

ERASED PEOPLE OF SLOVENIA

Peace Institute Report on Discriminatory Practices in Slovenia concerning Legal Statuses of Citizens of other Republics of Yugoslavia

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I. Summary

Before its dissolution the Socialist Federal Republic of Yugoslavia (hereinafter: SFRY or Yugoslavia) was composed of six republics. For this reason, SFRY citizens also had a republican citizenship. SFRY citizens of other republics living in Slovenia had the same rights as citizens having Slovenian republican citizenship. After Slovenia became independent, citizens of other republics having permanent residence in Slovenia could apply for Slovenian citizenship in six months by the deadline of 26 December 1991.

On 26 February 1992, at least 18,305 persons (the number has been provided by the Slovenian government), were removed from the Slovenian register of permanent residents and their personal data were transferred to the registry of foreigners. Those affected were not informed of this measure and its consequences. The "erased" were mainly people from other former Yugoslav republics, who had been living in Slovenia and had not applied for or had been refused Slovenian citizenship in 1991 and 1992, after Slovenia became independent. As a result of the "erasure", they became foreigners and *de facto* stateless persons illegally residing in Slovenia.

In many cases the "erasure" was subsequently followed by the physical destruction of their legal identity and their personal documents, such as identity cards, passports and drivers licenses, were annulled. Some people were deported as illegal aliens. All the 'erased' were deprived, and many of them are still, of their pensions, apartments, access to health care and other social rights.

II. Historical Developments that brought to the Erasure

The reasons for the erasure originate in legislative and administrative measures, adopted by the legislator, the government and responsible individuals at the Ministry of Interior, following the dissolution of Yugoslavia and creation of new independent successor states: Slovenia, Croatia, Bosnia and Herzegovina, Serbia and Montenegro (now two independent states) and Macedonia. When the authorities of the then Yugoslav Republic of Slovenia began with preparations for the independence and for the separation from Yugoslavia, they have formally promised to all people living in Slovenia that their human rights will be respected. The authorities also stipulated that all those people with permanent residence in Slovenia will have the opportunity to acquire Slovenian citizenship, if they so desire. These promises have been made by a document titled "**A Statement on Good Intentions**" adopted by the parliament of the then Yugoslav Republic of Slovenia on December 6, 1990, which, *inter alia*, states:

"Through the will expressed in the plebiscite by the Slovene nation, the Italian and Hungarian ethnic communities and all other voters in the Republic of Slovenia, Slovenia may finally and actually become a sovereign, democratic and social state based on the rule of law. It should be based on work and enterprise, on social justice and security for all, on environmental responsibility and on the best Slovenian and European traditions. In this regard it will develop politically a parliamentary

democracy, and on the level of modern awareness it will protect human and civic rights and freedoms . . . The Slovenian state also guarantees to the Italian and Hungarian ethnic communities in the independent Republic of Slovenia all rights as laid down in the constitution, laws and international acts concluded and recognized by Socialist Federal Republic of Yugoslavia. In the same way it shall guarantee to all members of other nations and nationalities the right to universal cultural and linguistic development, and to all those with permanent residence in Slovenia, that they may acquire Slovenian citizenship, if they so desire.”

On 25 June, Slovenia announced its independence from Yugoslavia. At that time more than 200.000 persons (10% of the population) from other Yugoslav republics permanently lived in the territory of Slovenia; they were not registered in the Register of the Citizens of Republic of Slovenia. For Slovenia this was a period of creating its body of citizens for the first time. For this reason the whole package of the “legislation of independence” was adopted. On 25 June 1991, the Slovenian National Assembly adopted a **Citizenship of the Republic of Slovenia Act**. In accordance with the promise made with the Statement on good intentions, with this act the people with permanent residence in Slovenia, who have not acquired citizenship automatically,¹ were given the opportunity to apply for Slovenian citizenship. Article 40 of the Citizenship Act stated that:

“A citizen of another republic that had permanent residence in the Republic of Slovenia on the day of the Plebiscite of the independence and autonomy of the Republic of Slovenia on December 23, 1990 and actually lives here, can acquire citizenship of the Republic of Slovenia on condition that such a person files an application with the administrative body competent for internal affairs of the community where they reside.”

