

Draginja Nadaždin

Director of Amnesty International Poland  
e-mail: draginja.nadazdin@amnesty.org.pl  
tel. +48 22 827 60 00

## **The Story of Erased People in Slovenia: The role of Civil Society in a Long Road to Justice**

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**Summary.** The article is focused on the story of “erased” people in Slovenia. On 26 February 1992, the Slovenian state secretly changed the legal status of twenty five thousand inhabitants (around 1% of Slovenian population) by deleting their data from the Permanent Residence Register. As it was documented by human rights lawyer Matevz Krivic, and by human rights groups, the decision of the Slovenian authorities was deliberate in targeting people from other parts of former Yugoslavia who did not obtain their new Slovenian citizenship. The article examines consequences of this political decision, and follows scholars such as Jelka Zorn (*The Politics of Exclusion During the Formation of Slovenian State*, 2003) and Jasminka Dedić (*Discrimination in Granting Slovenian Citizenship*, 2003) in seeing the erasure as a generator of critical human rights violations, where creation of a nation-state is based on exclusion of the other. The article briefly presents the strategies applied by human rights groups in order to discover the problem, bring the issue to public debate and put it into frames of human rights standards. These strategies, as I attempted to show, were crucial for saving the story of “the erased” people and empowering them to tell the story by in their own voice.

**Key words:** human rights, citizenship, discrimination, “erased”, refugees, Slovenia, former Yugoslavia

### **Introduction**

On the 26 February 1992, six months after Slovenia gained its independence, the secret erasure from the register of permanent residents made thousands of people residing illegally in Slovenia. This revocation of resident status affected people

from other Yugoslav successor states who had their legal residence in Slovenia but did not apply for, or were denied, new Slovenian citizenship. At the same time, foreigners from all other countries were not subject to the erasure – they were granted the right to reside permanently in Slovenia.

Although it meant deprivation of a long list of rights they were entitled to before, neither the “erased” nor the general public were informed about the erasure. This case, known as the case of the “erased”, shows a systematic state action in creating a nation-state based on the exclusion of the others. In the case of Slovenia, specific groups of those non-Slovenians representing links with the past and former federation were given the title of “other”. The decision of the Slovenian authorities to erase thousands of residents from their register was one of those dangerous precedents leading to further human rights violation. It is certainly a unique case but it was based on the common logic of segregation and discriminatory practices that violates human rights standards in the field of citizenship and migration policy. Logic, which is a sign of our time.

Nevertheless, due to the work of human rights groups and mostly Slovenian lawyers and scholars, the case of the “erased” is a well documented, long lasting struggle for justice and empowerment. Within Slovenia, a significant part of this struggle was, at the beginning, on the shoulders of a few individuals such as Matevž Krivic, a former judge of the Constitutional Court, who supported victims of erasure and managed to bring the issue to public debate. The research, documentation, and consistent advocacy done by the Peace Institute from Ljubljana, Amnesty International, Helsinki Monitor Slovenia, as well as, established in 2002, the Association of Erased and other organizations, changed the discourse and contributed enormously to the struggle for the rights of the victims, including justice and reparation. This text, based mainly on a desk research, aims to show that the story of the erased would never have been written without their efforts and is an attempt to acknowledge their work<sup>1</sup>.

## 1. The Erasure and its Consequences

The disintegration of the Socialist Federal Republic of Yugoslavia (SFRY) was followed by wars that aimed to create ethnically homogeneous nation-states. The less visible part of the wars between 1991-1995 on former Yugoslav territory were new legal acts on citizenship and its implementation. As a result, thousands of former citizens of SFRY of different ethnic origin became stateless with a prolonged uncertainty about their future. Alongside the ethnic “cleansing” and other war

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<sup>1</sup> I am very thankful to Slovenian scholar Rastko Mocnik who drew my attention to the case of the erased in summer 2002, when public debate in Slovenia had just started.

crimes, the new legislations and practice on citizenship were part of the same war tactics and political conceptions based on exclusion and elimination of the “others”. One of the first administrative moves in that direction happened in February of 1992 in Slovenia, formerly a constituent republic of the Socialist Federal Republic of Yugoslavia. Being the most ethnically homogenous among the Yugoslav Republics, Slovenia did not experience ethnic conflict, but it gained independence after the 10-day war with the Federal Yugoslav Army in June 1991.

The Socialist Federal Republic of Yugoslavia was a federation of six republics and every citizen had both federal citizenship of SFRY and a second, republican citizenship. In the time of SFRY, all citizens enjoyed the same rights regardless of their republican citizenship and the place they lived in the SFRY. Therefore, during the existence of SFRY, people from other republics living in Slovenia enjoyed the same rights as those with Slovenian republican citizenship<sup>2</sup>.

