

Sodba Vrhovnega sodišča z dne, 9. 4. 2021

[Povezava na celotno sodbo.](#)

Povzetek: Vrhovno sodišče je v celoti pritrdilo sodbi upravnega sodišča v zadevi A. M. proti Republiki Sloveniji zaradi nezakonite izročitve Republiki Hrvaški, s čimer je Slovenija **kršila tožnikovi pravici do prepovedi vračanja in prepovedi kolektivnega izгона** ter tožnikovo **pravico do dostopa do azila iz Listine EU o temeljnih pravicah.**

Kot je razvidno iz obrazložitve, tožnik v postopku na policijski postaji ni imel dostopa do prevajalca, informacije o postopku in tožnikovih pravicah mu niso bile posredovane v njemu razumljivemu jeziku, moral je podpisovati dokumente v slovenščini, prav tako pa ni imel dostopa do pravne pomoči.

Poleg tega **policisti tožnika sploh niso obvestili, da je v postopku vračanja na Hrvaško**, kar je na glavni obravnavi potrdila tudi zagovornica obrambe z utemeljitvijo, da »je vprašanje s kakšnimi problemi bi se policisti soočali, če bi tujce predhodno seznanili,« da jih nameravajo vrniti na Hrvaško.

Tovrstno vodenje postopka po presoji sodišča predstavlja **kolektivni izgon**. Namen prepovedi kolektivnega izгона je namreč, da ima posameznik možnost predstaviti svoje individualne okoliščine, zaradi katerih bi izročitev drugi državi predstavljala tveganje, da bo podvržen nečloveškemu ravnanju, za kar bi bilo po mnenju sodišča »potrebno najmanj, da bi bil obveščen, da je v postopku vrnitve na Hrvaško«.

Da tožnik ni imel možnosti predstaviti individualnih okoliščin kaže tudi dejstvo, da je policija tožnika obravnavala skupaj z iraškim kurdom, ki je bil istočasno na policijski postaji, o vodenju postopkov proti obema posameznikoma pa obstaja le en, skupen, zapisnik. Tako naj bi po trditvah policije oba skupaj izjavila, da sta matični državi zapustila iz ekonomskih razlogov in da želita v Francijo.

Sodišče je izpostavilo, da ni verjetno, da bi oba tujca podala identično enostavno pojasnilo glede razlogov za pobeg iz matične države, poleg tega pa iz zapisnika ni razvidno niti na katero vprašanje naj bi podala ta odgovor. Zato **po mnenju sodišča obstaja utemeljen dvom, da zapisnik odraža dejanska pojasnila tožnika.**

Kot bolj kredibilno je sodišče štelo tožnikov podroben opis dogajanja pred, med in po obravnavi na policijski postaji, v katerem je tožnik večkrat izrazil namero za vložitev prošnje za mednarodno zaščito. Sodišče je tako ugotovilo, da so policisti z ignoriranjem te namere **kršili tožnikovo pravico do dostopa do azila.**

Pri tem je sodišče še izpostavilo, da je tožnikov opis postopka na policijski postaji skladen z opisi postopkov v poročilih Varuha človekovih pravic, Amnesty international in Pravno

informativnega centra nevladnih organizacij. Vsa ta poročila po mnenju sodišča kažejo na splošno slabo policijsko dokumentiranje postopkov.

Sodba tako pritrjuje ugotovitvam nevladnih organizacij, da je zavračanje dostopa do azilnega postopka sistematična praksa in ni omejena le na tožnikov primer.

Prav tako bi policija po mnenju sodišča morala upoštevati poročila nevladnih organizacij o kršitvah pravic migrantov na Hrvaškem in v Bosni in Hercegovini. Ta poročila kažejo, da Hrvaška ne obravnava prošelj za mednarodno zaščito, prosilce sistematično in mimo uradnih postopkov izganja v BiH, z njimi ravna nasilno in uničuje njihovo lastnino. Tudi tožnika je hrvaška policija takoj po vrnitvi iz Slovenije izgnala v BiH brez izdaje odločbe, česar obramba niti ni prerekala.

Obramba je sicer zatrjevala, da je Hrvaška članica EU, med katerimi velja načelo zaupanja, da spoštujejo človekove pravice. A je sodišče ta argument zavrnilo, saj je načelo zaupanja izpodbojno, poročila nevladnih organizacij pa so bila javno dostopna in bi jih policija morala poznati, saj se nanašajo na njene naloge, pri katerih je zavezana k spoštovanju človekovih pravic.

Slovenija bi tako na podlagi dostopnih informacij morala opraviti presojo tveganja, da bo tožnik na Hrvaškem podvržen nečloveškemu ravnanju. Ker tega Slovenija ni storila, je **kršila prepoved mučaja, nečloveškega in poniževalnega ravnanja.**

Posledice odločitve sodišča tako pomenijo, da mora Slovenija pri vsaki predaji tujcev Hrvaški oceniti tveganje, da bodo podvrženi nečloveškemu ravnanju, česar pa policija po dostopnih podatkih še vedno ne izvaja.