The deadline to apply for citizenship was 6 (six) months and it expired on December 26, 1991. In accordance with this law, about 171.000 people with permanent residence in Slovenia were granted Slovenian citizenship. However, there were about 30.000 people who were not granted citizenship for the following reasons:

- they did not apply for citizenship for various reasons (e.g. they missed the deadline, they chose not to apply and expected that they will keep their permanent residency of Slovenia, or they did not know they had to apply to prevent the loss of their permanent residence, etc.); or
- they applied for citizenship, but their claim was rejected by the authorities (approximately 2400 applications); or

¹ In accordance with Article 39 of the Citizenship of the Republic of Slovenia Act, any person who held citizenship of the Republic of Slovenia and of the Socialist Federative Republic of Yugoslavia according to the existing valid regulations is considered to be a citizen of the Republic of Slovenia. Namely, before the dissolution of Yugoslavia, the citizenship system had two levels: all citizens of the federal country had federal Yugoslavian citizenship, but in addition to that they also had republican citizenship (e.g. the citizenship of the Yugoslav republic of Croatia, Serbia etc), which was granted to people in accordance with the principle of *ius sanguinis* – on the ethnic basis. When Yugoslavia dissolved, the federal Yugoslav citizenship did not exist anymore. The only citizenship the people were left with was the citizenship of one of the federal Yugoslav republics. Those who had the Slovenian citizenship, were also automatically considered citizens of the independent Republic of Slovenia.

- they wanted to apply but the authorities refused to accept their application under the pretext that it is not complete; or
- they applied for Slovenian citizenship, were issued a positive decision, but their citizenship was later withdrawn; or
- they applied for citizenship and they never received an answer from the Ministry of Interior.

In addition to the Citizenship Act, the Slovenian authorities also adopted the Aliens Act which regulated the status of aliens in the Republic of Slovenia. For the erased, Article 81 of the Aliens Act is particularly relevant:

“(1) Up until the effectiveness of a decision in administrative procedure for obtaining citizenship of the Republic of Slovenia, the provisions of this act shall not apply to citizens of SFR Yugoslavia who are citizens of another republic, and who within six months of the entry into force of the act governing citizenship of the Republic of Slovenia apply for citizenship of the Republic of Slovenia pursuant to Article 40 of the stated act.

(2) For citizens of the SFR Yugoslavia who are citizens of another republic and who have not applied for citizenship of the Republic of Slovenia within the deadline from the preceding paragraph or to whom a negative decision has been issued, the provisions of this act shall begin to apply two months after the expiry of the deadline within which they could have applied for citizenship of the Republic of Slovenia of from issuing a final decision.”

In reality this meant that the deadline to apply for citizenship was December 26, 1991. Two months after that, **on 26 February 1992 the names of the people who had permanent residence in Slovenia, but did not obtain its citizenship, were secretly *ex officio* transferred from the register of permanent residence to the register of people with no legal status (i.e. the so-called “erasure”) without any legal basis.** The transfer of the names consequently resulted in losing permanent residency in Slovenia. This measure was instructed and coordinated by the Ministry of Interior and was carried out by Administrative Units across the Republic of Slovenia. It was carried out on the basis of an internal conclusion (internal act) of the Ministry of Interior which is not a legislative act. The Constitutional Court in its 1999 decision stated that when the Government found out that the Aliens Act cannot be applied for the people who did not obtain the Slovenian citizenship because of the legal void that was created by this act, it should have instructed the legislator to adopt appropriate laws instead of taking other measures such as internal acts of the Ministry and interfere with the legislative power of the National Assembly.

In 1999 the Constitutional Court with a decision No. U-I-284/94 declared that the “erasure” was an illegal measure which had no legal basis in the Constitution and in any of the laws of the Republic of Slovenia. Moreover, it found that the Article 81 of the Aliens Act created a legal void, because it did not contain any legal basis for any measures taken against the erased. **The Court declared that the conduct of the authorities was against the rule of law and against the principle of legal certainty. It stated that in accordance with the rule of law the Slovenian state should recognize permanent residency to all erased since February 26, 1991.** Afterwards the Constitutional Court many times confirmed its 1999

decision with the following decisions: No. Up-60/97 of July 15, 1999, No. U-I-89/99 of October 6, 1999, No. U-I-295/99 of May 18, 2000, No. U-I-246/02 of April 3, 2003 and No. Up-211/04-21 of March 2, 2006.

People were not informed about the consequences of their failure to apply for Slovenian citizenship. People were also not informed about the erasure itself. They found out about it in various ways, e.g. when they wanted to renew their passports or other documents. In many cases the Administrative Units even called them and required that the people obtain new documents. When the people handed valid documents over to the officials at tellers, they took them, punched them and refused to issue new documents to them. Many times, this has been happening in small towns where everyone knows each other. In some cases officials were punching the documents to their neighbors and acquaintances.

