

SUBJECT: OPEN QUESTIONS ON THE EXECUTION OF THE ALIENS ACT

Through Article 40 of the Citizenship of the Republic of Slovenia Act, the right of citizens of other republics of the former SFRY to citizenship in the Republic of Slovenia with lenient conditions has been exhausted. In direct relation to this Act, the Aliens Act, in its preliminary determination, allowed these persons the opportunity to arrange their status on the basis of their own free will. Therefore, after 25/2-1992 provisions of the Aliens Act took effect for most persons who had not requested citizenship of the Republic of Slovenia. For persons who had received a negative decision regarding their application for Slovene citizenship, the provisions of this Act begin taking effect two months after negative decision has been issued.

According to our estimates, there are 40,000 persons who, by force of law or on the basis of a negative decision regarding citizenship, became foreigners and are arranging their residence status in the Republic of Slovenia. To date, the practice of receiving applications for permanent and temporary residence has shown that most applications draw on existential reasons, which are said to justify the reason for residence in the Republic of Slovenia (long-term residence in the Republic of Slovenia, employment, marriage to a citizen of the Republic of Slovenia, real estate holdings, etc.). The justification of reasons for residence is also linked to acquired rights [underlined by editors], which may cancel out eligibility conditions (a person does not have the means to sustain his/her existence, or his/her survival in the state is in no way guaranteed - unemployment, justification through real estate holdings without justifiable reasons - falsity). Delays in the adoption of an Employment of Aliens Act and Social Security Act also present a unique problem. Attempts are being made to compensate for this legal void with the provisions of the Aliens Act, which was not its original purpose.

As of 1/6-1992, the Ministry of the Interior has received 800 applications for permanent residence. Administrative decisions on temporary residence fall under the jurisdiction of municipal administrative bodies for the interior. The problem of temporary residence permits is growing ever larger, as the fact that the Ljubljana Ministry of the Interior alone has issued over 5,000 temporary residence permits as of 1/6-1992 shows. Deciding on applications for permanent residence presents a special problem, because two legal positions have emerged. The first respects the notion of "acquired rights", by which the case of a negative decision would constitute one-sided revocation of rights which these persons had already acquired prior to 23/12-1990 or 25/6-1991. According to this interpretation, all persons who, by the previous stipulations, had a registered permanent residence in Slovenia would retain permanent residence regardless of the change in status. The second position derives from an interpretation of the law which grants the possibility of acquiring a permanent residence permit only after 3 years of legal temporary residence. This means that these persons, aside from exceptions under Articles 16 and 17 (foreigners of Slovene descent and children or spouses who already have legal permanent residence), would not be granted permanent residence prior to this date.

In light of the intent of the Employment of Aliens Bill and the Social Security Bill, this dilemma is of key importance, as it is a matter of deciding upon existential rights which the state must guarantee.

In these questions, the matter of whom to grant permanent residence remains open, in particular because an acquired permit is difficult to revoke (problematic persons, such as criminals, violators of public peace and order, and certain persons who were employed in the Yugoslav Army). It is therefore a matter of persons who, according to Articles 13 and 19, in many cases do not even meet the requirements for obtaining a permit for temporary or permanent residence, and who, in their applications, link justifiable reasons to the fact that their spouses and children reside in the Republic of Slovenia. Owing to long-term residence in our country, they have lost contact with their home countries, and an existential bond with Slovenia also derives from this.

Because of the complexity of the problem, which has both a political connotation and financial consequences, we suggest that the Government of the Republic of Slovenia familiarize itself with this problem and take its stance towards the positions listed above.

The Ministry of the Interior believes that in the independence phase of the Republic of Slovenia, all rights of citizens of republics of the former Yugoslavia, which are derived from international conventions and interstate agreements, were respected. The independence legislation (in particular Article 40 of the Citizenship Act and Article 81 of the Aliens Act) granted these persons free choice on their status to the greatest possible extent. This is why we feel that, in further proceedings, acquired rights must not be of account [underlined by editors], as they were consciously forfeited, and that for this reason the determinations of the Aliens Act must be thoroughly followed.

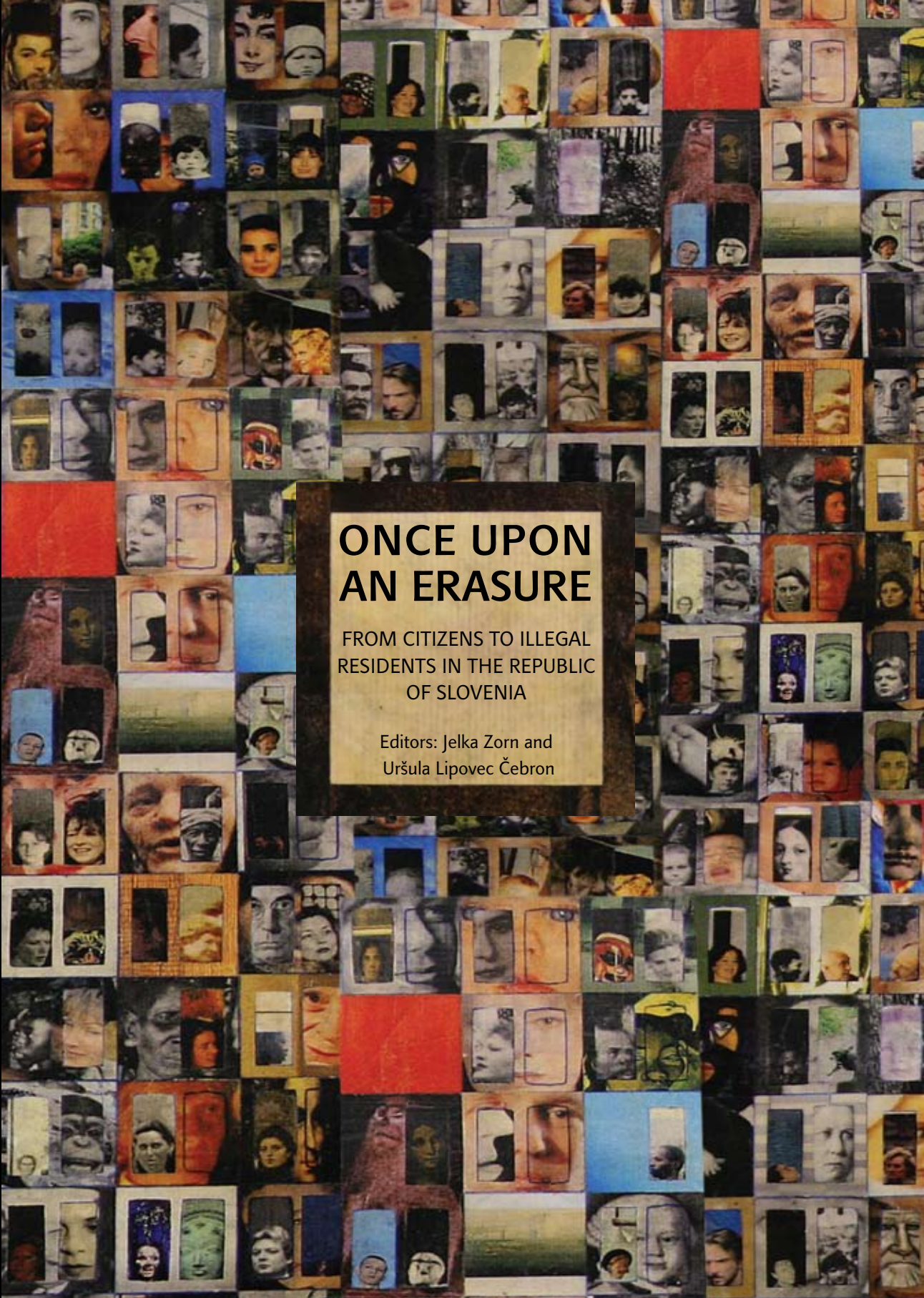
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ONCE UPON AN ERASURE

Journal for the Critique of Science



ONCE UPON  
AN ERASURE

FROM CITIZENS TO ILLEGAL  
RESIDENTS IN THE REPUBLIC  
OF SLOVENIA

Editors: Jelka Zorn and  
Uršula Lipovec Čebon



Editors

Jelka Zorn and Uršula Lipovec Čebtron

Once Upon an Erasure: From Citizens to  
Illegal Residents in the Republic of Slovenia

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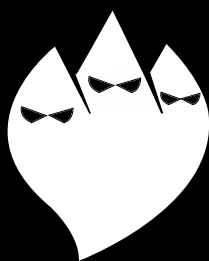
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I FEEL SLOVENIA



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Karaula MiR (Migration-Resistance) (2005) *On the Other Side of the River*

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EDITORIAL

“solo la memoria  
puede avanzar,  
nunca el olvido”

*»Only memory can advance,  
never oblivion.«*

Graffiti in Ciudad de Guatemala

M. Bajtin.





# The Erasure and Cultural Anesthesia – A Report on Slovenia's Statehood, Political Equality and Social Justice

*Europe is dying.*

*The League of Nations and the apothecary,*

*both are a lie.*

*Operations. Revolutions!*

*On a grey road I appear.*

*Brown leaves are falling from the trees,*

*and only one thing I fear.*

*When these trees are black, no longer verdant*

*and grey fields*

*and small houses*

*and I will scream*

*then everything, everywhere around*

*will be silent.*

*Europe is Dying* by Srečko Kosovel, a Slovene poet (1904–1926)

In the literature on Central and East European nationalism – indeed even within the more specialized, yet especially prodigious, body of scholarship dedicated to the break-up of Yugoslavia – Slovenia is largely absent. When this former Yugoslav republic is mentioned, it is viewed uncritically as both a positive case of new sovereignty and a model European Union accession state. This book, however, with its critical investigation of the manner in which Slovenia's citizenship was constituted and the ongoing human rights violations against “minorities” created by this process, paints a very different picture.

As one of six federal republics of the former Yugoslavia, Slovenia first achieved its statehood in 1946 Constitution, thus developing its own cultural, scientific, judicial, legislative, governmental, and welfare institutions. The decentralization of Yugoslavia instituted in its 1974 Constitution and intensifying following President Tito's death in 1980, set the course for the federal state's disintegration at the beginning of the 1990s. However, at the time this disintegration did not seem inevitable, as the main civil movement for

change and renewed Communist Party had their focus on democratic and economic reform, political pluralism, and personal freedoms rather than on plain nationalist mobilization. Slovenia and Croatia were the first to claim their independence in summer of 1991, thus triggering armed conflict. The war in Slovenia finished within ten days. In sharp distinction to Croatia, which would soon be engulfed in a much more bloody and protracted war, Slovenia did not have any “territory” of “native” populations belonging to other nations of the former Yugoslavia, which could be claimed constituent parts of national territory. Instead there were dispersed and diverse communities of “internal” immigrants from other republics of Yugoslavia. Slovenia, being the most economically developed republic, received a significant number of economic immigrants from the 1960s onward. They formed their own families in Slovenia, became settled and more visible in the 1980s, particularly in more urban and industrialized areas. In the 1990s these immigrant communities became a political issue, portrayed mostly in a negative light, and interpreted according to the “needs” of the “core nation,” the Slovenes. The exclusionary politics towards immigrants was fully realized after secession, not only with regard to political language, but also through administrative measures, especially what is now known as the erasure from the register of permanent residents. In this introductory chapter we would first like to briefly explain this erasure, including questioning its (non) compliance with the European citizenship, and then present the outline of the book.

## I. The erasure

When Slovenia became a sovereign state in 1991, it had to specify who its citizens were. With regard to the political equality of its residents, the process of secession from Yugoslavia was highly ambiguous. A particular kind of extreme ethnonationalism emerged, one which used administrative procedures to strip certain persons of their social, economic, political and basic human rights. This procedure has now come to be known as the erasure, in which thousands were removed from the register of permanent residents of the Republic of Slovenia in 1992, following an initial overall determination of Slovene citizens. Immigrants from other republics of the former Yugoslavia were welcome in Slovenia in the 1960s, 1970s and 1980s, when they were needed in developing industry. Later, in the incipient state with its new neoliberal context, they fell victim to racist discourse and exclusionary practices. Despite the governmental abuse of administrative measures and the mistreatment of individuals whose only “offence” was that they did not become Slovene citizens in 1991, Slovenia has been constantly praised as the only success story on the territory of the former Yugoslavia.

The erasure was based on ethnonational administrative categories inherited from the *ancien régime*. The 1974 Constitution of the Socialist Federative Republic of Yugoslavia introduced a two-layered citizenship concept: republican citizenship and Yugoslav citizenship. According to this Constitution, all Yugoslav citizens were simultaneously citizens of one of the republics, regardless of their self-identification as Yugoslavs, for example, which was a case for transnational identity. Republican citizenship was an administrative, obligatorily ascribed status; however, it was generally unknown to the citizens of Yugoslavia. In other words, Yugoslav citizens were usually unaware of their republican citizenship status,

because, for them, it served no practical purpose and had no legal consequences. This citizenship became relevant only after Yugoslavia dissolved. In the successor state of Slovenia, it was applied as an initial criterion for the overall determination of the citizenship population.

On 25 June 1991, when Slovenia declared its independence, approximately 200,000 persons (10 percent of the population) that lived permanently in its territory did not hold Slovene republican citizenship. The majority were able to obtain Slovene citizenship on the basis of Article 40 of the Citizenship of the Republic of Slovenia Act. This article, with a six-month window, stipulated much more lenient criteria for achieving citizenship than ordinary naturalization rules allowed.

For various reasons, not all non-Slovene citizens applied for Slovene citizenship through Article 40 – or they did apply but were rejected. Instead of being allowed to maintain their status as legal residents, 18,305 persons<sup>1</sup> (almost one percent of the Slovene population) were secretly erased from the register of permanent residents by the Ministry of the Interior on 26 February 1992. The erasure resulted in the violation of social, political, and human rights: the right to legal safety, equality before the law, freedom of movement, the right to employment and an unemployment safety net, the right to a pension, health care, social assistance, education, etc. Protection of human dignity was also harshly violated as these persons were made “illegal” residents in their own homes. Perhaps the crudest and among most traumatic were situations of detention and deportation of erased persons from Slovenia. Since they lived with their families it means that family integrity and parental rights and duties were violated (as parents obviously could not take care of their children owing to their forcible removal). Shortly after Slovenia was recognized as a sovereign state by the international community in January 1992, both statuses – citizenship and status of permanent resident – became subjected to a Cerberian gate-keeping by the executive authorities.

During subsequent years, the Slovene public and even the Erased themselves were not aware that this Kafkaesque bureaucratic exclusion represented a systematic, ethnically motivated act of hatred and not merely an accumulation of individual administrative errors. Seven years after the initial act of exclusion, in 1999, the Constitutional Court ruled in favor of an erased person, the complainant Blagoje Miković. The Court identified the legal void of the Aliens Act, which failed to define the status of those permanent residents who did not become Slovene citizens. So the practices that followed from this legal void were ruled to be in violation of the Constitution. Owing to this ruling and to pressure from the European Commission (at the beginning of the European Union accession process), the legislative body passed a law that curbed *de facto* statelessness, the surreal situation in which the Erased found themselves. In subsequent years, approximately 12,000 persons received the status of permanent resident on the basis of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (ARLSC). However, this law could not bring justice to the Erased, since it did not recognize the erasure as such. Not all the Erased could reclaim their revoked permanent resident status on the basis of this law; therefore, another complaint was filed with the Constitutional Court. This time the complainant was the collective of the Erased and not an individual. In April 2003 the Constitutional Court again ruled in favor of the Erased, thereby declaring the ARLSC unconstitutional.

<sup>1</sup> 18,305 is the number of erased persons used by the Ministry of the Interior, although their explanation of the problem differs from the one presented here. However, Helsinki Monitor, the organization which was the first to advocate on behalf of the Erased, has suggested a much higher number, up to 130,000.

Despite these Constitutional Court rulings in favor of the Erased, their oppression has continued. Following the 1999 decision, however, significant change has occurred. Thus, in 2002 the Erased managed to organize themselves collectively in order, not only to share their traumatic experience, but also to lead a political campaign for their rights. This campaign can, in certain respects, be considered a great success, since it brought to light the oppressive character of the Slovene state and society. Without the campaign, the general public, and even the Erased themselves, would not have been aware of precisely what happened. Of course, one would still be aware of discrimination, xenophobic attitudes, hate speech, surreal administrative procedures, the banishment of Serbo-Croatian languages from Slovenia (as the Slovene language is widely considered central to national identity) etc.; however, a deliberate and systematic policy behind such hostile attitudes and practices might not be obvious and provable.

The campaign of the Erased illuminated the method of their own as well as similar exclusions. Through sharing their experience, and making their opinions and actions relevant, the Erased transformed themselves from isolated victims into a collective, publicly recognized subject. The Erased did not establish themselves *ex nihilo* or out of a desire to counter linguistic assimilation and other subjugation pressures – although this alone would have been a sufficient reason to start a campaign, as someone must hold a mirror up to those in power. Calling themselves the Erased, thereby referring to their experience of exclusion, they elucidated divisions and injustices within Slovene society – and this has been one of the sources of the symbolic power of the movement of the Erased. They might, otherwise, have continued to be referred to – as they were in bureaucratic discourse – as “aliens without status”, which not only concealed the method of their exclusion but also displaced responsibility onto the affected persons themselves. At this point, the question arises of whether this symbolic power is also actual. The answer is, to a certain extent, positive. All along, the aim of the campaign has been to win justice, initially on the level of the national Constitutional Court and, since their ruling has resulted in the failure of the executive authorities, also at the European Court for Human Rights. These struggles are expected to have not only symbolic force, but also actual, material results.

The political aim of the diverse struggle is intertwined with theoretical work and reflected in the articles of this volume. As Pierre Bourdieu has pointed out, a political intervention’s chances of success increase the more it arms itself with theory that is grounded in reality. With regard to the issue of the erasure, however, the Slovene social sciences and humanities have been (with a few rare exceptions) shrouded in silence and thus have consciously or unconsciously supported the arguments of government policy. Thus the effect they have produced is the *status quo*.

However, the erasure should not be perceived as a solely domestic affair, isolated from the wider European context. Slovene officials’ implementation of the erasure must be understood to have been carried out in spirit of Europe’s tightening controls against immigrants and asylum seekers, which was at this time being written into the emerging European citizenship (cf. the 1990 Schengen Agreement and 1992 Maastricht Treaty). The erasure perhaps implemented these “European” principles more harshly, but it also reveals more starkly, therefore, the pervasive logic of states’ production of illegality. The case of the erasure – as well as European “fight against illegal migration” and refusal of “bogus” asylum seekers – makes it very clear that states do not attempt to eliminate illegality, but rather produce it, using this illegality as



a pretext for repressive measures. Considering Slovenia's initial aspiration for EU membership, it comes as no surprise that newly founded Slovenia established institutional structures for a truly European treatment of asylum seekers and undocumented immigrants, including the construction of asylum and detention centers. But then who was to be considered an undocumented immigrant and sent to detention? In many cases the Erased found themselves in these new carceral institutions, sometimes making up even the majority of their populations. Étienne Balibar's claim that the territory of the former Yugoslavia should not be perceived as external to Europe but rather as a projection of European "race relations" seems plausible also in the case of Slovenia. His argument that "the fate of European identity as a whole is being played out in the former Yugoslavia" can be applied to Slovenia where the European citizenship is reflected as evermore becoming the citizenship of borders, founded on exaggerated exclusion of immigrants [liable to detention en masse]. Slovenia, unfortunately, is a paradigmatic example of the negative aspects of this constitution of citizenship. Readers sensitive to European exclusion, such as the situation of the Sans-Papiers, or undocumented migrants in France, for example, will not be able to escape a recognition of parallels with the case of the Slovene erasure.

<sup>2</sup> The Journal for the Critique of Science, Imagination, and New Anthropology (*Časopis za kritiko znanosti, domišljijo in novo antropologijo*, Slovene acronym ČKZ) is an established Slovene social and humanistic journal launched at the time of the student rebellions in the early 1970s by a group of radical students and young intellectuals in order to open a theoretical forum for academics wishing to be formed in the stream of reflection of the most relevant social movements. Today's editorial board continues to follow the concept, and therefore the journal diverges from traditional scientific notions where the lack of judgment of one's own normative foundations is confused with "scientific objectivity". In the last two decades the journal has been committed to the treatment of problems of open society in young democracies, social-ecological issues, cultural, gender and queer studies, media theory, social-pedagogical topics, addiction, disability, African studies, Europe, migration, war and militarization of societies etc., discussed by national and international authors from a variety of disciplines.

## II. About the book

This book is a collection of translated articles first published in the Slovene Journal for the Critique of Science, Imagination, and New Anthropology [volume 35, issue 228].<sup>2</sup> All of the authors who contributed articles, documentary films [see the DVD supplement], photos, caricatures and with whom interviews were conducted are actively engaged in the struggle for the rights of the Erased. They perceive this struggle as a fight for the right to have rights and an endeavor to overcome ignorance and cultural anesthesia – i.e. a suppression of the agonizing and controversial experience of those who have been constructed as cultural Other [these include "non-Slovenes", immigrants from other republics of the former Yugoslavia].

The argument which follows from the above explanation is that the act of the erasure should not be perceived solely as a technical anomaly within the Slovene administrative system. As the articles in this volume show, the erasure from the register of permanent residence is simultaneously a legal, political, and social issue. To put this differently, the frequent journalist's question about how many of the erased persons are still without documents, implies that in receiving the status of permanent resident or citizen, the problem of the erasure would be finally solved. However, it would not. The solution we call for involves a transformation of the societal structures – the mechanisms of belonging, the ability and willingness to reflect on cultural anesthesia – and a search for accountability.

Until a different kind of discussion prevails in Slovene society, a discussion about the content of “loyalty”, the consequences of racism, and personal and political responsibility instead of a discussion that reinforces stigmatization and conceals responsibility, any overcoming of the erasure is not viable. This perspective is also shared by contributors to this volume. In the following we are briefly presenting their main points.

Borut Mekina and Jelka Zorn's articles both describe the decision making process of the legislative body at the time of formation of the new sovereign state in 1991. They cite arguments accompanying the adoption of the Citizenship of the Republic of Slovenia Act and the Aliens Act thus revealing the arguments behind the subsequent erasure. An interview with the erased activist Aleksandar Todorović illuminates these and related issues from a more personal, even profound perspective.

Cultural anesthesia was a primary condition that maintained the enormous gap between the declared respect for human rights, on the one hand, and the actual experience of the Erased, refugees from the Balkan war and non-Slovenes in general, on the other. It was reproduced by the masses, most of the media, and public institutions. This silence and the “unpopularity” of investigation into the issues concerning the rights of non-Slovenes, especially of those constructed as national enemies, is addressed in Igor Mekina's article.

The link with other types of erasure, wherein the “Slovene erasure” shows itself to be one of the more dramatic symptoms of European exclusion, is elucidated in the interview with Roberto Pignoni as well as in Imma Tuccillo Castaldo's article. Both draw comparisons to the situation in Italy. In her analysis, Tuccillo Castaldo uses the case of thousands of young Roma who were born and raised in Italy, but go without the right to citizenship, to examine paradoxes of legal belonging to a place of actual residence. Some of these Roma displayed solidarity with the Erased by joining their journey to the European Parliament in November 2006. The question of “erasing” collective memory in Italy has made it possible for modern detention camps (where some erased individuals have been detained) to appear in the immediate vicinity of former concentration camps. This issue is addressed in the interview with Pignoni, in which he also describes the process of preparing a lawsuit of the eleven cases of erased persons for the European Court for Human Rights.

Marta Gregorčič presents an even broader context for the struggle. She links the campaign of the Erased with the struggle of friends and families of the disappeared in Latin America. Their political activity is based on the principles of self-organization and resistance to neoliberalism. They not only defend the rights of particular groups, but also take a critical look at the collective memory and responsibility that applies to society as a whole. Vlasta Jalušič's article also takes an in-depth look at the problem of responsibility. It focuses on the area of the former Yugoslavia, and seeks analogies between avoidance of personal and collective accountability in the case of the erasure and in the case of war in the Balkans.

In his article, Andrej Kurnik considers both the crises of national-form and the original contribution of the Erased to politics. He poses the question of whether the Erased have extended the boundaries of citizenship through their citizenship practices, concluding, in strong agreement with French philosopher Étienne Balibar, that the Erased have used a strategy of “becoming” rather than “being” a citizen.

Marta Stojić has chosen a slightly different approach to the issue of the Erased and their subjectivity: using an anthropological perspective, she has depicted the Erased as those marked by *liminality*. This means that they are neither fully inside nor fully outside

community/society; they occupy a symbolic interstitiality, and social non-time. Besides, she perceives the term *erasure* as a metaphor, since it has attained such a degree of social validity that it is possible to transfer it to other social areas.

While some articles analyze the erasure by comparing it with situations in other countries and regions of the world, others analyze it with regard to violation of singular rights in the context of Slovene society, for example, a case of deportation which ended in the violent death of an erased person [article by Svetlana Vasović]. A case of the right to health-care services and deterioration of health of socially deprived erased individuals is examined by Uršula Lipovec Čebren. The transition to overall neoliberal relations has created selective access to rights once available to all. This poses the question of what happens to people who do not have access to healthcare services, and to a system that gives pride of place to profit wrapped in the administrative red tape of health insurance. One could even wonder whether a diagnosis of *erasure* should be introduced in medical textbooks. As the interview with physician Aleksander Doplihar has shown, the neoliberal orientation of healthcare has created parallels between the denial of rights to the Erased and to other residents of Slovenia: “Our patients [those who seek the services of the Medical and Counseling Clinic for Persons without Health Insurance] can be perceived as a single group, as they share the same experience: if they don’t have an insurance card, they don’t receive medical assistance”. Doplihar himself rejects such administrative non-compliance criteria, and has so far cured and supported many of the Erased and other persons without health insurance.

Nonetheless the government claims that the erasure never happened but, at the same time, that this problem has already been resolved. The rhetoric of the current government [mandate for 2004–2008], which has been analyzed by Boris Vezjak, shows the continuation of the erasure; far from any kind of logical argumentation, the governmental discourse appears to be based on the argument that “might is right”. In the legal sense, this continuation has been analyzed by Neža Kogovšek. A draft Constitutional Law proposed by MPs of the current center-right coalition government would not resolve the erasure, but actually legalize it. As argued by Kogovšek, “the adoption of the Draft Constitutional Law would formally and materially interfere with the basis of the independence of the Republic of Slovenia. By adopting this Constitutional Law, the legislator would actually be amending the Constitutional Law for the Implementation of the Basic Constitutional Charter of the Independence of the Republic of Slovenia of 25 June 1991”.

The comprehensive chronology at the end of this volume, collected by Sara Pistotnik, lists the government’s activities in preserving the problem of the erasure, as well as actions organized by the Erased and solidarity movements.

Three documentary films have also been produced within or in close relationship to this movement and they elucidate some of the burning issues and have therefore been made into a DVD supplement to this book. Dimitar Anakiev’s film *Rubbed Out* [2004] presents the personal stories of the Erased from their unique individual perspectives. It shows parts of their struggle in Slovenia at local administrative centers, where the problem is supposed to achieve a resolution, since these are the original locations where the erasures were initiated in 1992. But the Republic of Slovenia seems reluctant to resolve the problem, and with Slovenia’s membership in the European Union, the Erased shifted their political rhetoric and called themselves the Erased of the European Union. Dražena Perić’s *The Caravan of the Erased* [2007] gives us an inside look into the continuation of the movement on a more

international, European stage. The Caravan has formed alliances and stopped in Italy (with the FIOM trade union and members of the Friuli Venezia Giulia regional Parliament) and France (with *Sans Papiers* and French deputies) prior to arriving at its final destination, the European Parliament in Brussels.

The third documentary contained in the book's supplement is a product of the activist research group Karaula MiR (Migration-Resistance), titled *On the Other Side of the River* (2005). It takes a look at the wider context and investigates, not only the stories of the Erased, but also the symbolic connections between former concentration camps of the fascist regime and detention centers of the present in Italy. The aim of the film is to challenge the perception of today's camps, i.e. detention centers for migrants, as normal and tolerable institutions. Moreover, the film is focused on the relationship between the memories of emigrants from the past and the experiences of today's immigrants and those invisible residents to whom the right to reside has been denied, such as Italian Roma and the Erased of Slovenia. Like the articles of this book, all three films show that the battle for the "right to have rights" is still being waged.

There are two more supplements to the book which need to be mentioned. These are translations of the two most important governmental documents discovered so far, which obviously served as instructions for implementing the erasure. The one signed by the Minister of the Interior, Igor Bavčar, forms the back cover of the book, whereas the second, signed by the Secretary of the Interior Ministry, Slavko Debelak, forms the last page. Both were issued in 1992, and found by the journalist researcher Borut Mekina in 2004.

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# Once Upon a Struggle

On the sixteenth anniversary of the erasure of 18,305 former citizens from the register of permanent residents in the Republic of Slovenia, and on the sixth anniversary of their collective and organized struggle, it seems that both a great deal and, at the same time, almost nothing have been accomplished. The goal of the legal struggle of the victims of the erasure has been to prove the illegality of this act that was initiated and sponsored by the highest institutions in the state. Multiple Constitutional Court rulings – among which the 2003 ruling stands out, as it obliges the legislator to return the permanent resident status of the Erased retroactively – have confirmed the claims of the Erased. The future of the struggle of this colorful network of diverse protagonists, whose broader objectives include the return of revoked rights, the remedy of injustices, the recognition of the crime committed, legal accountability for those responsible, and common action against exclusion and illegalization on the European level, is still uncertain and filled with new challenges.

In publishing this collection of articles, we do not harbor the illusion that it is possible to sum up the erasure and the struggle of the Erased. Nor do we dare posit that a single interpretation of these matters is possible. Nonetheless, today we can say that the struggle of the Erased has produced a number of material and symbolic results, and that these serve as a good conveyance for its future and as an inspiration for other struggles.

The brief analysis of the period following Slovene independence elucidates two basic conclusions. While the judicial branch of government has managed to avoid pressure from political demagoguery, populist hysteria and legalistic manipulation, an adequate analysis of the erasure, and consequently a rational resolution of this problem, are not possible or even desired within the institutional political sphere. At least since they have been among the opposition, left-center parties have cited the Constitutional Court's position. They have argued against the adoption of the Constitutional Law proposed by the current government, which, far from resolving the matter of the erasure, would actually introduce it into the

constitutional order, thus normalizing it. In spite of this, the road to the actual implementation of the legal minimum contained in the Constitutional Court's rulings remains a long one. And the resolution of the essential problem is even further off, since the matter of reparations and assignment of responsibility (which would not only recognize the criminal nature of the original event, but also significantly decrease the possibility that crimes of this kind will recur in the future) is being avoided by all institutional political actors. Meanwhile, the burden of responsibility for the erasure bubbles like hot lava beneath the feet of the entire political spectrum, and poses the question of whether anyone would survive any eruption created by the search for those guilty of the erasure.

It should come as no surprise that the movement of the Erased has, to a large degree, been signified, weighed down, and challenged by a completely erroneous and generally misleading stereotype, which has more or less irrevocably reversed the roles of victim and perpetrator. Even today, it is difficult to believe that this endlessly repeated propaganda – the thesis of the Erased as aggressors in Slovenia, speculators in citizenship, and murderous profiteers – could have so completely overshadowed all the victims' arguments and still successfully legitimize this criminal act of the majority against a minority. The power-media apparatus has processed a multitude that includes all nationalities of the former Yugoslavia – Slovenes, Croats, Bosniaks, Serbs, Macedonians, Montenegrins, Albanians, and Roma – into a homogenized, aggressive, anti-state (or at least anti-Slovene) monster, which must be exterminated as soon as possible. The fact that the state and citizenship rights were equated with Sloveneness/the Slovene nation precisely through the erasure must not be overlooked. This is how the authorities – those who perpetrated the erasure, and those who preserved it and continue to preserve it – have donned a mask of innocence which only irrefutable evidence to the contrary can remove. The burden of proving the state's guilt and their own innocence has fallen upon the weakest and most vulnerable segment of society, on erased men and women, and by doing so has effectively limited their space for taking the political offensive.

That is why, since its very beginning, the struggle of the Erased has been compelled to posit the question of its own organization, methods of struggle and goals. Once it became clear that the fight would be long and the expected results ambiguous, it was compelled to adopt a strategy that would present the Erased not only in the negative sense, as victims of nationalistic political agitation whose status will be resolved at an undefined time in the future; but also in the positive sense, as a subject that is creating new approaches to organization and solidarity through its activities; a subject that can be empowered and humanized through cooperation, resistance and courage; and a subject that is not changing itself in order to become acceptable to the world, but changing the world into one that would be acceptable for all. Soon after the foundation of the first Association of Erased Residents in 2002, this struggle converged with other movements and initiatives striving to put an end to discrimination based on national, racial, gender, economic, and other factors, both in Slovenia and abroad. In just a few months, the Erased had become a political issue *par excellence*, a rift that devoured even the slightest possibility of apathy and indifference, and a dividing line running through all alliances and oppositions.