When Slovenia declared independence, citizens of other republics who had settled permanently and had permanent residence in Slovenia could apply for Slovenian citizenship by the deadline of 26 December 1991. The *Constitutional Act implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia and Citizenship of Republic of Slovenia Act of 25 June 1991* (Article 40) regulated procedures of acquiring Slovenian citizenship, even for people from other republics. *Aliens Act of 25 June 1991* (Article 81) stated that those people from other republics who did not apply for Slovenian citizenship in six months time since the enactment of the Citizenship Act, and those whose applications for Slovenian citizenship were rejected, would be treated as aliens, and with provisions of the Aliens Act, two months after the deadline for application or two month after the negative decision on their Slovenian citizenship was issued<sup>3</sup>.

Around 170 000 people from other parts of former Yugoslavia who were living in Slovenia gained new Slovenian citizenship. Those who did not apply, or whose applications for citizenship were rejected, not only became foreigners, but were “erased” from the register of permanent residents on 26 February 1992. On that day, Slovenian authorities secretly transferred the records of thousands of people from the Slovenian register of permanent residents to a register of foreigners. This stands in sharp opposition with the treatment of permanent residents from other countries. In practice it meant that residents from other Yugoslav successor states became migrants with irregular status, without any protection from the Slovenian state. Without leaving the place they lived in for years as a citizens and then residents, they became the “irregular” migrants overnight, and, they were not even aware of it.

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<sup>2</sup> *Ustav Socijalističke Federativne Republike Jugoslavije*, Službeni list no.9/1974, Belgrad 1974.

<sup>3</sup> Predlog Zakona o tujcih, ESA 357, 24 May 1991.

At the very beginning, it is important to emphasize that for the next decade state officials did not admit to the scale of the erasure, nor did they offer complete information as to who was affected by that state act. The civil society in Slovenia took it upon itself to discover this hidden issue and to help the erased people. The work of human rights groups and scholars was very complex from the very beginning. It involved the identification of the problem and raising public awareness on it, offering legal support to erased people, advocacy work, and documentation of information about them, as well as, collection of their testimonies. The Office of the Human Rights Ombudsman also played his role: Ljubo Bavcon, Ombudsman in years 1988-1994, noted that his office undertook hundreds of interventions on behalf of people who faced a number of human rights violations caused by the erasure. As he considered this erasure as a serious human rights problem, he warned the Prime Minister at that time, Janez Drnovsek. Ivo Bizjak who took the post of the Ombudsman in 1995 emphasized this problem in the Annual Report of Human Rights Ombudsman in 1995 and following years<sup>4</sup>.

According to the latest estimates of human rights groups, 25,671 individuals were removed from the permanent residents register in February 1992<sup>5</sup>. As this was a secret operation, for a long time the full scale of erasure was not known even to those that tried to help the erased people. That is why we can find smaller numbers in the reports and literature from previous years. Year after year, more facts were discovered and it was obvious that the first estimations were very modest. The Slovenian Ministry of Interior, on his web page, has recently published statistics, where it admits to the same number of 25,671 erased persons. The Ministry also presented the division of this group by age and sex:

Age group	Men	Women	Total
up to 18	2 764	2 596	5 360
18-29	2 562	2 446	5 008
30-39	4 083	2 413	6 496
40-49	2 543	1 489	4 032
50-59	1 855	940	2 795
above 60	968	1 012	1 980
Total	14 775	10 896	25 671

Source: the web page of Ministry Of The Interior Republic of Slovenia, [www.mnz.gov.si/en/services/the\\_erased/](http://www.mnz.gov.si/en/services/the_erased/) [30.03.2014].

<sup>4</sup> V. Jalušič, *Organized Innocence*, in: J. Dedić, V. Jalušič, J. Zorn, *The Erased. Organized Innocence and the Politics of Exclusion*, Peace Institute, Ljubljana 2003, p. 18.

<sup>5</sup> Amnesty International, *Slovenia: The 'erased'*, Briefing to the UN Committee on Economic, Social and Cultural Rights, 28 November 2005, EUR 68/002/2005.

The “erased” people presented an internally diversified group not only by sex and age. Some of the “erased” moved to Slovenia from other parts of Yugoslavia in the time of the Federation and decided to stay in Slovenia after it became an independent state in 1991. Some of the “erased” persons were born in Slovenia, but from parents who migrated from other parts of the Yugoslav republic. Among the erased there were also a significant number of members of the Romani communities. Another group of erased people were formed of the former Yugoslav Federal Army officers, who did not apply for, or were refused, Slovenian citizenship. Former officers were usually refused under the presumption that they participated in the 10-day war against Slovenia, or their loyalty to Slovenia was questioned<sup>6</sup>.