III. Act of Intent, Not Coincidence

The fact that the erasure is not a coincidence or a reckless mistake of the authorities is established with the support of two facts:

- a) **Failure to support the amendment that would prevent the erasure:** While adopting the “legislation of independence” the National Assembly refused to accept and support the amendment to the Aliens Act which was proposed in May 1991 by Ms. Metka Mancin, member of the then Liberal Democracy of Slovenia party. This amendment would prevent the creation of the legal void which enabled the erasure and would ensure that all those people with permanent residence in Slovenia who would not apply or obtain citizenship, to be issued permanent residence permits of the Republic of Slovenia. The proposed amendment clearly indicates that there was awareness among the politicians on the implications that the lack of regulations of their statuses will have. Paradoxically, the Demos party (which also formed the Demos government and had a majority in the parliament) agreed with the contents of the amendment, but still decided not to formally support it. This implicates that the erasure was an intentional discriminatory administrative measure.
- b) **Failure to inform the people about the consequences of not applying for citizenship:** While adopting the “legislation of independence” the National Assembly refused to accept and support the amendment that required the Slovenian state to inform those who would have to apply for Slovenian citizenship about the necessity to apply and the consequences of their failure to apply. Such amendment was not supported with the explanation that anyway the state has the obligation by the international law to inform its residents about the intention to adopt measures that will affect the legal status and the execution of rights of the people. This opinion was expressed by members of the National Assembly at the session when the proposal of the citizenship act was discussed. At the end, the obligation to inform was not included in the law, while the stated international obligations were also not respected since no official notification has been issued to the erased. In addition, the general public got to know about the erasure only after 1999 (seven years after the erasure took place) when the Constitutional Court issued its first decisions concerning the

erasure. When the measure was taken the authorities did not inform the public which shows that it could only have been successful if taken far from the spotlight.

IV. Discriminatory nature of erasure:

The act of erasure was not only illegal because it was carried out without any legal basis; it was also an act of discrimination. There are four aspects that indicate discriminatory nature of the erasure and the practice of granting citizenship, which is connected to erasure:

- a) Discriminatory aspect of the adoption of the “legislation of independence” and the creation of the legal void;
- b) Discrimination in granting Slovenian citizenship;
- c) Discriminatory nature of erasure as such (comparing nationals of other republics of the former Yugoslavia and other third country nationals);
- d) Discriminatory nature of initiatives to withdraw citizenships after they were granted in accordance with Article 40 of the Citizenship of the Republic of Slovenia Act

a) Discriminatory aspect of the adoption of the “legislation of independence” and the creation of the legal void: The erased people were subject to direct discrimination on the ground of not obtaining a Slovenian citizenship, and to indirect discrimination on the ground of ethnicity. Namely, most of the erased people were Serbs and Montenegrins, some of them were from Bosnia and Macedonia, some of them were Croatians. The erasure also disproportionately affected Roma people (the assessment of the European Roma Rights Centre is that two thirds (66 %) of the Slovenian Roma population is without Slovenian citizenship, while many of them are even stateless). The ethnic origin of the erased translated into republican citizenship which was not Slovenian (see above footnote 1); namely, the republican citizenship was granted to people in accordance with the principle of *ius sanguinis* – on the basis of their ethnic origin. (It needs to be mentioned, however, that some of the erased were also ethnic Slovenes who for some reason were not signed into the register of Slovenian republican citizenship.)

b) Discrimination in granting Slovenian citizenship: Besides citizenship and ethnicity, there were also other grounds of discrimination present with respect to rejected applications for citizenship: one of them was **previous conviction for a crime** (convicted persons were not granted citizenship due to representing ‘a threat to public order’); another was **employment in the former Yugoslav National Army**: people who were employed in the army (even if they were employed as cooks, nurses etc.) were not granted citizenship because of their alleged “aggression” towards Slovenia.² The result of such practice was indirect discrimination of those who had genuine link with the Republic of Slovenia: this link was

² However, since the latter have never been charged or convicted for any crimes, the Ministry of Interior used the criterion of threat to public order, defense and security of state which has been included in the Citizenship of the Republic of Slovenia *after* the independence (December 1991). This also means that the Ministry of interior used this article *retroactively*: this article did not exist in the time of the alleged aggression on the Republic of Slovenia (June 1991) and could therefore not be used to process the acts of aggression allegedly committed during the independence process. The fact that the nature of these provisions was inconsistent with the law and the constitution was also confirmed by the Constitutional Court decision No. U-I-147/92 of May 6, 1993.

completely ignored, the only element that was taken into account when deciding who would be erased and would not, was the lack of possession of the republican citizenship of Slovenia.

c) Discriminatory nature of erasure as such (comparing nationals of other republics of the former Yugoslavia and other third country nationals): permanent residence statuses were withdrawn without any prior notification and without legal basis from the people from other republics of former Yugoslavia, while at the same time this measure was not carried out against all other third country nationals (e.g. western European Countries, Americas, etc). The measure was carried out only against those who were in accordance with the principle of *ius sanguinis* (the principle of ethnicity) listed in the registers of republican citizenship of Croatia, Bosnia and Herzegovina, Serbia, Montenegro or Macedonia. The measure was therefore not carried out against them because they were not citizens of the Republic of Slovenia, but because they were of Croatian, Bosnian, Serbian, Montenegrin, Albanian or Macedonian ethnic origin.

d) Discriminatory nature of initiatives to withdraw citizenships after they were granted in accordance with Article 40 of the Citizenship of the Republic of Slovenia Act: After the period of granting Slovenian citizenship to about 171.000 people, there were numerous initiatives proposed to the National Assembly by the right-wing members of the parliament, to withdraw the citizenships granted by the independent Slovenian state to those people ethnically from other Yugoslav republics who did not obtain it automatically or to those who consequently had double citizenship (both Slovenian and of one of the other Yugoslavian successor states). The initiatives were accompanied by the xenophobic and racist public discourse of members of the parliament, but they did not obtain a green light of the legal department of the government of the Republic of Slovenia because of their interference with acquired rights, human rights and the principle of legal certainty.