Despite the boost the movement received from cooperation and institutional confirmation of its claims, and, to a certain extent, precisely because of the vast spectrum represented by those involved in the struggle and the intensity of their activities, it soon became clear

that the complex challenge posed by authoritative arrogance would not permit a uniform response. The struggle has reached a fork in the road; the two roads were initially complementary, but over time became parallel and occasionally even divergent. The first focuses on remedying injustices by legal means, court rulings, and legislative initiatives, which are to resolve the question of the erasure within the framework in which it first emerged: the nation state. The second path includes all the elements of the first, but does not limit its activities to the legal field, having incorporated a vast palette of political, social, and cultural/artistic activities. Its strength lies in its autonomy, its refusal to compromise, and especially in its internationalization, in light of Slovenia's inclusion in the European Union and possibilities arising from this fact, on both the institutional and the extra-institutional level. One of the most important initiatives that symbolized this second, biopolitical path is the urgent complaint of eleven erased persons before the European Court for Human Rights, which was supported by the three-day Caravan of the Erased to the European Parliament, including stops in Italy and France.

Although the focus of the movement of the Erased has clearly been on very concrete demands for the return of all lost rights, it has also – especially after its breakthroughs in the legal sphere – functioned symbolically, and has taken off on the wings of active imagination expressed through the direct practice of democracy: demonstrations, posters, hunger strikes, round table discussions, public forums, and countless interviews and statements; as well as through global networking with similar initiatives and cultural artistic expression in the form of exhibits, street art, and cinematic, literary, and theatrical creation. But the field of the symbolic is not only important as a tool for communicating with those outside the movement. Its most important role lies within the movement itself, as it represents a space in which the Erased are equal residents of the European Union, and in which they express themselves as the subjects of their own lives, free from the mechanisms of domination and paternalism.

Thus the story of the Erased has two sides. It is a story of civil death, a creation of statelessness, and of “bare life”, stripped of all social, legal, and political standards of the twentieth century; it is a story of violation of the respect for human dignity, the right to political and social action, the right to medical care, social security, education, pensions, family life, and association. But it is also a tale of incredible courage, the art of survival, and the creative resistance that the Erased have displayed both in their private lives and through their collective struggle. The cries of the invisible have rent the darkness of hopelessness and apathy, and echo in the hopes of all who are fighting for a world of many worlds that would be free of erasures, illegality and degradation. The invisible put on their faces a long time ago. It is time for us to work together to put them on those responsible for this crime.



***"Tonight dreams are allowed.  
Tomorrow is a new day."***

Milan Kučan, President of the Presidency  
of the Republic of Slovenia at the Independence  
Declaration ceremony, 26 June 1991.



# The Impossible is Possible:

An Interview with Aleksandar Todorović, initiator  
of the movement of the Erased and founder of  
the Association of Erased Residents of Slovenia  
and the Civil Initiative of Erased Activists

## E for erased

*Bez nec: Fifteen years have passed since the erasure from the register of permanent residents of the Republic of Slovenia took place. You yourself gave the initiative for the movement of the Erased, and are its most visible and active member, having founded two different associations of the Erased. And you are probably the person who knows the most about the history of the erasure and the struggle to regain your rights. How do you interpret the erasure today, following countless actions and interpretations and manipulations of this story? Are there any differences between your insight into the problem today and when the struggle first began?*

Todorović: I think that today, I view the erasure in an even worse light because I understand it better. At the same time, several additional negative shifts have occurred in Slovene society since 2002, when our struggle began. As far as judging history is concerned, I believe that the period since the foundation of our association has been rather more critical than the period before it. I think we witnessed a historic turning point at that time. If nothing else, these matters became clearer, and it became obvious

that the authorities were prepared to keep on lying and to cling vehemently to their positions and nationalistic principles. This is my view of what's going on outside of our struggle. As far as the Erased are concerned, it can be said that we've accomplished certain things, although this has been mostly because the state wanted to take some of the edge away from our struggle. Some have been granted citizenship, and the conditions for obtaining permanent residence permits are now less strict; this might have been done in order to take away the trump cards our side has been waving, or to cool down the passions of people who were ready for a fight. And we can't forget the 2004 referendum. In my opinion, this is one of the worst things ever to have happened to Slovenia. Do you recall that I supported the referendum at the time? I thought that we'd at least find out who was on the other side. And what we got was black and white; ours is a fascist society. Well, perhaps this isn't the best word, but things did coincide. We liked to speak of fascism as evergreen, and in the case of the referendum, the fascism that lives in all of us coincided with the authorities'

<sup>1</sup> The Strojan family was expelled from their home village in the winter of 2006. A village mob attacked the family; however, the government solved the issue of this racial violence by moving the Roma Strojan family to a refugee camp in the other part of the country. For this decision of active support for the racial behavior, the Slovene government was criticized by some European institutions: for example, the Commissioner for Human Rights visited Slovenia immediately and wrote a letter to the Slovene government. See *Thomas Hammarberg, Council of Europe Commissioner for Human Rights Letter, following his visit to Slovenia on 16 November 2006*. Online. Available at [www.coe.int](http://www.coe.int) (accessed 11/3/2008) [Editors' note].

project, which encourages and supports this fascism. This is similar to the Strojans<sup>1</sup>, very similar.

*Beznec: Would it be possible to say that yet another erasure occurred with the referendum?*

Todorović: Yet another erasure, that is, a legalization and legitimization of institutionalized discrimination with the help of the people. So, unfortunately, it is now clear that the erasure actually did occur in the name of the people. I am convinced that the authority structure never mentally outgrew 1991, in spite of its declarative division into right and left. I think it became clear what kind of structure we're dealing with only in 2002 and the years that followed; this structure – I don't know if this is the correct expression – tore Slovenia away from Yugoslavia. It became clear that it contains a despotic dimension, but that's not even that bad. It turns out that it is not at all sensitive towards its people and it does not take its share of responsibility. The official reason for independence was a desire for democracy and respect for human rights; everything else was supposed to be of secondary importance. At that time, it was said that we didn't want to live with Bosnians, Croats, Serbs, etc. anymore because we wanted to respect human rights. And we all know what happened. I think that the Erased can be proud of the fact that we succeeded in interpreting the period since 1991 from our own perspective in such a short time, in only five years, that is, since the foundation of the Association of Erased Residents of Slovenia in 2002.

*Beznec: And how do you comment on the total paradox, the fact that 180,000 people from other republics of the Socialist Federal Republic of Yugoslavia were granted citizenship, while the fate of over 18,000 people was so radically destroyed. Why do you think this happened, and is this not rather schizophrenic?*

Todorović: Yes, precisely, schizophrenic. The nationalistic authorities behaved like a pathological mental patient whose actions cannot be predicted and whose rationale cannot be discerned. Hate is not a rational category. In my opinion, it was a test of loyalty, national loyalty, because a nation state was being created, and the Slovenes were building their "thousand-year-old" dream of independence. It was about loyalty in the "we will accept you" sense, and that's why a request for citizenship was more than a request. A request was proof of your loyalty, of your wish for or acceptance of assimilation, for becoming a Slovene. Because being a Slovene was very important at the time, just like today. Say I meet with friends and I speak Serbo-Croatian with them; once other people come along, we change our language so they won't recognize us as non-Slovenes. This was in all of us.

And it really is schizophrenic; I'll say it again, a request was a vow of loyalty. And if you didn't want to request, you'd have to face counter measures. That's why the erasure happened. It was never about, as some have said, the computer breaking down. There are other aspects. There was the possibility that Slovenia would not succeed.

*Beznec: ...yes, but the erasure occurred at the end of February 1992. At that time the process of independence was already finished.*

Todorović: The deadline for handing in requests for citizenship was 25 December 1991, not February 1992. This is when we were erased. And now we've come to one aspect that is not mentioned very often. In my view,

all of Article 40 of the Citizenship Act of the Republic of Slovenia<sup>2</sup> and the six month deadline for filing an application was illegal. Slovenia wasn't a state at the time. We had to ask a sort of community, which was not yet a state, for citizenship. If I go to Great Britain, I know it's a country and that I can request citizenship. Slovenia, however, had only declared its independence. Tomorrow, I can declare myself to be an elephant, and you can say that I'm not an elephant – until I get a certificate or recognition that I am an elephant. I cannot, for example, accept anyone in my association until it's registered. At the time Article 40 was valid, from the declaration of independence to 25 December, Slovenia wasn't even a state. International recognition came only after the erasure.<sup>3</sup> For me, this is a very important argument, because I think of myself as more or less a legalist.

*Beznec: But when you say that, don't you think that you're confirming the authorities' argument, which sees you as conniving and speculative?*

Todorović: And why wouldn't I speculate? Do you know what it was like at the time? I felt guilty, less worthy, because I was not a Slovene. The psychosis, the division into Slovenes and non-Slovenes, was terrible. To others, I was first and foremost a Serb. But what do I have to do with Serbia, Milošević the aggressor, the populist, etc.? On the other hand, I don't even know if you can call it speculation. If Slovenia had not have succeeded, those who had automatically acquired citizenship would not have gotten screwed, but those who had asked for it in writing. In this case, the Yugoslav authorities would have treated these people just as cruelly as or even worse than Slovenia treated those it felt to be disloyal. It was a question of to be or not to be. You don't request citizenship because you automatically obtain it, but for me it'd be black and white, I'm a traitor. Yugoslavia, just like all other countries, had indivisibility, sovereignty, entirety, written in

<sup>2</sup> Article 40 of the Citizenship of the Republic of Slovenia Act states that "A citizen of another republic that had registered permanent residence in the Republic of Slovenia on the day of the plebiscite on the independence and sovereignty of the Republic of Slovenia on 23 December 1990, and has actually been living here, shall acquire citizenship of the Republic of Slovenia if within six months of the entry into force of this Act, he/she files an application with the administrative authority competent for internal affairs of the municipality where he/she has his/her permanent residence."

<sup>3</sup> The Republic of Slovenia considers 15 January 1992 as the date of complete international recognition. See [http://www.mzz.gov.si/index.php?id=13&tx\\_ttnews%5Btt\\_news%5D=22813&tx\\_ttnews%5BbackPid%5D](http://www.mzz.gov.si/index.php?id=13&tx_ttnews%5Btt_news%5D=22813&tx_ttnews%5BbackPid%5D) (accessed 17/7/2007).

<sup>4</sup> Milan Kučan was the first President of the Republic of Slovenia. He was elected twice and held the post from December 1992 to December 2002.

<sup>5</sup> Dr Janez Drnovšek was the first Prime Minister of the Republic of Slovenia (from April 1992 to December 2002). Afterwards he was elected the second Slovene President (from December 2002 to December 2007).

<sup>6</sup> Janez Janša was a dissident journalist in the second half of the 1980s (in the times of Yugoslavia), then he became Minister of Defence (from May 1990 to 1994); in 1993 he was elected president of the Slovene Democratic Party. In 2004 his Party won the elections, and thus he became Prime Minister [Editors' notes].

its Constitution. And when Kučan<sup>4</sup> takes off, when Drnovšek<sup>5</sup> takes off, when Janša<sup>6</sup> takes off, everybody takes off, they're already on the runway, but I don't have anywhere to go. There wouldn't be space for me on that plane. And you want me to sign that I'm a citizen of Slovenia who's undermining the Yugoslav Constitution?

And then there's the absurdity of dual citizenship in Yugoslavia, which divides us by nationality. Many of us didn't know that this existed, that we were citizens of other republics of the former Yugoslavia. 22 million dual citizens of the same country! Even today, I can't figure out how the category of republican citizenship was determined, because none of our documents contain it. Take birth certificates, for example. If you request a birth certificate today, you won't get it. What you'll get is a print out from your birth certificate. The origi-

nal document doesn't contain the section on republican citizenship. It isn't on other documents either. The only section that existed was nationality, and not republican citizenship. Censuses of the population were also done in this manner: they inquired into nationality and ethnic belonging, not republican citizenship.

More than anything, you have to understand the circumstances in which these events occurred. In the fifteen years prior to independence, certain stereotypes began to take hold; some of them were more true, and others less. The Slovene national being took up ideas about superiority, about its greater worth. And this flourished, not only in Slovenia, but also in Croatia, and in Serbia. And I think it's still alive today. I also had some stereotypes about Slovenia. I came here for a dig [as an archaeology student], and I thought Slovenia was lovely, beautiful. I came here because of love, not only for Olga [his wife]; I was in love with Slovenia. Maybe because I had spent my entire life in Vojvodina, *glupi i ravni* [dumb and flat] (he laughs). I had only good feelings when I came. In 1977, I hadn't experienced the things that I experienced at the end of the eighties. I think the Yugoslavian orientation in Slovenia at that time was even stronger than in Serbia and Croatia.

But everything changed during the independence movement, and I was under enormous pressure. Olga remembers that I watched television and listened to the radio a lot. These were times when I wouldn't dare go out on the street, or to a pub, because I had "Serb" written on my forehead. Can you believe that I was gripped by paranoia, and I'm not a paranoid person; I think this was the only time in my life I felt paranoia. I slept with a knife under my pillow, in case anybody came to the door. It's all everybody was talking about: Serbs, Serbs, Serbs, Southerners, Southerners, Southerners! The psychosis that came from feelings of national superiority was strong in both Slovenes and us, the Southerners. This

pressure, this feeling that you're in a group of inferior people when war is on the way, a war which was, thank God, more or less virtual, was horrible. And even though I had a job, I ran. This was paranoia. Why sit here and wait for someone to kill me, to interrogate me because I'm a Serb. And Olga suggested that we get away for a few days because she couldn't stand the thought of us going out on the street, where there were a lot of armed, drunk people. We left during the war, and also returned during the war. Who we have to thank that everything ended so smoothly, let each person decide for themselves. We were only a millimeter short of experiencing a bloodbath, the likes of which later occurred in Bosnia and Croatia, because I doubt Slovenes are any different. Maybe we should thank the international community.

## R for return to the beginning

*Bez nec: From today's perspective, one of the most shocking and surprising facts of the erasure was the secrecy of the whole operation, which remained hidden from the general public and even the Erased themselves for over ten years. Because the Erased never received any kind of notification or decision which would have explained their new formal legal situation to them, and because no Slovene or international institution completely and publicly pointed out the phenomenon of the erasure, one of the hardest steps in the struggle of the Erased was recognizing its existence and the dimensions of its effects. What was your first encounter with the truth, how did you find out what was going on?*

Todorović: The country's main goal was to force you into a situation where you couldn't do anything; you were supposed to just go away after years of paralysis. This way, the country doesn't have to dirty its hands with deportations, while you leave everything you've spent years working for here: a pension, health insurance,

an apartment. For example, I sent a request for document A, and it was rejected because I did not have document B. I sent a request for document B, and it was rejected because I didn't have document A. I first realized something was wrong when my driver's license expired in 1992. I went to the administrative centre. They took all my documents and put them on the shelf without giving me a receipt. I went to the head of the administrative center and yelled at him. He ordered them to give me back my documents, which they did. When I had to change my driver's license from Yugoslav to Slovene, I didn't even try, because I knew they wouldn't give it to me. In March 1993, Sana was born [Aleksandra Todorović, daughter of Aleksandar and Olga], and we went to the administrative center to officially declare the child's paternity. That's when they punched a hole in all my documents. I still have the official statement with my signature confirming that I'm Sana's father. But Sana's birth certificate was issued with an empty field where the father's name should have been written. And that's when all the bullshit started – will I be a father or not?

I was completely without documents, and I didn't have a job. I couldn't get anything done in Ptuj, so I went to my land in Haloze [a countryside in the vicinity of Ptuj] all by myself, without my family. I only saw my family on weekends. I conquered my depression through meaningless physical work. I registered myself as a self-financer for health insurance, and they sent me bills – my address was still good for bills – and I paid them, but they wouldn't issue me a health insurance card because I had been “automatically” unregistered. Isn't that brilliant? They should patent that one! I knew something rotten was going down, but I had no idea what – I couldn't even begin to imagine! At first, I thought there had been a mistake, but not like a computer error. They told me I should go back to my country for a driver's license, even though I had passed my driver's test here. They claimed that I was not

<sup>7</sup> A condition for obtaining a personal work permit was ten years of residence on the basis of a permanent residence permit, Article 8 of the Employment of Aliens Act, Official Gazette No 33/92, not valid since 10 August 2000.

here. I had a lawyer who moved things forward and suddenly, even today I don't know on what basis, I got a foreigner ID card and a Slovene driver's license, and Sana was registered as my daughter. This happened in 1996. Of course, it was the result of pressure from my lawyer. It would have been quite different if I had taken up the fight for my very existence all by myself.

*Beznec: So, you got permanent residence in 1996, and you still didn't know why they had taken it away or returned it to you?*

Todorović: That's right. At the time I was incredibly happy; I got an ID and a driver's license. Work was waiting for me; I wanted to go to work. But the law said that foreigners with a permanent residence permit couldn't automatically get a personal work permit. For this kind of permit, you had to live in Slovenia continuously for ten years, according to the law at the time.<sup>7</sup>

*Beznec: But how could you have lived continuously in Slovenia for ten years, if the country had only existed for five?*

Todorović: I don't know, I don't know. Slovenia behaved as if it had been a country for a hundred years. It took no account of the fact that people who are different live here, people who came here from elsewhere. It could have used the system of positive discrimination or issued all of us citizenship without any sort of discrimination; each individual could have decided if he/she wanted it or not, or if he/she would prefer the status of a foreigner, along with the rights given to foreigners. After all, we had moved, just like moving from Celje to Velenje [two cities in Slovenia] or from Paris to Lyon, and many were born here.

*Beznec: Nonetheless, some information about the erasure did come out. Didn't Mladina pub-*

<sup>8</sup> Dr Ljubo Bavcon is a distinguished law Professor. He was one of the founders and president of the Committee on Protection of Human Rights established in 1988. This Committee was a predecessor of the Ombudsman introduced in 1995 [Editors' note].

*lish something about this very early on? And Ljubo Bavcon<sup>8</sup> informed the Prime Minister, Janez Drnovšek, about the problem of the Erased as early as 1994, even though they weren't called that at the time. Did you know anything about this?*

Todorović: Yes, as early as 1994, Igor Mekina, a journalist at Mladina, made attempts, but was silenced. Only ten years later did I find out that Bavcon had fought for a year and a half to get to Drnovšek. His next appearance in association with the erasure was in 2004.

*Beznec: And Blagoje Miković's constitutional initiative?*

Todorović: That was a constitutional initiative that had been at the Constitutional Court since 1994. Miković demanded the return of his permanent residence address, and won in 1999. Following this decision, the Act Regulating the Legal Status of Residents from Former Yugoslavia Living in Slovenia, in which a three-month period for applying for a permanent residence permit was specified, was passed. Only later I learned about it. At the time I only felt that something was going on, I lived a normal life, I worked illegally (laugh)... Slowly, I got to know people who were in the same boat as me. Meanwhile, my lawyer and I filed a lawsuit because I couldn't receive a work permit. When we had exhausted all legal means, beginning with the Ministry of Family, Labour and Social Affairs, we gave the initiative for a Constitutional settlement. We claimed that the Employment of Aliens Act was discriminatory, because it treated us, immigrants from the former Yugoslav Republics, worse than foreigners who had been foreigners in Yugoslavia (and, unlike us citizens, had foreigner residence permits at that time). In 2001, they rejected

my complaint with the Constitutional Court because the Employment of Aliens Act had been changed, and then I got the right to work. That's when I knew that I was right and that they shouldn't treat us like this! I felt I had to do something. I didn't know what, so I decided on a hunger strike. Whatcha gonna do? (laugh).

*Beznec: Why this course of action following a victory? What did you want to express by doing this?*

Todorović: Nothing, I don't know, I was confused. But I did feel that I wasn't alone, and that there were probably a lot of us. My main goal was probably to display my suffering, to show people what this country had been doing. You know how people were shocked (laugh)! For the first time, it was really black and white that basic rights were being violated, but all I knew was that I suffered. Sana was still very small, but I really meant to go all the way. It was a kind of insanity, in the style of "if I can't do anything to you, I'll starve to death, let your consciences torture you!" Ah, and you know how their consciences would have tortured them (laugh)... I wrote a very serious letter to all my friends, and ended it with the thought that, if I couldn't live like a normal person for ten years, I was at least going to die like one. At the time, it was a very important shift in my life. I told Olga about my decision just before, and she cried. At the time I was really determined, passionate.

## A for Attack

*Beznec: Armed with your first legal victory and strengthened by your first taste of political action, you decided to take it a step further by founding the Association of Erased Residents of Slovenia. What was your individual path, from a hopeless situation to the realization that you were dealing with a broader problem, and finally to the first signs of political organization*

*in order to inform people about the violation and the return of your rights? How did the public and the authorities react to this meteor, which lifted a ton of dirty dust over the perception of Slovenia as a tolerant and democratic country?*

Todorović: Before I began my hunger strike, I informed various institutions: the Catholic and Orthodox Church, the Helsinki Monitor, Amnesty International etc., thinking I would “wake them up”. Of course, this didn’t happen. I left the municipality of Ptuj to see the Helsinki Monitor. There, I picked up some brochures and took some with me on my strike. I also happened upon a letter in which the Helsinki Monitor mentioned a document that was supposed to contain an enormous number of people whose fundamental rights had been revoked in 1992. That’s when it hit me that this document was also about me, and that I was part of a larger group. I somehow managed to get this document, and I still keep it today. It says that there are 83,136 people without status. I was shocked that something like this could happen without us knowing anything about it. In the car, at minus five degrees Celsius, I had ten days to think. That’s when I got the idea of starting an organization, of making a big boom. On 14 January 2002, we appeared on television for the first time, on the Studio City show. At first, they didn’t want to register us in Ptuj under the name *Association of the Erased in the Republic of Slovenia*. The other founders of the Association were Mirjana Učakar, Marko Perak, Mladen Balaban, Zlatka Polanec, Jovica and Marica Gajić, Staniša Milenović and others. Matevž Krivic<sup>9</sup> soon contacted me and visited me at home and we continued, picking up where we left off with the registration.

I was shocked that so many representatives of the media came to the Association’s first public presentation, which was held on 26 February 2002, the tenth anniversary of the erasure. An important moment for our affirmation was the fact that both national TV

<sup>9</sup> Matevž Krivic is a renowned former constitutional judge who joined the Association of Erased Residents of Slovenia in 2002 and still pursues advocacy on their behalf [Editors’ note].

networks and the most influential reporters came to Ptuj, where nothing was really going on but some people founding an association. Okay, we did have a cool name – the Erased. But there’s more to it. This meant that all those reporters and their bosses knew about this problem, but did not want or dare to say anything. It was a kind of taboo. And you could see this at the event. There wasn’t a reporter who didn’t later tell me a new tragic story about a neighbor, relative or acquaintance. That’s when I knew that I’d have to put myself out there as an Erased, because the media couldn’t talk about the erasure in general, but could refer to personal stories in its reports.

*Beznec: What kind of strategy did your Association adopt, what resources did you rely on, and what were your main goals? Did you even know, at the time, what kind of mess you were getting yourselves into?*

Todorović: Our first goal was to make the problem visible, to alert the public. I wanted to gather as many erased persons as possible, so that they would fight for their rights, and join us and help. At the time I was working with numbers from the document I mentioned before, and the Ministry of the Interior denounced our statements in June 2002, by stating that there were *only* 18,305 erased persons in Slovenia. They had to state their position, because we were filling up the newspapers. But even at the beginning, some tricky questions, pertaining mostly to media activities, arose within our group. We had to satisfy the members of our Association (which had come together rather quickly and was a pretty tight knit group), public opinion, and other as yet unorganized erased persons. I was rather inexperienced, but we worked quite well with the media. Our second goal, better organization among the Erased in our struggle,



has yet to be achieved. I think I know why. We never promised them anything. It wasn't like before in a revolution or a war, when everyone's looking forward to a division of spoils following the victory.

*Bez nec: ... but your Association managed to achieve two giant victories in just one year: the introduction of the issue of the Erased into the public space and the state's acknowledgement of the existence of 18,305 persons who had been, to use their terminology, "moved from the register of permanent residents to the register of foreigners without regulated status". The next big victory came just a year after this...*

Todorović: Krivic wrote a second constitutional initiative on the basis of Miković's appeal, which led to a second Constitutional Court decision in April 2003. First, we had to show legal interests, and the Association skipped over all other channels and filed a complaint directly with the Constitutional Court as a legal person.

Compared to the first decision, which obliged the legislator to merely return the status, but did not oblige them to return it from the date of the erasure, the Constitutional Court's second decision contained significant added value. The first decision did not mention retroactive measures, and also did not use the term *Erased*. In this respect, the second decision was stronger. It was also stronger because we had roused the public, continuously and in a number of different ways, together with antifascists – activists from social movements and initiatives. This was a huge victory, because it meant a final legal decision about the return of status to all of the Erased from the date of the erasure on. We had already been politically active, and we also took it to the streets. At that moment, the decision came like a bolt out of the blue. It affirmed all our statements and demands. Legally, the matter was finished, but the fierce political battle around the enactment of the Constitutional decision had begun. If there's a

Photo: Dare Čekeliš



Anti-racist demonstration held in Ljubljana, 26 June 2006.

crime, there's also supposed to be a guilty party. But how could the authorities admit that they had dirty laundry? This reaction was expected; it didn't come down to left and right, because they were all equally responsible.

## S for Strife

*Beznec: Although the Association's strategy was pretty much uniform and rather simple from the standpoint of the Erased, specifically the thorough and immediate implementation of the 2003 Constitutional Court's decision, which would have also meant a formal confession of injustices and subsequently the possible beginnings of a search for those guilty of these injustices, different visions about the methodology of your activities and struggle began to appear, both within the Association and without. On the one hand, you had legal means, and, on the other, political means, which included keeping the problem visible and various demonstrations, actions, provocations, and confrontations.*

Todorović: In my opinion, the only effective method of action is struggle without calculation, without compromise, without worrying whether they like us or not. Even today, I feel this is necessary, because the affirmation of the Erased occurred through a political struggle. And not only the affirmation of the Erased. We sort of told everyone that they themselves could become active and assertive. If they're not in Parliament, they have to express themselves differently, in their own way. Of course it was stressful, especially for my personal life. As in many similar cases, our Association was infected with "criticism" syndrome, that is, criticism without taking responsibility. There was a lot of deep thinking and talking, but we were mostly figuring out things that had already been figured out a long time ago. Every meeting was supposed to bring about an idea for tomorrow, for the day after tomorrow, a line of its own, but our

Association wasn't up to the task. There were battles about who said what and when, and once the authorities reacted, most members no longer wanted to expose themselves. They criticized me a lot. If they had agreed with me, they would have worked with me, exposed themselves. If they had supported me, they would have had to take this responsibility. So the Association worked more like a sewing circle that only cares about itself. That's how they pictured the struggle.

At the same time, we had problems with unsuitable representation of the Association. The first people to respond to the foundation of our Association came from the former Yugoslav Army structure. These were people with at least a high school education; they were well informed. They became members of the executive committee, and it was interesting to note how much this meant to them. They probably really felt that they had climbed the social ladder (laugh). So it happened that there were a lot of soldiers, who represent two per cent of the entire erased population and 80 per cent of the executive committee. I pointed this out many times. I had no executive powers; I could only try to explain that they should back off, since we were facing tremendous pressure from demagogues who portrayed the Erased as aggressors. I tried to get them to give more space to younger people, people with a more open spirit. We were dealing with a huge paradox, because these military structures placed great importance on the Association's reputation, and they criticized any action that, in their opinion, would undermine our reputation, while all the while they did not realize how their mere presence affected this reputation. Well, of course they realized; it was more like an oversight. Even today, I can't understand what they were thinking with this reputation. Even then it was clear that the Erased would never be reputable members of society. What reputation? Struggle is the only possibility, because you can at least gain respect as an "enemy".

*Bez nec: But you managed to maintain the balance. So it was another straw that broke the camel's back?*

Todorović: The final turning point came five months before the parliamentary elections in May 2004, when Krivic sent out a letter to members of the Association, in which he suggested that the Association cease all public activities until the elections, because we were fortifying Janša's power and taking votes from the left that was in power at the time, mainly the Social Democrats. That's when I saw that this wasn't going to work, that we were selling out to a declared left which had nothing like a leftist orientation. I resigned from my function as president. Even today, I don't regret it, even though we never again achieved the critical mass that we had when meetings were attended by over a hundred people. But it's better to have two true allies than four hundred yes-men without ideas and, ultimately, without courage.

## E for Exertion

*Bez nec: Even though there never was any doubt as to whether you would continue your struggle in some way or another following the dispute, you decided, on the basis of your experiences, that new battle ground would take an old form. Why did you decide to found a new association, the Civil Initiative of Erased Activists, [Slovene acronym CIIA]? What kind of challenges did the new association take on, compared with the old one, seeing as the question of the erasure had literally blazed throughout the daily media and political space, and as, at least in Slovenia, the 2003 Constitutional Court's decision and the ban on deportations of the Erased meant that you had achieved everything there was to achieve through legal channels? Did you have any idea how to achieve the material application of the results you had achieved in the formal sense?*

Todorović: Following the conflict with the Association of Erased Residents and my departure – I was both its founder and the first person to leave it – some time passed before the new association was organized. The establishment of a new association wasn't necessary for the sake of easing operations, but was meant to provoke the state. Say, for example, we wrote in our founding document that we would fight against ethnic cleansing and discrimination, we were interested in seeing how the authorities would react. But they didn't respond as they had before; they were more subtle, in line with the adage "don't poke the shit, it'll stink". They warned me that, by law, the association must not deal with politics, that it must be apolitical, but they registered us anyway. If most of the Erased hadn't wanted some kind of official grouping, I would have preferred to work without any association, without any official seals that have to be approved by the state, because I could have done the exact same things without an association. The organization of a new association was concurrent with preparations for the lawsuit at the European Court of Human Rights, so we were joined by a lot of new people.

*Bez nec: How did this big change come about? Before deciding upon the lawsuit, the Civil Initiative of Erased Activist – CIIA had launched some actions that made an impression of defensiveness and desperation on outside observers.*

Todorović: Before our second association was officially registered, I worked with a handful of people, friends and people I trust. It's true that a lot of the things we did were self destructive, but it wasn't because we liked starving ourselves. It was because we didn't know what to do. My philosophy has always included the principle that you have to do something before you know how far you can go. First, we staged a hunger strike in the lobby of the TR3 building, where the European Commission had its headquarters, in the framework of the Week of the Erased in February 2005. At first, we wanted to stage a

similar action in the office of the Ombudsman to persuade him to become more involved. We decided on a more productive strategy because we were awaiting the internationalization of the problem of the Erased. And we won an important victory, because an important EU institution stated its position towards our problem. The press contact of the head of the Slovene Office of the European Commission, Erwan Fouere, stated for the media that the European Commission supported the complete implementation of the Constitutional Court's decision, which completely contradicted the claims of the opposition party led by Janez Janša and also of the position of the ruling party, led by Anton Rop. The government avoided issuing supplementary decisions with retroactive effect for residence status of the Erased by creating two bills, which never made it past a referendum. A few months later we staged a hunger strike at the Šentilj border crossing, and continued in Ljubljana, first at the Autonomus Cultural Zone Metelkova, then at UNICEF. It was nice there; they were very nice. We alerted them to the large number of erased children, to the impossibility of their education, etc. From there, we went to UNHCR headquarters, which was a disaster, because the high representative, Gregory Garras, simply didn't want to, or could not, understand. We tried to explain that Slovenia had had a quota of refugees it had to accept during the Balkan wars, but at the same time turned its permanent residents into refugees in their own country.

It was yet another attempt at internationalization, an attempt to reach the public in Europe and beyond, to make the Erased heard. From the very beginning, I've wished people to know about the Erased; everything else was perhaps overly ambitious. Parallel to the last hunger strike, the opportunity for a lawsuit began to appear, and we made contact with the Italian lawyers. A different period had begun, because most things had begun to be done behind a table, and not on the streets. Countless people

took part, activists, and they accumulated documents, did interviews, and translated the files. It was an exceptionally long and exhausting process; it took all year before the lawsuit was filed with the court in Strasbourg. The first lawsuit now encompasses eleven urgent cases of the Erased, where the persons in question are still without documents. Now we're waiting.

