the revision is permitted, including, if the decision to be challenged in an administrative case has very serious consequences for the party.

Reply to the recommendations contained in paragraph 17(c) of the concluding observations

16. In the procedure of granting international protection against the decision by the Ministry of Internal Affairs of the Republic of Slovenia issued at the first instance, in accordance with article 74, paragraph 1 of the Act on International Protection, it is possible to file an action before the Administrative Court of the Republic of Slovenia. Action that is filed against the provision by which an application for international protection is refused, shall suspend its enforcement. Which means that it delays the removal of the alien or that the applicant whose application for international protection has been refused, has the right to remain in the Republic of Slovenia for the duration of judicial proceedings, and hence has all the rights that belong to applicants for international protection.

Reply to the recommendations contained in paragraph 17(d) of the concluding observations

17. The International Protection Act fully respects binding international principles in the area of international protection, as well as all international standards in the areas of refugee law and human rights law. The last amendments to the Act on the International Protection, which have increased some rights for applicants for international protection and for persons granted international protection, was adopted in late 2010 and on its basis eight implementing regulations were adopted in 2011, detailing the implementation of certain areas of the Act (the implementation of legal representation for unaccompanied minors, enforcement of the rights of applicants for international protection and persons with recognized international protection, the implementation of permanent resettlement procedures). In addition to this, in 2011 entered into force and into application the new Aliens Act, which amongst others, includes fully into national law the standards and guarantees in proceedings for the return and removal of aliens, which in the proceedings for granting international protection becomes important in the case of a final rejection of the application for international protection. Therefore, again, in the Aliens Act the principle of non-refoulement is defined.

Roma minority**Reply to the recommendations contained in paragraph 21 of the concluding observations****Position of the Republic of Slovenia**

18. As stated already several times, in terms of constitutional provisions and the principles of proportionality and purpose oriented processing of personal data it is not possible for the State to determine the obligation to collect and process additional data, if they are not necessary to decide on the specific rights and obligations of individuals. Certain legal-systemic and constitutional arguments of the Republic of Slovenia in this regard are provided in the position of the Republic of Slovenia on the recommendation contained in paragraph 9 of the concluding observations. Given the volume itself of ethnically motivated criminal offences, Slovenia adequately reported to the Committee on the conduct of activities of police and other authorities of the Republic of Slovenia, and it is not possible to assess that in the Republic of Slovenia ethnically motivated criminal offences are manifestly recognisable as a known problematic quantity. Therefore we repeat that the ethnic motives of criminal offences are taken into account in sentencing of perpetrators. In the light of discussions before the Committee we can stress that the Ombudsperson of the Republic of Slovenia has not recorded that anyone ever complained about the ethnically motivated criminal offences of the State (e.g. police action).

19. Concerning the strengthening of the efforts of the Republic of Slovenia against all forms of discrimination against the Roma community in the Republic of Slovenia, the Republic of Slovenia, shall, of course, further develop the current positive activities in this area.