V. Consequences of Erasure: *De Facto* Statelessness and Deprivation of Rights

The erasure had grave consequences for the victims. First, it exposed many of the victims to ***de facto* statelessness**. Many people who were erased are today *de facto* stateless – although in principle that should not have happened since all citizens of Yugoslavia should have been granted one of the republican citizenships (Croatian, Serbian, etc.) in addition to the federal citizenship of Yugoslavia. However, in practice, that was not the case because for the state system of the former Yugoslavia, the republican citizenship was not essential, no rights depended on it, and the books of republican citizenships were not thoroughly kept by all republics. Furthermore, even if there was a possibility for the people to obtain citizenship of another republic after they were erased, that was many times impossible due to wars and ethnic cleansing that took place in Croatia, Bosnia and Herzegovina, Serbia and Kosovo. *De facto* stateless in combination with the withdrawal of permanent residency in Slovenia had devastating effects to the lives of the people concerned (see examples at the end of this brief).

Further, most of the civil, social and economic rights in Slovenia are **tied to the status of permanent residence** (not to the citizenship – citizenship provides the person with additional rights such as voting rights, holding public functions, obtaining employment in public service

and public bodies etc.). Due to the erasure, the people became illegal migrants, were subject to deprivation of liberty and detention in the Aliens Centre together with illegal migrants who just entered the country, and were subject to expulsion from Slovenia where they lived for many years. In addition, many of them lost their businesses, apartments, jobs; they were separated from their families (which resulted in a violation of private and family life in accordance with Article 8 of the European Convention on Human Rights), and were prevented access to unemployment allowance and social security benefits. They were unable to access hospitals or obtain pensions although they had been paying contributions to the health and pension insurance systems for their whole lives.

VI. Current Situation

Since February 26, 1992 when the erasure took place, the erased people of Slovenia tried to regulate their statuses in various ways. Following the 1999 Constitutional Court decision, the National Assembly adopted the Act Settling of the Status of Citizens of Other Successor States of the former Yugoslavia (Slovenian acronym: ZUSDDD) and 2002 Amendments to the Citizenship Act. In accordance with these two acts, about 13.000 people managed to regulate their status and obtain their permanent residence, but not retroactively, which means that they still have no continuity in their status from the moment of the erasure. Out of the remaining 5.000 people, about 2.500 obtained temporary residence in accordance with the Aliens Act on the basis of employment, studies and schooling, or family reunification in Slovenia. (This group is in an uncertain position because in order to renew a temporary residence permit one has to fulfill the conditions for the permit at each renewal). The assessment is that the remaining 2.500 still have no status at all (e.g. the total erased). Many of them still live in Slovenia in inhuman conditions, while others were forced to leave Slovenia and seek refuge abroad.

Although most of the human rights treaty bodies of the United Nations (Human Rights Committee, Committee on Civil and Political Rights, Committee against racial Discrimination, and the Committee on the Rights of the Child), the Human Rights Commissioner of the Council of Europe, Amnesty International and other human rights organizations throughout the world and in Slovenia (including the highest authority – the Constitutional Court), have called upon the Slovenian authorities to investigate the erasure, to return the statuses of the erased and to redress the injustice, the Slovenian authorities have not yet taken any comprehensive measures to respect the recommendations.

Currently, the government of the Republic of Slovenia stands on the position, that the proposal of the Constitutional Law which has been prepared to ‘redress’ the injustice, is an appropriate solution and will be adopted when the National Assembly gathers two third majority for its support.

However, defenders and advocates of the erased, as well as the opposition parties are of opinion, that the Constitutional Law is not an appropriate way to redress the statuses. In fact, if it was adopted, it would create new injustices and would violate the Constitutional Court decisions. Namely, the proposal of the Constitutional Law:

- Changes the constitutional bases of the creation of the independent Republic of Slovenia and seeks to legitimize further legislative acts and measures that caused the erasure.
- Excludes individual and objective responsibility of those who committed the act of erasure;
- Counters all up to date achievements of the erased themselves, the Constitutional Court, and their defenders; its contents are against all constitutional courts decisions issued so far;
- Enables new trials and possibilities for withdrawal of statuses that were re-gained;
- Completely excludes a possibility of compensations that could be awarded to the erased for the material and immaterial damage suffered.