As stated earlier, the affected people were not provided with information on the erasure, nor presented with an explanation of the decision of the Slovenian authorities. As described by a person who lived in Slovenia since 1986:

When Slovenia became independent I did not submit an application for Slovenian citizenship because I did not know what it means, why it was necessary, and what would the consequences be. In 1994 I should have extended the application to continue receiving financial aid at the unemployment office. When I got there to arrange it, they told me to go to the municipality to ask for a certificate of permanent residence. When I got to municipality, they destroyed my ID card (issued in Maribor) and tossed it in the trash! When I asked why they did that, they told me that I should be happy they did not call the police and that I was even lucky to be in this state. They did not tell me that I have to arrange my status of a foreigner, and that I need a working permit in order to work. Because they were so unfriendly, I left and did not ask them any questions<sup>7</sup>.

The “erased” learned “through experience” about the far reaching consequences when they suddenly faced the deprivation of the rights they had. They had felt deeply rooted in Slovenia in existential terms, before suddenly becoming “irregular migrants”, without valid documents, healthcare and social security, denied the right to work, in constant fear of prosecution, and subject to exploitation. Some of them were deported from Slovenia and divided from their families.

The erasure was also an attempt to take away the identity of the erased. Before the erasure, they had proper documents respected by police, employers, health and social workers, schools, and local officials. After the erasure happened, they discovered that their documents were worthless, as they were annulled. When shown to authorities, their identity cards and other documents were physically destroyed by piercing and punching in police commissariats of local administration offices. As Matevz Krivic explains, this sometimes happened when erased persons were invited “to settle their papers” – instead of receiving any new documents, they lost

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<sup>6</sup> Ibidem.

<sup>7</sup> Mirovni Institut, *Stories of Erased People, I Still Live In Slovenia Without Documents*, [www.mirovni-institut.si/izbrisani/en/i-still-live-in-slovenia-without-documents/](http://www.mirovni-institut.si/izbrisani/en/i-still-live-in-slovenia-without-documents/) [30.03.2014].

the documents they had, and that had served them previously for their everyday life in Slovenia<sup>8</sup>. Erasure meant that they lost their legally defined identity and were offered nothing instead. They were taken out of the law.

Although they legally lived in Slovenia for years and some were even born there, after February 1992 some of “the erased” were forcibly removed from the country. Authorities did not care if they did not have any real link with their place of origin, nor if there was a war. They usually took the expelled person to a border with Croatia. An important study by Jelka Zorn *The Politics of Exclusion During the Formation of Slovenian State* contains the testimonies of people who were taken from their home in order to be deported. Some of them say that they were transferred to the Croatian border and given to Croatian border control, despite the war between the Serbs and Croats, while Slovenians officials knew that they were Serbs<sup>9</sup>. Others, after expulsion, could not enter Slovenia for several years even though their families stayed in Slovenia. Some of them were taken from their home and transferred to Centers for Foreigners but never expelled<sup>10</sup>. In 2008 deportation procedures were initiated against some of “the erased”, although deportations were not actually carried out.

In its briefing to the UN Committee on Economic, Social and Cultural Rights in 2005, Amnesty International drew attention to the negative effects of the erasure on different areas of life, such as the massively violated right to work. Many of “the erased” lost their legally obtained jobs. As they lost the status of permanent residents, they could no longer be legally employed. This situation lasted for years and they had to choose if they would find a job in the “informal sector”. This also put severe strains on the living standards, as illegal jobs meant lower salaries and no social insurance. In effect, some of them experienced extreme poverty. The organization also listed the negative effects on social security and pension, access to healthcare, and access to education. The “erasure” leading to the loss of employment, had long-lasting negative effects as the situation of the erased was not solved for years. They found themselves excluded from systems of social security and pension contributions. As mentioned in the briefing, many of “the erased” had lost their entitlement to a pension. Even those who eventually managed to restore their legal status had to learn that their expected pension would be significantly reduced. In this way, the removal from the registry of permanent residents had serious negative effects on the right to social security of some of these individuals. They also lost access to comprehensive healthcare after 1992; in some cases this had serious consequences for their health. Children removed from the registry of permanent residents in 1992, or those whose parents were removed from the

<sup>8</sup> M. Krivic, *Post Scriptum*, in: J. Dedić, V. Jalušič, J. Zorn, op. cit., p. 159.

<sup>9</sup> J. Zorn, *The Politics of Exclusion During the Formation of the Slovenian State*, in: J. Dedić, V. Jalušič, J. Zorn, op. cit., p. 132.

<sup>10</sup> *Ibidem*, p. 128.

registry, in some cases, lost access to secondary education. Some of “the erased” lost years of education and faced delays in the completion of their studies<sup>11</sup>.