*Beznec: ...you're waiting in motion, seeing as you launched a new initiative in November 2006, following the filing of the lawsuit. The Caravan of the Erased through Trieste, Monfalcone, Paris, and Brussels was a sort of political counterpart to the legal process.*

Todorović: Even though the Erased signed their names under the Caravan, we couldn't have done it without our supporters, activists from social movements, some of whom have been with us from the very beginning of our struggle. I handled the physical part of the Caravan (laugh), I called people, got them enthused, coordinated things, took care of certain documents, and organized transportation. Of course, we adhered to our principle that the Erased are the speakers, and that was our main task with the Caravan. The response of Franco Frattini, the Vice President of the European Commission and the Commissioner for Justice, Freedom and Security, who agreed to meet with us at the European Commission's headquarters in Brussels and who announced, a few weeks later, that the problem of the Erased is Slovenia's internal business, might seem negative. But even then, and still today, I believe that opening the doors is enough. For now, it's enough that Frattini is acquainted with the problem of the Erased and that he will use this phrase at least once a year in conversations with various institutions. On the other hand, the reaction of the Slovene authorities was fierce. Never before had they tried so hard to render one of our actions illegitimate. They even launched a contradictory, agitpropesque action, counter-propaganda at the European Parliament; they informed

the European representatives that the Erased did not exist, but at the same time stressed that there was another association of the Erased in Slovenia that did not support our Caravan etc. They sang an old tune about how we all had the opportunity to acquire citizenship, which doesn't have a lot to do with the problem of erasure from the register of permanent residents. Even if this was a criterion, we could prove that many Erased had asked for citizenship but did not receive it, sometimes for really petty reasons, like disturbing the public order. This reaction showed that we were going in the right direction and that, in the face of our initiative, the authorities could do little else but lie. At the European Parliament, we forced them to take the defensive for the first time. What the Slovene authorities did at the European Parliament reminds me of a conspiracy, a guerilla action. They even managed to make sure that we were without translators, so that other participants in the Caravan had to simultaneously translate my words from Slovene to English before Frattini and at various

Committees in the Parliament. The Slovene state took it upon itself to sabotage the Slovene language, because it was saying things that it didn't like very much. It was like in a war, when you form your strategy based on your opponent's reaction. We weren't able to say that the authorities were afraid, but you could see and feel that they weren't comfortable and that, possibly for the first time, they were no longer in the position of plaintiffs, but sat among the defendants.

## D For Debris

*Bez nec: Of course, the battle is not over. Nonetheless, in the fifteen years since the erasure, and in the five years since the beginning of intensive processes in various fields and on various levels – on the national, supernational, and transnational levels – a considerable fund of experience, both good and bad, has accumulated for the protagonists of your struggle. Similar experiences have accompanied all struggles of*

Photo: Leon Megušar



Rally against referendum on the so-called Technical Act, Ljubljana 4 April 2004.

*this kind throughout human history. Which of these experiences would you like to emphasize, and what can others who are on a similar path, or just getting started, learn from the struggle of the Erased?*

Todorović: Regardless of this or that result, the most important thing was that people became more human through the struggle; we had been totally dehumanized, not only on the administrative level, but also as people in our personal lives, in our relationships with friends and relatives. It seems that this struggle, this exposure, the public proclamation of the Erased, standing up to the stereotypes of the majority – this is what brings a kind of humanization. The other thing that happened in the context of our story, that is, in the context of the agonies that occurred in the name of some nationality throughout the former Yugoslavia – and it's very important – was that both associations succeeded in overcoming these divisions. Of course, we couldn't avoid them completely, but I must admit, unfortunately, that nationalism was stressed the most by the Serbs. We can explain this in a number of ways. Maybe it's because, since 1991, Serbs have been the most hated nationality within Slovenia. Maybe the problem is that I'm a Serb, and the Serbs found it easier to open up to me than if I had been a Croat or a Macedonian. Maybe, if I had been a Croat or a Muslim, I would have said the same about Croats and Muslims. Maybe it's true that Serbs are just more nationalistic. I don't know.

I think overcoming ethnic divisions is a big accomplishment, because, as I see it, there are not a lot of people among the Erased who have a positive attitude towards diversity, national or any other kind. It appears that people need time to comprehend that violating the rights of one means violating the rights of all. Among the Erased, this can be seen in the fact that they have a very hard time thinking about

injustices that are happening to others, because they themselves have suffered tremendously. On the other hand, I think that, percentage wise, there are more people among the Erased who are sensitive to questions of discrimination than there are among the remaining population. There are positive trends, and this is what we need to work on. Personally, I truly wish that we would achieve this in the largest possible numbers, because we're activists and we need people, we need bodies. I'm not one to think that people need to be changed. You have to accept people as they are, and perhaps just bring out their hidden qualities. And the first impression a person makes on you usually turns out, tomorrow or the day after, to be true. For me, it's unthinkable that I would have a spouse whom I would be changing throughout life. No, take her as she is. Even though we often speak of manipulation, I believe that it's not possible to manipulate people, even though the erasure, for example, has drastically changed my life. I began a very special story from Ptuj, some province. In order for this story to become a success story, it was most important that it unfolded here [in the family's apartment in Ptuj], because there was an unbelievable amount of support here, not just moral support, but also material support. If there hadn't been this support, everything would have been different. As for the future of the struggle of the Erased and the actions of the state, I think things first need to be verified, and then repaired. We have yet to see verification in the moral sense. Every alcoholic must first admit that he/she is an alcoholic; only then can the healing begin. The country of Slovenia must first admit its mistake; only then can therapy begin. But my motto has always been, and will always be, Slovenia's nationalized slogan from the beginning of the 1990s: *The Impossible is Possible!*

Ptuj, February 2007

Translated by Michael C. Jumič

# The Erasure is Always and Everywhere

<sup>1</sup> Mira Muršič graduated from the Pedagogical High School in Maribor. She received her classical musical education in piano, accordion and singing at the Music and Ballet High School in Maribor. She has a rich career in the field of culture (music, writing, painting) and working with youth. She has been widely engaged in workshops and performances for children and youth, among them Roma. She writes essays and reviews for a regional newspaper and radio where she also acts as a member of the management committee. She has published three books of essays and a music CD. She has received award for her work in the field of painting. For a while she was active in local politics. Currently her main focus is in ethno musical experimental duet and the writing of two books: a novel and a collection of short essays. The story of Mira Muršič is based on an interview conducted by Jasmina Pavčnik, a student of social work, from the Ljubljana University. The interview was conducted on 9 November 2007 in Celje. Jasmina transcribed the conversation.

A few months before 1990, I got divorced and received custody of my two children. I moved to Miklavž (a village in the northern part of Slovenia), where I rented a house. At that time I also opened a company, *Gustav Ltd*, which manufactured souvenirs and small decorative items. A few days before the deadline for filing a request for Slovene citizenship, a friend warned me that she had heard that those who were born elsewhere and were foreigners had to make some kind of arrangements. She is my friend; she warned me because I was a single mother at the time and therefore not in a very good social situation. Besides, she knew me well, which is why she knew that I had been born elsewhere. The two of us even got into a bit of a tiff over it. Why should I go and apply for citizenship if my parents lived in Slovenia, in Maribor, even before I was born? Actually, my mother had gone to visit my aunt and gave birth fourteen days earlier. I was born a kilometer over the border, on the Croatian side. I admit that at the time we didn't have a television, and the kids were still very small – just a few years old (my son was born in 1986 and my daughter in 1987). Of course, I was dealing with the very concrete burden of just getting by, so even if we had a television, I wouldn't have had time to watch it. But nonetheless, all this business just didn't leave me alone, and right at that time I had something else to take care of at the administrative center, so I went anyway.

The whole time I knew that I myself could choose which citizenship to take. This is my choice and no one can hold a deadline over me. At the administrative center, at the department



for personal status, I handed in my documents. Without saying a word, or giving any kind of explanation (until I asked), a woman at the desk voided my documents. I just stood there with a dumbfounded look on my face, because I didn't know what this meant. They punched a hole in my passport and voided my ID with a stamp. I asked what all this meant and she said that I was not a Slovene citizen and that I should register at the office for aliens. Instead of going to this office, I rushed to the first lawyer I could think of, an acquaintance, and asked him for an explanation. He had no idea what was going on. He didn't know how to answer any of my questions, but he did say that under no circumstances should I register at the office for aliens, because then they could even go so far as to deport me from the country if I found myself unemployed, or if some other reason came up. So I didn't register at the office for aliens.

When I went to the administrative center to ask under what conditions citizenship could be obtained, they told me that this would take two, maybe three months that it would be taken care of quickly, just as soon as our politicians straightened a few things out. So initially I didn't make a big deal out of it. I was worried about the company, because I had just started it up and only needed to open a bank account – at the time I only had a temporary account.

In the meantime, I turned to the mayor of Maribor – because she was familiar with my work and activities in the field of culture – and she referred me to the supervisor of the local Department of the Interior. Unfortunately he did not follow her instructions. They could have simply re-entered me in the computer, because they saw what the situation was and that I had been living in Slovenia since birth. But the gentleman adhered strictly to bureaucratic regulations, although he did offer me some ambiguous solutions, which were rather insulting. The first solution was that I get married, and the second that I put myself at his service.

What I never expected was that the whole process of acquiring citizenship would drag on for years: first because this supervisor held on to my application for a year and didn't forward it to the Ministry to be processed. At the time I wasn't aware that it was held up by him. Then my case came under the new article of the Citizenship Act, and I had to get foreign citizenship and foreign documents as a necessary precondition to apply for Slovene citizenship. This article essentially complicated things.

What actually happened was that I found myself in the situation of having no legal status. My husband cleverly took advantage of these unfortunate circumstances. He filed for custody of our two children and won the suit. I couldn't even go to court, not even once, because I didn't get mail, or I couldn't pick it up from the post office because I didn't have any valid personal document with which to identify myself. A few months later, I found a notice nailed to my door – that I had failed to appear in court and that my husband got custody of the children. My husband prevented us from having contact, and I didn't see my two children for eight years. It wasn't until I obtained documents that I could arrange visitation rights and see them. It is a sad story. My son told me that they tore up my letters right before his eyes.

Let me return to the issue of acquiring personal documents in 1996. As already said, to be able to apply for Slovene citizenship I needed to be a citizen somewhere. In my case there was a possibility for Croatian citizenship, since I was obviously registered there according to my place of birth. I don't have any relatives in Croatia that I keep in touch with. Fortunately, my friend offered to help. She had already helped me before, when I realized I was without status, and she signed as my personal guarantor. Then she helped me with the border crossing issue. I entered Croatia illegally, because without a valid document I couldn't enter the country legally. At first, I had considered crossing the frontier through the fields, outside a border check point.

<sup>2</sup> Translator's note: The Slovene language only uses the hard »ch« sound and letter (č), whereas Croatian and Serbian use both the hard (č) and soft (ć) sounds and letters.

Then my friend got up the courage and told me that she would give me a ride. On the Slovene side of the border, I explained my situation to the policemen. They were very clear that they wouldn't let me back without documents, and that I had to real-

ize this. On the Croatian side, we used our female charms on the customs officer. My invalid ID card was tucked into my friend's passport. He quickly flipped through the passport; he saw that my ID was in there and didn't notice the stamp, so he let us pass.

We managed to get to the Croatian side without any guarantee that I would be able to obtain Croatian documents and return to Slovenia. Because of this uncertainty, I didn't sleep a wink for two days. The psychological pressure was terrible, I was shaking. I had already suffered several years of being without documents, made worse by the whole business with my ex-husband. And now this. I had never committed even a misdemeanor in my life, and had never been convicted of anything. I'm not that kind of person, and that's why crossing that border was something awful.

Fortunately, with the help of my friend, everything turned out okay, except that they made up my documents with a "ć" [soft "ch" sound].<sup>2</sup> I didn't want to make a big deal about it because I was afraid that something else would go wrong if I did. It should be mentioned that a tax had to be paid for each document, and each document required a notarized translation (from Croatian to Slovene for Slovenes and *vice versa* for Croats). That wasn't cheap. The taxes in Croatia were high and everybody at the administrative units laughed at me and wondered why I was putting myself through this in the first place. They said that they were not pushing me back to Slovenia. Ultimately they had to give me documents because I was registered in the central birth register of Čakovec – I was born at my aunt's house. So I had succeeded, and returned home with Croatian documents.

I had a difficult time surviving without any kind of status in Slovenia. For a living, I often performed with a music band, the *Romanoraj* – for some time this was my major means of subsistence. It wasn't a lot of money. At the time, we got about 50 euros per person for a performance. When business was at its best, we had four performances a month, and in between there were gaps when we didn't perform. But even this had to be done through somebody else contract and account. I couldn't collect my earnings. To get by, I also had to work under the table as a bartender, even though my business has always been in culture, and I had all the potential there if only I didn't have this personal status complication. No one in my circles – not even those close to me, not even my friends (except two or three) knew how pressing my situation was. Even I couldn't explain it to myself. I would say that I didn't have citizenship. Most people didn't understand. They thought that I had been negligent and just hadn't submitted an application, and that I'd reaped what I sowed. No one (except my closest friends) made an effort to imagine what it meant to be without citizenship.

I had to pay for all health care services myself, and I couldn't get health insurance. I could only see a doctor if I paid. I had an expensive operation on my veins. In fact, I went into debt. It happened that I went without electricity at home; I wasn't able to pay the bills, so they would turn it off. I have lived in a communal apartment. The municipality office signed a contract with me just two weeks before I would have had to provide proof of citizenship. Before, it wasn't necessary to provide this proof, and I was lucky I could persuade them to prepare the contract before citizenship criteria would be applied. The whole time I have stayed in this municipal apartment. Also the Tax Office had me on the record the whole time, despite the erasure. They

even threatened me with a bill for 180,000 Slovene tolar (750 euros) because I hadn't paid the land tax on my previous address in Miklavž, where, in fact, I had not been living since 1994. They charged me land tax until 2000. Fortunately, I had the contract, so I was able to prove that I had moved out.

Being without status and Slovene documents, I was very scared. If I saw a policeman on the street, I would turn down the first street because I didn't know what would happen if they ran a check on me. Later I learned that this was an unnecessary precaution. Sometime around 1996, the police ceased to deport people in such situations and left them alone. I realized this during a raid at a club, when I flat out told them what my problem was. The policeman just smiled, said "Ok", turned around and left. That's when I saw that they weren't being so hard on people without citizenship anymore. But I have heard stories where people got evicted from their apartments and deported from the country. I was surprised at how many people there were without documents. I kept quiet about it for some time, but once you start talking about it, you see that there are quite a few. From what I remember, I would say that the first articles on this issue appeared in 1996, and that's when people started talking about the erasure as such. I didn't realize that I had been erased until the first article about this was published. Before, I perceived myself as a person without documents and called myself a citizen of nowhere. At the administrative centre, they didn't tell me that I had lost my permanent resident status. I just logically figured that, because I didn't have citizenship, I couldn't register at the Employment Office.

Once I acquired a Croatian passport, I could at least cross borders. I had the opportunity to work at the Halle an der Salle Academy of Art in Germany – nothing fancy, just posing, but it paid well. I made quite a bit of money there, so I was able to cover my debts and still have a little money for the future. On my way back to Slovenia, I treated a friend and myself to dinner as a reward, and someone broke into our car and stole my purse, where I kept my Croatian ID. Fortunately, I had my passport with me. But to get Slovene citizenship I was obliged to renounce my Croatian citizenship, which included cancellation of all my Croatian documents. I went to the Croatian Embassy in order to do that; however, they demanded both documents – my ID card and my passport. But I didn't have my ID. I didn't know how to handle the situation – should I report the stolen ID to the police, or not? I was afraid that the whole affair would get even more complicated, so at the Embassy I simply told them that I forgot my ID and that I'd bring it later. Then I went to Croatia once again to have a new ID made. It cost money again, of course, but fortunately, this time I had a passport and could at least cross the border normally. I gave up my Croatian citizenship in 1997 which was a rather expensive demand; just for the renunciation procedure I paid about 500 euros.

I got my Slovene citizenship only after I wrote to the President of the Republic of Slovenia, Milan Kučan. He was quick to respond. He advised me to turn to the Ombudsman, who was also quick to respond. After that, things really went fast. About six months went by from the Ombudsman's reply to the day I got Slovene documents. This was in 1998. This means that I was without Slovene documents for seven years: since 1991, when I went to the administrative centre on the first working day after the deadline for filing applications for citizenship (under Article 40 of the Citizenship Act).

This whole matter had cost me a fortune, not including my work and time, just what I paid. I calculated that I had paid at least 2,300 Euros just for translations, taxes and travel expenses. It's a shame that I had to pay to have the electricity turned on, that I couldn't work legally, that I was exposed to certain dangers and surreal situations, that I didn't participate in the sharing of

<sup>3</sup> Translator's note: when Slovenia became independent and property ownership was transformed from collective to private, each citizen received a certificate which he/she could invest in a stock of his/her own choice.

collective property<sup>3</sup> etc. And what about other material damages that cannot be proved easily? For example, the employment period that I lost (six years). Ironically I had to pay for the removal of my company from the register, since I had to close it down.

Not to mention that my husband took advantage of my situation. However, owing to this whole situation, I believe I couldn't have taken proper care of my children; they would have suffered a great deal with me. It is difficult to calculate financial damage and impossible to put a price on this moral damage. How would the state remedy the injustice it has caused to my children? Who can fix that? My son is autistic, and how could this void in our relationship be filled? I didn't have the chance to save for his future. But my son did have an easier time dealing with it compared to my daughter. Sometimes we think that children with disabilities are more problematic, but it isn't necessarily so. He didn't burden himself with that "why?" as my daughter did. She's really holding it against me, and does not want to see me. As to how people talk about the Erased in public, it makes me sad, but it doesn't surprise me. I think that some time will have to pass before this whole issue is redefined. But in the end, my daughter, although extremely bright, did have a difficult time with her final high school exams. Now she is a part time university student, although I feel her place should be with the regular students. No one is going to tell me that this has no connection to the situation I was put in owing to the erasure. The child didn't grow up in a normal environment.

At the Center for Social Work they treated me without respect and unfairly. They didn't want to collaborate with me in terms of arranging visitation rights with my children because I didn't have citizenship. They told me that I was not a citizen of Slovenia, and that this was the reason they couldn't work with me, that they were not even allowed to work with me. They advised me to hire a lawyer in Croatia and to have him make contact with a Slovene lawyer who would represent me through the Croatian lawyer. I told the social worker that I didn't even have money for food. At the time, I weighed a mere 43 kilograms. There wasn't money for food or clothes. Of course, with clothes you can always find something. It was more difficult with the food. I remember that once, for two weeks, I ate potatoes that my friend's mother had wanted to throw away because they had begun to sprout.

After I acquired Slovene citizenship and started the procedure for visitation with my children at the Center for Social Work, four social workers changed during this procedure. Their style of work differed significantly. Two of them spoke with me as little as possible, but the other two were supportive. The lawyer working on our case was biased, and even asked me if I paid child support, while the children were with their father. This would seem to be a job that demands at least a little sensitivity, especially if they are confronting a person in a situation beyond their ability to solve. Our case demanded team work, because it was complicated – the father didn't appear at the Center for Social Work, he only came once, when he saw that he couldn't get out of it. And he had his sister on his side, and she is a psychologist. She called the Center for Social Work and said only horrible things about me. I must say, the younger generation of social workers is much better. The older generation completely misunderstood me and couldn't relate my situation to causes outside my control. They would check out the rumors going around about me, like if I'm really neurotic. It seems that they were looking for an excuse to avoid dealing with our case, to avoid listening to my story, and to leave everything the way it was. Since the children were awarded to their father against my will, they only suggested I should file a complaint. At that time the children were 15 and 16. This was not at all a good

idea. If I had filed a custody suit, the suit would have been resolved when the children were of age, and then the outcome of the suit would be meaningless.

In our country, I feel that there is a lack of quality public services. A diploma doesn't mean everything. It's the basis for hiring people, but it does not automatically produce good results. I've just recently come to terms with the rage I feel because officials don't deliver services as they should. No one made an effort to ask any questions or try to resolve anything in my case. They adhered to a strictly bureaucratic approach – but to my detriment. No one showed their human side. Only when the Ministry of the Interior got the Ombudsman's reply, the matter was all of a sudden resolved in my favor, and I got citizenship fairly quickly.

What I also found very disturbing with the Ministry of the Interior was that personal matters were discussed over the phone in the waiting room of the Ministry building and not in person. This phone was by the doorman, at the entrance, and one has to speak loud enough to be heard. Those in the waiting room would watch the poor guy at the phone and listen to his (her) conversation knowing that it would soon be their turn and everybody would have to listen to their personal details.

Before receiving Slovene citizenship I wasn't allowed to register as an unemployed person at the Employment Office. I was required to bring in a citizenship certificate, which I didn't have. I had hoped that they would kind of forget about the certificate, but they didn't. It was terribly frustrating because all I could do was waiting. Much later (in 2004) in a conversation with the director of the Employment Office in Maribor (because I complained about something), he was looking to chide me and he asked what I had been doing for seven years in between, why I wasn't registered as an unemployed person, and why I hadn't found myself a job. As soon as I said that I had been erased, it was all clear to him. What I wanted to say is that you're followed by a trail of files up to the present time. Only now, there are people who have started to understand the issue, but there are still others who look down on you; they think you're a mess, a disorganized person who didn't know how to get their life together. I'm a public figure, and I make appearances (I even published a book during that time), and this ignorance and lack of information about what really happened at the end of the day harms your referentiality. Maribor is a small town. Many hold on to the interpretation that I "messed something up". In this way the problem of the erasure continues; people believe, for example, that I abandoned my children. That's the kind of story that was going around.

I do believe that a vast majority were similar cases to mine – that they were not responsible for what happened, that they weren't informed that they would lose their status completely if they didn't apply for citizenship. Because I had permanent residence, I should have had the right to wait for ten years if needed to decide on my citizenship. That's clearly a personal matter. I remember I had heard about citizenship matters on the radio, on the bus from Maribor to Miklavž. They said that anyone who had been in Slovenia for the last 20 years did not have to apply for Slovene citizenship. That stayed in my head, and I thought, well, either way I've been here all along. There wasn't any logic behind it. My parents had been living here since I was born. My brother was also erased because he had assumed, as I did. He was also born in Croatia, while my mother was still living at home when my father was getting their apartment ready. At the time, no one thought that it was necessary to register anyone anywhere. It seemed normal for me to be born at my aunt's house and have my place of birth there, in Čakovec. In Yugoslavia, nationality was obviously listed according to one's parents nationality, or, in relation to the place of birth, which means Croatian, in the case of Čakovec.

In my opinion Mr. Bavčar is responsible for the erasure. He was Minister for the Interior at the time. Two sides were negotiating over the erasure. As the Minister, he should not have allowed the side that eventually prevailed and opted for the erasure. Every minister should adhere to the Constitution and human rights standards. Another high ranking employee of the Ministry, Slavko Debelak, signed the document ordering the police to deport people who were erased. These documents were published in the weekly magazine *Mladina*.

Regarding the prevailing argumentation and panic over the right to compensation, I absolutely do not agree that compensation should not be paid. On the basis of my own costs and my own story, I can see that these were people who died, went bankrupt, became ill, families were broken etc. If the state pays for every other injustice that it has caused in the past, I think the erasure deserves no exception. It is true that compensation would not be small. Matevž Krivic, the solicitor for the Erased, calculated quite a large sum as an example of an individual case. It is possible that the state simply wouldn't be able to pay it. I feel that it would be wiser to look for some kind of solution in the form of annuities, so that urgent matters would be covered and people could get back to where they were in life. But in the end it isn't really about compensation, but about reimbursing actual costs. I would definitely like my costs to be reimbursed – at least a minimum, but if you add interest, then again, that's quite a lot of money. What the Constitutional Court ordered is the minimum bottom line for what they should do, together with an unambiguous apology to everyone. Permanent residence status shouldn't have been taken away so easily once it had been acquired. The very least the government should do is give back unlawfully revoked personal statuses and publicly apologize.

Translated by Michael C. Jumič

# The Story of Velimir Dabetić

No one can match him in chess except his mother Ljubica. She instilled the passion for the game in him, and while Velimir attended high school in Koper, he had no true rival.

<sup>1</sup> Chetniki [Četniki] are an ultranationalist Serbian political and para-military movement [Editors' note].

The Dabetić family moved to Slovenia from Montenegro in the sixties in order to find work. The port town of Koper, where different industries were developing in the midst of a Mediterranean environment, presented itself as a highly attractive opportunity.

With the first salary Velimir's father received, he built a small house on a hill overlooking the bay. It was his refuge, and he did not require anything else. After graduating from high school, Velimir started working in a factory in Vicenza, Italy. Generally speaking, the life of the Dabetić family was progressing placidly.

Trouble started brewing in 1991, when Slovenia seceded from Yugoslavia. The "war" had disappointed Slovene nationalists: it lasted only two weeks, and there was no real bloodshed – too little took place to become the stuff of myth. Their frustrations had to be taken out on an "internal enemy". A neighbour of the Dabetić's reported them to the police, accusing them of harbouring "Chetniki"<sup>1</sup>. The police came at night and forced Velimir's brother to crawl on his knees for two kilometres with a gun pointed at his head. When they arrived at his parent's house, they started shooting, destroyed the water tank and much more. They broke in and, keeping their guns aimed at the family members, demanded: "Where are the Chetniki?" Who was to persuade them it was pure nonsense? Moreover, Velimir's grandfather was a national partisan hero, and as such a mortal enemy of the Chetniki. They searched thoroughly everywhere, realized it was a blunder, and left them alone.

The following year, the Dabetić's found out they had been erased, and could no longer count themselves citizens of Slovenia. Not even Velimir, who was born and raised in Koper.

The erasure was a time bomb. Velimir's regular employment of twelve years in Italy now depended on the only remaining document he had left: a red passport of the Socialist



Federative Republic of Yugoslavia. When it finally expired, he lost his residence permit, and with it his residence and employment: a destiny shared by many other Erased.

The chess player from Koper did not give up; he made one of the few possible remaining moves and became a street artist. Black, the pet dog who accompanies him, is four years old – as old as the “new” Velimir, born after the “erasure” executed by the Verona Police Directorate. The two friends roam the Italian coast, enjoying the smell of the sea. Occasionally they are stopped by police. “We’ll send you back to Yugoslavia”, they told Velimir at the Ancona Police Directorate, where it seems they are not up to date with the current geopolitical situation on the other side of the Adriatic. “Send me to Morocco. Maybe they’ll want me there”, replied Velimir in despair.

Three months ago a police chief from the city of Pesaro ordered him to “leave the Italian territory from the Malpensa airport in Milan within five days,” or failing this, face “from six months to one year in prison”. The deportation would launch him into interstellar space: Velimir is a stateless person, his birth country erased him, and there is not another willing to accept him.

On 16 January 2006 he was put behind bars in Mantova, while Black was taken to a dog shelter. In an expedited trial Velimir was pardoned, and walked out a free person. It was the first time an Italian court had recognized arguments submitted by an erased person; however, for the Ministry of the Interior, this was not enough. Velimir is still clandestinely roaming the piazzas accompanied by Black and making a living by juggling.

From time to time he pulls out a chess set. He wants to remain in good shape. And yet, he has already won his game – in spite of all the cops who imagine that they can simply erase a person.

Translated by Matija Ravitz

Photo: Romano Martinis



Velimir Dabetić (left) in front of the European Parliament in Brussels, 29 November 2006.

# The Double Erasure of Ali Berisha<sup>1</sup>

The policeman tossed the passport about in his hands and sneered mockingly: “What is this? Red passports are no longer valid.”

It was 23 May 1993. Ali Berisha was on his way back home from a visit to his relatives in Germany. Born in Kosovo, he had moved to Slovenia as a boy. At the age of sixteen he was employed by a company in Maribor, later he served in the army in Slovenia, and his brother had recently obtained Slovene citizenship. To cut a long story short, Ali had no doubts where his home was. He pointed out to the policeman that the passport had been issued in Slovenia and was valid for another four years.

The policeman raised his voice: “Serbs, Albanians, Gypsies and Croats are no longer entitled to live here. Only Slovenes have this right.” They seized his passport and took him to the Transit Centre for Aliens in Ljubljana.<sup>2</sup> The next day he found himself on a plane bound for a country he had never before visited.

At the Tirana airport the border policemen kept a surprised eye on a youth who had flown in from Ljubljana without any documents. It soon became clear to them that he was not an Albanian citizen, but a Roma from Slovenia – who spoke Albanian.

After the short negotiations that followed, and which cost Ali all his savings and a gold ring, he boarded the same plane on which he had arrived, and took a return trip. In Ljubljana he was hand-cuffed and again taken to the Transit Centre for Aliens: “If Albanians don’t want you, we’ll send you to Slovakia.”

Ali started getting annoyed by all this. A person equipped with suitable technical know-how is not easily scared by a few locks and bars on the windows; in a few days he organized a group escape.

<sup>1</sup> The article was originally published in the Italian newspaper *La Liberazione*, special edition Queer, 24 June 2007, page 5.

<sup>2</sup> The Transit Center for Aliens in Ljubljana was a predecessor of both the Detention Center and the Asylum Home. The institution was introduced in 1992 and transformed in 1999. Following this transformation, the Asylum Home is meant for asylum seekers and the Detention Center for migrants who cannot obtain legal status in Slovenia and are awaiting deportation from the country [Editors’ note].

In jumping from the window sill, he injured his knee. It was a rather serious injury. It wouldn't have healed without the aid of an acquaintance, an older Slovene lady who had grown fond of Ali. She hid him in her home for several days; she even managed to have him treated in hospital under a false name. Immediately after his recovery, his brother drove him to Germany.

The Germans would not hear anything about the Erased. There was only one way for Ali to get *Duldung*, humanitarian protection: by inventing a story about his escape from a war zone. But they had doubts about that as well; he had to be convincing.

When Ali talks about these events, which does not often happen, he smiles shyly: "I got hold of a real Kalashnikov, like the ones they make in Kragujevac, and put on a fire-fighter's coat. Standing in front of the judge, I unzipped the coat and showed him the weapon, saying: "You have no idea what I've been through; I'm more used to machine gun fire than I am to drinking morning coffee. What a scandal! They said I'd be sentenced to five years in prison for smuggling a machine gun into court. But in the end I got *Duldung*".

Ali spent the following twelve years in Germany as a "Kosovo refugee". He worked and started a family there. In 2005 the decision that there was now peace in Kosovo came out of the blue, and he was to be deported back. Ali came to an agreement on the manner of his "return": they would go by car, driving through Slovenia.

Yes, Slovenia. Ali already had yet another clever move in mind. Immediately after crossing the border he, his wife and children asked for political asylum: an erased person as asylum seeker in the country that had erased him!

After returning to his homeland, Ali did not waste any time, and within a few months became a visible public figure in the antiracist movement in Slovenia. When the Slovene Parliament adopted an act in breach of human rights for giving police the right to decide, who is or is not entitled to seek asylum, the Constitutional Court overturned it on precisely this point. The first signatory of the petition against it was Ali Berisha: a true expert in this field.

As could be expected, the Slovene government did everything to send Ali back to Germany; but it was not a simple operation, as the Constitutional Court had explicitly banned deportations of the Erased in 1999. On the basis of this argument, a rapid international mobilization backed by Giusto Catania and Roberto Musacchio, European Parliament Members of the Italian Party of Communist Renewal (*Partito di Rifondazione Comunista*), twice managed to prevent the deportation of the Bersiha family. In November 2006 Giusto Catania rushed to the Detention Centre in Postojna, where the Berisha family was being held (along with the youngest son Valon, who at the time was only four months old), and caught the officials of the Slovene Ministry of the Interior off guard. The Centre's director, Jože Konec, was furious but in the end let the family go free.

In the meanwhile, Franco Frattini, European Commission Vice President and Commissioner responsible for Justice, Freedom and Security, lent support to the Slovene government: the key priorities listed on his web page include "fundamental rights and citizenship". Nevertheless, in his response to an MEP question concerning this issue, he declared his lack of competence in the Berisha case, for "the European Union Treaty and Treaty establishing the European Community do not accredit the Commission with universal competence in the field of fundamental rights [...]". Consequently, the position of Ali Berisha and that of other erased persons was supposed to be treated as an internal affair of the Slovene state.

After Frattini had given Slovenia a free hand, the Slovene police changed tactics. At daybreak on 1 February 2007, they loaded Ali, his wife and five children into two unmarked

police vans. They rushed them through Austria and into Germany, only stopping in Munich: a magnificent example of international cooperation, which enabled the illegal deportation of an Erased and his family from Slovenia.

The Berisha family is currently living in Germany and is threatened by being deported to Kosovo. The story, however, is not over yet. A year ago Ali and ten other erased citizens, backed by *Karaula MiR*, a group of anti-racist individuals from Slovenia and Italy, filed a lawsuit against Slovenia with the European Court of Human Rights in Strasbourg; they are being represented by the law firm of Anton Guilia Lana from Rome. It has recently been made known that the lawsuit will go to trial; and despite what Franco Frattini might think, the Slovene government shall have to take responsibility for violating the fundamental rights of the Erased. Slovenia – the country holding the EU presidency – has thus found itself in a rather uncomfortable position.

Translated by Matija Ravitz



Photo: Borut Krajnc

Hunger strike of the Erased at the Slovene Italian border Šentilj to support the case of Ali Berisha, 2 July 2005.

# A Monument to the Erased

The idea of erecting a monument to the Erased somewhere in Slovenia, in front of the building of the Ministry of the Interior in Ljubljana, could be taken for a bad joke, especially if one presumes, in conformity with current trends, that monuments are agents of unification. However, the story of the agglomeration of 18,305 individuals, who had been clustered together by bureaucracy, seems to be well on the road to being redeemed only by a monument. Not for the sake of reconciliation or in order to reach a consensus, but as a reminder for the future not to forget the injustice done to these people in the past. *The Campaign Week of the Erased*, a yearly occurrence, when different organizations from international as well as cultural and research fields remember and discuss the erasure, is in the end becoming just such a custom.