In addition to that, it provides the basis for individual examination of every individual ‘case’ of the erased, instead of returning the statuses to them in the same way as they were taken away – collectively. These are the reasons why the domestic and international human rights community rejects the proposal of the Constitutional Law as a measure that is inappropriate and unacceptable for redressing the injustice. For the same reasons the opposition parties of the National Assembly refuse to provide support needed for the adoption of this act.

VII. A few Examples of Erased

- *Asylum Seeker in Germany*

1. Mr. A. B. is an erased person and has real and effective ties to Slovenia. Mr. A. B. came to Slovenia from Kosovo in 1985, moving within the same state, the Federal Socialist Republic of Yugoslavia. For a period of seven years he had legal residence and employment in Maribor, Slovenia. However, as he had not applied for Slovene citizenship in 1991, he was ‘erased’ from the permanent residence registry in 1992, meaning that he was among the many tens of thousands of persons with real and effective ties to Slovenia whose records were arbitrarily destroyed in the context of administrative ethnic purges surrounding Slovene independence. Consequently, he lost all his rights in Slovenia, without ever being informed of this circumstance (“erasure” was a secret operation). In 1993 he was arrested by the Slovenian police that took all his personal documents away from him, addressing him with xenophobic statements such as “there is no room any more for Roma people here in Slovenia”. A. B. was closed up in a detention centre and then forcibly expelled (without any documents) by Slovene authorities to Albania, a country to which he had no ties whatsoever and indeed in which he had never previously been. The Albanian police sent him back to Slovenia, where his close relatives live (including his brother who now is a Slovene citizen). Upon arrival he was again detained in the detention centre by police. Again, they told him that “the Slovenian state is meant only for Slovenes”, therefore he would be forcibly expelled again, to some other destination. He succeeded in escaping from the detention center, but hurt himself seriously when he jumped out of the window. Some Slovene friends helped him to recover and to reach Germany. At that time thousands of erased people were forced to leave Slovenia, and hundreds of them probably fled from Slovenia to Germany. However, to our knowledge

none of them could obtain any protection as an erased person. In order to stay legally in Germany they were forced to lie, presenting themselves as refugees from some other Yugoslav region (where, at the time, war had burst). Therefore A. B. declared he was coming from Kosovo and thanks to this declaration was issued 'Duldung', a form of temporary protection. In Germany, where he lived and worked for 12 years, he ultimately married and had four children. His wife M. B., originating from Kosovo, also had 'Duldung'.

2. Threat of expulsion to Kosovo in spite of his Roma background. In 2005 German authorities ordered Mr. B. and his family to leave Germany and to return to Kosovo, in spite of clear indications that forced returns of persons regarded as 'Gypsies' in Kosovo were potentially cruel and degrading. Mr. B.'s family was forced to leave Germany but stopped its travel in Slovenia. Upon arrival they were advised to apply for asylum, which was the origin of endless legal complications, since the situation of Mr. B. in Slovenia is quite different from that of an asylum seeker. In any case, on 27 July 2005 Mr. B. himself also applied for a residence permit as an erased person.

In the fall of 2005 the Slovene Ministry of Interior attempted to forcibly return the B. family to Germany (from where they would have been subsequently deported to Kosovo). This gave rise to a strong pressure by civil society and to international mobilization, with Italian deputies in the European Parliament Giusto Catania and Roberto Musacchio presenting an interrogation to the European Commission on this subject. On that occasion, the German Embassy in Ljubljana was formally asked to inform the German government of the fact that A. B. is an "erased" and that cooperating to the deportation of an erased person is an illegal act. Eventually, a ruling of the Administrative Court of Ljubljana declared that the expulsion would be unlawful and stopped the deportation. This decision was, at the time, confirmed by Slovene Supreme Court.

In November 2006, the Slovene authorities again attempted to forcibly expel the B. family. For that purpose they were transferred from the Asylum Home, where they were living, to the Detention Centre of Postojna. Again, international mobilization draw attention on the case and a new interrogation was presented to the European Commission by Italian deputies Giusto Catania and Roberto Musacchio, who also organized an inspection in the Detention Center. A complaint was filed to the administrative court, which on 15 November 2006 declared the measure illegal and ordered that the family be immediately accommodated in the Asylum Home, until the final decision. Upon the appeal against this decision filed by the Ministry of Interior, the Supreme Court overruled the administrative court ruling and confirmed the deportation order. Two days later, on 1 February 2007 the deportation order was executed.

3. On 1 February 2007 at 6.30 a.m. the B. family was unlawfully and unconstitutionally deported from the Republic of Slovenia. The deportation was carried out with a van with no police markings, heading towards the Slovenian-Austrian border and later towards Germany. The deportation was carried out without a previously issued deportation order and without a prior notification issued neither to the family nor to their legal representatives.