These are only some of the consequences of erasure that were well documented by human rights lawyers and groups<sup>12</sup>. Some of the erased said that at the beginning, when faced, for example, with the destruction of the documents, they thought it was an administrative mistake<sup>13</sup>. Soon it became obvious for them, that they could not count on the Slovenian institutions any more, with exception of the Ombudsman office. The Ombudsman is the main human rights body created in the Slovenian Constitution. Its only mandate is to monitor actions by the state and to react when it receives an individual complaint. According to the Ombudsman at that time, Ljubo Bavcon, quoted by Matevž Krivic, had to undertake a number of actions connected with complaints and he informed high level politicians about it in 1994<sup>14</sup>. However the problem still remained.

## **2. Breaking the Silence and Building the Narrative. Civil Society as a Story Teller**

In the erasure that took place in 1992, silence and denial were words that best described the strategy chosen by the Slovenian high officials at that time and used for years, until the end of 90s. No information, or explanation, was offered as to what happened to that one percent of the population. There was a complete silence around the issue in the media. Therefore, breaking the silence was a crucial step in the struggle for the rights of the “erased”. The general public did not receive any information about the scale of the erasure until the press conference in June 2002 when the Minister of the Interior (the erasure was performed by the Ministry of the Interior), at the press conference gave information about the 18 305 erased people. It happened only after civil society had pushed the government to speak up. The silence thus lasted until several milestones were reached, including the establishment of Association of Erased in February 2002 with the support of Krivic.

As the story of the erased people did not exist for officials, civil society attempted to collect pieces of individual fates to write the whole story. The reconstruction of the history of erasure committed by the new Slovenian state became possible only due to the work of the non-state sector. What was supposed to stay hidden and quickly forgotten was saved in the reports and texts of human rights groups and academics.

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<sup>11</sup> Amnesty International, *Slovenia: The ‘erased’*, op. cit.

<sup>12</sup> Due to limited space, the text is quoting only some of them.

<sup>13</sup> J. Zorn, op. cit., pp. 104-105.

<sup>14</sup> M. Krivic, op. cit., p. 162.

The title of the story was simply *Erased*. It emphasizes the real nature of the erasure and endorses the proper wording. Instead of technical expressions preferred by state officials that were speaking about the transfer of data, human rights groups and the “erased” themselves insisted on the word “erasure” underlining the non-legal nature of the act itself, while world of “erased” illustrated the condition of the people that were suddenly excluded from a legal system they functioned in.

By 2002, civil society managed to bring the issue to public debate. Silence was then replaced with denial of the planned and systematic operation of the erasure. During the stormy discussion that followed after 2002, human rights lawyers and activists who supported erased people were often labelled as traitors, while the “erased” were blamed for the situation they found themselves in. Hostility towards the “erased” was displayed routinely by many policy-makers and opinion-makers, sometimes reaching the level of hate speeches.

Although a public debate began in 2002, the erased have not been properly included in that debate, as it was far from a constructive dialogue with civil society, the erased and their representatives. Thus a main challenge identified by civil society was to make the erased people visible and to support them in regaining their voice.

An important contribution to the debate was the book *Erased. Organized Innocence and the Politics of Exclusion* published in 2003 by the Peace Institute from Ljubljana. It contains two studies: *Discrimination in Granting Slovenian Citizenship* by Jasminka Dedić and *The Politics of Exclusion during the Formation of the Slovenian State* by Jelka Zorn, both mentored by Krivic, who also wrote the *Post Scriptum* for the book. Dedić analyzes the legal concept of citizenship in newly independent Slovenia and its connection with human rights violations. One of the conclusions of this study is that the most critical human rights violations in Slovenia in that context were consequence of erasure from the register of permanent residents. Dedić analyzed the relevant legal acts and procedures, as well as, political decisions up until 2003. Although these elements should be well known to the public, as the state should be as transparent as possible in this regard, the complex analyses of legal and political documents was actually a missing part. Dedić’s study gave legal arguments to the debate, showing clearly that the state’s sovereignty does not excuse the state’s failures in fulfilling the human rights obligations. The author emphasized that Slovenia, as a new succession state, had an obligation to minimize the effect of statelessness. No less important is the approach in which the author reminds us of other human rights standards and Slovenian’s obligation in this regard, showing that the erased belong to that legal framework and cannot be “erased” from it. This frame of reference reminds us of the core of international human rights. As stated by Winstop P. Nagan: “A central quality of contemporary human rights is the central idea of respect for the “other”<sup>15</sup>.

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<sup>15</sup> W.P. Nagan, A.M. Haddad, *The Holocaust and Mass Atrocity: The Continuing Challenge for Decision*, “Michigan State International Law Review” 2013, Vol. 21, Issue 2, p. 62.