The historic opportunity to resolve the issue of the Erased has thus been missed. The steps being taken by current politics are making it more and more obvious that the erasure was an intentional act. Even if the current or a future government cracks this nut sometime in the future, and does so in a way that would be compliant with the decisions of the Constitutional Court, and so there would be nothing reproachable by international institutions, the memory shall remain of this machination employed by politics to take away all social rights and thus punish those who had not applied for Slovene citizenship. When searching for reasons and leafing through pages of publications on the Erased, which are yet to be published, we must go back to 1991 – the year when, on the one hand, we established the state in protest against the Yugoslav regime of intimidation, and in order to ensure respect for individuals and protection of their inalienable rights, above all freedom of political conviction, and when on the other hand, we took revenge on those whom we considered not to agree with us.

## Local politics against the Erased

The parliamentary debate from that time is both interesting and instructive. What surprises the reader of transcripts kept in the Parliamentary archives is the absence of arguments from

those deputies who voted “in favour of the erasure”. It is interesting and possibly contrary to the current perception of the problem that “high” state politics, represented at the time by the Executive Council and the Socio-political Chamber of the legislative body, had actually been more empathetic and much closer to a favourable outcome, yet in the end nevertheless failed to fulfil promises written in the Statement of Good Intent. Votes “in favour of erasure” were most advocated by representatives of local interests. In 1991 they were the majority political force in the Chamber of the Communes, i.e. the second of three chambers of the then legislative body. Today these interests are represented in the National Council, where the Slovene People Party’s majority has been somewhat traditional. A slightly greater display of understanding for the situation of those who are now called the Erased was shown among the representatives of workers’ and employers’ interests in the third chamber, i.e. the Chamber of Associated Labour. This is evident from the debate and the results of the vote on the amendment to the Aliens Act, which was to fill in the legal void and prevent the erasure from taking place. “Citizens of the Socialist Federative Republic of Yugoslavia (SFRY), who are citizens of other Yugoslav republics, and do not submit an application for citizenship of the Republic of Slovenia but have a registered permanent residence or are employed in the Republic of Slovenia on the day this Act enters into force, shall be issued with permanent residence permits of the Republic of Slovenia.” This text was proposed by two parties in all three Chambers, the then Union of Socialist Youth of Slovenia – the Liberal Party and the Communist Party of Slovenia – Party of Democratic Renewal.

In the Chambers of the Communes the amendment was proposed by Jože Zakonjšek (Union of Socialist Youth of Slovenia – Liberal Party), but a large majority of deputies – each Chamber had 80 – voted against it. Only four voted in favour. In the Chamber of Associated Labour the amendment was proposed by Dejan Murko (Union of Socialist Youth of Slovenia – Liberal Party). Fourteen deputies were in favour, 22 deputies voted against, and 13 abstained from voting. In the Socio-political Chamber the amendment was advocated by Dr. Lev Kreft and Metka Mencin (both Union of Socialist Youth of Slovenia – Liberal Party), and came close to being adopted. Kreft explained during the session: “We propose the adoption of a special article to regulate the temporary status of citizens of the Socialist Federative Republic of Yugoslavia in order to assure that such a decision doesn’t alter their existing status, as written in promises given before the plebiscite, or that they shall share our fate, as written in the agreement between political parties and parliamentary groups.” And Metka Mencin: “It is our opinion that this amendment would at least to some extent improve the position of residents of the Republic of Slovenia who are citizens of other republics, and would under the provisions of the Aliens Act suddenly be considered aliens. This amendment is primarily intended to aid those who have employment in Slovenia but do not fulfil the criteria to obtain citizenship.”

During the first vote, 19 deputies voted in favour, 19 against, and 12 abstained. Hence the vote had to be repeated. At the second attempt, the amendment came one vote short of being adopted (20 against, 19 in favour). Of all those who voted against at that time, the minutes record only one remark made by Andrej Šter. He voted against “[...] because the amendment introduces an explicit disorder and uncertainty into our legal order, for it introduces a category we are otherwise unfamiliar with, i.e. somewhere in between.”

Even though the amendment had not been adopted, the Socio-political Chamber did adopt the following resolution on the Aliens Act proposed by the Party of Democratic Renewal: “In accordance with the principle of reciprocity, the Republic of Slovenia shall seek to ensure the

<sup>1</sup> B. J.: »Tudi z osebno izkaznico k nam«, newspaper Večer, 25 June 1991, page 14.

rights enjoyed thus far to all existing citizens of the Socialist Federative Republic of Yugoslavia in the Republic of Slovenia, and equal rights to the citizens of the Republic of Slovenia in other republics of the Socialist Federative Republic of Yugoslavia.” As many as 26 deputies voted in favour of the resolution, 13 against, and 10 abstained.

## Promises, on the one hand, legal acts, on the other

The proposed arrangement raised doubts in the Chamber of Associated Labour. Muharem Bolić said at that time: “I would like to ask the gentleman, what will happen to workers who reside in resident homes for workers, and do not have permanent residence but do have permanent employment here?” Dr. Bogomil Brvar, the then representative of the Ministry of the Interior replied:

“The proponent, i.e. the Secretariat of Interior Affairs of the Republic in the role of agent and competent administrative body in this field, shall seek to ensure that in the transitional period or in the period provided for by the law, these matters are settled in such a manner that not only administrative bodies receive suitable instructions but also the people are acquainted with the law. In a timeframe provided by the law every person shall be given the opportunity to settle their affairs in the Republic of Slovenia [...]. Certainly, the Constitutional Act [...] shall provide grounds for the regulation of civil rights of all those, who fail to obtain citizenship of the Republic of Slovenia in the provided time, i.e. the right to work, to seek employment, to inheritance, social and health rights, etc.”

The representative of the Ministry of the Interior thus promised that a Constitutional Act would regulate the rights of all those who would not obtain Slovene citizenship in the provided time. When he spoke of “those” people, he was not only referring to over 18,000 of those who are now referred to as the Erased, but to approximately 100,000 of those who had citizenship in other republics of the Socialist Federative Republic of Yugoslavia and at the time had only temporary residence in Slovenia, or had only employment and no other legal status. It soon became obvious that his words had been just empty promises. When the government submitted a proposal for the Employment of Aliens Act in the following year, its first draft set out that aliens could obtain work permits relatively simply, after they’d had permanent residence in Slovenia for five years (later changed to ten years). It is, however, customary that countries enable the acquisition of a personal work permit immediately after a permanent residence permit is granted to an alien, and this applies to the current Slovene legislation as well.

If we take a look at the archive of newspapers’ articles published between 1991 and 1992 on the adoption of the Aliens Act, we realize that the question of what would happen to permanent residents of Slovenia who were citizens of other republics and did not plan to apply for Slovene citizenship, was unknown to the public. In that period, for instance, the daily newspaper *Večer* made in-depth mention of the provisions of the Aliens Act only a few times. On one occasion there was an article on the obligation of landlords to register aliens within a period of 12 hours.<sup>1</sup> On a different occasion there was more detailed mention of the Aliens Act, when it



<sup>2</sup> »Prepušчени smo le sebi«, newspaper Večer, 3 October 1991, page 5.

<sup>3</sup> I. Ivačič: »Kako postati slovenski državljan«, newspaper Večer, 4 May 1991, page 4.

<sup>4</sup> »Sovražniki med lastnimi državljani«, newspaper Večer, 16 May 1991, page 2.

was presented to the public by the then Minister of the Interior Igor Bavčar in October of 1991, who explained that “citizenship of the Republic of Slovenia has been entered and clarified in a centralized computer register for 1,860,000 citizens, and approximately 200,000 unresolved registry entries remain.”<sup>2</sup> The Minister added that these 200,000 persons would be treated as aliens. Or on the third occasion, when Nada Končina, the then Head of the Department of Civil Status at the Ministry of the Interior, gave an interview on how to become a Slovene citizen. She explained that after the transitional period was over, every alien “including current citizens of other republics, who wish to live in Slovenia, shall have to prove they have sufficient means for residing in Slovenia, as well as where they intend to live.”<sup>3</sup>

Of all other acts that provided the state with a basis for the events that followed, the greatest portion of media attention was given to the Citizenship Act. It is true that the scope of erasure would be greater, if the Assembly had adopted some of the proposals submitted by certain deputies with the intention of further limiting the granting of Slovene citizenship. In the end the Assembly adopted the decision that eligibility for citizenship would be granted to all those citizens of other republics who had permanent residence in Slovenia on the day of the plebiscite. During the parliamentary procedure for the adoption of the Act, the deputies even discussed the possibility of checking the medical condition of applicants, their knowledge of the Slovene language, or of setting five years of continuous residence in Slovenia as a condition for obtaining citizenship. The latter, for example, was proposed by the Slovene Democratic Party (then called the Social Democratic Party). On the other hand, one can also read that France Tomšič, who is nowadays considered the father of the Slovene Democratic Party, advocated a more liberal option. When deputy Darja Lavtižar Bebler said she was “personally leaning towards more restrictive conditions for obtaining citizenship on account of news of Chetniki (i.e. Serb nationalists) on our soil”, Tomšič replied that, if we wished to have a peaceful separation, “we should not complicate matters on this basis”.<sup>4</sup>

## Case No 1: A Kafkaesque nightmare

The effects of this silent policy, which had not clearly articulated its motives anywhere, could later be observed in action. A detailed description of a case was provided by a bank clerk from Maribor, whom we shall call Neda. The year was 1992, and Slovenia had in the meanwhile declared independence. Neda was among those who voted for independence at the 1991 plebiscite.

In May 1992 Neda went to the Maribor administrative office accompanied by her husband to make arrangements for her new personal documents. She had moved to Maribor from Šibenik (Croatia) in 1976, when she was 19, and was convinced she became a Slovene citizen with a permanent residence address. She had never been served the decision on the change in her legal status, and was thus surprised when the clerk informed her that her data was included neither in the register of Slovene citizens nor in the register of Slovene residents. At that time she was still under the impression it might have been one of those bureaucratic mix ups which take up an extra hour of one’s time. The clerk finally found her listed in the register of aliens

without residence permit. When her name was entered into the computer, a sub page with this note appeared: "Erased in accordance with the law". The clerk read the note aloud and explained that she had to register as an alien, and then almost forcibly wanted to take away her Yugoslav passport, which had been issued in Slovenia.

Although she could hardly regain composure to return home, she had been used to dealing with paperwork, and came back with new documents in two weeks, remembers Neda. This time it was her intention to apply for a temporary residence permit. She filled out the application form and paid the tax. The clerk invited her into the office and explained that only holders of foreign passports could register as aliens. Neda did not have one; hers had been issued in Slovenia. "What am I supposed to do? Can I file a complaint somewhere?" she asked. "The only possibility for you to remain in Slovenia is to acquire a foreign passport, and then register as an alien with temporary residence," answered the clerk, and pointed out another formality: "The foreign passport mustn't by any means state this address in Maribor or anywhere in Slovenia as your permanent address."

Summer passed, and autumn came. In September Neda went to the administrative office again, this time with a new, Croatian passport. And her Maribor home address was not stated as her permanent address. The address in the passport was from Switzerland. She received a Croatian passport from the Croatian Embassy in Bern, Switzerland, on the basis of a Croatian certificate of citizenship mailed to her by her relatives. Since she had not had a permanent address in Croatia since 1976, her temporary Swiss address was entered in the passport. A new problem ensued. Her name in the Croatian passport did not include her husband's family name. The clerk would not give in. Neda was supposed to bring in a certificate of legal name change. This, however, was not possible because the passport had been issued by the Croatian Consulate in Switzerland on the basis of a Swiss temporary residence permit, and in this permit her name was entered without her husband's family name. Therefore the application she submitted was not accepted as incomplete, but instead turned down completely by the clerk. "I was thus given a final rejection," says Neda.

Neda kept on living in Maribor illegally for approximately three years. Being without legal status presented a range of difficulties, and in 1995 she reapplied for a temporary residence permit with the same documents as in September 1992, and without a certificate of legal name change. This time the administrative office also demanded a certificate of her husband's pecuniary situation, a lease agreement for the apartment, a non-criminal record statement and a translation of Croatian documents, but not also a certificate of legal name change. Thus she finally managed to obtain her temporary residence permit.

The process of acquiring a permanent residence permit followed. "My applications for permanent residence were repeatedly rejected over a period of ten years. I had to submit applications for extension of the temporary residence permit regularly. My application for permanent residence, which I filed on 21 December 1999, and which was even substantiated by a Constitutional Court decision, was first considered in May 2002, and almost rejected." When Neda received an official letter from the Ministry of the Interior in May 2002 explaining that her application of 1999 was incomplete, her husband paid a personal visit to the Ministry and asked them to take into consideration the fact that he and his wife had been married and living together for 27 years. He was told this could not be done, but that he could bring witnesses who would be heard in Maribor and testify to the fact that Neda lived in Maribor. "My husband gave the names of two persons. Later we learned they had given testimony, but their testimonies were

not taken into consideration by the Maribor administrative unit because the witnesses had been given by ourselves. The Maribor administrative unit therefore invited two other witnesses who were to be chosen at random,” she says. The witnesses were a neighbour, a 78-year-old lady, and another person. “The whole neighbourhood was saying that people had been invited to a hearing because of me. The neighbour, who didn’t know me personally, was even asking the cashiers and clients of a local store if they knew anything about me because she would have to attend a hearing. In the place where I live, all eyes were upon me wherever I turned.”

The procedure for issuing of the permanent residence permit by the Ministry of the Interior finally came to an end in July 2002.

“The matter is so absurd, it cannot be explained rationally! Who would believe it, if they hadn’t lived through it? I am convinced the state authorities found out years ago that I had been erased illegally and in contradiction to the Constitution. Instead of trying to right this illegitimacy, and enable me to lead a normal life, they were obviously intent on getting rid of me. This is further proven by the fact that they persistently, i.e. every time I applied for an extension of temporary residence, as well as when I submitted the application for the permanent residence permit, demanded documents that I wasn’t able to acquire, for example the foreign passport (where I had used all my resourcefulness to attain it); the lease agreement for the apartment (my husband and I live in our own house in Maribor); the certificate of medical insurance (I couldn’t get insurance without a residence permit); the income statement (I couldn’t be employed without documents), etc. All my oral complaints (there was no legal basis for written complaints) only made matters worse for me. When I reached the point of desperation on one occasion, and asked the clerk of the Maribor administrative unit the question ‘why’, and what they would do with me if I once failed to complete my application according to their ever changing wishes and instructions – would I maybe be deported from Slovenia – she answered very resolutely: ‘Yes, if need be!’”

## Case No 2: Resourceful use of the law

The secretaries, undersecretaries, as well as clerks of administrative units whom we asked in the recent years why the erasure occurred mostly gave the answer that they had only been implementing the law. In certain cases, however, state institutions in pursuit of goals similar to the ones that could already be perceived during the first parliamentary debates, also made arbitrary interpretations of the law.

A family from Celje has recently, after a reconstruction that lasted over ten years, learned how Dragomir Petronjić died. On Sunday, 2 September 1992, Dragomir Petronjić returned home from working in Austria. His passport had expired, and he intended to take care of it on Monday. On Wednesday he was driving to visit his friend Marija, when he was pulled over by a road patrol. They took away his driver’s license and ID card, and let him drive on. On Thursday he had to wait in his apartment for the police to bring his documents. Two policemen arrived around noon. They told the family he had to leave with them. They handcuffed him and brought him to a misdemeanours judge, who fined him in the amount of 1500 tolar (6.3 euros) for the expired documents and ordered the payment of a 1000 tolar (4 euros) lump-sum

<sup>5</sup> Borut Mekina: »Izbrisani gledajo Janšo, on pa njih ne vidi«, newspaper *Večer*, 1 December 2006, page 4.

<sup>6</sup> Hannah Arendt (1994): *Eichmann in Jerusalem; A Report on the Banality of Evil*. New York, Penguin Books.

court fee. Petronjić paid the fine immediately. The judge did not issue the “security measure” of deporting the alien to Croatia, where a war was raging at the time. “Deportation or expulsion of an alien to a country in which his/her life or freedom might be endangered because of race, religion, nationality, member-

ship of a special social group or political conviction, or to a country in which the alien might be exposed to torture or to inhumane and humiliating treatment or punishment”, is prohibited by law.

However, at that time the police received instructions to bring aliens without papers to the border and expel them “without a decision by an administrative body”. If we are precise, Dragomir thus had not been “forcibly expelled” but only “referred” to Croatia. A day later, on 5 September, when he was already in Croatia, the Croatian authorities were supposed to send Petronjić as a “labour and combat capable refugee from Bosnia and Herzegovina” to his “native” country. He never arrived there – as a Serb in Croatia he was murdered in an atrocious manner several days later (for a more detailed description of the case, see Svetlana Vasović in this volume).

There are more similar, also contemporary cases. The argument reiterated several times by the current Prime Minister Janez Janša and his Minister of the Interior Dragutin Mate that there are no more Erased because their status has been resolved, still does not hold true. Even today, sixteen years later, it is still surprising how many Erased are left with their status unresolved, and must therefore receive medical treatment at the Maribor and Ljubljana Clinics for Persons without Health Insurance. According to the doctors working there, there are approximately 80 such persons in Ljubljana, and approximately 30 in Maribor. For example, in September 2006 the Ljubljana dispensary referred an erased person with a severe form of psoriasis to the dermatological clinic, and a year before an erased patient’s leg in late stage gangrene had to be amputated.<sup>5</sup>

## Nobody’s responsibility?

During the week when newspapers were filled with reports from the trial of Aleksandar Todorović, president of the Association of Erased Residents, who had flung the word “fascists” in the teeth of former Minister of the Interior, Andrej Šter, former Secretary of the Interior Ministry, Slavko Debelak and former Undersecretary of the Interior Ministry, Alenka Mesojedec Pervinšek, and told them they were fit for “the Hague” and not to live among “civilized people”, we were also celebrating the hundredth anniversary of the birth of the political philosopher, Hannah Arendt, who had offered one of the most provocative and controversial explanations of this phenomenon. Her study is actually a study of responsibility for the greatest crimes committed in the modern age.

She stirred up a public commotion with her report from the Eichmann trial for *The New Yorker*.<sup>6</sup> Eichmann was a high ranking officer of Nazi Germany, responsible for the transport of Jews to concentration camps and negotiations with Jewish organizations, which enabled the process to be carried out without complications. After World War II he had escaped to Argentina, where he was captured fifteen years later by the Israeli Secret Police. He was transferred to Jerusalem, and put on trial for the Holocaust, which became a most spectacular legal process. To Arendt, however, it became clear during the trial that Eichmann did not hate Jews,

and that the guilt for the crime that is clearly evident in usual criminal proceedings, would be difficult to prove. Eichmann was a “normal” person, a loving husband and father, hardworking, fairly ambitious, and – he had never murdered a person with his own hands. In the Nazi bureaucratic machinery he simply did not want to evaluate the consequences of his actions, i.e. that just by doing administrative work and carrying out orders he had made a decisive contribution to one of the greatest and to a large extent still incomprehensible crimes in human history. He was not alone, of course. Many little Eichmanns, careless and ambitious, successful in their respective narrow fields of expertise and ignorant of all ethical dilemmas and norms, were necessary. They all moved the levers of a great machine, so that in the end only the push of a button was necessary for the process to go its course almost by itself. The banality of evil was not a consequence of the wish to be violent and kill, but a consequence of the complete lack of judgement about and reflection on one’s own actions.

When it comes to erasure, it can be concluded that it involved a notion of the state being a community of Slovenes, which had been promoted by certain politicians. Despite the frequent occurrence of clearly expressed nationalist motives during the first years of independence, one might still accept the presumption of a legal error having taken place. It is nevertheless surprising that several hundred clerks, and even judges, who for over a decade had been in contact with the Erased on a daily basis, never raised any suspicions or pointed out to their superiors that there must be something fundamentally wrong with the system.

Translated by Matija Ravitz

# “We, the Ethno-citizens of Ethno-democracy” – The Formation of Slovene Citizenship

*Just yesterday, citizenship, Yugoslav or Slovene, only meant that you were not a foreigner. If anything, it meant you were subjected to the state, rather than being its proud founder and the sovereign source of its power. Now citizenship has attained importance for the citizen. It has become a source of all rights and the basis of an individual's self-confidence.*

Deputy Lev Kreft, Assembly Sitting of the Republic of Slovenia, May 1991

*I stand for citizenship that would make those who possess it proud of it. I would like to see Slovene citizenship represent a sort of value [...]. The state should exude a national character, it should have a specific flavour, a specific form. Members who would like to join this nation must submit themselves to this fact.*

Deputy Zvone Žagar, Assembly Sitting of the Republic of Slovenia, May 1991

With the founding of the independent Republic of Slovenia, the concepts of citizenship and rights, along with the entire social system (from a socialist to a neoliberal capitalist economy, and from a multinational to a nation-state), were transformed. In the first quotation, Lev Kreft stresses the emancipatory potential of the new citizenship, which was to be “a source of all rights and the basis of an individual's self-confidence”. The paradox of this concept lies in the fact that, on one hand, it establishes equality among citizens (as bearers of rights), but, on the other, excludes non-citizens. The second quotation reveals an understanding of citizenship as something which is rooted in ethnic or cultural content and linked to perceptions about the identity of the dominant people. A concept of this kind establishes inequality from within, between citizens themselves, as it foresees submission to the “majority culture”, whatever that might represent.

The key question that will be posed in this article is what kind of citizenship was established in the newly founded Slovene state and, accordingly, what kind of democracy was the ruling elite capable of creating. The argument that Slovene citizenship contains both an ethnic and

a moralistic dimension will be made. The former was important when defining the initial body of citizens (on the basis of the legal continuity of the *jus sanguinis* principle); the latter, which is derived from the former, is based on two characteristic demands: *loyalty* and accordance with *public order*.

That which was excluded from Slovene citizenship can provide insight into what Slovene citizenship is. In this case, these are persons erased from the register of permanent residence. The erasure stands in contrast to citizenship, thus symbolically creating it and determining its content, its value, and its identity (or “particular flavour”, as deputy Zvone Žagar said in the above quotation). Precisely how the rules and laws of independence, which defined who would be included in the initial citizenship population and in what manner, formed the foundation of an ethno-citizenship that was to create the erasure as its collateral damage will be shown below.

The discussions on the draft laws for the Citizenship of the Republic of Slovenia Act and the Aliens Act provide crucial insight into both Slovene citizenship and the erasure. These discussions contained arguments that can, from today’s perspective, be broken down into those which supported the erasure and those which attempted to prevent it, even though the actual act of erasure from permanent residence records was not publicly debated at the time. The system that emerged will be shown to be an ethno-democracy. Here, democracy is used in a broader sense: it signifies more than representative government in a parliamentary framework and the *demos* having the power to decide through elections. It is used to signify permanent political activity, as opposed to the alienated political involvement of the majority in the form of a representative system. This also raises the question of which, or whose, problems are publicly presented, and in what way, and who are the subjects of this presentation. For example, between 1992 and 1999, when the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (hereafter ARLSC) was passed, thousands of people resided in Slovenia without a residence permit or citizenship, but their problems were not publicly acknowledged, at least not in a way that would enable or encourage the general public to understand the root of their suffering. From 1999 to the end of 2006, 12,199 persons received permanent residence permits on the basis of this law. This poses the question of the invisibility of a relatively large group of persons forced to live outside the protection of the national law and in conditions of extreme deprivation, and to do so in a country that was celebrating its new democratic order. However, once the issue of the erasure had been made public, discourse on loyalty to the Slovene nation and state came to the fore. For example, the argument that the Erased had been opposed to the project of Slovene independence was often used to justify the erasure. This puts the Erased in a sort of prohibited position (regardless of their actual opinion about Slovene independence) and constitutes the erasure as punishment for such an “ill-advised” political position. The *demos* represents the Slovene nation joined by *loyal* citizens of the former Yugoslav republics. This *demos* can render verdicts on those outside of it, on non-citizens, or rather anti-citizens. And that is precisely what happened in 2004, in the referendum on the technical law which was supposed to settle the problem of those erased persons who had already acquired their permanent residence status. The Erased themselves were not permitted to participate in this “democratic” act of decision making.

In discussions about the erasure from the register of permanent residents, one often hears (from both proponents and opponents of the Erased) that citizenship and permanent residence permits are two different statuses, and that people did not lose citizenship, but permission or registration of permanent residence. From a narrow, legalistic point of view, and also in struggles to remedy lost

<sup>1</sup> See the statements of the current Prime Minister Janez Janša, and his fellow party members at the first hearing on the ARLSC, at the 13th Parliamentary Sitting, 21 April 1999 <http://www.dz-rs.si/index.php?id=97&cs=1&fts=ZUSDDD&mandate=2&unid=SZAZ3A2835888A0678B4C125675F002476CB&showdoc=1> (accessed 10/6/2007).

rights, this is true. However, in attempts to understand the erasure as an all encompassing social phenomenon, a distinction of this kind reduces the problem to a question of personal legal status. Also, it overlooks the fact that the erasure is a constitutive element of Slovene citizenship. This narrowed point of view also overlooks the fact that the erasure is damaging to all society, to the state and public institutions that are supposed to serve the principles

of justice and equality. The altered functioning of public institutions (such as health care, social services and employment conditions) is a reflection of a shift in the socio-political system: from egalitarian access to rights under socialist Yugoslavia to neoliberal conditionality and exclusivism in independent Slovenia. And because it was precisely the Erased who fell through this sieve, one can view the erasure as a symptom of neoliberalism. The erasure not only shows how a group of people can end up without rights, but also why this expulsion was significant for other residents who were facing uncertainty and a lack of social and legal security (growing unemployment, lack of access to housing, the commercialization of health insurance etc.).

As a diverse, complex and long term problem, the erasure is more than just the exclusion of certain people from the political community, and much more than a collection of various forms of oppression and violence. The erasure represents the production of symbolic value for those who have been included, that is, for citizens. In 1992, all citizens of Slovenia received citizenship certificates, and promptly stowed them away in a safe place. These certificates had to be appended to applications for scholarships or jobs, and so fulfilled the first condition of eligibility. In a sense, they “shielded” “Slovenes” from those who had not obtained citizenship. This is how the new state protected the rights of its citizens. Despite an increase in unemployment, the waning of labor and all other rights, and the commercialization of healthcare insurance, citizens still had their certificates, which served as a precondition for exercising many rights, and which psychologically placed them in the “dominant” group. The growth of social insecurity and the rise in social inequality were compensated by the production and exclusion of non-citizens. “Ordinary” citizens were allowed to oppress non-citizens, at least in the psychological and symbolic sense (see Kuzmanic, 1999). The value of Slovene citizenship came from the dignity and moral superiority it conferred upon citizens as opposed to non-citizens. Here, the independence discussions that addressed the question of who would be granted Slovene citizenship, and how, were important. These discussions will be described below. The demonization of those who were excluded because they “didn’t even want this citizenship, when they could have requested it”<sup>1</sup> still figures heavily in public discussions. This is why the Erased are not just non-citizens, but anti-citizens: they stand in binary opposition to Slovene citizens, and define Slovene citizenship through their exclusion.

Even though social and political inequality was on the rise following independence, the class struggle did not intensify; on the contrary, this antagonism was transposed onto the field of ethnicity, loyalty, and citizenship. In a symbolic sense, citizenship status became a glass floor (Shklar in Olson, 2001: 171). Citizens could see those on the bottom, who were much worse off, and could feel superior because they knew that they could never fall below a certain point, thanks to the “safety net” of citizenship status (ibid.).

This article will point out some of the circumstances and conditions of the erasure; however, these should not be taken to mean that the erasure was unavoidable. During the secession process, and considering the constellation of political forces and their preferences, oppressive discourse towards immigrants could have existed “merely” on the symbolic level as prejudice,



<sup>2</sup> On the academic level, these demands were articulated in the journal *Nova revija* in the second half of the 1980s (see Kovačič and Kuzmanič, 2004).

stereotyping, and discrimination in various fields. However, the erasure was much more pervasive and overwhelming, since it cast an administratively determined group of people beyond legal protection, thus reducing them to “bare life” (Agamben). Some were punished for their “illegal” residence in Slovenia, and were detained, deported, bullied etc. (see Dedić *et al.*, 2003). In short, the Erased lived in a country that had robbed them of their rights but nonetheless subjected them to its laws (Blitz, 2006: 545).

These and other conclusions, or an analysis of the erasure, would not have been possible without the political subjectivization of the Erased. Through political action, the Erased have pointed out the systematic cause of their problems, and of the blatant violation of the principle of legal protection. By doing so, they are also taking a stand against the concept of ethno-citizenship and the neoliberal push for the precariousness of rights. The question that will be examined at the end of this article pertains to both the persistence of the erasure and the success of the struggle of the Erased.

## Normalization and the defence of nationalism

*Nationalism in itself is not nationalist. National becomes nationalist when a nation starts to function as a Nation on the symbolic or actual level, internally or externally* (Hribar, 1987: 25).

During the secession process, and especially during its aftermath, nationalism revealed itself to be extremely nationalistic. This nationalism relied on the foundation of a new state when making its arguments, which were based on two key issues. The first focused on human rights, freedoms, and democracy, and the second on the realization of ethnonational sovereignty.<sup>2</sup> One of its results was the oppression of those recognized as “non-Slovenes”. In his analysis of populist mainstream media discourse, Tonči Kuzmanič (1999) has shown the creation of an “us-community” functioning as the oppression of a variety of identity positions or political subjectivities that were not included in *Sloveneness*. Joining the oppressive discourse of the racist, homophobic, and sexist community can be seen as a way of belonging to “us”.

In the 1980s, nationalist discourse encompassed both demands for economic development (the discovery and manipulation of the fund for underdeveloped parts of Yugoslavia) and issues of cultural diversity. Praising the diversity of the cultures of the Yugoslav nations, some Slovene academics formed demands for cultural-linguistic autonomy, which was thought to be unachievable without political sovereignty (Hribar, 1987: 6). The curiosity of this demand lies in the fact that the cultural-linguistic autonomy of the Slovene nation in the Republic of Slovenia was both formally defined and practically implemented with the first Slovene Constitution of 1947 and in all constitutions that followed.

Among the general public, this 1980s discourse on linguistic autonomy was expressed as a negative attitudes toward immigrants from other Yugoslav republics, as if they were the ones threatening Slovene culture and the Slovene language. For example, a Slovene public opinion poll showed that, in 1980, 16 percent of respondents believed that immigrants from other Yugoslav republics were a threat to the Slovene language. By 1986, this figure had risen to

39 percent (Rupel, 1987: 63). By 1991, when Slovenia seceded from Yugoslavia, this negative attitude towards immigrants had become one of the key antagonisms within society: 29 percent of respondents claimed to have a negative attitudes toward immigrants (40 percent claimed to have a neutral attitude) (Klinar, 1992: 89).

This nationalism also found support in academic circles. The principle of *bratstvo in enotnost* – brotherhood and unity – which had once served to politically unite the multinational state in anti-fascist ideology and to secure the exclusive rule of the Communist Party, became the main target of criticism and angst. Taras Kermauner (1989), for instance, dubbed it the terror of brotherhood. Ivo Urbančič, a member of the circle of *Nova revija*, wrote that the absolute dominance of the state and the absolute governance of the Party in all actual socialist systems functioned as nationalism: “In its function of domination over society (regardless of its initial ethnic heterogeneity), the state implies a uniform nationality and represents itself as a nation” (Urbančič, 1987: 37). Tine Hribar traced modern subjectivity, individual autonomy, and rights to the individual as a member of a nation, who can only feel proud in a nation state. Hribar understands the nation to be a natural fact, as if it were a filial unit:

“We will remain half-persons, fragmented and broken, if we are unable to claim our rights or at least to freely express our desires, and to do so as Slovenes, as members of the Slovene nation. It is natural, but also consistent with modern subjectivity, to perceive oneself as a member of one’s own lineage, one’s own nation, and to want, besides individual autonomy, but also based on it, to enforce the autonomy of a nation” (Hribar, 1987: 24-5).

Here, the political system, which should have been a topic for critical analysis, was being put forth as a normative, ideal system: “Man’s desire to establish his own laws as a member of a nation and national institutions based on a nation – this is not a nationalist demand” (ibid.). But in Slovenia, these national institutions have become nationalistic, as those left on the outside of national belonging and outside these institutions were merely “bare humans”, with their rights and dignity trampled. Nonetheless, even left-leaning intellectuals justified Slovene nationalism on the grounds that it clearly appeared to be a lesser evil than the nationalistic discourse and wars in Bosnia and Herzegovina, Croatia and Serbia. Rudi Rizman, for example, understood Slovene nationalism as “totally natural and legitimate – in its limited form, of course” (Rizman, 1997: 53). Peter Klinar tried to sidestep the perplexing question of whether nationalism in Slovenia was a positive or a negative phenomenon by distinguishing between two types of nationalism:

“In Slovenia there are two forms of nationalism. The first is an expression of nationalism which embraces the masses and has a positive character; it is linked with the independence process and the establishment of a new nation state. The second form of nationalism has a negative character and is associated with the negative attitudes of the autochthonous population towards immigrants from other republics of the former Yugoslavia” (Klinar, 1992: 90).