Prav tako **Slovenija še vedno ni uresničila sodbe v delu, ki ji nalaga, da tožniku omogoči vstop na ozemlje Republike Slovenije in vložitev prošnje za mednarodno zaščito.** Kljub večkratnim ponudbam tožnikovega zagovornika, da notranjemu ministrstvu nudi pomoč pri izvršitvi sodbe, ministrstvo vztraja, da mora tožnik sam doseči ozemlje Republike Slovenije, s čimer ga sili k ponovnemu poskusu prečkanja Hrvaške in izpostavlja nevarnosti nasilja hrvaške policije.

Summary of the judgment

The Supreme Court fully upheld the ruling of the Administrative Court in the case of A. M. vs. the Republic of Slovenia on unlawful extradition to the Republic of Croatia, thereby **violating the plaintiff's rights in regard to prohibition of returns and collective expulsions, as well**

as the plaintiff's right to access to an asylum procedure under the EU Charter of Fundamental Rights.

As evident from the judgment commentary, the plaintiff did not have access to an interpreter at the police station, he had to sign documents in Slovenian language, he was not provided information about the proceedings and his rights in a language he understands, nor was he provided access to legal aid.

In addition, **the police officers did not inform the plaintiff that he was in the process of being returned to Croatia**, which was also confirmed by the defense counsel at the main hearing, arguing that the question is what problems the police officers would face "if they had informed the foreigners in advance" that they intend to return them to Croatia.

In the court's judgment such conduct of the proceedings **constitutes collective expulsions**. The purpose of the prohibition of collective expulsions is to give individuals the opportunity to present their individual circumstances which put them in risk of being subjected to inhuman treatment if extradited to another country. According to the court, in order for this to take place, "it would be necessary for the person to at least be informed that he or she is in the process of being returned to Croatia."

That the plaintiff was not able to present individual circumstances is also clearly shown by the fact that the police processed him together with an Iraqi Kurd who was at the police station at the same time, and there exists only one joint transcript of the proceedings for both individuals. According to the police, the two jointly stated that "they had left their home country for economic reasons and they wanted to go to France".

The court pointed out that it was unlikely that both aliens would give an identical, simple explanation as to the reasons for fleeing their home country, and that the transcript didn't make it clear to which question they had given their answers to. Therefore, according to the court, **there is reason to doubt the transcript and how it reflects the plaintiff's factual explanations**.

The court considered the plaintiffs' detailed description of the events before, during and after the hearing at the police station to be more credible. In the description, the plaintiff repeatedly expressed his intention to file an application for international protection. The court thus found that the **police officers had violated the plaintiff's right of access to asylum by ignoring this intention**.

The court also pointed out that the plaintiff's description of the proceedings at the police station was in line with the descriptions of the proceedings in the reports of the Ombudsman, Amnesty International and the Legal Information Center of Non-Governmental Organizations. According to the court, all these reports show a generally poor documentation of the police proceedings.

The judgment thus confirms the findings of the above non-governmental organizations that the refusal of access to the asylum procedure is a systematic practice and is not limited to the plaintiff's case.

According to the court, the police should also take into account the reports of non-governmental organizations on violations of migrants' rights in Croatia and Bosnia and Herzegovina. These reports show that Croatia does not process applications for international protection, expels applicants systematically and without formal procedures to Bosnia and Herzegovina (BiH), treats them violently and destroys their property. Immediately after his return from Slovenia, the Croatian police also expelled the plaintiff to BiH without issuing a decision, which the defense did not even dispute.

The defense claimed that Croatia is a member of the EU, and due to that fact, the principle of trust applies, the main presumption behind which is that Croatia respects human rights. But the court rejected this argument, as the principle of trust is rebuttable, clarifying that NGO reports were publicly available and should have been known to the police, as they relate to its tasks, which ought to be committed to the respect of human rights.

Slovenia should have therefore, on the basis of available information, carried out a risk assessment, concluding that the plaintiff will be subjected to inhuman treatment in Croatia. **By failing to do so, Slovenia violated the prohibition of torture, inhuman and degrading treatment.**

The consequences of the court's decision thus mean that Slovenia must assess the risk of migrants being subjected to inhumane treatment at any extradition of foreigners to Croatia. According to available data this is still not carried out by the Slovenian police.

Slovenia has also still not implemented the judgment in the part which obliges it to allow the plaintiff to enter the territory of the Republic of Slovenia and to submit an application for international protection. Despite repeated offers by the plaintiff's lawyer to assist the interior ministry in enforcing the verdict, the ministry insists the plaintiff must reach the territory of the Republic of Slovenia himself, forcing him to try to cross Croatia again and exposing him to violence by Croatian police.