4. Expulsion is contrary to the Constitutional Court decisions. The authorities took all these measures in spite of the fact that the Constitutional Court, already in 1999, declared that

erased persons should not be expelled from the country. In its decision No U-I-284/94 of 4 February 1999 the Constitutional Court stated that “because a possibility exists that citizens of other republics [of former Yugoslavia who were erased from the registry of permanent residency because they did not apply for Slovenian citizenship] who on the day of referendum for independence had permanent residence in the Republic of Slovenia on 23.12.1990 and actually live on its territory, still do not have their legal status regulated, the Constitutional Court, in accordance with Article 40 of [the Act Regulating the Status of Citizens of other Successor States of the former Yugoslavia] decided that these persons should not be forcibly returned as foreigners until the legislator adopts measures to redress the erasure.” With its decision, the Constitutional Court expressly prohibited a forced removal of erased persons such as A. B.. In spite of that, the Slovenian authorities have twice attempted and for the third time succeeded to expel him.

5. Until this day there were numerous actions taken to protect the family from forced expulsion:

- As we already mentioned, a parliamentary interrogation was set two times (by Italian members of the European Parliament Giusto Catania and Roberto Musacchio) asking the European Commission to express its position on the expulsion of A. B. from Slovenia as an erased person (the second parliamentary interrogation was presented on 16 November 2006)
- Amnesty International launched an urgent action calling upon people to send letters to the Slovene authorities, and issued several press releases condemning the threat of deportation
- A lawsuit titled “Makuc and others vs. Slovenia” was filed to the European Court of Human Rights (ECHR) on 04.07.2006 by the Italian Attorney’s Office Studio Lana Lagostena Bassi. The lawsuit was filed on behalf of eleven erased people, including A. B., and it concerns the violation of many articles of the European Convention on Human Rights. The ECHR decided that it will be treated as a priority, in an urgent procedure.³
- European Roma Rights Centre (ERRC) wrote a formal letter to the Ministry of Interior of the Republic of Slovenia expressing concern regarding the threat of deportation and asking to intervene without delay to cancel the detention and forcible expulsion of B. family.⁴

• **Z. M.**

1. Mr. M. is also an erased person and has real and effective ties to Slovenia. Mr. M. came to Slovenia with his family (of a Serbian ethnic origin) from Kosovo as a five year old. He had permanent residency in Slovenia from August 1, 1984 until February 26, 1992. He finished elementary school and vocational school in Slovenia. When Slovenia declared independence from Yugoslavia, the soldiers with residency in Slovenia serving army in other states were called home. At the time Mr. M. was serving in Slovenia and then in Croatia, and was called home in the summer of 1991. After he was called from the army he decided to

³ Letter of the European Court of Human Rights to Studio Lana Langostena Bassi on 10.11.2006.

⁴ ERRC letter to the Ministry of Interior on 9.11.2006.

visit his grand parents in Kosovo. He left for Kosovo on November 2, 1991, while his whole family (father, mother, a brother and a sister) stayed in Slovenia. When he wanted to return to Slovenia at the end of December 1991 aged 18, the Serbian border police did not want to let him over the Serbian – Croatian border because he had no proof that he either served the army in Serbia or that he was excused from the army service. Mr. M. did not have such proof because he served the army in Slovenia (where he had his permanent residency) and afterwards in Croatia. This is the reason why Mr. M. missed the six-month deadline to apply for Slovenian citizenship, and as a “punishment” he was erased from the permanent register as well.

Because of this Mr. M. was forced to stay with his grand parents in Kosovo, while he managed to return to Slovenia only in 1992. At that point he lodged the application for Slovenian citizenship, but it has been rejected because of the expired six-month deadline. As other erased persons, Mr. M. was also not informed about the erasure and about the consequences that would take place if the deadline was missed. Since 1992 Mr. M. tried to resolve his status in various ways; among others, he applied for citizenship on the basis of article 19 of the Citizenship Act, but he did not receive it in spite of the fact that other members of his family, who were also erased, did (except for his father who only has permanent residency, but was not granted citizenship due to a language barrier).