The ambiguity of the nationalism expounded by Hribar and others at *Nova revija*, and of nationalism in general, lies in the fact that “the nationally frustrated population was firmly

<sup>3</sup> Immigrants from other republics of the former Yugoslavia shared Yugoslav citizenship, and many among them were long-term residents of Slovenia or were born and raised in Slovenia, so they were not immigrants in the usual meaning of this term.

convinced – as was everybody else – that true freedom, true emancipation, and true popular sovereignty could be attained only with full national emancipation, that people without their own national government were deprived of human rights” (Arendt, 2004: 347). The ambiguity implied here comes from the realization that this desire to respect human rights and emancipation can quickly disintegrate into its exact opposite; the fact that human rights tend to be intermixed with national belonging leads to the exclusion and oppression of those with a different ethnic belonging, and of those without a residence permit or citizenship in the place where they actually live. The Erased and other people without citizenship, such as refugees, represent a “disquieting element in the order of the modern nation-state, this is above all because by breaking the continuity between man and citizen, *nativity* and *nationality*, they put the original fiction of modern sovereignty in crisis” (Agamben, 1998: 131, emphasis as in the original). In Slovenia, this paradox of the modern nation state was not merely left unresolved; on the contrary, it escalated extremely: those without citizenship were no longer only refugees and other internationally displaced persons, but now included permanent residents stripped of their administrative statuses, who had been members of the political community for a number of years or even decades.

## From egalitarianism to ethnocentrism

The legal framework that outlined the position of “immigrants”<sup>3</sup> during the establishment of a sovereign Slovenia was a dynamic one: a chronological overview of the documents reveals a shift from initial political egalitarianism to state supported ethnocentrism. The language of political egalitarianism prevailed in the period before secession, which was marked by the Statement of Good Intent and the plebiscite for Slovene independence. Ethnocentric tendencies surfaced during discussions about the adoption of new laws and in the Constitution. Following independence, these ethnocentric tendencies became even more pronounced. They can be detected in demands for amending the Citizenship of the Republic of Slovenia Act (especially in the period from 1993 to 1995) and in attempts to avoid remedying the erasure. The initial definition of the legal position of internal immigrants and other relevant laws which made the erasure possible (but did not mandate it!), will be examined below.

One of the first documents of Slovene statehood, the Statement of Good Intent (6 December 1990), guarantees the following:

“[...] the members of all other nations and nationalities their right to an overall cultural and linguistic development, and to all those who have their permanent residence in Slovenia that they can obtain Slovene citizenship, if they so desire. [...] The plebiscite on the sovereign and independent state of Slovenia is committed to the best traditions of humanism and civilization, the Slovene and European history, and a kind future for Slovenes and other inhabitants of the Republic of Slovenia.”

The Basic Constitutional Charter on Independence and Sovereignty that followed in June 1991 stated that Slovenia guarantees the protection of human rights and fundamental freedoms for all

<sup>4</sup> Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, 25 June 1991, Official Gazette No 1/1991-I.

<sup>5</sup> Constitutional Law on the Enforcement of the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, 25 June 1991, Official Gazette No 1/1991-I.

persons in its territory, regardless of their national belonging, free of any discrimination, and in accordance with the Constitution of the Republic of Slovenia and relevant international agreements.<sup>4</sup>

In the same period, the Constitutional Law on the Enforcement of the Basic Constitutional Charter on the Independence and Sovereignty<sup>5</sup> was adopted. This law set a time limit and conditions for equality, as it stated that citizens of other republics were to be equal to citizens of Slovenia in their rights and obligations until

they acquired citizenship through Article 40 of the Citizenship Act or until the expiry of the deadline defined in Article 81 of the Aliens Act. These two laws, in combination with the Constitutional Law, effectively put an end to the political equality of residents of Slovenia.

The Constitution of the Republic of Slovenia continues these ethnocentric tendencies. The first paragraph of Article 3 states that Slovenia “is a state of all citizens and is founded on the permanent and inalienable right of the Slovene nation to self-determination”. Already at this early date, Ciril Ribičič pointed out an “increase in constitutional provisions that stress the Slovene national character of the republic, which already bears the Slovene name” (Ribičič, 1992: 65). Ribičič viewed the fact that the diction “Slovene nation” appears in the preamble and in the normative section of the Constitution as a disfiguration of the constitutional foundation of statehood: the mention of the Slovene nation’s permanent and inalienable right to self-determination “in a normative section in a place that defines the statehood of Slovenia, no longer has anything to do with proving permanence and inalienability, but rather creates confusion about the constitutional foundation of the state” (ibid. 68). According to Ribičič, what this actually means is that the “national qualification of statehood places minority ethnic communities and citizens who are not Slovenes in a different position. [...] If the constitutional order is not based on the equality of all citizens, on their equality before the law, then it cannot be considered democratic” (ibid.). One can argue that such an order is primarily *ethno-democratic*, since it strives for democracy at least in the declarative sense, but relies on ethnic references to do so.

## Adoption of the Citizenship of the Republic of Slovenia Act and the “meat grinder” effect

*In my opinion it would be very bad if the sixth paragraph of Article 10 on mastery of the Slovene language were interpreted to mean that we want to use a “meat grinder”, to grind all non-Slovenes in Slovenia and turn them into Slovenes. I would like to warn you that this is one of the key points of our behaviour. It is no coincidence that there is great deal of concern over certain restrictive parts of the draft law among the many non-Slovenes who live and work in Slovenia. Many who have contacted me said: “In the plebiscite we voted for a sovereign, independent Slovenia in the belief that we could live as equals, but today we feel that you would like to get rid of us”.*

Deputy Jože Smole, Assembly Sitting of the Republic of Slovenia, May 1991

Approximately six months after the Statement of Good Intent and four months after the plebiscite, draft laws on citizenship and aliens were discussed in the three assembly chambers. Most of the discussion focused on Article 40 of the Citizenship Act, that is, on criteria for obtaining citizenship in the case of immigrants from other republics of the former Yugoslavia. A wide range of opinions about the role and functioning of the state were presented: from interpretations of the state as an instrument of law (which guarantees the equality of citizens), to views of the state as an instrument of the nation (whereby the nation takes over the state and citizenship becomes ethno-selective). This wide range of opinions could be projected onto an axis, with the left leaning<sup>6</sup> parties on one end and the right leaning parties of the *Demos*<sup>7</sup> coalition on the other. Although the left-wing parties' pressure towards political equality for all residents was in line with the Statement of Good Intent, realization of its principles would not have sufficed to resolve the issues of political equality in the incipient state. It was not only persons with a registered address of permanent residence who resided in Slovenia, but also immigrants with a registered temporary residence address, as well as unregistered persons. With several isolated exceptions, the future position and rights of these two groups were never discussed, which indicates a broad consensus on their unequal position, that is, that they were not welcome in the new state.

### The Statement of Good Intent as “political deceit”?

In discussions on Article 40 of the Citizenship of the Republic of Slovenia Act<sup>8</sup>, which defined the procedure for obtaining citizenship in the case of residents of Slovenia of non-Slovene origin (citizens of other republics of the former Yugoslavia), the deputies of the Social Democratic Party<sup>9</sup> stated that they did not agree with the criteria promised in the Statement of Good Intent, whereby it suffices for an individual to be a permanent resident of Slovenia. According to their suggestion, a person filing an application for citizenship should fulfil the following conditions: that he/she has renounced the citizenship he/she possessed until this point; that he/she has guaranteed accommodation and permanent means of survival; that he/she has mastered the Slovene language to the extent that he/she can communicate coherently; that he/she has not been sentenced to imprisonment of one year or more in the country of his/her citizenship or in Slovenia; that he/she has not received an order forbidding his/her residence in Slovenia (Tomšič, Assembly Sitting No 19 of the Socio-political Chamber, 1991: 278).

Similar content for Article 40 was also accepted by the Chamber of the Communes of the Assembly. They did not deny the fact that their suggestion contradicted the Statement of Good Intent. For example, Anton Tomažič, a member of the Social Democratic Party, described the matter in these terms:

<sup>6</sup> The left leaning, opposition parties at the time were: League of Communists of Slovenia – the Party of Democratic Renewal, the former League of Socialist Youth – renamed the Liberal Party (and later Liberal Democracy Slovenia), Socialist Party, and others. See Republic of Slovenia, 10 Years of Independence, available online: <http://www.ukom.gov.si/10years/path/> (accessed 10/7/2007).

<sup>7</sup> The following parties were united in the Democratic Opposition of Slovenia – *Demos*: Social Democratic Party, Slovene Christian Democrats, Slovene Democratic Alliance, Peasants Party, Green of Slovenia etc. See Republic of Slovenia, 10 Years of Independence, available online: <http://www.ukom.gov.si/10years/path/> (accessed 10/7/2007).

<sup>8</sup> The main debate over content covered the conditions for obtaining Slovene citizenship in four cases: 1) for permanent residents of non-Slovene origin (Article 40); 2) for Slovene emigrants (Article 12); 3) for Slovenes exiled after World War II who had their Yugoslav citizenship revoked (Article 41); 4) in the case of regular and extraordinary naturalization (Article 10).

<sup>9</sup> The Social Democratic Party was established in 1989. Its first president was France Tomšič. Later it was renamed the Slovene Democratic Party led by Janez Janša, who became Prime Minister in 2004 when the Party won the elections.

“Through a liberal approach, the burden of Yugoslavism would be brought into the new state. It is this burden that we are trying to get rid of. If someone came to Slovenia one week before the plebiscite, then he can be a Slovene citizen, even if he is openly disloyal and does not speak the language? I don’t think that would be right [...] it is also a question of how a person like this had voted. It’s logical that only those with citizenship should be eligible to vote. But because the registers were not settled, we were all extremely open, so everyone could vote, regardless of citizenship, as long as they had a permanent residence address in Slovenia, which was extremely liberal. I feel that now, as we prepare a new law, we must not be overwhelmed by this” (Tomažič, Assembly Sitting No 19 of the Socio-political Chamber, 1991: 73)

In this statement, deputy Tomažič has interpreted the principle of equality set out in the Statement of Good Intent as disorder: all residents were said to have been eligible to participate in the plebiscite because of some sort of administrative disorganization.

Transcripts of this discussion show that the fiercest clash of opinions occurred over the language condition. It was suggested that a person filing an application for Slovene citizenship in accordance with Article 40 should be fluent in the Slovene language. Besides the Social Democratic Party and the Chamber of the Communes mentioned above, this condition was also suggested by the Assembly’s Legislative and Legal Service. The Executive Council (the government), which had prepared the draft law, opposed this stipulation. When it was time to vote, a majority of deputies (26) supported the linguistic criterion; 14 were opposed, and 4 did not vote. After the voting, the Liberal Democracy Slovenia and some other deputies left the Assembly in protest in order to prevent quorum. This gave certain right-wing deputies a chance to put their foot in their mouth. For example: “How are we violating the Statement of Good Intent? By saying that citizens of this country must have a basic knowledge of the language? Is this a violation of good intentions? Is anybody preventing anybody from residing in this country? Certainly not” (Kolešnik, Assembly Sitting No 19 of the Socio-political Chamber, 1991: 379). After a repeat of the debate and the voting, the suggested condition of proof of knowledge of the Slovene language was not made into law.

Citing the Statement of Good Intent, deputies from left-wing opposition parties stressed the obligation to secure the political equality of permanent residents of Slovenia, that is, of Slovene citizens and citizens from other republics:

“[...] the assurances and promises in the plebiscite documents that pertain to citizenship came about precisely because of the expressed interest and numerous questions of eligible voters in the plebiscite who wished and had the right to know, before they cast their vote, what a Slovene state would mean and change relative to their citizenship status, especially in light of the fact that citizens of the SFRY had never had citizenship arranged in an appropriate manner, which is why most of them never even knew which republican citizenship they had. Our promise at the time was unambiguous, since ambiguous promises would have been a threat to the plebiscite and its result” (Kreft, Assembly Sitting No 19 of the Socio-political Chamber, 1991: 58).

Mile Šetinc made a similar argument. He also emphasized that rights must not be reduced, as this would jeopardize basic legal principles and harm Slovenia’s reputation in the European Community:

“[...] the Statement of Good Intent was intended to create a positive atmosphere for the plebiscite, so that, as eligible voters, non-citizens would vote for the independent, sovereign state of Slovenia. I do not doubt that many of them also did this. If it turns out that this Statement was just a form of political deceit meant to get many non-Slovenes to vote for a reduction of their rights, this would be an awful conveyance for Slovenia on the road to the European Community. Furthermore, it would be a clear violation of one of the basic legal principles, that is, that people must not have their rights revoked. In the case of citizenship, we're dealing with an institution that is linked to the entire package of the political, economic, social, and cultural rights of the individual. If a person does not have citizenship, he [or she] is significantly hampered when it comes to these rights” (Šetinc, Assembly Sitting No 19 of the Socio-political Chamber, 1991: 69).

Accordingly, Mile Šetinc suggested automatically transforming all permanent residents into citizens, regardless of their republican citizenship. “Those who do not want Slovene citizenship would have the right to renounce it within a legally determined time frame” (ibid.).

Some pointed out the consequences of not making every resident a citizen. Franco Juri said that it would be politically unwise to create a large number of foreigners within the new state, as this would trigger a “politically justifiable response” (Assembly Sitting No 19 of the Socio-political Chamber, 1991: 57). By doing so, Slovenia would make “a large number of enemies within its population; they would become enemies of the state” (Šetinc, ibid.).

In December 1991, if not before, the Statement of Good Intent was in fact revealed to be an act of political deceit. Just as the six-month time frame for applying for Slovene citizenship was coming to an end, two new paragraphs were added to Article 40. Not only persons who had been implicated in military acts against Slovenia (paragraph 2), but also those who could be considered a “threat to public order, security, or the defence of Slovenia”, were barred from obtaining citizenship (paragraph 3).<sup>10</sup> Through paragraph 3, 179 persons who had a record of criminal offences or misdemeanours had their requests for citizenship rejected.<sup>11</sup> This annulled the principle behind the Statement of Good Intent, which was a language of political equality, and not of moral valuation. An analysis of the juridical practices of the Supreme Court regarding Article 40 has shown that this Court rendered a verdict on the sensitive question of the relationship between the rights of the individual and the interests of the state by *judging the character of individuals* who appealed the negative decisions on their requests for citizenship:

“An applicant can have his/her application rejected because of *one* criminal offence if the consequences thereof and the circumstances in which it was committed are such that would indicate a threat to public order. When assessing a threat to public order, the attitude of the applicant towards the legal order *in its entirety*, and not merely towards the regulations pertaining to public order and peace, is evaluated” (Kutoš, 2002: 75, emphasis as in original).

<sup>10</sup> The Ministry of the Interior turned down 2,427 persons who had filed applications for citizenship through Article 40 on time, citing three reasons: 1) These persons did not “actually” reside in Slovenia, or were not registered as permanent residents (1,953 rejected applications); 2) These persons were thought to represent a danger to the security or defence of the State (195 rejected applications); 3) These persons were thought to be a threat to public peace and order due to criminal offences or misdemeanours (179 refused applications) (Ministry of the Interior, press conference, 2002). The second and third paragraphs of Article 40 were adopted only later (on 11 December 1991), just before the expiry of the six-month time frame to apply for Slovene citizenship.

<sup>11</sup> Some even had the citizenship status they had already received revoked (see Dedić et al., 2003: 127).

The Supreme Court also concurred with the Ministry of the Interior's opinion that persons who had not been convicted could nevertheless represent a threat to public order. For example, the Ministry had refused the citizenship application of a person who had "degraded the national feelings of his neighbours during the independence process by belittling the independence efforts of the Republic of Slovenia forces, and had upset them by doing so" (ibid.: 76). (The Court did in fact grant this man's appeal of the Ministry's decision, but only because of a lack of evidence of his "disturbing" behaviour, and not because they did not agree with the government's interpretation of the law.)

The second and third paragraphs introduced the possibility of allowing the executive authority to arbitrarily rule on cases, thus deepening the ethnic and moralistic dimension of Slovene citizenship. They created formal inequality between "Slovenes" and "non-Slovenes" on the basis of moral references (such as character judgement). Those who received a negative decision on their request for Slovene citizenship (2,427 persons) found themselves erased from the register of permanent residents. Political equality either means equality for everyone or simply does not exist. It was obliterated by these two paragraphs even before the erasure occurred.

This is how Slovene citizenship became a moral category. It was not until 1999 that the Constitutional Court nullified paragraph 3 of Article 40.

### Immigrants from other republics as a "burden to society" and the "possibility of deportation transports"

One variation of the Social Democratic Party's<sup>12</sup> suggestion about eligibility conditions for acquiring citizenship on the basis of Article 40 would have required applicants to append a health certificate to their applications. This Party argued that a person applying for citizenship should append "a certificate from a competent medical institution proving that his/her health condition is such that it does not foresee medical treatment that would financially burden the Republic of Slovenia" (Social Democratic Party, Assembly Sitting No 19 of the Socio-political Chamber, 1991: 372–73). The Executive Council, which suggested the law, suggested this criterion in cases of regular naturalization, that is, in Article 10 of the Citizenship Draft. The condition of a clean bill of health, however, did not receive sufficient support for Article 40 or for Article 10. But even though the suggestion did not pass, it reveals how right-wing parties and the Executive Council (that is, the government) viewed the content of citizenship and the question of who could become a citizen. The subsequent erasure showed that the idea of saving money on healthcare did in fact become a reality. It is interesting that, even at this early juncture, deputy Mile Šetinc pointed out a possible result of the health eligibility condition, an "erasure", which he called the "possibility of deportation transports". His rhetorical cynicism showed both the possibility of the erasure and its unimaginability:

"Those who claim that Slovenia would be buried up to its neck if it granted citizenship to immigrants with permanent residence, as they say, the unbearable financial or social burden, are simply forgetting that it will be necessary to grant permanent or temporary residence permits to immigrants if they do not acquire citizenship, and of course to acknowledge all social security and employment rights. The 'only' difference is that these immigrants will have a reason to feel threatened because, for example, their right



to vote and most likely their right to purchase certain kinds of real estate will be taken away, and that, as individuals, they will be largely exposed to all kinds of extortion and harassment, as it will be possible to revoke their residence permits on certain grounds – unless, if one can really imagine, that, at the end of the twentieth century, it would be possible to organize some kind of new deportation transports, and to do so in a small, open-minded republic that has been knocking at the conscience of the international community with its struggle for self-determination” (Šetinc, *ibid.*).

<sup>13</sup> This is one of the variations of the amendment that appear in the transcripts of Assembly Sitting No 19 of the Socio-political Chamber and in documentation containing draft amendments. Another variation does not mention those who are employed in Slovenia, but only those with registered permanent residence (see Borut Mekina’s article in this volume).

Deputy Anton Tomažič opposed this statement, and said that “even those who do not acquire citizenship immediately will be allowed to stay here, and the Aliens Act is very liberal and the possibility of obtaining a work permit is vast. So nobody’s talking about deporting anyone” (Assembly Sitting No 19 of the Socio-political Chamber, 1991: 73). But the reality played out differently, and certain erased residents experienced deportation. Newspapers used misleading diction such as “A foreigner who resisted his return home” or “Foreigners who did not acquire personal documents” etc. (see Dedić et. al 2003: 120; Zorn, 2006). And “deportation transports” did actually cut healthcare costs. In 2002, the Clinic for Persons without Health Insurance was founded in Ljubljana. The Erased are among users of this service, which indicates a link between the erasure and saving money on medical care. It means that the Erased have been refused access to mainstream health services (see Uršula Lipovec Čebren’s article in this volume).

## Ethno-citizenship as a condition of the erasure and rule by decree

In Articles 39 and 40, the Citizenship of the Republic of Slovenia Act stipulated two methods for transforming citizens of Yugoslavia into citizens of Slovenia. The first way, which applied to most residents of Slovenia, was automatic: whoever had citizenship of the Republic of Slovenia *and* of the Socialist Federative Republic of Yugoslavia according to the regulations valid at the time, became a Slovene citizen (Article 39). The second way was based on an application procedure: citizens of other republics who had a registered permanent residence in Slovenia on the day of the plebiscite (23 December 1990) and who actually lived in Slovenia could obtain citizenship by filing an application with the competent local office (Article 40). In this way, the Republic of Slovenia continued the concept of administratively defined ethno-national belonging, as stipulated in the Yugoslav Constitution of 1974. Ethno-national belonging remained a state category. Not (only) symbolic ethnic delineations, but very concrete, *administrative* ethnic boundaries were a pre-condition for erasure from the register of permanent residence.

During the adoption of new legislation, an amendment to Article 81 of the Aliens Act was suggested; if passed, it would have prevented the erasure (see also Borut Mekina’s article in this volume). The amendment was proposed by deputy Metka Mencin, and read as follows: “Citizens of the SFRY who are citizens of other republics and have not filed a request for citizenship of the Republic of Slovenia, but who do have a registered permanent residence or are employed in the Republic of Slovenia on the day this law takes effect, will be issued a permanent residence permit in the Republic of Slovenia” (Assembly Sitting No 19 of the Socio-political Chamber, 1991: 361).<sup>13</sup> 19 deputies were for, 20 were against, and nine refrained

<sup>14</sup> The agreement stipulates that each state shall assume responsibility for and regularly pay legally grounded pensions funded by that state in its former capacity as a constituent republic of the SFRY, irrespective of the nationality, citizenship, residence or domicile of the beneficiary (Article 1 of the Annex E). The rights to movable and immovable property located in a successor state and to which citizens or other legal persons of the SFRY were entitled on 31 December 1990 shall be recognized, and protected and restored by that state in accordance with established standards and norms of international law and irrespective of the nationality, citizenship, residence or domicile of those persons. This shall include persons who, after 31 December 1990, acquired the citizenship of or established domicile or residence in a state other than a successor state. Persons unable to realize such rights shall be entitled to compensation in accordance with civil and international legal norms (first paragraph of the Article 2, Appendix G of the Agreement on the Succession Issues, Official Gazette RS-MP No 20/2002). Thanks to Aleksandar Todorović for alerting me to this agreement. He brought up the question of what this law implies in the case of persons erased from the register of permanent residents.

<sup>15</sup> Passports of the Citizens of the Republic of Slovenia Act, Official Gazette of the Republic of Slovenia No 1/1991-1, Article 39.

from voting. Immediately after the vote, an amendment to Article 82 was passed. It stated that permanent residence permits issued on the basis of the Yugoslav legislation on the movement and residence of aliens would remain valid. This pertained to persons who had had the status of aliens in the SFRY.

Through these two articles, the deputies voted for and made into law formal discrimination against different groups of foreigners, thus creating the legal foundation for the erasure. The possibility of the erasure was given in the legal void of the second paragraph of Article 81 of the Aliens Act, since this paragraph, or the Aliens Act in general, did not stipulate the position and rights of former citizens who had a registered permanent address of residence in Slovenia.

After rejecting the amendment, the Assembly adopted a resolution to “begin the process for reaching an agreement with other republics of the SFRY with regard to those persons that reside in Slovenia and would not (like to) become citizens of the Republic of Slovenia, and also for the question of the rights and obligations of citizens of the Republic of Slovenia in other republics of the SFRY (voting, real estate purchase, inheritance, employment, healthcare, social, and housing rights and the like)” (Assembly Sitting No 19 of the Socio-political Chamber, 1991: 363). But an agreement to resolve these issues never materialized. It was not until 2001 that the Agreement on Succession Issues, which generally resolved matters such as the sharing of debt, state property, bank property, etc., was passed in Vienna. This agreement’s contribution to a resolution of questions of the rights of individuals was minor, as it mainly covered rights to property and real estate (housing, intellectual property, etc.).<sup>14</sup>

Instead of an agreement on the mutual resolution of the rights of residents who did not become citizens of the new states

in the territory of the former Yugoslavia, rule by decree became possible. On 27 February 1992, Slavko Debelak, head of the Office for Internal Administrative Affairs and Secretary of the Ministry of the Interior, sent instructions on executing the Aliens Act to all local administrative centres. These instructions stipulated that the personal documents of persons who had not become citizens were no longer valid, “even if they had been issued by the competent authority and are still valid”. For example, Yugoslav passports remained valid until 25 July 1993 for Slovene citizens,<sup>15</sup> but only until 27 February 1992 for the Erased. And the situation with ID cards and drivers licenses was similar. Filling a legal void through rule by decree, a juridical exception was created. Exceptions conceptually derive from a state of emergency (war, for example), and are characterized by a suspension of basic rights (Agamben, 1998).

Besides this exception pertaining to the invalidity of personal documents, another exception was introduced in Debelak’s instructions (and also did away with regular legal norms and basic rights). It stated that an employee of the Ministry of the Interior (i.e. a police officer) could transport a person who had not acquired Slovene citizenship “to the state border and direct

him/her over the state border, without any decision from an administrative authority”.<sup>16</sup> This instruction reveals the function of juridical exception as argued by Agamben in his theory on the logic of the sovereign. According to Agamben, an exception is a kind of exclusion, an individual case that is excluded from the general rule, but that confirms and explains it (ibid.: 17). However, an exception is not, on account of being excluded, without a relationship to the rule (ibid.). The exception is maintained in relation to the rule in the form of the rule’s suspension. Agamben calls this extreme form of relation, which “includes through exclusion”, a relation of ban: “The relation of exception is a relation of a ban. He who has been banned is not, in fact, simply set outside the law and made indifferent to it but rather *abandoned* by it, that is, exposed and threatened on the threshold in which life and the law, outside and inside, become indistinguishable. It is literally not possible to say whether the one who has been banned is outside or inside the juridical order” (ibid.: 28–29, emphasis as in the original). Here, life is understood as bare life, which actually (as the case of the Erased also illustrates) means life without rights.

Three months later, on 4 June 1992, the government was informed of the problem of residents who did not acquire Slovene citizenship in a memo entitled *Open Question on the Execution of the Aliens Act*. In this memo, Igor Bavčar, the Minister of the Interior, mentioned two possibilities for dealing with these non-citizens. The first constituted the continuity of their status and rights, as these persons, “due to long-term residence in our country, have lost ties with their home countries, and an existential bond with Slovenia also derives from this”. The second solution offered by the Minister was that “acquired rights must not be of account, as they were consciously forfeited, and that for this reason the determinations of the Aliens Act must be thoroughly followed”.<sup>17</sup>

Especially in this initial development, the case of the erasure displays the rule of executive authority (the Police and Ministry of the Interior) in an area where legislative authority is supposed to render decisions (that is, the National Assembly). The suspension of regular rule and legal norms (and their replacement by rule by decree in the area of the legal void) indicates a state of exception, which is the situation between the law and politics. Its general characteristic is the removal of democratic order and the rule of law (Agamben, 2005). A state of exception is most often conditioned by war: for example, the well known case of Guantanamo Bay, which is characterized by its existence outside of normal prisons and criminal law. As an exception, it is similar to centres for detention and deportation of foreigners. An essential characteristics of a state of exception, argues Agamben, is the provisional abolition of the distinction between legislative, executive, and judicial powers (Agamben, 2005: 7). He also claims that the state of exception has a tendency to become a lasting practice of governments (ibid.). It seems that the case of the erasure proves this in practice.

## The stubbornness of the erasure

For ten years, the experiences of the Erased fell on deaf ears and went unnoticed by the public (see Igor Mekina’s article in this volume). The reasons behind the public’s ignorance of this problem are complex. One key reason lies in the way the erasure was carried out; the affected indi-

<sup>16</sup> The Ministry of the Interior, *Executing the Aliens Act – The Instructions*, 27 February 1992. This letter was addressed to all municipal administrative authorities for the interior in the Republic of Slovenia (Decree No 0016/4-14968). It is signed by Slavko Debelak.

<sup>17</sup> The Ministry of the Interior, *The Open Question of Executing the Aliens Act*, 4 June 1992 (No 0016/1-S-010/3-91). The letter was addressed to the government of the Republic of Slovenia and signed by the Minister Igor Bavčar.

<sup>18</sup> Measures that created a “permanent temporality” of Bosnian refugees in Slovenia had a similar effect. This subject is too vast to be discussed here.

<sup>19</sup> Ministry of the Interior, Policy Proposal for Execution of Citizenship Provisions, 19 March 1993, No 0011/3-S-207/4-93.

<sup>20</sup> The Slovene National Party, Proposal for a Law on Revoking Citizenship of the Republic of Slovenia acquired on the Basis of Article 40, 2 September 1994.

<sup>21</sup> Activities for the realization of these demands were carried out until 1995, when the Constitutional Court ruled that the referendum proposed by the Slovene National Party on the possibility of reviewing and revoking citizenship status already acquired through Article 40 of the Citizenship of the Republic of Slovenia Act was unconstitutional (Constitutional Court decision No U-I-266/95-8, 20 November 1995, Official Gazette of the Republic of Slovenia No 69-3171/95).

<sup>22</sup> The ARLSC, First Hearing, 18 March 1999, [www.dz-rs.si](http://www.dz-rs.si).

viduals could not realize the systematic nature of the erasure, and had to enter its legal labyrinths as isolated individuals. Another factor that helped keep this problem hidden was the oppressive, ethno-nationalistic atmosphere that silenced voices not in accord with the generally held perception of Slovenia as a democratic state under the rule of law, that is, as the only success story from the territory of the former Yugoslavia. The ethno-nationalistic atmosphere was fortified by public discussions on citizenship status acquired on the basis of Article 40 of the Citizenship Act.<sup>18</sup> Thus, in 1993, the Ministry of the Interior identified dual citizenship as a problem, and the Slovene National Party pointed out the excessive number of “non-Slovenized” Slovene citizens. Analogous to these developments, the Ministry proposed a law that would prevent dual citizenship,<sup>19</sup> and the Slovene National Party proposed a law that would make it possible to review cases of citizenship status already acquired on the basis of Article 40.<sup>20</sup> These suggestions resulted in the oppression of non-Slovenes: both those who had become Slovene citizens and those who had become “foreigners”.<sup>21</sup>

One characteristic of the social context in which this racist discourse became increasingly commonplace was the rise in unemployment and growing feelings of social insecurity. Unemployment grew as many companies went out of business.

So ethno-nationalistic discourse did not appear by chance; through its use, the working class could be divided and consequently weakened (cf. Olson, 2001). The Slovene Public Opinion Poll from 1990 shows that most of the respondents were in favour of a selective acceptance of immigrants from other republics of the former Yugoslavia (Klinar, 1991: 372–3). According to the Poll, only those immigrants who assimilated and who were needed by the Slovene economy should be allowed to stay (58 percent of responses). Half of the respondents expressed the view that immigrants jeopardise the jobs of the autochthonous population, and that, in a time of economic crisis and restructuring, workers from other republics should be fired before Slovene workers (ibid.). This development not only overshadowed the problems of the Erased, but also became entangled with them.

The state’s first attempt to resolve the erasure came more than seven years after the initial act. The Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (ARLSC) was passed in response to the 1999 Constitutional Court’s ruling that the second paragraph of Article 81 of the Aliens Act was not in accordance with the Constitution, owing to the legal void it contains. The problem of residents without status had been pointed out by the European Commission (Regular Report on Slovenia’s Progress Towards Accession, 1998), the Slovene Ombudsman, the United Nations High Commissioner for Refugees, and several non-governmental organizations and journalists (especially Igor Mekina of weekly *Mladina*).<sup>22</sup> Paradoxically, this law was proposed in the National Assembly by Slavko Debelak, one of the leading “erasers”. As with the discussions on Article 40 of the Citizenship Act, representatives of right wing parties opposed the law on the grounds that those who were disloyal to Slovenia and were even demonstrating against the NATO attacks on Serbia and Kosovo should not receive residence permits.

Deputy Janez Janša (the current Prime Minister), for example, found it completely unacceptable to adopt this law at a time when “NATO is bombing the remains of this former country, the heart of totalitarian ideology and practice” (Janša, First Hearing of the ARLSC, Sitting No 13 of the National Assembly, 1999). In the opinion of the Social Democratic Party, persons opposed to the NATO attacks on Serbia and Kosovo should not be eligible to acquire permanent residence permits in Slovenia. Deputy Ivo Hvalica defended this position with the following words: “And you have the nerve to say that it doesn’t matter if we ask these people whether they’re for the military action in Yugoslavia or not? Where is your elementary element of loyalty which everyone must have? Not just every citizen, but also every person who resides in this country” (Hvalica, *ibid.*). In this spirit, the Social Democratic Party wished to supplement the suggested law with the following: “The abuse of the law must be prevented; it must guarantee that persons who are disloyal to the Republic of Slovenia cannot obtain permanent residence permits” (*ibid.*).

It is interesting to note that, at the time this law was being prepared, the government had no idea how many people had been erased. They assumed that, through this law, approximately 3,000 people would be eligible for a permanent residence permit. The European Commission’s figures were somewhat higher: 5,000 to 10,000 people.<sup>23</sup> Applications for permanent residence permits were in fact filed by 12,931 persons.

Another attempt to remedy the erasure followed in October 2002, when Article 19 of the Act Amending the Citizenship of the Republic of Slovenia Act was adopted. This Article was adopted partly as the result of the collective struggle and pressure of the Erased, and partly in order to harmonise the Slovene legal framework with the European Convention on Nationality (Council of Europe, 1997). Within the one year time frame established by Article 19 of the amended Citizenship Act, 2,959 people who had been erased from the register of permanent residence applied for citizenship, and 1,729 actually acquired it (Ministry of the Interior, 2007).