Zorn, the author of the study *The Politics of Exclusion During Formation of the Slovenian State* presents a long list of human rights violations taking place as a consequence of the erasure. She defines it as the most crucial and typical experiences of the erased. The study, based on in-depth interviews, includes individual testimonies collected by the author. Most interviews were conducted at home of erased people, while 3 of them were conducted in prison, and 4 in deportation Centers for Foreigners in Ljubljana. As the author emphasized, her research was based on advocacy perspective. Preserving the narratives of the erased was crucial at that time and showed the direction of what should be done in the following years as their testimonies were the only source of information of what could happen to someone who was erased. The importance of this documentation is easy to understand if we take into account that even now, there is no official full list of persons that were erased. By presenting the narratives of erased people this study brings another missing part that rather provokes us to pose further questions, than giving a final explanation. One of these question is “How this is possible to happen? Why policemen and clerks followed the orders, even though they knew something was wrong?”. Another question posed by the author is “Why the erased people were silent for so long?” or rather “Why their narratives were not heard for so many years?”

Important context of the silence that covered the issue of the erasure for so many years is presented in the essay opening’s mentioned book, written by Vlasta Jalušič, the head of the Peace Institute. According to her, the establishment of an independent state was followed with the belief that “evil things can happen only in our neighborhood, down there in the Balkans, in those terrible wars”<sup>16</sup>. Slovenia tried to make its reputation as a “really European” state, based on human rights as opposed to the Balkans in general and other Yugoslav successor states in particular. To give a wider context, it is important to add that Slovenia enjoyed a distinctive economical superiority over the southern republics while it was part of SFRY. Moreover, after the disintegration of Yugoslavia and the emergence of wars in Croatia and Bosnia and Herzegovina, Slovenian political elites often took positions of moral superiority over other Yugoslav successor states. This was one of the elements that shaped the mentality about the people from these states, also those that were living in Slovenia for years.

In order to avoid further marginalization of the erased people, civil society focused on their empowerment. Along with the legal support that some organizations were offering to the erased, they supported the erased so that they could speak for themselves. As noted in 2003 by Dedić:

Since the establishment of the Association of Erased Residents of Slovenia – the Association for Human Rights in February 2002, the media and the public have been expressing an increasing interest in the erasure, its causes, and consequences. Particular

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<sup>16</sup> V. Jalušič, op. cit., p. 14.

segment of civil society concerned with these and similar issues took action and began to coordinate their activities. Yet there is still no network which would connect and harmonize the operation of these segments, if only informally<sup>17</sup>.

The establishment of the Association of Erased was a milestone as it showed that people who were erased from each form of social and political life, were able to self-organize and speak in their own name. From a practical point of view, it also helped to connect the erased people, as many of them were scattered abroad or living isolated in Slovenia as non-regular migrants.

Civil society also organized public actions and public debates that helped bring the erased to the public space and discourse. In 2003, a Slovenian section of Amnesty International, in cooperation with other European sections of the organization, organized a speaking tour involving erased people in order to present their stories across European countries in 2008, just before Slovenia took the Presidency in the European Union. Recently, theatre director Oliver Frlić prepared the play „25,671“, together with Presern's Theatre from Slovenian city Kranj. As the years passed by, another question was to be answered: “Why it takes so long for the story of the erased to come to an end?”

### 3. Advocacy and Accountability

Although the first complaint by one “erased” person was submitted to the Slovenian Constitutional Court in 1994, nothing happened as the Constitutional Court postponed the decision on it until the end of its terms<sup>18</sup>. A new Constitutional Court ruled in 1999 that the erasure was not legal. It was the first time that the Slovenian Constitutional Court ruled that the change of resident status was illegal.

Civil society continued to monitor the situation and to work on advocacy as Slovenian governments that came to power after the erasure were not ready for accountability. They did not acknowledge the state's responsibility for the erasure and the erased could not count on a remedy for the human rights violations, although it was obvious that the erasure was done by the Slovenian state as a planned and premeditated action. This was also proved by journalist Mekina who on 26 November 2002 published an article on that topic in *Vecer*.

Legislative efforts made in 1999 with *the Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia* and in 2002 with amendments to the *Act on Citizenship* coming into force were the attempts to regulate the situation of the erased. Nevertheless, they failed to restore

<sup>17</sup> J. Dedić, *Discrimination in Granting Slovenian Citizenship*, in: J. Dedić, V. Jalušič, J. Zorn, op. cit., p. 79.

<sup>18</sup> M. Krivic, op. cit., p. 160.

permanent residence retroactively, while those erased who had to leave Slovenia or were expelled and could not enter it again, were not taken into account.