Due to the unresolved status Mr. M. could not obtain an employment. Because he lived in Slovenia illegally he was living in constant fear from forced deportation. Since he saw no other solution he was forced to ask for Serbian citizenship and move to Kosovo, which at least enabled him to obtain visas to legally visit his family in Slovenia. Namely, his only wish was to reside in Slovenia legally, and he hoped to resolve his residency status while staying legally in Slovenia on the basis of visas. The visas lasted for one month at the most, and to obtain them he was required to pay high sums of money (35-50 EUR). Soon after 1992 his visits to Slovenia were prevented by wars in Croatia and Bosnia and Herzegovina, which made traveling from Kosovo to Slovenia physically impossible. In that time he worked in Kosovo for seven years and raised a family of his own. After the two wars ended, the war in Kosovo started in 1999 which forced him to flee from Kosovo (as a Kosovo Serb) and become an internally displaced person in Serbia. The war caused destruction of infrastructure, postal and telephone system and cut Kosovo away from the rest of the world. During that war he lost everything, including the family home. In that time it was physically impossible to apply for a visa. Not before after the war he returned to Kosovo and in 2000 he again applied for a visa and visited his family in Slovenia which he was very close to because he lived there since his early childhood. At the embassy of the Republic of Slovenia in Budapest (which was until 2000 competent for Serbia as well) and later at the embassy of the Republic of Slovenia in Belgrade, he applied for a visa many times, and was able to obtain it for several entries.

2. When in 2002 he again tried to arrange Slovenian citizenship while in Slovenia on a visa basis he was forcibly expelled by the Slovenian police without any kind of expulsion order being issued to him, in spite of the fact that his visa was still valid (and in spite of the fact that in 1999 the Constitutional Court prohibited deportations of the erased persons until the issue of their status is not resolved because article 8 of the European Convention for

Human Rights could be violated). The only proof that he was expelled is a stamp mark in his passport. After this incident it has become much more difficult for him to obtain a visa. For one of his last visits he needed to apply for a visa for three times.

3. Currently Mr. M. has three open procedures: first, his application for permanent residency is pending before the Ministry of Interior. Second, his application for Slovenian citizenship was rejected and the lawsuit filed against this decision is pending before the Administrative Court of the Republic of Slovenia. And third, he is one of the 11 erased people who filed the application to the European Court of Human Rights on July 4, 2006. The problem with Mr. M.'s situation is that it will be very difficult to prove that he fulfills the condition in the only law that is currently available for the erased who wish to resolve their status – the Act on Settling the Statuses of Citizens of Other Successor States of SFRY (known for the Slovenian acronym ZUSDDD). In accordance with this act, permanent residency may be granted to persons who prove that they have had their permanent residency on February 26, 1992 and who can prove that they had actually and uninterruptedly resided in Slovenia ever since. Obviously, Mr. M. did not reside in Slovenia actually and uninterruptedly since the erasure for reasons which were (and still are) completely outside his power. Mr. M.'s case shows that the current legislation cannot redress the statuses of the erased since it requires the fulfillment of conditions that some erased cannot fulfill.

- **3. V. D.**

1. V. D. was born in Koper, Yugoslavia, on 22 september 1969. For his first 22 years of existence he was a Yugoslav citizen. Then, on June 25, 1991, Slovenia declared its independence. Koper was no more a Slovenian town within Yugoslavia; it had become an important city of a new State. V. D. had his “permanent residence” in Koper, together with his family. He had been educated in Koper, from primary school till high school diploma. He distinguished himself in the game of chess and was considered one of the best young talents in Slovenia. Being born and grown up in Slovenia, he believed he was a Slovenian citizen.

After his studies, V. went out for work. He was employed, for about one year, by the firms Tomos and Mehanotehnika in Izola, Slovenia. In the early nineties he decided to look for work in the nearby regions of Italy, where the occupational situation was quite favorable. He was employed as metal worker in Vicenza, then in a leather factory in Arzignano, and finally in a furniture firm in Verona. He had regular jobs, with a legal contract, he paid his taxes, and he had a permit of stay for work reasons, issued by the Italian Ministry of Interior Affairs.

2. In February 26, 1992. V. D., aged 22, does not imagine that his destiny has already been printed in the hard disks of the computers of Slovenia's Ministry of Interior. As all other “erased”, he is completely unaware of the hurricane that is going to hit him, eventually destroying his life. He should have nourished some doubts, though. He should have considered with more attention the episode that, immediately after the secession from Yugoslavia, had upset the quiet routine of his family, back in Koper.

The “incident” was provoked by the circumstance that his parents were from Montenegro. A neighbor reported to the police that they were hiding some “cetnics” (that is, Serbian extreme right nationalists) in their house. The police broke into their apartment at night and tortured V.’s brother, Desimir. They directed a gun to D.’s neck and forced him to walk on his knees for more than 2 km, to a small house where his parents were spending the night. After arriving there, they started to shoot. They fired more than 30 cartridges, destroying the water reservoir and several other things. After breaking inside, they directed their guns to V.’s parents. They illuminated them with a reflector. The policemen kept asking: “Where are the “cetnics”?”. It was useless to answer that this was nonsense and that they never had any contact with such people. V.’s grandfather had namely been an important partisan hero, a deadly enemy of the “cetnics”. When the policemen eventually realized their mistake, they went away. They left behind a devastated house, and no explanations.