These two laws were merely attempts to “put out the fire”, and did nothing to undermine the principles and sentiments that led to the erasure. The ARLSC limited the right to acquire a permanent residence permit to a certain group of the Erased (those who had lived in Slovenia for the entire period since the erasure), and did not retroactively restore lost statuses as of 26 February 1992.<sup>24</sup> Article 19 of the amended Citizenship Act contained similar restrictions, but did establish a longer time frame for filing applications (one year). Neither of these laws mentioned the erasure as such, and so could not undo it.

## Conclusion

It is possible to see how the independence process pitted an understanding of the state of Slovenia as an instrument of the law against one that interpreted it as an instrument of the

<sup>23</sup> Owing to this incorrect estimate of the number of the Erased, it is possible that the financial effects of adopting the law were also incorrectly estimated. Persons who acquire a permanent residence permit are eligible for various forms of social benefits through the Social Security Act. Statistical data from 1999 show that the percentage of recipients of social transactions through the Social Security Act was 2.7 percent of the entire population. On the basis of this percentage and incorrect estimates of the number of erased persons, it was calculated that they would represent an additional burden of 4,583 euros per month to the budget of the Ministry for Family, Labour and Social Affairs, or 55,000 euros per year (Proposal of ARLSC, 1999, [www.dz-rs.si/index](http://www.dz-rs.si/index), accessed 12/6/2007).

<sup>24</sup> The adopted law set a mere three month time frame for filing applications for permanent residence, and excluded those Erased who had been removed from the country or had moved because of the erasure. By 2002, 9,514 applications received a positive reply, and 12,199 by the end of 2006 (Ministry of the Interior, News on 26 February 2007, [www.mnz.gov.si/si/splosno/novice](http://www.mnz.gov.si/si/splosno/novice), accessed 10/6/2007). The 2003 Constitutional Court’s ruling did away with the three month timeframe of this law.

<sup>25</sup> See European Court for Human Rights Portal, <http://cmiskp.echr.coe.int/tkp197/portal>. For more on this lawsuit, see the interview with Roberto Pignoni in this volume.

Nation, of ethno-national belonging and loyalty. Both tendencies were present from the very beginning, and the erasure shows which one ultimately won out. Apart from confirming the national character of the republic, the erasure hurt many individuals and annulled the principles of the rule of law.

It took ten years for the Erased to overcome the silence and invisibility that had been forced upon them and to begin the collective struggle for their rights. This happened in 2002, when most of them had already acquired residence permits through the ARLSC, or through the Aliens Act, and the Citizenship Act. 2003 saw the Association of Erased Residents achieve an important victory which was to define their struggle and activities: the Constitutional Court ruled in their favour, not only stating that the erasure was unconstitutional, but also including the ARLSC, which the government introduced to “remedy” the erasure. But even after two Constitutional Court rulings (in 1999 and 2003) and two laws (ARLSC and Article 19 of the Act amending the Citizenship Act), the erasure has yet to be resolved; in particular, social and economic rights (in the form of compensation) have yet to be restored, and the government officials responsible for the erasure have yet to be brought to justice.

The next victory came in 2007, when a lawsuit was filed with the European Court for Human Rights. The lawsuit was in some important parts (the violation of the right to a family and a private life and discrimination as a consequence of the erasure) accepted for consideration in 2007.<sup>25</sup>

However, as the actual draft Constitutional Law and the statements of certain influential politicians have shown, the government persists in its initial stance, and still utilizes racist argumentation based on exclusion and “punishing” of disloyal citizens (see articles by Neža Kogovšek and Boris Vezjak in this volume). At the same time, the Erased are reinterpreting the foundation of Slovene statehood through their political activities. Their stories reveal that the Statement of Good Intent was in fact political deceit. Their contribution to the establishment of a permanent campaign of resistance against neoliberalism and racism is of great value; the Erased represent a new way of belonging and democracy characterized by political action, and not by ethnic reference. Even though the Erased appeared as extra-institutional political actors, once the movement against racism and neoliberalism had been established (in the form of solidarity with asylum seekers and Bosnian refugees), it was the Erased who finally opened the door (and also held them open) to a persistent, collective, but internally diverse struggle for social and other citizenship rights.

Translated by Michael C. Jumič

## References

- AGAMBEN, G. (1998): *Homo Sacer. Sovereign Power and Bare Life*. Stanford California, Stanford University Press.
- AGAMBEN, G. (2005): *State of Exception*. Chicago and London, The University of Chicago Press.
- ARENDT, H. ([1948] 2004): *The Origins of Totalitarianism*. New York, Schocken Books.
- BLITZ, B. (2006): Statelessness and the Social (De)Construction of Citizenship: Political Restructuring and Ethnic Discrimination in Slovenia, *Journal of Human Rights*, 5: 453–479.
- DEDIČ, J., JALUŠIČ V., ZORN, J. (2003): *The Erased. Organised Innocence and the Politics of Exclusion*. Ljubljana, Peace Institute.
- HRIBAR, T. (1987): Slovenska državnost. *Nova revija*, 6, 57: 3–29.
- HRIBAR, T. (2004): Kultura laži je lažna kultura. Kultura in gospodarstvo pred evropskim izzivom. *Nova revija*, 12, 263–264: 1–16.
- KERMAUNER, T. (1989): *Pisma srbskemu prijatelju*. Celovec, Založba Drava.
- KLINAR, P. (1991): O mednacionalnih odnosih v Sloveniji. *Teorija in praksa*, 28, 3–4: 370–383.
- KLINAR, P. (1992): Slovenska nacionalna zavest med osamosvajanjem. *Teorija in praksa*, 29, 1–2: 86–99.
- KOVAČIČ, G., KUZMANIČ, T. (2004): Poimovanje države in nacije pri novorevijaših v osemdesetih letih. Ljubljana, *Časopis za kritiko znanosti*, 32, 215/216: 245–265.
- KUTOŠ, S. (2002): Pregled sodne prakse Vrhovnega sodišča RS v zvezi s 40. členom Zakona o državljanstvu (državljanji drugih republik bivše SFRJ). In: *Zaključno poročilo o rezultatih opravljenega raziskovalnega dela na projektu v okviru ciljnih raziskovalnih programov, Konceptualni razvoj državljanstva v pravni ureditvi RS po letu 1991*. Ljubljana, Inštitut za primerjalno pravo pri Pravni fakulteti.
- KUZMANIČ, T. (1999): *Hate-speech in Slovenia. Slovenian Racism, Sexism and Chauvinism*. Ljubljana, Peace Institute.
- OLSON, J. (2001): A Democratic Problem of the White Citizen. *Constellations*, 8, 2: 163–83.
- RIBIČIČ, C. (1992): Predlog za amandmajsko spremembo tretjega člena nove ustave. *Teorija in praksa*, 29, 1–2: 65–69.
- RIZMAN, R. (1997): *Izzivi odprte družbe. Sociološki komentariji*. Ljubljana, Liberalna akademija.
- RUPEL, D. (1987): Odgovor na slovensko narodno vprašanje. *Nova revija*, 6, 57: 57–73.
- URBANČIČ, I. (1987): Jugoslovanska »nacionalistična kriza« in Slovenci v perspektivi konca nacije. *Nova revija*, 6, 57: 30–56.
- ZORN, J. (2005): Ethnic Citizenship in the Slovenian State. *Citizenship Studies*, 9, 2: 135–152.
- ZORN, J. (2006): Od izjeme do norme: centri za tujce, pridrževanje in deportacije. Ljubljana, *Časopis za kritiko znanosti*, 34, 226, 54–73.

*The Disability Committee often adds that it recommends “dietary food and walks”; how am I supposed to explain to them that the person has been “walking” for years because he is homeless? And he is always on a diet because there is nothing on his plate?*

An excerpt from the interview with the physician Aleksander Doplihar.

## metastasis

**metastasis** [me tástəssɪs] (*plural metastases* [me tástə seez]) *noun*

1. **spread of cancer:** the spread of a cancer from the original tumour to other parts of the body by means of tiny clumps of cells transported by the blood or lymph
2. **malignant tumour:** a malignant tumour that has developed in the body as a result of the spread of cancer cells from the original tumour

[Late 16th century. From, ultimately, Greek, ‘removal, change’, from *methistanai*, ‘to remove’, literally ‘to place differently’, from *histanai*, ‘to place’ (see APOSTASY).]

—**metastatic** [méttə státtɪk], *adjective*

—**metastatically** [méttə státtɪkli], *adverb*



# The Metastasis of the Erasure

Imagine four people who have been erased from the register of permanent residents. Let's call them Marjan, Ljubo, Vera and Ismet. Imagine that you made their acquaintance a year and a half ago and have been talking with each one individually ever since: over long afternoon "coffees", over the phone, waiting in line when you accompany them to administrative centers or hospitals, and so on.

All four live in Slovene coastal towns: Marjan came to Portorož when he was seven, when this area fell under "Zone B".<sup>1</sup> Ljubo and Vera came to Slovenia as teenagers when they were seventeen and fourteen years old, respectively, and later settled in Piran. As an experienced tradesman, Ismet decided at the age of thirty that he would like to live by the sea, and chose Koper. Even though these four people had never met, and even though they led very different lives, they have a great deal in common because of a single fact: the erasure. This act and its consequences have significantly marked their identities; it completely transformed their existence, their way of thinking, their emotions, and – as we shall see – their bodies. In other words, as Vera said, "from that moment on you're a different person. Nothing is the same as it used to be".

But the erasure is not something that they can view from afar, like an event from one's past, because its consequences are obviously still being felt. One could say that they are becoming even harsher as time goes by. For these four, the erasure is not a single act, but rather a continuous series of events,<sup>2</sup> or a state of being in which they have been suspended for over fifteen years. When I got to know them in 2006, they were all still "completely erased"<sup>3</sup> – lacking any legal status whatsoever in Slovenia. Today, two are still without any documents.<sup>4</sup>

<sup>1</sup> Following World War II, Trieste and its surroundings fell under Zone A, that is, American and British control, which left the administration of this territory to Italy. A part of Istria (including the Slovene coastal towns mentioned above) fell under Zone B, which was under Yugoslav administration. This division ceased in 1954.

<sup>2</sup> I would like to thank Andrea Saccucci for this suggestion.

<sup>3</sup> I use the term "completely erased" for people who are still without any legal status in Slovenia.

<sup>4</sup> Their presence in Slovenia, as well as the presence of numerous other "completely erased" persons, contradicts a statement made by the current Prime Minister, Janez Janša, on 27 November 2006 for the television program *Odmevi on RTV Slovenia*. When asked to comment on the Caravan of the Erased to the European Parliament, he claimed that there are no longer any erased persons in Slovenia: "The picture is distorted. In Europe, they think, thanks to inaccurate information and reports like this, that we're dealing with people who are currently without any status whatsoever. They don't know that it's a problem from 1992, and that most of these people are demanding status for the past, for the period from 1992, when they did not arrange permanent residence or citizenship, to the point when they did make these arrangements. At the moment, there are no residents without status in Slovenia. It's a question of resolving this intermediate period."

<sup>5</sup> Cerkno by Idrija and Vipava are both located in Slovenia [Translator's note].

<sup>6</sup> "Sciavo" is used as a pejorative term for Slavs, owing to its similarity with the word "schiavo" (slave). A similar pattern can be found in English ("Slav" and "slave") but, quite understandably, not in Slovene [Translator's note].

Imagine, then, that these four persons have been telling you about their lives – when you reach the chronological end of one of their stories, another one begins. Even though they have been stressing the darker aspects of their lives, none of them wishes to present him or herself as a victim. In fact, quite the opposite is true.

## Marjan

Marjan speaks slowly and falteringly. Each word is weighty, and the longer he takes to find it, the more restless he grows. Suddenly, the tension subsides from his face, and his voice softens. Marjan's father was born in Cerkno by Idrija, and his mother was born in Vipava.<sup>5</sup> Before the Second World War, they moved to the south of Istra, in Croatia, to a small mining town where his father had found work. They gave birth to a child, Marjan's brother, just before the war and to another, Marjan, just after it. When Marjan was in the first grade, his family moved back to Slovenia, to Piran. He recalls that there were seven Slovenes in his class, the other pupils being Italian. Pupils with a Slovene surname were soon moved to one side of the classroom, and pupils with an Italian surname to the other. The tension grew. Both adults and children were becoming more and more hostile towards one another. Once, a schoolmate with an Italian surname ordered him to fetch the ball during a game of soccer: "Va ti, va ti, Sciavo! – You go! Go, Slav!"<sup>6</sup> Marjan responded by smacking him across the face. They called his father. At home that evening, his father asked him if he had really hit his schoolmate. Marjan explained what had happened. His father looked him in the eye and asked him if he had done his homework. This was to be the first and last time he expressed interest in the subject. When Marjan finished grammar school, hotel Bernardin awarded him a scholarship to continue his education at the trade school for hotel and restaurant service. Even then, he was drawn to the sea, to ships and to long voyages into the unknown. As soon as he became a certified waiter, he looked for an opportunity to board a ship. And in 1968, he found one: he became a member of the crew of General Navigation Portorož for its trip around the world, which lasted six months. From what is today Bernardin, the crew and twelve passengers, mostly elderly Americans, set sail on the ship *Goranka*. They soon rounded the Cape of Good Hope and put ashore for a month in India, in Madras and Bombay; they then went through Hong Kong and sailed to smaller ports in Canada, finally setting off for the Mediterranean from their final port in Long Beach, California. On a later trip, they stopped in Angola just as a *coup d'Etat* was breaking out. He remembers the long talks about racism and the effects of Portuguese colonialism that he had with the natives in Angola – Marjan was the only one who could compare their situation to that of Mozambique and Brazil. He was also quite fond of trips to Latin America, especially to Argentina and Venezuela. Spain had a special place in his heart for a long time, in particular Bilbao: he still recalls her name and the street she lived on. He would visit her every three weeks with a ship that sailed between Detroit and Bilbao, and would stay for several days. He got to meet her parents, and plans were made. Once, they had to wait six months for her to get a visa so she could visit him in Trieste for a few days. But the distance was too great, and eventually they both grew tired of waiting. He later traded in his job on the ship for a job on land, and would send her a postcard or a New Years card from time to time. He was spending more and more time on the Slovene coast. In 1991, he had a communal apartment, a good salary, a regular job, a work period of twenty-one years, a large circle of friends, and, as he himself says, no particular worries.

## Ljubo

Ljubo says he knows every wall in Koper, Izola and Piran. When we had some time, he led me through the old town centers at a brisk, careful pace. He always came to a sudden stop before an intricately built stone wall and, eyes glowing, asked me if I knew who had built it. I would keep quiet, because I loved to see the proud expression he got on his face whenever he would explain how this or that wall was built, or what kind of stone was used. In 1991, he was 51 years old. He had spent 33 years in Slovenia. Before then, he had not been particularly interested in politics. He felt that Yugoslavia was his country, but also rejoiced when Slovenia became independent. He believed that a person must work hard and keep his nose out of things he does not understand if he wants to live a long, peaceful life. A few months after Slovenia declared its independence, an acquaintance mentioned that he had filed a request for Slovene citizenship, and recommended that Ljubo do the same. It sounded like good advice, even though he could not see why he would need citizenship. A request for citizenship meant bureaucracy, and Ljubo had always felt a sort of disgust towards anything even remotely associated with that word: nervously waiting in line, unclear instructions when you get to the window, and piles upon piles of papers that he had a hard time reading. "I'll build you ten walls, just don't send me to an office!", he would often say. He spent several days thinking about what his friend had told him, and decided that no inconvenience was too great when it came to continuing his relaxed life in Piran. He soon went to the administrative unit of the municipality of Piran to inquire into filing a request for Slovene citizenship. He asked an employee at the center, Mrs. Barbara, what documents he would need to bring to get citizenship and told her that he was willing to go to Bosnia in order to get them. She replied that he need not go anywhere or bring anything, seeing as he had had permanent residence in Piran since 1963. Ljubo believed her, as he once believed every administrative employee.

In March of 1992, someone wanted to hire him to build walls in Buje, in Croatian part of Istra. Once he had left home, he realized that his ID card had expired. That same day, he went to the administrative unit, where a different employee gave him a vacant stare as she punched a hole in his ID and told him that he should go back to Bosnia. Speechless, Ljubo left the unit and went directly to a lawyer's office he knew of through his friends. The lawyer was dumbfounded when he heard what had happened, and said that it must be a mistake. He explained that he had missed the deadline for filing an application for Slovene citizenship, and suggested that he rectify the situation by sending a written apology to the Ministry of the Interior. Ljubo consented and paid him in hand, 300 German marks. Every month, he would check in at the lawyer's offices or at the administrative unit, and ask if "anything had come up". For over four years, he did not get a single response. Finally, in December 1996, he received the first of a string of negative replies that stretches all the way to the present.

## Vera

She never liked speaking of these things in front of the children. In a rented studio apartment with a view of the street, I would find her behind piles of washed laundry, with an iron in her hand. Once we had exchanged formal greetings, Vera would ask her partner and children to go to the store. As soon as they closed the door, she would begin telling her story. It was not hard for her to see that something was wrong: all of a sudden, she stopped receiving compensation for maternity

leave. She was at home at the time, only months after she had given birth; her son had just uttered his first sounds, and her daughter was in the second grade. She waited a few days, and then went to the accounting department of the hotel where she had been a full-time employee for five years. As soon as she set foot in the building, she knew it would not end well; her co-workers barely greeted her. When she asked why they had stopped payments only five months into her maternity leave, she was told that foreigners without valid documents could not work in Slovene hotels. Employment record in hand, she went through the phone book, calling various institutions. One state institution was willing to meet with her. After Vera fired off the key facts, the employee told her, in a soothing tone, “Ma’am, we advise against resorting to lawyers – you’ll only lose lots of time and money, and won’t accomplish a thing. It’d be best for you to accept the fact that you’ve lost your job and legal status in Slovenia, and to start seeking other options.” The only option she had was to look after her children: during her daughter’s summer vacation, she took them to her parents in Croatia, and returned to Slovenia by herself. She swore to herself that she would find a new job and get her life back together in a few months. But another shock awaited her upon her return: the locks on the door to her apartment had been changed. It is true, the apartment was the property of the hotel, but Vera had signed a lease for several years, and had put all of her savings into the apartment. A neighbor who had noticed her desperate attempts to open the door told her that they had moved all her belongings out of the apartment a few days previously – and that the boxes were in the storage room of the hotel. After that, Vera moved from one friend’s apartment to another, and continued looking for work. During one move, she was stopped by the police. After a few confused replies, she admitted that she did not have any documents. The police threw her in the police car and took her to the detention center, which was called the Transit Center for Foreigners at the time. They released her only after her sister came for her and officially declared herself her sponsor. It was all downhill from there. Although she fought off desperation, feelings of powerlessness soon started taking over, accompanied by visions that grew ever darker. She had not seen her children in several years, because she feared that if she left Slovenia, she would no longer be allowed to return. She learned of her father’s death over the phone; shortly after, she also got the call that her mother, and then her brother, had passed away. In the same phone booth she also learned that her children had been put into foster care, and that her daughter did not want anything to do with her. By the time this daughter turned eighteen, her mother was no longer Vera, but had officially become a different woman, one whom Vera barely knew. It was too much for her to handle: she shut herself out and grew hard. It would take her a long time to get herself together. In Portorož, she met a kind man who was willing to help her. They had two children. She still speaks to her first son regularly. Over the phone.

## Ismet

When you see him sitting there, at peace, always on the same street, always on the same stoop, with a cigarette in his hand, he is so visible that he is almost invisible – blended into everything that surrounds him. Ismet’s credo is motionlessness, waiting without moving. Ever since he was young, he believed that all things come in and of themselves – *inshallah*; all one has to do is wait and keep the faith. And he always believed in the state: first in Yugoslavia, and then in Slovenia. Even after the Koper administrative unit informed him that he could not receive new documents because he was now a foreigner, he continued believing that he would soon

<sup>7</sup> *Filter 57* cigarettes were known throughout the former Yugoslavia as one of the cheapest brands of cigarette, and were somewhat of a symbol of the workers in that region.

be granted Slovene citizenship. At roughly the same time, a fire broke out at his communal apartment, incinerating all his Yugoslav documents. A few years later, city inspectors would make several attempts to evict him from the apartment for failure to pay rent. But how could he pay rent? The workshop that could barely keep up with the piles of orders that were coming in was now little more than a faded memory of the way things used to be. Soon, he began receiving letters marked “Confidential” at his workshop, letters he was too scared to open. There was already a whole pile at his apartment, in drawers, on the table, on the couch, and coming out of every corner; white envelopes, reminding him that he had failed to pay rent, electricity bills, water bills, gas bills etc. Each month, the total grew larger as fines accumulated. After his apartment had become a regular stop for local inspectors, the debt collectors showed up at his workshop. They told him they had a decision about distraint. He did not know that word, and opened up the doors of his workshop to them. Minutes later, they angrily left the workshop – they could not find anything worth carrying off. Ismet sat on the stoop, lit a *Filter 57*, and waited. The owner of the adjacent bar passed by and made him a “proposition”: he would take care of the debt for two-thirds of his workshop. Ismet took it as a sign and immediately agreed. Years passed before a friend would tell him that his debt was laughably small compared with the value of the space. But Ismet – who has been receiving coffee on the house at that bar ever since – was nonetheless satisfied. However, the peace of mind he had bought would last only a couple of years. And he knew that it had a limit; not only chronologically, but also spatially – every time he crossed the city limits he was in danger. Once, when he treated himself to a short vacation in Izola, the neighboring town, he was stopped by the police and asked to show his documents. He held out for a while, but then explained to the policemen that he did not have documents. The more he explained, the less understanding they became. In the end, they let him go, but with a threat: “Remember: if you don’t get your Slovene documents straightened out right away, you’ll be on the first flight to Sarajevo!”. Thus he has mostly confined himself to the immediate vicinity of Koper. Nonetheless, he still believes things will change: he still repeatedly assembles the documents he needs for a permanent residence permit and then for citizenship. But the responses from the Ministry of the Interior leave little to hope for, and Ismet is feeling old; his body tells of a terrible illness that has left him but little time; his faith is turning into an angry impatience, as he keeps asking himself, “Will I ever see Sarajevo again?”

## The morphology of the erasure

Sociocultural epidemiology is a branch of epidemiology that studies the extent of a given disease among a certain population and analyses the social and cultural factors behind diseases. Its focus is not exclusively on the biological and physiological factors that Western medicine or biomedicine examines, but rather on a vast palette of other factors, which cause disease by imprinting themselves on individuals throughout the community. At the same time, it pays attention to the ways communities – and their constituent members – understand the etiology, that is, the causes of illnesses, and how they categorize them, and the forms of treatment they seek. Many sociocultural epidemiologists whose work takes place at the nexus of biomedicine and medical-anthropological research have recently come to the fore in Latin America

<sup>8</sup> The clinic, which operates under the aegis of the Ljubljana Bežigrad Healthcare Center, was founded by the Ljubljana Healthcare Center, the Municipality of Ljubljana, Slovene Philanthropy and Caritas of the Štepanja vas. It is intended for all residents of Ljubljana who do not have basic health insurance ([www.pro-bono.ordinacija.net](http://www.pro-bono.ordinacija.net)).

<sup>9</sup> Annual report of social services for 2003 and for 2004, internal documents.

<sup>10</sup> In four years, from 2002 to 2006, 1,296 persons from a number of different ethnic groups and social positions were registered at the clinic (social services reports, internal documents).

<sup>11</sup> Similar practices can be found in the neighboring Friuli Venezia Giulia Region and in Austria. Clinics of this kind have a long history in Latin America, where healthcare institutions for the marginalized native population are often a source of important sociopolitical innovations (for example Hospital Makewe-Pelale, Centro de Salud Boroa Filulawen, and Centro de Salud Kompu Chiloé in Chile, and Hospital Aluminé in Argentina).

<sup>12</sup> The term “holistic” is often used by therapists working in complementary or non-conventional medicine, and stresses a focus on the psychic and spiritual dimensions of the healing process, which they feel are lacking in Western medicine (Dei, 1994, Lipovec Čebren, 2008). In this context, my use of the term is slightly ironic, so as to stress complementary medicine’s lack of interest in social and political factors that affect the health of individuals.

(Martínez, Haro 2007). Some of them use the traditional medical knowledge found among Native Americans for their interpretive models; this medical knowledge stresses that illness is the body’s answer to an imbalance on the macro level, that is, in the community (be it a family, a village, or an urban community; a region, or a statewide, national community), which is reflected on the micro level, in all aspects of an individual’s life. In their research, sociocultural epidemiologists analyze different types of factors that protect or threaten the health of the community and individuals both on the micro and macro levels (Massé, 1995, Ibacache Burgos, Leighton Naranjo 2004, Gonzales Mendoza, 2008).

Using this interpretive model, it is possible, on the macro level, to interpret the erasure as a disease within Slovene society, and at the same time as a cause or meta-cause of the illnesses of the Erased. On the other hand, the factors that contribute to the appearance of illness, as well as the identity of the illnesses themselves, can be discerned, and the ways in which the Erased themselves understand their illnesses can be analyzed.

The first institution to address the health of the Erased was the Clinic and Consulting Center for Persons without Health Insurance.<sup>8</sup> Its annual reports show that, since the very beginning of its activities, the Erased have represented a high percentage of its users: roughly 22 percent in the years 2002 and 2003, 46 percent two years later, and 20 percent in 2006.<sup>9</sup>

One could say that the clinic represents an “alternative gauge” within the Slovene healthcare system, one which tracks the condition of the part of the population that does not have access to public health services. The clinic’s files encompass a vast spectrum<sup>10</sup> of the Slovene population that goes undetected by other registers inside and outside of the healthcare system and that includes the “completely erased”, who are without any legal status in Slovenia.

Like its sister institutions,<sup>11</sup> the clinic in Ljubljana is not limited to medical assistance, but uses a holistic approach.<sup>12</sup> Since exclusion or various forms of discrimination are the key cause of health problems for most of the clinic’s users, the doctors and the on-staff social worker try to “readmit” individuals into the

healthcare and sociopolitical systems in a number of ways: by helping them arrange their legal status, disability compensation, pensions etc. This practice, which expands the dimensions of the clinic beyond medical assistance and into legal representation, has a number of aspects. First, it shows that it is feasible to combine medical and legal assistance, and not to keep them separate, as it is often the case. Second, healthcare institutions of this kind provide a sort of “litmus test” for their respective societies, as they are among the first to notice changes in the population: not only changes in the health of the population, but also social changes. Finally,

the offices of these institutions often become a “zone” of solidarity in the face of neoliberal logic.<sup>13</sup> The clinic in Ljubljana, for instance, “recycles” medication: a number of people now bring the clinic unused medication instead of throwing it away.

It follows that statistics from this clinic reveal an epidemiological overview that significantly differs from those presented by other healthcare institutions. To take just one example, tuberculosis, Dr. Aleksander Doplihar, a physician and head of the clinic, found that, in its first year, 2002, the clinic had “500 times more tuberculosis patients than in the rest of Slovenia” (Doplihar and Ugrin Vatovec, 2007).

A similar pattern can be found among the erased population that frequents the clinic: “The Erased I’ve treated mostly have pulmonary illnesses, and there’s a significant degree of tuberculosis. Other common diseases include acute circulatory problems – of both the heart and the veins, but also of the legs and remaining body. I treated two cases of erased persons who had their legs amputated because of narrow veins. They also have gastrointestinal illnesses and acute problems of the central nervous system. Furthermore, many erased who have come to us for help have psychiatric problems, from various forms of psychosis to depression” (ibid.).

According to Doplihar, one factor that directly threatened the health of the Erased was the act of erasure itself<sup>14</sup> and its countless consequences. On the basis of his conclusions and the work of social services within the clinic, it is possible to arrange other factors threatening the health of the Erased into the following closely interconnected categories:

1. Exclusion from society at large leading to exclusion from one’s immediate surroundings:

“The xenophobia of Slovenes is such a huge factor. Not only in Ambrus<sup>15</sup> – but also with the Erased who had been in Slovenia for twenty, thirty years, and who helped economically boost Slovenia, but were ultimately discarded, pushed into a corner [...]. Many Erased were abandoned by their families after the erasure, and by those closest to them, and lead an isolated existence. If you’ve been cast out, and have a failed marriage, and no relationship or contact with your children – this subgroup of the Erased is the most at risk; they are the most vulnerable to diseases” (ibid.).

2. Unsuitable or no accommodation and inadequate diet:

“The Erased are often homeless or have terrible, dilapidated living arrangements, the likes of which an average person can’t even imagine. [...] These persons have very poor nutrition, and often go almost completely without food” (ibid.).

3. Psychological stress leading to various harmful habits:

“In response to psychological strain, these people sit around all day and smoke, they smoke a lot, or go to a bar and hang around there all day [...]; in particular, people who ended up alone, without any opportunities, sank very quickly: serious mental

<sup>13</sup> In Latin America, for instance, healthcare institutions in areas inhabited by native Mapuche have become important reference points for sociopolitical movements. The doctors, who often received their education in Cuba, support solidarity networks and new forms of resistance against neoliberalism.

<sup>14</sup> “The erasure was the main factor that devastated the Erased” (Doplihar and Ugrin Vatovec, 2007).

<sup>15</sup> See the interview with Boris A. Novak in this volume.

<sup>16</sup> In this context, it is interesting to note how the former mayor of Koper, Dino Pucer, referred to events that occurred on 26 October 1991 in his inaugural address: "With anxiety in their hearts, which had been there for several months, they watched the *Galeb*, a ship filled with YPA troops, sail out of Koper harbor. [...] Familiar with harmony and multicultural and multinational cohabitation, the residents felt that here, in Koper, lies the meeting point of two worlds, and that we are in fact the point from which our world extends" ([www.policija.si](http://www.policija.si)).

<sup>17</sup> A number of unpublished accounts of the Erased can be cited. Perhaps the most telling is that of Tihomir K.; while punching holes in his documents, an official in Izola said, "There's no place for Bosnians in Slovenia". In Koper, Nataša Z. was told that "until she learns Slovene, she is not going to get any documents".

<sup>18</sup> For example, the six members of the Dabetić family from Koper report that they handed in their requests for citizenship at the Koper administrative unit before the deadline; the officials accepted their requests, but later, in 1992, told them that they had "put them in a drawer" – that is, that they did not send them to the Ministry of the Interior – which is why all the members of the family were erased.

<sup>19</sup> Although Ismet, Ljubo, Vera and Marjan often inquired into how to arrange their status at the administrative units in Koper and Piran, they were either turned away without an answer or greeted with derogatory remarks. Ismet, for example, was told, "Seeing as you did not arrange citizenship in 1991, it'd be best if you returned to Bosnia". The experience of Bojana G., a long time school teacher from Izola, reveals the complexity of the bureaucratic labyrinth conditioned by the erasure: "After Slovene independence, I received a notice that I must go to the administrative unit for my daughter's citizenship. There I discovered that I don't have Slovene citizenship. 'Why?', I asked the official, and she told me that I had to go to Mostar, in Bosnia, and have myself removed from the central register there. I couldn't understand; I began to cry, to scream. I knew that, when we all came to

health problems often appeared, alcohol, smoking, poor living conditions – all this rapidly led to weight loss, the weakening of the immune system, and finally disease" (*ibid.*).

Data from the clinic would lead one to conclude that the link between erasure and illness is more or less a rule: "If, 15 years after the erasure, a person is still healthy, we can but look on in awe: if he did not get sick, fall into various forms of addiction or into depression, or have his family ties severed [...], that's got to be a very strong person" (*ibid.*).

## Marginalization and isolation

On the one hand, we posit that the erasure is the meta-cause of the illnesses of the Erased and the key factor threatening their health, and, on the other, that the act of erasure, as a phenomenon in the life of an erased individual, has the characteristics of an illness. We must therefore conclude that the act of erasure was successfully "transposed" from the macro level – the Ministry of the Interior – to the bodies of individuals because of the conscious agency of the local community, in our case, the urban area of Slovene Istra.

Even though Slovene Istra, or even the entire Istra peninsula, has existed, and even been promoted,<sup>16</sup> as a multiethnic area for hundreds of years, the officials at administrative units in all three coastal towns often displayed blatantly racist behaviour<sup>17</sup> in the beginning of the 1990s, thus contributing to the erasure, that is, further complicating the acquisition<sup>18</sup> of legal status.<sup>19</sup>

But it would be wrong to perceive officials as excluded from the broader context; through its more or less open indifference, the population of these three coastal towns consented to the erasure,<sup>20</sup> and, by doing so, actually repeatedly suspended their fellow citizens in this state. So it happened that the citizens of Koper, Izola and Piran have voluntarily and collectively created a situation that can be called a cultural anesthesia (Feldman in Dedić et al., 2003).

In this context, Marjan's and Ismet's experiences are most telling: through the motionlessness of their bodies, on which the signs of illness grow increasingly visible, they elicit stares from people passing through the town squares of Koper and Piran. Despite their symptomatic exposure and lengthy residence in both towns, their fellow citizens rarely express an interest in them; and if someone does show interest, it often disappears when they mention that they were erased. Marjan attempts to



justify reactions of this kind by referring to his fellow citizens' "ignorance of the truth" about the erasure. He often mentions a sentence once uttered by a fellow citizen: "Marjan, how can you say you're erased: I know you, you've always been here!"