Again in 2003, the Constitutional Court ruled that those affected should have their status of permanent resident reinstated retroactively from the day their data was deleted from the register. Therefore, it ruled the Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia unconstitutional. Following this decision, Slovenian parliament adopted a “technicalities bill” in 2003, aiming to regulate the status of the erased. Nationalistic and right wing parties being then in opposition called for a referendum in 2004, in order to reject the bill. Slovenian civil society called for a boycott of the referendum. The turnout was slightly over 30 per cent, but 95 per cent of voters rejected the bill. There was also an attempt by the same political forces to organize the referendum of the “systematic bill”, a second act aiming to regulate the status of the erased, but it was blocked by the Constitutional Court in 2004<sup>19</sup>.

As noted by Amnesty International, due to the lack of clear legal framework regulating the implementation of the Slovenian Constitutional Court’s decision, the Slovenian Ministry of the Interior had begun in 2004, issuing individual written decisions stating that those concerned were permanently resident in Slovenia with retroactive effect, but then stopped issuing such decisions in July 2004<sup>20</sup>. For the next several years, no other positive steps were taken towards the erased.<sup>21</sup>

The political environment in Slovenia was rather hostile, so human rights groups raised the issue of “the erased” not only with the Slovenian authorities but also with international human rights bodies, including the UN Committee on Economic, Social and Cultural Rights, the UN Human Rights Council<sup>22</sup> and the Council of Europe. Several of these bodies have urged the Slovenian authorities to restore, retroactively, the permanent residency status of “the erased”, and to provide them with full reparation. In his report, published in 2003, from his visit to Slovenia, the Council of Europe (CoE) Commissioner for Human Rights noted that he was informed by organizations representing the “erased” of the “dire situation that resulted from the loss of permanent residence status and that is still going on for many of them [the “erased”]”.<sup>23</sup>

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<sup>19</sup> Amnesty International, *Slovenia*, Amnesty International’s Briefing to the United Nations Human Rights Council 9th Session, 17 September 2008, EUR 68/001/2008.

<sup>20</sup> Amnesty International, *Slovenia Long-Standing Concerns: Rights of the Erased and Discrimination Against Roma*, Amnesty International Submission to the UN Universal Periodic Review, October-November 2014, EUR 68/001/2014, June 2014.

<sup>21</sup> Ibidem.

<sup>22</sup> Slovenia became a UN member state in May 1992.

<sup>23</sup> CoE, Office of the Commissioner for Human Rights, *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on His Visit to Slovenia, 11-14 May 2003*, 15 October 2003, Paragraph 28. For shorten version of report presented to Commissioner by Krivic see: M. Krivic, op. cit., pp. 158-164.

In its Briefing to the UN Committee on Economic, Social and Cultural Rights, 35th Session, November 2005, Amnesty International emphasized that the situation of the “erased” shows Slovenia’s failure to meet its obligations in respect to the rights enshrined in the ICESCR of the individuals concerned, including their right to work (Article 6), social security (Article 9), health (Article 12) and education (Article 13).

In its submission to the UN Universal Periodic Review, AI states the unresolved status of individuals removed from the Slovenian registry of permanent residents in 1992, including their lack of access to full reparation for the violation of their human rights to which the “erasure” led to human rights violations such violation of *Principle of non-discrimination, violation of Right to work and social security, Right to the highest attainable standard of physical and mental health, Right to education*<sup>24</sup>.

Concluding Observations of the UN Committee on Economic Social and Cultural Rights (November 2005) noted the erasure as an illegal act and an act of human rights violation – both in its character and in its ongoing negative effects. Similar conclusions and recommendations have also been issued by other UN Treaty bodies and by various institutions within the framework of the Council of Europe. The Slovenian government has been informed of all of these.

In 2010, the European Court of Human Rights found violations of the right to private and family life and the right to an effective remedy to a group of erased complainants. New legislation from that year did not address all human rights violations experienced by the erased – the authorities failed to return the legal status to all of the erased and to present a complex plan to address all forms of injustices, including the issue of compensation.

Despite the recommendations and guidelines of numerous international human rights institutions and bodies, and the Constitutional Court of Slovenia, changes in law and in government did not lead to a solution of the problem. According to Amnesty International, in 2010 approximately 13,426 of “the erased” were still left without Slovenian citizenship or a permanent residence permit. The majority of them lived abroad and could not re-enter Slovenia, while some of them have lived “illegally” in Slovenia as foreigners or stateless persons since 1992. Many of those, who managed to obtain Slovenian citizenship or permanent residency, still suffered from the ongoing consequences of their previous unregulated status with no access to reparation, including compensation.<sup>25</sup> The situation in 2010 was still alarming: among those whose status remains unresolved only a limited number decided to made an application for their status to be restored. The procedure they had to face

<sup>24</sup> Amnesty International, *Slovenia Long-Standing Concerns...*, op. cit.