3. While these facts were happening, V. D. was working in Italy. He was pretty sure he was a Slovene citizen. He didn’t think nationalist intolerance would ever affect him that far. One day he was forced to change his views on this topic. He received a phone call by his parents who told him they had discovered the whole family had been “erased” from the register of “permanent residents” of the Republic of Slovenia. V. D. suddenly realized that the document on whose basis Italian police issued him the permit of stay was his “old” Yugoslav passport, issued by Slovene authorities before the dissolution of the federal state. Having been “erased”, he had no possibility to get any other document. Slovene authorities wouldn’t even let him cross the border, near Trieste, to visit his parents in Koper, a few kilometers away. His personal situation became untenable. The catastrophe occurred in 2002, after 12 years of regular permanence, and work, in Italy. He had to renew his permit of stay in Verona but his Yugoslav passport had lost any validity. V. D. realized he was a stateless person. 10 years after his illegal removal from the register of “permanent residents” of the Republic of Slovenia, “erasure” hit him like a time bomb, undermining his private, economic and social life. The police of Verona refused to renew his permit of stay. He lost his job, his house, all means of survival. He was transformed into a stowaway, an illegal migrant - a person without any rights in Italy (or anywhere else). This situation goes on still today: V. D. cannot work, can’t drive a car, can’t rent an apartment and can’t visit his parents, who are now Slovene citizens.

4. Having become homeless, V. D. had to find a way to survive. He turned himself into a street artist. Fire games, balls, skittles and, of course, chess-board and sleeping bag. Together with his dog Black, he wanders along the Adriatic coast and earns his living with shows and improvisations. Living on the road can be dangerous. Especially if you have no documents to show to the policemen, who stop you all the time and aren't always tolerant and comprehensive. »Erasure« is something you can't explain so easily. Few people, in Italy, have heard anything about it.

5. On Christmas' Eve 2005, V. D. was issued a decree of expulsion by the chief of Bologna police. Being under the threat of arrest for not leaving the country (to go where – Slovenia had “erased” him and no other State was willing to accept him), V. D. was advised by a young lawyer of Fano, Silvia Mannelli, to apply for formal recognition of his condition as stateless person. In Italy, in order to do so you must first obtain a permit of stay from the

Ministry of Interior. The permit of stay was denied to him, on the grounds that “V. D. does not have a valid permit of stay” (May 16, 2006).

This argument strikingly resembles the syllogisms of Slovene authorities, who rejected V. D. application for Slovene citizenship (November 14 2005). According to them, V. D. can't be a Slovene citizen “because, *after erasure*, he has not been living continuously in the country”. They don't seem to be aware of the fact that it was their administrative workers that kept kicking him off at the frontier, for over 13 years. Following the same school of thought, the Slovene Consulate in Trieste answered to his lawyer, Silvia Mannelli, that in order to obtain Slovene citizenship V. D. should document his uninterrupted residence in Slovenia *with a regular permit of stay* (August 24, 2005).

On April 20, 2006, the head of the police of Pesaro and Urbino ordered “D. V., born on 22.09.1969 in Koper (Yugoslavia), a *Yugoslav citizen* . . . to leave the Italian territory within 5 days . . . otherwise he will be punished with arrest from 6 months to 1 year.” On June 16, 2006 V. D. was captured by the police while waiting for a train in the railway station of Ostiglia and imprisoned in Mantova's jail. Three days later he was on trial.

In his sentence, the President of Mantova's tribunal, doc. Giovanni Scaglioni, remarks: “The defendant has reported that he was unable to obey to the order of expulsion. Having been deprived of Slovene citizenship, he could not be repatriated to that country that refuses to accept him. He has documented that he has asked to be recognized as a stateless person, the procedure is pending. His lawyer has proved with a note of the Slovene Consulate in Trieste that D. V. is not a citizen of the Republic of Slovenia. The defendant must be absolved from all charges. In fact, having been expelled from the country as Yugoslav citizen (born in Koper, 22 september 1969) and having lost his right to Slovene citizenship, at present he has a justified reason for not leaving Italy, since he will not be taken in charge neither by Slovenia, nor by any other State. The fact, therefore, has no penal implications.”

Thanks to V. D., for the first time an Italian Court of Justice took into account the existence of »erased« and declared that their removal is not legitimate. In spite of this, one year after this sentence V. D. is still without a permit of stay. He cannot find a house or a job and is under permanent threat of being arrested by the police and closed in a detention center. At present, he gets along in the city of Pesaro thanks to the support of a network of social workers, volunteers and individuals concerned about his survival. They would easily find him a house and a job if he could get some documents and a permit of stay. However, he is still an »erased« in Slovenia and an »illegal stranger« in Italy.

As for A. B. in Germany, joint work of the Ministries of Interior of two European countries makes it possible, 15 years after the »erasure«, that an “erased” is still kept in a degrading and inhuman condition and deprived of his fundamental rights.