If one considers the factors which, in the opinion of Doplihar, threaten the health of the Erased in this context, it would seem that the one essential factor in the cases of the four persons presented above is exclusion from society at large, and with it marginalization within their environment. In all four cases, a state of isolation occurred as the consequence of a loss of work or working environment: as wait staff, Vera and Marjan lost contact with their referential environment – daily contact with coworkers and clients – when they lost their jobs. Employment had been a key anchor for Vera and Marjan's identity, and the same can be said for Ljubo and Ismet. The loss of employment meant the first step towards an identity crisis, which often took the form of depression. The loss of a source of income had an even more drastic impact, forcing them to the brink of survival in only a few months – Marjan says that he "went from a well established man, who was envied by many, to a bum." The loss of their communal apartments meant total dependence on their environment. But, paradoxically, the more the effects of the erasure forced them to depend on their environment – Vera sought help from her sister and friends, Marjan turned to his brother, and Ljubo and Ismet went to their acquaintances – the more their environment began to exclude them.

Changes in their socioeconomic status were also reflected in changes in their social roles. Except for Ljubo, who managed to partially maintain his job and some contacts, the persons presented here initially spent a number of years in near total isolation and exclusion from their previous referential environments.<sup>21</sup> When they did begin to make new contacts, it was in a completely different social environment, where they found that their roles and aspirations had been transformed: when he lost his status as a local cosmopolitan, Marjan began to make contact with certain individuals from the bottom of society who were in a similar situation of exclusion.<sup>22</sup> Vera left the center of Ljubljana in search of refuge in a semi-urban area of Istra, where she started a new family.

Ismet spent a number of years getting over the loss of his status of a prominent tradesman in Koper, and only recently found a new referential environment in the Muslim community. Ljubo, who only partially encountered these problems, made the acquaintance of similar minded persons in the company of the Erased and activists involved with the struggle for the rights of the Erased.

The gestures of solidarity that certain people have made to these four individuals can be interpreted as factors that protected their health. Even though they claim that there have not been many experiences of this kind, these were that much more important because of their exceptional nature. In Ismet's case, for example, the members of the Muslim community in Koper decided to collect funds to pay off part of his debt. And Marjan has managed to establish a "solidarity stations"

Slovenia, my parents entered me in the central register in Sežana. But in Izola, where I had lived for over forty years, they didn't have this information! Then an employee whose sons I was teaching came in and said, 'She's Slovene, there must be a mistake', but the first employee said 'this is according to regulations, I have to do what's been written down.' Then they inquired in Sežana and found out I was registered there. I got citizenship. But what if I hadn't, if I would had been made to go to Bosnia, remove my name, then I wouldn't have wanted Slovene or Bosnian citizenship – neither!"

<sup>20</sup> It is interesting to note that the reactions of persons who came to these coastal cities from former Yugoslav republics and acquired citizenship in 1991 often uncritically adopt the xenophobic discourse through which the Erased represent internal enemies of Slovenia.

<sup>21</sup> One example of marginalization and discrimination is Marjan's experience at a café where he used to go for a coffee. Even though the owner was aware of his situation, he told him, once his illness became visible, that he should find another café because his "disreputable appearance" was bothering other guests.

<sup>22</sup> It is interesting that he said that he felt "really equal" only in the hospital, among other patients, because "we were all helpless and ill, all in the same green robes."

<sup>23</sup> I would like to thank Roberto Pignoni for this thought.

<sup>24</sup> Primorska is the official name of the western region of Slovenia, where all three towns mentioned in this article are located [*Translator's note*].

between Piran and Lucija – four people with whom he exchanges favors and various forms of aid:

“I visit an elderly woman, who asks me to carry water to her garden, because she can no longer carry such heavy things. I bring her water, and she makes me lunch. Then we play cards. When she calls me and asks if I’m coming over to play

cards, we know what it means, that’s our deal. Then there’s this guy who has known me since I was a child, and asks me to help him with his vineyard and then always offers his garage for me to sleep in, when he’s not using it. When I stop by, we drink a few glasses, he gives me food, and I can sleep in his shed. I’m rather close to two other people: a bus driver to whom I’ll tell a story for a ride to Lucija, and a restaurant owner in Piran. When he learned that I’m Erased, he gave me a plate of minestrone for free, and now I always go there – if it’s got meat I pay one euro; if it doesn’t, it’s free.”

The radical shifts that took place in their individual destinies at the beginning of the 1990s and marked the rapid descent from social certainty to complete precariousness were in line with tendencies present throughout Slovene society, which, at that time, was gradually discarding a number of elements of the social state and had consented to the logic of structural uncertainty typical of neoliberalism. In a way, the Erased were harbingers of a new system, because the consequences of the erasure, which removed their basic rights, tell of a gradual lessening of the rights of all citizens of Slovenia.<sup>23</sup> Furthermore, their experience of radical exclusion would seem to indicate a rapid weakening of relationships of solidarity among the general population and a concurrent rise in xenophobia and nationalism.

As Ljubo once said, “I moved to Primorska<sup>24</sup> because it was different there. This was in the sixties. At the time, people were somewhat more relaxed, more open, and they helped if you asked, and even if you didn’t, they’d bring you something, give you something. Get this, in Piran we always spoke Serbo-Croatian, we spoke it out loud and no one looked at us funny. Now it’s different: I can’t feel comfortable speaking my language; all of a sudden, everything’s changed and you have to be careful.”

## No apartment, no food

Two other factors that threaten the health of the Erased need to be mentioned. These are living arrangements and inadequate nutrition. On the basis of the experiences of the people I have spoken with, I can conclude that both are the result of a lack of financial resources. As Dragica Rihter, a social worker at the Piran center for social work who has been dealing with the problems of underprivileged individuals, including the Erased, for a number of years, said, “There aren’t any comprehensive institutional answers to the key needs of this population in Slovene Istra. We don’t have a public soup kitchen or homeless shelters, as they do in Ljubljana. Recently, we’ve acquired ten rooms, where we house the socially most deprived” (Rihter, 2007).

Nevertheless, a permanent residence permit, which “completely erased” persons lack, is a condition for obtaining the right to a room. Except for Ismet, the individuals featured in this article had to leave their communal apartments against their will, even though they had invested

<sup>25</sup> It often happened that all they needed for a long time – just like a number of other erased persons – was listeners who would be ready to listen to their traumatic experiences over and over again. In this regard, we could include group discussions of this kind among the factors that, to a certain extent, contributed to their mental health.

large amounts of capital and received documents about their purchase right. Marjan has been living as a homeless person since 1994, and Ljubo found himself trapped in a unique housing situation: “Five years ago I found a shack above Piran. I fixed it up a little, so the rain doesn’t get in. It’s not exactly nice – there’s no heat, electricity, or water. This land has always been the property of the municipality of Piran. A few years ago, Mr. Bernardi came here and told me I had to do physical labor for him, or else he’ll call the cops. I’ve been working like this for years, and he’d never paid me. I went to the center for social work, but they said there’s nothing they can do.”

Both Ljubo and Marjan are learning that, aside from the erasure itself, poor living arrangements have been central to the progression of their illnesses. This does not hold true for Vera. Nonetheless, her housing problem should be mentioned.

Vera’s partner and the father of her two children received a lease for a one-room apartment with a non-profit rent agreement a few months ago. He is listed in the lease as a single parent, while only he and the children, who are minors, are listed as users of the apartment:

“They’ve known me at the administrative unit for over ten years. They all know all about me. But they said, it was an employee, Vesna Šabec, that I can’t be considered because I don’t have documents, because I don’t have a permanent residence permit. She said I can’t be considered for the calculations of the size of the apartment or in the contract. Also, Vojka Štular, who was mayor at the time, and who knew that I had been erased, promised to try to do something once we get an apartment and move in. But she lost in the elections, and now nothing.”

## Internalized and externalized guilt

It has already been shown that the consequences of the erasure have led to an altered self-perception, with the Erased often harboring feelings of inferiority or worthlessness (Blitz, 2006).

Conversations with these four individuals reveal two phases, marked by two different reactions to the erasure: internalized guilt and externalized guilt, that is, holding external factors responsible. In line with Blitz’s conclusions, the first phase sees the Erased consent to an explanation which perceives them as responsible for the erasure, and personally at fault for endangering their own existence. In this phase, they are prepared to internalize racist discourse, according to which the Erased represent “traitors” to the Slovene nation. Because of the powerful stigma this explanation carries, their usual reaction is one of withdrawal, apathy and depression. Since they would like to avoid stigmatization, they openly resist being identified as Erased: Ismet suppressed the fact that he had been erased to the extent that he himself began believing that he had nothing to do with the Erased. When one speaks with him, he shows signs of amnesia, and has great difficulty recalling events from the beginning of the nineties, or cannot remember them at all. Marjan, on the other hand, knew that he had been erased, but systematically denied it in front of others. Both Ismet and Marjan needed a lot of time, and also intensive contact with other erased persons and activists<sup>25</sup>, before they were ready to publicly identify themselves as Erased.

In the second phase (which followed the first for Ismet and Marjan, but began immediately for Vera and Ljubo), which is marked by the externalization of guilt, the Erased perceive them-

selves as victims of the government policy that is wholly responsible for their severe existential problems. Interestingly, none of them see the officials at the administrative units or the general public, which contributed to the effects of the erasure through its indifference, as guilty. In this phase, these four persons often spoke of anger, rage and disappointment. Once limited to government policy, these feelings have grown to include all state institutions and world politics.

Once, when Marjan and I were figuring out what happened in 1992, he said, “Look, to understand what’s happened to me you’d have to... become an anarchist, or what? You’d have to change completely, get it? I need to have that conviction, that faith, that the state nonetheless works on my behalf.” This thought seems to be key: understanding the erasure means doubting the functioning of the state and the very essence of the state as a guarantor of the rights of its citizens. Internalizing this conclusion was a long-term process for the four, and it demanded a change in their outlook on life: from trust in the omnipotence of the state, which, as the bearer of power and care, was once present in every trifle of an individual’s existence, they were forced to confront a state apparatus that had intentionally administratively put them to death. Accepting this totally opposing view was a demanding task for the three men featured in this article, who had spent most of their lives under socialism (they are all between 60 and 75 years of age). At the same time, the internalization of this idea meant the climax and also the end of the second phase. Their search for a guilty third party gradually gave way to feelings of growing precariousness conditioned by general uncertainty. The magnitude of the impact of these feelings differed in each case, and led to different conclusions. Marjan and Ismet, for example, dismissed the conviction, common among the Erased, that their exclusion makes them exceptional and incomparable to other underprivileged groups, and began focusing on their similarities with other marginalized people: for Ismet, this was the Muslim community, and for Marjan, cancer patients.

As stated above, inclusion in new reference groups, through which they confronted their erasure, was a key health protection factor for the four. At the same time, the fact that many sought to reduce psychological strain by using mechanisms that threaten their health must not be ignored. Some resorted to alcoholism.

There remains the (eternal) question of the interplay between the body and the psyche: to what extent was psychological strain reflected in their physical illnesses, and to what extent are other factors, such as inadequate housing, lack of food etc., responsible? Taking into account the idea that experiences of illness have the characteristics of discourse, that is, adhere to culturally determined patterns in their illnesses one can discern mechanisms used by the Erased – through their own bodies – to call attention to the consequences of the erasure.

And what illnesses do these four erased persons suffer from? The epidemiological assessment of Doplihar partially corroborates the health problems of these four individuals, which were presented above: in addition to pulmonary problems, gastrointestinal problems also appear, as well as cancerous diseases. Both Ismet and Ljubo have severe pulmonary problems. Even though they had both been ill before 1992, their condition worsened after the erasure. Both were treated in the Hospital for the Treatment and Rehabilitation of Persons with Chronic Pulmonary Diseases in Sežana: Ljubo was first taken there in 1970, when he came down with tuberculosis, and spent several months there. Since then, his lung capacity has been limited, and he often has trouble breathing. In 2001, his life was seriously threatened when his right lung failed.

Ismet was stricken with a severe pulmonary illness in 1991, and was in the hospital in Sežana for six months, at exactly the time he was supposed to file a request for Slovene citizen-

ship. He still feels the effects of this disease. In recent years, Ismet has noticed symptoms that could indicate an enlarged prostate, and the possibility of prostate cancer cannot be ruled out.

Vera is one of the Erased who suffers from gastrointestinal disease. In 1999, she had an operation to remove an ulcer from her stomach, and since then has had chronic pain in a part of her stomach. Also, a myoma was discovered in her uterus in 2003, which her gynecologist believes could become cancerous.

Marjan has had serious problems with his hips since 2000, and must use a cane to walk. Also, a cancerous growth began developing above his lips between 2002 and 2003, and has gradually spread to most of his upper lip, including the oral cavity.

## Therapeutic labyrinths

In his pioneer medical-anthropological study, *Patients and Healers in the Context of Culture*, Arthur Kleinman concluded that the health care system can be broken down into three sectors: the *popular sector of health care*, where the ill person devises “layman’s” theories and practices about the type of illness he has and its causes, and tries to deduce a suitable cure. The *professional sector of health care* comprises of organized healthcare services, and in most societies is synonymous with Western medicine. The third and final sector often exists in a complementary and/or antagonistic relationship to the professional sector of health care: known as the *folk sector of health care*, it encompasses specialized forms of therapy (from traditional medical systems to unconventional or complementary medicines) that Western medicine tends to regard as non-professional (Kleinman, 1980: 51–58).

It would seem that the population of Slovenia usually combines theory and practice from all three sectors to create their own personal therapeutic itineraries.<sup>26</sup> Quite the contrary, one can see how these itineraries have decomposed into labyrinths (with no way out) for the persons presented here. For them, all three sectors are either inaccessible or difficult to access: the *popular sector of health care* cannot function nearly as well as it can for other members of the population because of a weakened social network, while the *folk sector of health care* is rendered inaccessible by the lack of funds. It is now necessary to take a look at the (in)accessibility of the professional sector, that is, official medicine.

Medical and health insurance institutions seem to be faithfully reproducing the government policy of exclusion. On the one hand, the health insurance system, which was designed after 1991, reflects the nationalistic discriminatory practices that led to the erasure: for example, a person without a permanent residence permit or without regular employment cannot obtain health insurance, even if he/she is willing to pay for it (Doplihar and Ugrin Vatovec, 2007).<sup>27</sup> For the “completely erased”, any chance of obtaining health insurance has been more or less ruled out.<sup>28</sup> Moreover,

<sup>26</sup> I am using the conclusions found in medical-anthropological research conducted by Židov (1996), unpublished research conducted by third-year students at the Department of Ethnology and Cultural Anthropology between 2004 and 2006, and my own Masters dissertation, published in the book *Krožere združja in bolezni: tradicionalna in komplementarne medicine v Istri* (Crossroads of Health and Illness: Traditional and Complementary Medicines in Istria), 2008.

<sup>27</sup> This places Slovenia among those European countries which decided on more restrictive access to health services – in neighboring Italy, for example, healthcare institutions are much more accessible to persons without citizenship or a residence permit.

<sup>28</sup> The only possibility is “commercial” insurance, which comes at a high cost, and also requires the person to have a valid personal document upon signing. But some insurance companies offer the possibility of obtaining insurance without documents through a relative – a cosigner. Vera’s experience should be mentioned: “I was pregnant again, and I went to the center of social work in Piran to ask if they could help cover the costs of an abortion. They inquired at the municipality and said that the only possibility was for me to pay for insurance as a tourist, 45,000 tolar (approximately 200 euros) for insurance with *Vzajemna*. Just for one month! I paid. But after the abortion the *Vzajemna* insurance company staff told me that this insurance didn’t cover abortion. Now I’m really in debt.”

<sup>29</sup> For example, immigrants, or, specifically, asylum seekers (see Dembsky, 2007).

<sup>30</sup> See the interview with Aleksander Doplihar, "Without a Health Insurance Card, You're Nobody", in this volume.

<sup>31</sup> The frequency of the argument that they do not know of this article, even though they were officially informed of it, is probably a form of conscious rejection or denial of this regulation. This fact is even more obvious in the case of asylum seekers: a number of non-governmental organizations have been making attempts to familiarize healthcare workers at the University Medical Centre Ljubljana with the healthcare rights of asylum seekers. In spite of this, asylum seekers who identify themselves with an Asylum Center ID are often sent away.

<sup>32</sup> In interviews with doctors who wish to remain anonymous, I have found that, under orders from the former Secretary of the Ministry of Health, doctors had to sign a document stating that they would treat persons without health insurance at their own risk, which implies that they themselves might have to bear the financial consequences of such treatment. In their words, after signing this document, very few doctors choose to take such a financial risk.

the experiences of a number of Erased and other marginalized groups<sup>29</sup> show that Slovene healthcare workers see potential patients only in people who have "valid healthcare ID cards."

But three phenomena would appear to be challenging this policy of exclusion: the Clinic for Persons without Health Insurance mentioned above, (rare) gestures of solidarity from individual healthcare workers, and a (too) little known article of the Health Care and Health Insurance Act, which was passed in 2002. This article, known as Article 7, states that persons without health insurance have the right to urgent medical assistance and emergency treatment aimed at "the preservation of vitally important functions, stopping serious bleeding or preventing a person from bleeding to death, preventing a sudden worsening of health which could cause permanent damage to individual organs or vital functions", with the costs paid out of the budget of the Republic of Slovenia. This provision could be listed among the so-called good practices which, at least in the field of emergency health care, preserve the previous public health care system of the former Yugoslavia, where health care was accessible to everyone.<sup>30</sup> However, the concrete experiences of the Erased and migrants show that health care workers either are not familiar<sup>31</sup> with this article or attempt to systematically bypass it.<sup>32</sup>

The experiences of the erased persons presented above can be divided into two categories: 1) the inaccessibility of public healthcare and 2) the solidarity practices of healthcare personnel.

## 1) The inaccessibility of public healthcare

On the basis of negative experiences with access to healthcare institutions and the consequent expenses, all four erased persons decided to see a doctor only once they felt that their life was in danger or that no other options existed. At the same time, their own understanding of their exclusion is reflected in the healthcare sector – even if they were aware that they had (at least) a right to emergency medical assistance, they did not want to risk facing new experiences of discrimination. As Vera said, "Well, I didn't want them to ask questions over and over again." That is precisely why Vera did not visit a gynecologist during her two pregnancies, but went to the hospital only after she started having contractions:

"The doctor who examined me asked me, prior to the delivery, where I had gone for my examination. I said to Ljubljana. I was too ashamed to say that I hadn't gone anywhere. The same thing happened with the second birth. When I was pregnant, I couldn't go for check-ups like other women. If you don't have insurance, if you don't have documents, that's what it's like. That's also why I didn't know exactly when I was going to give birth."

When Ismet was hit by a car and badly injured his leg, the paramedics wanted to take him to the hospital. He turned down their help: “You know, if I went, they would have drilled me with questions and wanted me to pay them. I went straight home.” Owing to the untreated leg injury, he still has trouble walking today.

On the other hand, Marjan began systematically seeking out medical assistance when the cancerous growth on his face prevented him from eating normally. He first turned to the healthcare center in Lucija, where the staff had known him for a number of years. Like the officials in 1992, the nurses told him that there was nothing they could do because he was “without documents”. He then literally waited in “ambush” for a doctor to leave the healthcare center. When one finally appeared, Marjan explained his symptoms and pointed out his clearly visibly carcinoma. “What do I know? Put some herbal cream on it,” was the doctor’s reply. Nor did Dragica Rihter, the social worker who has been following his case since 2005, manage to remedy his situation: “With the doctors, it was like this: I personally called the healthcare center in Lucija and talked with a doctor, but when Marjan came, he sent him away because he didn’t have documents. This happened multiple times. Even though his illness was clearly visible for everyone to see, they sent him away” (Rihter, 2007). Other attempts followed, and a doctor who would be willing to examine him was sought throughout Slovene Istra, but none was found.<sup>33</sup>

## 2) Solidarity practices of healthcare personnel

All three<sup>34</sup> who received medical care had to pay for it, and the amounts in question, covering medical treatment and hospital stays, were awfully high for them.<sup>35</sup> Nonetheless, the testimony of the Erased reveals individual solidarity practices, or rather gestures through which doctors and nurses practiced disobedience<sup>36</sup> within a healthcare system which is becoming more and more commercially oriented and which places a person’s legal status before his/her medical needs.

Ljubo tells how, in 2001, when his right lung collapsed and he was taken by paramedics to the Sežana hospital, the nurse at the admissions desk refused him medical assistance because he did not have “a health insurance card or any other documents”. The paramedics already wanted to drive him back, when a Macedonian pulmonary specialist working at the hospital took responsibility for him – in open defiance of the nurse. Ljubo had a similar experience at the Izola hospital. In 2003, when he was hit by a car going full speed as he crossed a street at a crosswalk and suffered a concussion and a broken collar bone, he was turned down as soon as he entered the hospital. As he was leaving, a doctor, also from

<sup>33</sup> Certain erased persons from Koper and Izola and their fellow activists spent several months – from March until June 2006 – calling healthcare workers they know and asking for help. Many refused to help on the grounds that their “hands are tied” since they signed the former state Secretary’s document. It was not until June 2006 that Marjan received assistance from the Clinic for Persons without Health Insurance, where – even though he was not a resident of Ljubljana – he was examined and given a referral to the Oncological Institute. Despite this referral, the administration at the University Medical Centre initially refused to accept him, on the grounds that he was without documents and that they did not know about Article 7 of the Health Care and Health Insurance Act. Only after multiple interventions by the Clinic for Persons without Health Insurance and certain activists for the Erased was Marjan accepted as a patient. His treatment was successful. This experience shows that – as in other spheres – the need is great for the activists to be aware of healthcare rights and ready to accompany an individual in all phases of his/her therapeutic itinerary.

<sup>34</sup> Ismet has not received medical care since 1992.

<sup>35</sup> After treatment at the clinic in Sežana, Ljubo received a bill for 99,680 tolar (approximately 420 euros). Following her abortion at the Izola hospital, payment was demanded from Vera in the amount of 120,000 tolar (approximately 500 euros).

<sup>36</sup> One could say that, in a system that puts administrative demands before the health of the individual, each doctor who thoroughly follows the Hippocratic Oath is practicing disobedience. The fact that the healthcare workers whom we have described as disobedient are actually merely following healthcare legislation (Article 7) can only be described as paradoxical.

<sup>37</sup> This “illegal” treatment proved to be problematic to Ljubo’s legal protection as an injured party in a traffic accident. In the months that followed, the driver of the car, who was entirely at fault, sued Ljubo for causing the accident. Since Ljubo could not obtain a medical report of his injuries from the Izola hospital, the misdemeanor judge fined Ljubo.

<sup>38</sup> See the interview with Aleksander Doplihar, “*Without a Health Insurance Card, You’re Nobody*”, in this volume.

Macedonia, caught up with him and took him in through a side door: “He took care of me, saying the treatment’s on him.”<sup>37</sup>

Healthcare workers from other republics of the former Yugoslavia have also practiced solidarity with the Erased by making it possible for them to write off the “debt” they had at the hospital, as Vera’s experience shows.

“That was in 1999. At dinner, I suddenly felt sick. I had to go to the emergency room, and they immediately operated on me because of an ulcer in my stomach. They said that my situation was critical. I was in the hospital for 12 days. It was very difficult for me: they made fun of me and constantly asked where’s my insurance and where’s my healthcare ID. They wouldn’t let me leave the hospital. Then my partner met a doctor in the hall, I can’t say his name, because it could harm him..., he was from Bosnia. Well, this doctor arranged so that I wouldn’t have to pay – the total was huge: 12 days of treatment in the hospital and an operation! I could never have paid for that!”

Wishing to avoid discriminatory bureaucratic labyrinths, the same doctor would visit Vera every day and dress her wound in order to prevent new financial demands from the hospital’s administration.

Vera’s birthing experience at the Izola hospital demonstrates how it is only possible to combat the complexities of administrative exclusion on level ground by using equally complex solidarity practices:

“After a while, the gynecologist, with a beard and graying, said ‘Ma’am, you’re going to have to pay us 30,000 tolar [approximately 125 euros] for each day of your stay, blood tests and the operation, 70,000 tolar [approximately 293 euros] for the Cesarean section. If you don’t pay, we will not let you and your child leave the hospital.’ When my partner T. came to visit, a woman from the administration stopped him and told him to pay the hospital all the money immediately, or else they wouldn’t release me. T. didn’t know what to do, nor did I. T. went to Lucija, to the health center, and told everything to one of the workers who knew us well. This woman thought it over, called some of her colleagues, looked through the laws and regulations, and then said that the only possibility is for me to get a document from my place of birth saying I was insured through someone as a child, and to use this person as a guarantor. This was my father. T. then called Čakovec and they said they’d take care of it. But the problem was they couldn’t send this to Slovenia via fax. I couldn’t cross the Slovene border, or even leave the hospital! Then T. remembered that they could send the fax to the city of Umag in Croatia, which is near here. Then they somehow got the fax to Umag and confirmed my old Yugoslav health record, which had been invalid until then. They gave confirmation for only a month, so that I could leave the hospital. Can you imagine?”

What must be emphasized is that – regardless of the stringency of one’s reading of Article 7<sup>38</sup> – the accounts listed above show that the actions of the hospitals in Izola and Sežana and



the health center in Lucija were unlawful. When healthcare workers at these institutions refused to give assistance to Ljubo, Vera and Marjan, even though their “vitally important functions” were threatened and a “sudden worsening of [their] medical condition” had occurred, they clearly violated Article 7. It was also violated when, in certain cases, these individuals were presented with invoices for treatment that fell under emergency medical care and should thus have been paid for by the Ministry of Health.

<sup>39</sup> See Sara Pitotnik’s contribution, *A Chronology of the Erasure*, in this volume.

<sup>40</sup> See, for example, the discussions and forums on the web portal of the Slovene newspaper *Delo*: [www.delo.si](http://www.delo.si).

## Conclusion

Let’s return to the thesis that the erasure is both a illness and, at the same time, the meta-cause of the illnesses of the four Erased whose experiences I have presented in this text. I have attempted to show that one of the key elements in the “healing” of the Erased was their confrontation with the act of erasure itself: recognition of the collective dimensions of this act and the consequences it had for every individual. In this process, a key role was played by the community, or rather those individuals who were ready to analyze, together with the erased persons, the events that followed 26 February 1992 and caused radical changes in their existence: from their social roles to their emotional-mental and physical constitution. Despite the efforts of the erased individuals and the people who have stood by their side throughout the process, the illness that is the erasure still exists. It is like a cancer: metastases radiate out of control from a single point, making the possibility of a “cure” uncertain; the first intervention that must be undertaken is the removal of the tumor – the erasure.

In this regard, the Erased have probably achieved all they could achieve. On the individual level, each erased person was exposed to the long and rigorous process of self investigation about his/her personal position within Slovene society. The movement of the Erased and their supporters has done the same thing on the collective level, but has gone about achieving it through numerous public events and pressure on Slovene and European institutions – to set off the process of collective reflection on the reasons for and the consequences of the erasure. Despite a number of successful results – Constitutional Court decisions and numerous calls from international institutions for the Slovene government to promptly resolve the question of the Erased – the main resolution is still lacking.<sup>39</sup> The result of the 2004 referendum, as well as the reaction of the government and many ordinary citizens to the Caravan of the Erased<sup>40</sup>, shows that the erasure is still a taboo subject in Slovenia, and that people generally persist in their collective anesthesia and perception of the Erased as internal enemies of Slovenia.

At this point, the following questions arise: what is preventing the Slovene public from collectively confronting the act of erasure and seeing its actual dimensions? Have the accusations of European institutions against the government of Slovenia contributed to a collective reflection of this problem? If individual erased persons were to begin resolving their illness-erasure through long term group discussions and by sharing their experiences of isolation and exclusion, would a similar method be effective on the level of society in general? If not, what would be a suitable method for treating this cancer?

## References

- BLITZ, B. (2006): Statelessness and the social (de)construction of citizenship: political restructuring and ethnic discrimination in Slovenia. *Journal of Human Rights*, 5: 453–479.
- DEDIĆ, J., JALUŠIČ, V., ZORN, J. (2003): *The Erased: Organised Innocence and the Politics of Exclusion*. Ljubljana, Peace Institute.
- DEI, F. (1994): »Oggi si chiama negatività...«: *Pranoterapia e medicine alternative fra tradizione e modernità*. Unpublished PhD thesis. Siena, Università degli Studi di Siena.
- DEMBSKY, H. (ed.) (2007): *Chronicles from Limbo: Stories of Asylum Seekers*. Ljubljana, Department of Ethnology and Cultural Anthropology, Faculty of Arts.
- DOPLIHAR, A. and UGRIN VATOVEC, A. (2007): Unpublished interview with physician Aleksander Doplihar and social worker Alenka Ugrin Vatovec, Clinic and Counseling Centre for Persons without Health Insurance in Ljubljana, 4 June 2007.
- GONZÁLES MENDOZA, Z. (2007): *Hacia una epidemiología sociocultural de un grupo indígena migrante a la Ciudad de México*. Available online: <http://cbs.xoc.uam.mx/posgrados/documentos/cvsp/hsm/a01.pdf> (accessed 10/2/2007).
- IBACACHE BURGOS, J., LEIGHTON NARANJO, A. (2004): *Perfil epidemiológico de los pueblos indígenas*. Available online: <http://www.ministeriodesalud.go.cr/ops/documentos/docPerfil%20Epidemiologico.pdf> (accessed 10/9/2007).
- KLEINMAN, A. (1980): *Patients and Healers in the Context of Culture*. Berkeley, Los Angeles, London, University of California Press.
- LIPOVEC ČEBRON, U. (2008): *Krožere zdruja in bolezni: tradicionalna in komplementarna medicina v Istri*. Ljubljana, Župančičeva knjižnica (in press).
- MARTÍNEZ HERSCH, P. and HARO, J. (2007): *¿Epidemiología Sociocultural o Antropología Médica? Algunos ejes para un debate interdisciplinar*. Available online: <http://www.portalescolson.com/boletines/218/epi-demiologia%20sociocultural.pdf> (accessed 14/5/2008).
- MASSÉ, R. (1995): *Les apports de l'anthropologie à l'épidémiologie: le cas du rôle étiologique de l'isolement social*. Available online: <http://www.gris.umontreal.ca/rapportpdf/T06-01.pdf> (accessed 3/8/2007).
- RIHTER, D. (2007): Interview with social worker Dragica Rihter, Center for Social Work in Piran, 21 May 2007.
- ZORN, J. (2004): Oris slovenskega državljanstva – od *ius sanguinis* k evropskemu apartheidu. *Poročilo Skupine za spremljanje nestrpnosti*, Ljubljana, Peace Institute, pp. 146–167.
- ZORN, J. (2005): Ethnic Citizenship in the Slovenian State. *Citizenship Studies*, 9, 2: 135–152.
- ŽIDOV, N. (1996): *Alternativna medicina v Sloveniji: Etnološki vidik*. Unpublished PhD thesis. Ljubljana, Department of Ethnology and Cultural Anthropology, Faculty of Arts.

# “Without a Health Insurance Card, You’re Nobody”

An Interview with Aleksander Doplihar, physician and founder of the Medical and Counseling Clinic for Persons without Health Insurance, which operates in Ljubljana and Maribor. Many Erased are among the users of this service.

*Lipovec Čebtron: As a physician at a Clinic for Persons without Health Insurance, you’ve probably had a number of encounters with the Erased. When and how did you first notice them?*

Doplihar: I noticed the Erased even before, but I actually got to meet them when I started working at the Clinic. I retired in 1991, and was working part time as a retired doctor at a health center in the city of Mengeš which was frequently visited by people who did not have health insurance. Under socialism, there weren’t people without health insurance, so to speak. Before the Slovene medical establishment took on a capitalist orientation, we medically examined people without insurance just as we would anyone else. Also, the referrals we wrote for these people didn’t come back, as they do today, on the grounds that the person in question is not covered.

At the beginning of the nineties, when working conditions changed and took on a capitalist orientation, there would be prob-

lems anytime someone without health insurance came looking for medical assistance. And the Erased were among those without health insurance at the time. So I first met the Erased as early as the beginning of the nineties: they would come in and tell us that they’re not insured and don’t have money – at the time, none of them would clarify that they had been erased. We learned this only later, when newspapers began writing about it.

*Lipovec Čebtron: How do you explain the erasure today, having had a number of experiences with the Erased that you treated?*

Doplihar: The problem with the erasure is that people were put in an impossible position; they were supposed to decide, in six months, whether or not they would ask for Slovene citizenship. Through this demand, we put enormous pressure on them, seeing as most of the Erased owned property of some kind in the republics of the former Yugoslavia. Many of them could not decide whether or not to ask for Slovene citizenship because, at the time, it seemed that their property in other republics of the former Yugoslavia – if they accepted Slovene citizenship – might be taken away. We must keep in mind that these people had invested their hard earned money in this property in the hopes of being able to enjoy it once they retired. There are also a number of Erased who asked for Slovene citizenship, but were rejected. I can recall a number of cases.

Take, for example, a nurse who asked for Slovene citizenship and was still in Nursing School at the time. Her family members signed a statement on her behalf, saying they would financially provide for her, but her request met with a negative response. So all her family members got citizenship, but she alone did not.