<sup>25</sup> Amnesty International, *Slovenia*, Amnesty International submission to the UN Universal Periodic Review, Seventh session of the UPR Working Group, February 2010, AI Index: EUR 68/004/2009.

was extremely complex. The burden of proof in that procedure rested entirely with the plaintiff. As emphasized by Amnesty International, the erased were not even exempt from administrative fees, although the erasure was the fault of the state.

In 2012, twenty years after the erasure, Nicola Duckworth, Amnesty International's current Director for Europe and Central Asia, said:

It's about time that Slovenian authorities acted and reinstated those forced to the margins of society, deprived of their rights and their documents [...]. With the stroke of the pen, people were denied health care and education, lost their homes, jobs and pensions and had to face extreme poverty and marginalization. Many were forcibly removed from the country as illegal migrants [...]. The deletion of thousands of people from the country's permanent residence registry is one of the gravest human rights violations in independent Slovenia. The authorities must recognize its discriminatory nature and conduct a thorough and impartial investigation of erasure and its consequences. Redress along international law standards, including restitution, satisfaction, compensation, rehabilitation and guarantees of non-repetition is long overdue<sup>26</sup>.

Slovenia was condemned by the European Court of Human Rights in 2012 and was ordered to compensate six plaintiffs and to set up a mechanism for compensation for all of the erased. On March 12, 2014 in the Grand Chamber final judgment, the judges of the ECHR had awarded more than €250,000 in damages in the case of Kurić and Others v. Slovenia (application no. 26828/06). The European Court of Human Rights ruled, unanimously, that the Slovenian government was to pay the six applicants whose rights under the European Convention on Human Rights had been violated amounts between 29,400 and 72,770 euros (EUR) each. In its Grand Chamber judgment on the merits of 26 June 2012, the court had found that there had been violations of Article 8 (right to respect for private or family life or both); of Article 13 (right to an effective remedy) in conjunction with Article 8; and, of Article 14 (prohibition of discrimination) in conjunction with Article 8 of the European Convention on Human Rights<sup>27</sup>.

The decision of the European Court of Human Rights could lead to a final systematic solution as it applied the pilot-judgment procedure, giving the Slovenian government one year to set up a compensation scheme for the "erased" in Slovenia. Since 18 June 2014, the erased can submit a request for compensation in accordance with the Law on compensation for damages for the erased, adopted in December 2013 by Slovenian Parliament. Nevertheless, the new law does not give a proper answer to the request for a remedy: it does not tackle the problem of

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<sup>26</sup> Amnesty International, *Slovenia: 20 Years Later – Issue of the Erased Remains Unresolved*, press statement from 23 February 2012, AI Index: PRE01/103/2012.

<sup>27</sup> European Court of Human Rights, *Slovenia: 'Erased' People Human Rights Protest Leads to €250,000 Award*, press statement from 12 March 2014, European Convention of Human Rights, [www.humanrightseurope.org/2014/03/slovenia-erased-people-human-rights-protest-leads-to-e250000-award/](http://www.humanrightseurope.org/2014/03/slovenia-erased-people-human-rights-protest-leads-to-e250000-award/) [30.03.2014].

the re-unification of the families, nor of the integration for those that spent years abroad as they were forced to leave Slovenia. In addition, it also, for unexplained reasons, introduces a limit to the amount of compensation. The Association of the Erased with Krivic as their legal representative, has submitted this complaint on the new law to Slovenian Constitutional Court. During the legislation process, a number of proposals by erased persons were ignored and in protest they boycotted the discussion of Law in Parliament. Many of the erased are therefore planning to submit their complaints to the European Court of Human Rights.

## **Conclusion**

The paradox of the contemporary state is erosion of its power and a lack of capacity to face the global economical and political challenges on one hand, and its strongly expressed will to keep sovereignty in the area of citizenship and residence on the other hand. The citizenship understood as a legal status and legal decision on who is a citizen, and therefore, who is allowed to enjoy the fullest spectrum of rights, is treated by the states as the opportunity to demonstrate its power. This is particularly visible in situations when the state's power is emerging or decreasing. The uncertain times that occurred at the end of World War I with the fall of a multiethnic emporium and the creation of nation-states in Europe, once described by Hannah Arendt, were again witnessed in Europe in the 1990s with the end of the Soviet Union, the fall of the Socialistic Federative Republic of Yugoslavia, and the new identity of countries from a former Eastern Block. This uncertainty is observed on a global basis. It can also be observed in a current crisis in Ukraine, entering the armed conflict in an eastern part and facing the interventions from neighboring Russia at Crimea and its eastern border from early spring 2014.

Arendt identified the sources of the uncertainty shared after World War I in the newly created nation-states' decision to exclude a large part of the population from being their citizens. A crisis situation in a country, being it a threat of war, civil war, social and ethnic unrest or a complex process of creating a new state, is a situation in which the definition of the citizen is a crucial part of state's self-definition or redefinition. These moments are often used to question, either openly or between the lines, the loyalty of certain groups of citizens and residents. Uncertainty around the loyalty of the groups of people is then used as justification for treating them as less valuable citizens or residents, or even for denial of their political, civil, but also economical, social, and cultural rights. As the case of Slovenia shows, the role of civil society in fighting these violations can be crucial.

Having said that, it is important to admit that the lack of trust towards certain groups of citizens and/or residents is not only reserved for the states in crisis or at the edge of war. It can easily appear either in legislation, or only in public discourse in countries experiencing years of political and economical stability. Canada is just going through this exercise. In spring of 2014, new citizenship amendments – Bill C-24 – introduced significant changes to Canada’s citizenship laws which passed through the House of Commons, and are to be considered by the Senate. The new law, if passed by the Senate, would legalize limited trust towards those Canadians that also possess a citizenship of another state and those who obtained Canadian citizenship via naturalization. Human rights groups such as The Canadian Association of Refugee Lawyers (CARL), British Columbia Civil Liberties Association (BCCLA) and Amnesty International warned that the proposed law would eliminate equal citizenship rights for all, and violate the Charter of Rights and Freedoms, as well as, the international human rights law. According to the organizations, the proposed law would allow the revocation of citizenship validly obtained by birth or by naturalization. It would take away rights from a number of Canadians, creating double standards in the citizenship regime that discriminates against dual nationals and naturalized citizens<sup>28</sup>.

As said at the beginning, the violation of human rights of “erased” people by the Slovenian authorities was often justified through more or less openly expressed lack of trust towards people from other parts of the Yugoslav republic that permanently settled in Slovenia before its independence. It shows how painful the consequences are, that are caused by this lack of trust and exclusion of the “other”. The costs of this treatment were enormously high for the erased people, who lost more than two decades of their life, but also for the Slovenian state that lost the image of a state based on human rights values, and is now obliged to pay compensation to thousands of its inhabitants for violation of their rights and the delays in finding proper legal solution. The story of the “erased” also showed that much more sustainable results would be achieved if participation of the “erased” would be ensured in the on-going political and legislative processes.

The respect for human rights standards, respect of the “other”, and the empowerment of minorities were leading principals for human rights groups and individuals that saved the story of the erased and allowed us to learn a lessons from it. Lessons important not only to the people of Slovenia and other Yugoslav successor states, but also to the world we live in.

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<sup>28</sup> Amnesty International, *New Citizenship Law Will Be Challenged on Constitutional Grounds, If Passed, Say Rights Groups*, press statement by Canadian section from 19 June 2014, [www.amnesty.ca/news/news-releases/new-citizenship-law-will-be-challenged-on-constitutional-grounds-if-passed-say](http://www.amnesty.ca/news/news-releases/new-citizenship-law-will-be-challenged-on-constitutional-grounds-if-passed-say) [30.06.2014].

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## **Historia wymazanych ze spisu ludności na Słowenii.**

### **Rola społeczeństwa obywatelskiego**

#### **w dochodzeniu sprawiedliwości**

**Streszczenie.** Artykuł przedstawia historię tzw. wymazanych w Słowenii. 26 lutego 1992 r. rząd Słowenii potajemnie zmienił status prawny 25 tys. mieszkańców (około 1% ludności Słowenii), usuwając ich dane ze spisu mieszkańców. Dokumenty zgromadzone w tej sprawie przez Matevza Krivica, prawnika zajmującego się prawami człowieka, jak i przez inne organizacje broniące praw człowieka, pokazują, że decyzja rządu Słowenii była wymierzona w ludzi z byłej Jugosławii, którzy nie otrzymali nowego obywatelstwa Słowenii. Autorka omawia konsekwencje tej decyzji politycznej, odwołując się do takich badaczek jak Jelka Zorn (*The Politics of Exclusion During the Formation of Slovenian State*, 2003) oraz Jasminka Dedić (*Discrimination in Granting Slovenian Citizenship*, 2003), traktuje wymazanie jako poważne pogwałcenie praw człowieka, gdzie tworzenie państwa narodowego opiera się na wykluczeniu „innych”. W artykule zostały zaprezentowane strategie, które zastosowały organizacje broniące praw człowieka, dzięki którym możliwe było zdiagnozowanie problemu, włączenie go do debaty publicznej i osadzenie go w ramach standardów praw człowieka. Strategie te w sposób istotny przyczyniły się do zachowania historii „wymazanych” i pozwoliły im przemówić własnym głosem.

**Słowa kluczowe:** prawa człowieka, obywatelstwo, dyskryminacja, „wymazani”, uchodźcy, Słowenia, była Jugosławia