It is a horrible generalization when someone says that the Erased represent an anti-state element. Maybe one percent of the Erased were employed in the Yugoslav People’s Army. Probably even fewer than that were sympathetic

<sup>1</sup> Category Three disability concerns people who have lost the capacity to work full time, but are capable of working at a certain job on a part-time basis at least, or they can continue to work in their occupation on a full-time basis, but they have lost the capacity for work at the job to which they have been assigned. Moreover, Category Two disability is given to people whose capacity for work in the occupation they were trained for is impaired by 50 percent or more, while Category One disability concerns individuals who have lost the capacity to engage in organized gainful employment (see Slovene Pension and Invalidity Insurance Act, available online [www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti\\_\\_pdf/pziz1\\_en.pdf](http://www.mddsz.gov.si/fileadmin/mddsz.gov.si/pageuploads/dokumenti__pdf/pziz1_en.pdf), accessed 10/4/2008).

to the idea of a Greater Serbia. Almost all of the Erased were workers who had worked in Slovenia for years, and at the end they were thrown into a situation where, because of the erasure, all that work was reduced to nothing. And why? Because of Slovene xenophobia.

*Lipovec Čebren: In 1992, the Erased encountered a number of bureaucratic labyrinths, whereby they had to fulfill paradoxical and hard to meet conditions if they wanted to attain legal status. Those who wanted to acquire Slovene citizenship had to, among other things, pass a demanding test in the Slovene language. So it happened that professors of the Slovene language were – indirectly – among those who decided who gets citizenship and who doesn't.*

Doplihar: People don't realize how much erasure shocked an individual: a person went to the administrative center, he/she was asked to hand in his/her documents, and the official destroyed them, punched a hole in them, right before their very eyes. No one would or could explain why. A lot of people were uninformed. Some were poorly educated. In a number of cases, they worked at the most menial jobs – for instance, cleaning, assembly line work, etc. They found themselves in an impossible situation; they could not go anywhere, and so in fear they shut themselves out, like in a ghetto, they disappeared from social life. And what did we do before that?

We imported them to Slovenia en masse, stuck them in single workers' accommodation facilities, where they only had contact with each other. All of a sudden, with Slovene independence, we demanded that they master Slovene. Nobody had ever spoken Slovene with many among them. We demanded that they have a knowledge of Slovene, but didn't do anything so that they would be able to speak it. After we had left them on the street, erased them, we set high standards and prices for Slovene language exams – and almost none of them met this condition.

*Lipovec Čebren: As a physician and the head of a Clinic, you often try to give back to the Erased that which they have still not managed to get through legal channels or political struggle – I'm referring to pensions and disability compensation. What problems have you encountered when, for example, you've presented the cases of Erased persons to the Disability Committee?*

Doplihar: At the Disability Committee they often deride us for presenting the cases of people who were erased and now have severe physical injuries. As their physician, I often send requests for disability compensation to the Committee to be approved, but the Committee comes back with the most incredible replies.

Take, for example, a person who has a terrible case of tuberculosis and only 20 per cent lung capacity; they'll only give him a Category Three disability<sup>1</sup>, which means that the person is supposed to be capable of performing "suitable light work"! At the same time, they write that this person should continue "suitable treatment", when the person hasn't had a job for over 15 years because he's been erased and could not find legal employment in all that time. Well, on top of it all, the Committee doesn't tell me how I should "suitably treat" him, seeing as we're talking about someone without a home or food. The

Disability Committee often adds that it recommends “dietary food and walks”; how am I supposed to explain to them that the person has been “walking” for years because he is homeless? And he is always on a diet because there is nothing on his plate? The Committee also recommends “continued treatment”, but most of them haven’t had any treatment at all because they don’t have health insurance!

The nastiness of the Disability Committee comes from the fact that the people who work there, though qualified specialists, have altogether forgotten the Hippocratic oath to help and not harm a person. If they write that a person who suffers from tuberculosis and is in urgent need of treatment is capable of performing his job, it means that they’re completely missing the point. On the one hand, the Erased lost their jobs when they lost their documents; on the other, the companies and factories where they worked have, in many cases, been shut down and are no longer operating. The Disability Committee decides that, after fifteen years, the person is capable of performing the job he had 15 years ago, but they don’t realize the plain facts: he was 15 years younger and had an opportunity to perform this job because he was fully employed; today you have a person who’s been living in isolation all that time.

We must also be aware that significant changes in the area of disability took place over a short period of time. In the former Yugoslavia, a person with a Category Three disability who could not find employment received compensation in the amount of 80 percent of his last salary while he waited. Today, that compensation is calculated on the basis of the pension a person would get according to his/her current criteria, minus 40 percent – in most cases it’s a miserable little sum. I have people come to me who are receiving 120 or 130 euros a month as compensation. I don’t see how a person can live on that.

*Lipovec Čebren: Your experiences have shown that the Disability Committee either does not grant disability status to the Erased or grants them only Category Three disability. Do you know of any cases where a person has been granted Category One disability?*

Doplihar: It’s rare, but there have been cases. But then new problems arise. For instance, right now I’m working with the case of an erased person who got Category One disability, but cannot receive financial compensation because although the agreement between Slovenia and Bosnia and Herzegovina has been signed, it has yet to be ratified. Only when the agreement becomes legally binding will the period of employment in Bosnia count towards a Slovene pension.

So he received a decision about being granted Category One disability, but it also said that he will not be entitled to financial compensation because he does not have the required work period. He’ll only get the required work period recognized if his work period in Bosnia is added to his work period in Slovenia. There are a number of cases like this. Even when the agreement is ratified, there’s the question of whether or not they will grant these people retroactive financial compensation. All the while, they keep forgetting that Yugoslavia used to be one country, and that, for decades, the Erased paid contributions to that country!

*Lipovec Čebren: And what about pensions?*

Doplihar: Many Erased don’t have a pension, even though they meet all the criteria. But even if they get it, something else goes wrong: someone won’t get a pension because he doesn’t have a tax number, which he doesn’t have because he doesn’t have a permanent residence permit. I can recall a case where the person went to the tax office with a decision about his pension, but was not given a tax number because he did not have a permanent residence permit, which he didn’t get

because he couldn't afford it – so even if you get a pension, you don't get it!

*Lipovec Čebon:* The Ministry of Health has yet to state its position towards the problem of the Erased. The Ministry has also not clarified how healthcare personnel should treat persons without health insurance when they seek medical assistance. In this regard, healthcare workers can only use their own discretion – in your experience, how did they treat the Erased? Have you noticed a uniform pattern of behaviour, and if so, has this been changing since 1992?

Doplihar: I think they've been behaving the same way all along. At clinics in smaller cities, the Erased usually get medical treatment, but it isn't taken down. For free. In larger cities, it usually gets tricky when it comes to administrative workers. The Erased can't bypass an administrative worker: when the Erased are unable to produce a health insurance card in emergency rooms, hospitals, or clinics because they don't have one or have not had it renewed, they're immediately turned down. No matter what their medical condition might be. Without a health insurance card, you're nobody.

*Lipovec Čebon:* At what point in the healing process do the Erased come to your Clinic – do they come only once they realize that other healthcare institutions will not give them medical assistance, or before?

Doplihar: Most of the people who come have already sought assistance elsewhere. Not only the Erased, but others as well – migrants, the homeless – they usually seek assistance elsewhere and later turn to centers of social work and non-governmental organizations, who send them to us. Our patients can be perceived as a single group, as they share the same experience: if they don't have an insurance card, they don't receive medical assistance. So they have no choice but to come to us. Only rarely does someone else help.

*Lipovec Čebon:* You've helped many Erased who do not have any legal status in Slovenia by referring them for specialist examinations, admission to hospitals, or to get prescriptions at pharmacies whereby you cited Article 7 of the Health Care and Health Insurance Act. How do you understand Article 7?

Doplihar: You see, Article 7 speaks of the right to emergency medical protection for persons without health insurance. What does emergency medical protection mean? It's supposed to mean all interventions aimed at saving a life, at preventing the deterioration of a person's medical condition. By my interpretation, Article 7 covers all interventions in the field of medicine: what treatment isn't aimed at saving a life or preventing the deterioration of one's medical condition? The only exception is cosmetic surgery, which is excessive. The same holds true for medication: a patient needs this or that medicine to maintain his/her medical condition.

Of course, many have refuted me. The former Secretary of the Ministry of Health, Dr. Dorjan Marušič, read this article restrictively. So he thought, for example, that if someone has a broken arm, putting it in a cast falls under Article 7, but that removing the cast is no longer covered by Article 7. We often have problems with this restrictive interpretation. So it happened that we once prescribed insulin to a diabetic, but were refuted by a healthcare centre on the grounds that it isn't in line with Article 7. It's the same with vaccinations for children, which they feel do not fall under Article 7, but which I feel clearly do.

*Lipovec Čebon:* You could say that your Clinic is putting in place a new way of interpreting Article 7 and setting up a new model for practice in the field of healthcare by doing so.

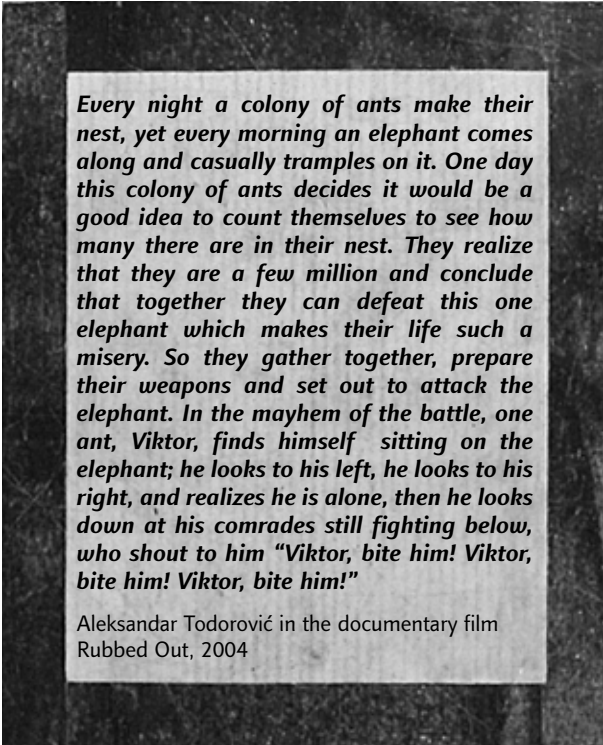
Doplihar: That's what we're trying to do. Many health care workers don't know of Article 7; they haven't even heard of it at many pharmacies. So they simply don't give medication

to uninsured persons. This isn't true of all pharmacies; across the street from the Polyclinic there's a place where an uninsured person can get medication with a special prescription.

I feel that this lack of information on the part of pharmacies is very problematic; that's why I wrote a letter to the president of the Health Council in which I asked the Ministry of Health to issue instructions for pharmacies to give out medication on the basis of

Article 7 and send the bill to the Ministry of Health. The purpose of every medicine a patient receives is to improve his/her medical condition or at least maintain it at the level it's at – that is in line with Article 7. If we take as a starting point the assertion of the former Secretary of the Ministry of Health that putting on a cast falls under Article 7, why can't we then refer to this article when treating other illnesses?

Translated by Michael C. Jumič



*Every night a colony of ants make their nest, yet every morning an elephant comes along and casually tramples on it. One day this colony of ants decides it would be a good idea to count themselves to see how many there are in their nest. They realize that they are a few million and conclude that together they can defeat this one elephant which makes their life such a misery. So they gather together, prepare their weapons and set out to attack the elephant. In the mayhem of the battle, one ant, Viktor, finds himself sitting on the elephant; he looks to his left, he looks to his right, and realizes he is alone, then he looks down at his comrades still fighting below, who shout to him "Viktor, bite him! Viktor, bite him! Viktor, bite him!"*

Aleksandar Todorović in the documentary film  
Rubbed Out, 2004



# Renouncing the Political Capacities:

## Organized Innocence and Erasure of Citizenship Responsibility in Post-Yugoslav Nation-state Building

### Introduction

This article offers a tentative analysis of some problematic “post-totalitarian” elements<sup>1</sup> in the establishment processes of the post-Yugoslav nation-states. These elements developed and persisted before, during, and after the period of war and collective crimes. I will claim that a substantial link, or, continuity exists among the policies of newly established nation-state formations – that is to say, between the cases of war and cases that were not immediately involved with or affected by mass crime related to the wars. These features can be explained as specific crystallizations and/or transformations of certain pre-war elements that led to the war and, in some cases, created the conditions that culminated in the perpetration of massive collective crimes, such as the killing of Muslims in Srebrenica in 1994.<sup>2</sup> Such an outcome, however, was only possible as part and parcel of a more general problem. This problem is the phenomenon which Hannah Arendt, in her analysis of the rise of totalitarian elements, has labelled the (simultaneous rise and) decline of the nation-state, and is connected to the concomitant problems of citizenship homogenization, minorities, and statelessness, which have been described in terms of “the end of human rights” – the process that poses the greatest threat “after Auschwitz”.

It is not my intent to analyse all relevant elements connected with the phenomenon of tribal nationalism, such as the issue of racism, the emergence of mass movements, and the rise of totalitarian leaders. Instead, I will limit my focus to the phenomenon I like to call “organized innocence syndrome”, and will make reference to Arendt’s portrayal of “organized guilt” in Germany under the Nazi-regime and elaborate on her notion of responsibility – a problematic “identity” base for a nascent state, its citizenship, and its political institutions in general. In order to show the phenomenon of organized innocence as a *conditioning commonality of all the newly established states*, I will pay special attention to the post-war case of those called

<sup>1</sup> Post-totalitarian here refers to the time after the experience with the totalitarian regimes of the 20<sup>th</sup> century and the subsequent problems, and not to the time after the break-up of the socialist regimes in 1989.

<sup>2</sup> The Srebrenica killings can indeed be perceived as an outrageous exception to what has been courteously called “ethnic cleansing”, and then measured as “the worst outcome”, as an incomparable crime that happened in the frame of the post-Yugoslav war developments.

<sup>3</sup> The group was in fact connected to the Serbian Ministry of the Interior, as the documents later showed.

<sup>4</sup> In the meantime, a Special War Crimes Chamber in Belgrade indicted the six suspects of War crimes against civilians. The trial ended in spring 2007 with relatively minor charges.

<sup>5</sup> A report on this was presented at the Conference on Truth and Reconciliation in Belgrade, 2001.

<sup>6</sup> See also projects and publications of the Belgrade Circle on Transitional Justice. Available online: <http://www.belgradecircle.org/eng/tjustice/index.html> (accessed 12/9/2006).

the “Erased” (inhabitants from other republics of the former Yugoslavia) in Slovenia. This example will be elucidated against the background of cases from other parts of the former Yugoslavia from after the war (silence about the past, new exclusions, and refusal to face collective responsibility and individual guilt), and from the period of preparation for the war (such as mass population mobilization by Milošević and established elements of terror), and will also consider events that occurred during the war (massive crimes like the genocide in Srebrenica – today located in Republika Srpska in Bosnia and Herzegovina).

## Buffers against responsibility in the case of Yugoslavia

“There is no such a thing as collective guilt or collective innocence; guilt and innocence make sense only if applied to individuals” (Arendt, 2003a: 29).

In June 2005, the International Criminal Tribunal for the Former Yugoslavia presented video footage showing the killing of six Muslim civilians by a Serbian paramilitary group called the Scorpions<sup>3</sup> in 1994 in Srebrenica. After its airing on the Serbian news, the footage caused great unease in ruling Serbian political circles and among the public in general, as they still clung to an explanation of the war and genocide in Bosnia and Kosovo as being “defensive” in nature and as not involving either the Serbian state and political power or large parts of the population, either as bystanders or perpetrators.<sup>4</sup> Shortly prior to this, when the BBC documentary film *A Cry from the Grave*, which deals with the mass killings in Srebrenica, was shown on Belgrade B92 TV, people exasperatedly called the management of this broadcast company with angry threats, claiming that what they had watched was a pure fabrication – an insulting, anti-Serb propaganda document. Confronted with the disquieting fact of this collective crime from the recent past and its inherent demand that the audience face the question of associated responsibility, most people were outraged or indifferent, and not ready to think. Research carried out by B 92 in 2001 showed that the main way of thinking about responsibility at that time was, above all, to blame others, for example NATO, Croatia, Slovenia, or Bosnia.<sup>5</sup> Although today few people in Serbia deny the massacre in Srebrenica, the number of victims is often diminished, in some cases by a factor of ten, and the Dutch peacekeepers are thought to be even more responsible for the crimes than the perpetrators themselves (see Dimitrijević, V., 2003). Similar reactions to revelations from the past could be noted in Croatia. In the summer of 2006, video footage of war crimes in joint Croatian and Bosnian military operations from 1995 was discovered and shown on the TV news. Although these crimes were not denied, they were immediately labelled as “alleged” war crimes by the public.

To date, much has been said and written about critical issues of transitional justice in the post-Yugoslav situation (see Centar za humanitarno pravo, 2005 and Transitional Justice, 2006).<sup>6</sup> The reluctance of official political institutions, and judiciaries in the region to tackle the issue of war crime, the denial of responsibility, and the continuation of ethno-nationalist policies has been addressed (see Ramet, 2007). The failure of international, and especially EU institutions to take account of domestic efforts needed to deal with war crime, and the

inadequacy of the International Criminal Court for its mission to contribute to the restoration and maintenance of peace and to facilitate the process of coming to terms with the past have also been criticized. While Serbia has taken steps to prosecute a small number of paramilitary members and soldiers in the Special War Crimes Chamber, only one case has been processed against Croatian war criminals in Croatia, and only one case has been processed in Bosnia and Herzegovina (in Republika Srpska, which has a large number of perpetrators within its jurisdiction). In Serbia, the truth commission established in 2001 failed to address the issue of facts about the crimes. It was dissolved in 2003, without having achieved significant results. Moreover, the most important actors dealing with war crimes and victims of human rights violations were excluded from it. Until recently, the issue of facts had never really been on the agenda in Croatia, and no official war crime inquiries have taken place in this sense. The weak but persistent efforts of civil society organizations to initiate a regional process for dealing with the past have not been seriously supported or assisted by international actors.

But the failure to deal with the past (especially its crimes) is only a symptom of the persistence of a deeper problem presented by the elements that helped create circumstances in which collective crimes were possible, and which, even though the war is over, still persist. What are these circumstances? As I have argued elsewhere (Jalušić, 2007), the Yugoslav war and massive crimes, and especially the case of Srebrenica, cannot be understood through a one-sided explanation of their causes, such as nationalism as the origin of all subsequent evil. Besides many human actions and omissions, a specific climate and mentality was needed in order to prepare people to participate in, commit, or tolerate the crimes that occurred. This extended process of preparation can be described as the process of creating what I call “organized innocence syndrome”.

In the areas that were most involved in the wars on the territory of the former Yugoslavia, like Serbia, there are three main ways to approach the recent war and mass crimes and their consequences. These approaches, however, can also be applied to a broader context. The first way mainly involves denial and silence about the criminal past and attempts to “forget”, that is, to leave it to oblivion. The second constitutes an attempt to exculpate oneself using violent structures, propaganda, powerlessness, nationalist politicians and corrupt elites as a pretext. The third, and most problematic way is a thorough “contextualization” of crimes and their apologia – sometimes even in the form of open justification of what has been done, which can serve to legitimize further exclusion, insofar as it is not based on excessive violence or mass killing. This approach to the criminal past represents something substantially new in the developments that followed the Nazi crimes of the Second World War and post-war attempts to come to terms with them. Its novelty lies in the fact that, for the first time since Hitler, total exclusion from the state is again considered as unproblematic – provided it did/does not involve mass killing, which is seen as violent and uncivilized evil. This novelty is yet again built upon a special, tribal, nationalist (*völkisch*)<sup>7</sup> understanding of the nation-state and of its function in this region following the collapse of socialism. This notion of the nation state began to propagate with the growth of Serbian tribal nationalism, and once again “justifies ethnic cleansing with the goal of

<sup>7</sup> Tribal nationalism or *völkischer Nationalismus*. I use the term “tribal”, which is used today mainly to describe societies in the “third world”, intentionally. So did Hannah Arendt, when she described the Slavic and German nationalisms – with the intention of blurring the imperially defined difference between “European” and “other” nationalisms that were “behind schedule”. The thesis about tribal nationalism as the basis for the analysis of war in Yugoslavia – in the analogy with with Arendtian *völkischer Nationalismus* – was developed by Kuzmanić (2004).

<sup>8</sup> Here I allude to the German term *Vergangeheitsbewältigung*, on the confrontation with the past and its “overcoming”.

the protection of territory for one’s own people” (Devic, 2003). An understanding of this new climate’s role and the way it functions is crucial to achieving greater insight into the lessons of

the post-Yugoslav outcomes – and their implications are much broader than local or regional consequences. In other words, although they occurred within regional borders, these events bring up questions similar to those that arose out of the crisis of the European nation-state in the first half of the 20<sup>th</sup> century.

Those who write about and protest against what they call the “the culture of silence” and the denial of responsibility warn against the persistence of such a climate and its concomitant contextualization and insist on taking further steps to discuss the past and dismantle the crimes of some post-Yugoslav regimes. Otherwise, they claim, the key institutions and values that have been retained from the criminal regimes will influence the future and hinder the desired progress in liberal-democratic state-building. Not without the influence of Arendt’s concept of responsibility, they also claim that the majority of those who, willy-nilly, belonged to the communities in whose name these crimes were committed cannot evade responsibility for the past and that the “transition from the criminal regime to democracy can never be merely a forward-looking political issue” (Dimitrijević, N., 2005).

Of course, one must be aware that it will take some time before communities can begin to think about and come to terms with their past.<sup>8</sup> And the “culture of silence” does not automatically imply that the silenced will be repressed (Grunenberg, 2001: 9). Still, there is something “deeply disturbing and wrong” (Dimitrijević, N., 2006) about indifference to and denial of the dark past in areas that were involved in the most recent collective crimes, both in the former Yugoslavia and elsewhere.

The problem is not only that one is rendering irrelevant the past and the crimes committed in the name of something, someone, or someone’s identity (see Dimitrijević, N., 2005), or that such a “culture of silence”, together with an attempt at this kind of “forgetting”, does not lead to oblivion, but instead corroborates the wrong past (Dimitrijević, N., 2006: 379), but that these crimes are actually made into something righteous for a second time, and are normalized accordingly. This cannot fail to make an impact, and complements the indifference of other communities which were less affected by the war and its crimes, but still somewhat involved: for example, states on the periphery of the former Yugoslavia, which also continue to legitimize their nation-state policies on tribal, nationalist grounds. Furthermore, the crimes have only been reflected to a negligibly small degree in the international community, even though it is clearly not just a question of the direct perpetrators, victims, and immediately involved states, but also of global bystanders, including various instances involving what is usually called the “international community”. How could elements, patterns, and behaviours that brought about violence, war, and collective crime in the past just be expected to disappear with the end of the regime and the war? Instead, they have survived and, though transformed, still influence the present and the future. While thinking about totalitarian domination in terms of elements, Hannah Arendt has warned that even when a totalitarian regime has been defeated, elements of *totalitarian solutions can survive* the system in the form of *several temptations* (Arendt, 1986: 459). She never thought that these new forms (temptations) would have to be “repetitions” with the same appearance, but maintained that the elements of totalitarianism can either persist or rise anew out of established democracy and crystallize into various new phenomena.

## Arendt: responsibility, innocence, and the nation-state

Several other points in Arendt's elaboration of the nation-state, citizenship, and political responsibility lend support to the theses presented above and further my "tentative" understanding of post-Yugoslav developments and the phenomenon of "organized innocence". A broad outline of these will be given below, but a comprehensive exegesis of Arendt's thought will not be attempted.

Arendt understood responsibility as being twofold. While rejecting the notion of collective guilt for what is today called "collective crime" and insisting on the strict individualization of guilt, she did stress collective (political) responsibility (Arendt, 2003b: 147), and differentiated it from personal responsibility. Guilt, as distinguished from collective responsibility, consists of what a person has done and not of his/her intentions or potentialities; it cannot be collective, but always "singles out" (in court, for example).<sup>9</sup> In her opinion, speaking of collective guilt in today's world would mean both disguising personal guilt and omitting collective responsibility, and could cause moral confusion ("where all are guilty, nobody is") (Arendt, 2003b: 147). This, however, does not exclude the possibility of "organizing" the entire population into a condition of guilt, wherein one must first be ready to renounce his/her own responsibility and to subordinate himself/herself to the collective and start to "function as a cog in the machine".

On the other hand, there exists a form of political and collective responsibility that one can hardly escape, and that cannot be renounced as long as one lives in some kind of community. It is connected to non-voluntary belonging, and its implications extend far beyond legal responsibility; it involves acting not only with regard to the law, but, in some cases – as the case of totalitarianism teaches us – also against the law, since compliance with the law can demand the commission of crime. Political responsibility therefore has no *a priori* moral or juridical connotation, but is closely connected to action; it is not based on any pre-existing moral standards, but is expressed strictly through its performative character and eventual "greatness" (see Vetlesen, 2005: 87; Herzog, 2004: 39; Honig, 1993: 87 and Villa, 1996: 52–59). Political responsibility belongs among those virtues that are acquired by performance itself, and will not take place if it is not enacted through agency (Vetlesen, 2005: 86 and Herzog, 2004: 42). Therefore, one of the main tasks of those who are trying to preserve political responsibility is "keep[ing] intact the powers of agency (of judging, choosing and acting)" (Vetlesen, 2005: 86).

For Arendt, political (collective) responsibility ceases to be applicable only in very rare circumstances. In this sense, "innocence" in the political sense, that is, as a complete absence of responsibility, hardly exists. This has serious consequences for all (non-voluntary) members (citizens) of those communities in the name of which problematic policies are implemented, not to mention those where crimes have been committed. First, they are responsible for things they have not done, but which were done in their name, regardless of the fact that they accidentally belong to a given community (see Dimitrijević, N., 2006).<sup>10</sup> Second, this responsibility is not some kind of generalized or even metaphysical collective guilt recognition, which could lead to a denial of a concrete, political, and future oriented (forward-looking) worldly responsibility (Grunenberg, 2001: 107; Arendt and Blücher, 1968: 146).

<sup>9</sup> She stopped judging evil deeds by "intentions" and instead focused on the factual effects of deeds. This was crucial for her judgement about Eichmann's guilt in the extermination of European Jews. See *Eichmann in Jerusalem* (Arendt, 1963) and the interpretation in Neiman (2002).

<sup>10</sup> Dimitrijević – while comparing the cases involving the Nazi regime with Milošević's regime – shows how responsibility goes "beyond causality" without becoming "metaphysical" or "collective guilt". He, however, speaks about collective moral responsibility rather than about the political, which would be a contradiction in terms from an Arendtian perspective. See also Dimitrijević (2001).

<sup>11</sup> This might seem paradoxically, a kind of a vicious circle, as it is action that affects power, and meanwhile here it presupposes at least a minimum of power. This power is, however, something conferred by someone's "place in the world", since this exists as a kind of given frame where people can act: action does not come from "nowhere" but always "takes place". Arendt also suggests that the admission of one's own impotence in such situations might be a source of strength and even power for those in desperate conditions of powerlessness, isolation and organized loneliness, and for those who have fallen into a position without rights. Such was the case of the opposition in East and Central Europe in communist times. It was Vaclav Havel who (together with Jan Patočka, who was also reading Arendt) articulated this as the "power of the powerless".

<sup>12</sup> She never emphasized her victimhood, quite the contrary. In the interview with Gauss she claimed, regarding her short arrest in 1933: "I thought at least I had done something! At least I am not 'innocent'" (Arendt, 1994: 5). There was considerable annoyance in her refusal to speak about the collective guilt of Germans or to see Jews as a priori "innocent" (meaning desubjectivized) victims.

When considering exceptional situations where political responsibility no longer applies, Arendt mainly speaks of situations of extreme powerlessness in which "responsibility for the world, which is primarily political, cannot be assumed because political (collective) responsibility always presupposes at least a minimum of political power" (Arendt, 2003a: 45).<sup>11</sup> Only those totally without rights can be considered "innocent" in the political sense, and this innocence is actually the "seal of their loss of political status" (Arendt, 1986: 375), in terms of the conditions one must fulfil in order to be able to start speaking and to be heard in the public sphere. This innocence is therefore linked to a lack of conditions for enacting responsibility, and is not a sign of non-guilt.

There are several places where Arendt tackles the issue of such (inhuman) "innocence", both in light of the victims of modern terror and with regard to her own position as a refugee and stateless person.<sup>12</sup> Her considerations reflect some of the basic problems with the apprehension and practice of power and action within the modern nation-state system. In her book on the rise of totalitarian domination, she shows how the door to the dehumanization of some groups of people is gradually and lawfully opened by the process of the decline (in function) of the nation-state as the main protector of human rights and as the institutional guarantor of political and legal equality. On the other hand, she uses this term with regard to perpetrators as well, especially insofar as they themselves – as in the case of Eichmann – try to explain away their agency in and responsibility for massive evil-doing. What does the observation of this

obviously problematic innocence (on both sides – victim and perpetrator) that is linked to the conditions and predicaments of "modern terror" mean? What does it tell us about the issues of humanity, human action, and the modern nation-state? And how is it connected to the issue of citizenship and responsibility?

The first point that must be made is that the connection between the loss of political responsibility and modern terror has been revealed. For Arendt, one of the greatest problems of modern terror was the fact that it destroyed the basic condition for action and consequently politics. It produced both "inhumanly innocent" victims, on the one hand, and "banal" and thoughtless perpetrators, on the other, a situation which actually shows that both victims and perpetrators have somehow been stripped of their potential to act (and think). In this sense, both have been dehumanized, or, to use Vetlesen's words, a "double dehumanization" is at work. However, this double dehumanization does not happen automatically. Not only are the perpetrators of mass crime actively involved in the dehumanization of their (potential) victims; they themselves actively participate in their own dehumanization. A common trait of both aspects of this dehumanization is the loss of the human condition that enables one to become an acting and responsible being.

The second point involves the contradictions within the nation-state, of which Arendt was well aware. The story of the decline of the nation-state – of an institution only too vital to the

guarantee of legal and political equality and thus to the protection of all rights, including the most basic right, the “right to have rights” – is a crucial element in her story of the rise of totalitarian domination. The paradoxes that lurk at the heart of a territorially based sovereign state system (Benhabib, 2004: 49) – originating, among other places, in the tradition’s instrumental understanding of power and political institutions as fabrications, and in the comprehension of the state as a more or less homogeneous and violent “work of plastic art”<sup>13</sup> – have opened a space for giving the nation precedence over the state.<sup>14</sup> With the rise of nationalism, the fundamental tension between human rights and national sovereignty, along with national interest, has become transparent. The instrumentalization of the state by the nation (mainly for imperialist goals) ended in totalitarian forms of nationalism (tribal nationalisms) in the twentieth century, whereas law and institutions have begun to serve – sometimes to the extreme – as a means to achieve “what is good for the nation” (Arendt, 1994c: 208).<sup>15</sup> This homogenization became fatal for minorities, non-nationals and millions who became stateless between the two large-scale wars of the 20<sup>th</sup> century or later. Statelessness – the loss of citizenship – provided a basis for the total loss of all rights, and denationalization became one of the main instruments of totalitarian politics.

The novelty of this process was the appearance of groups of people – non-nationals, the stateless, and minorities – who were “innocent” in the sense described above, as they fell outside the political and legal order and were potentially or actually superfluous and entirely without rights. As they had been transformed into nothing but human beings, and representing “mere existence”, Arendt saw in them the embodiment of a deadly threat to the law of equality on which the public sphere is based (Arendt, 1986), and also to the notion of common humanity that had seemed promising since the beginning of the Enlightenment (Arendt, 1994b: 236). Long before discussions of bio-power, Arendt had pointed out that a devastating danger and potential evil was lurking in the homogenizing “demographic policies” of modern imperialist nation-states, and identified these as a key phenomenon of totalitarianism; these policies not only evoke the loss of citizenship status and statelessness, and consequently the decline of the legally protective power of state institutions, but also render people superfluous, thus exposing them to extermination.

In addition to being similar to slavery in the ancient world or to the medieval practice of banishing *homo sacer*, these phenomena could be considered even worse because they provided a basis for the potential destruction of plurality, and resulted in the superfluity and disappearance of human political capacity. This is why Arendt could bluntly claim that extermination “happens to human beings who for all practical purposes are already ‘dead’”, and could view the totalitarian event as a “radical” novelty. It is this possibility of being dead before death, of experiencing “political death”, the death of agency, before physical death or extermination that led her to think about the potential for a post-totalitarian (st)age, which “would make Nazis look like crude precursors of future political methods” (Arendt, 1994a: 131). While it might be true that the new, post-totalitarian predicaments we face will not necessarily appear to be

<sup>13</sup> To be created by a certain kind of Hobbesian sovereign, as one man, and not as a political space emerging when plural people act together.

<sup>14</sup> As Arendt summarizes it in her review of Dalos’ book *The Nation*, such a state has, first, inbuilt potentials that do not serve the “real function of the state”, which is “the establishment of a legal equality”, a “legal order that protects all rights” regardless of the “number of nationalities which are protected within the framework of its legal institutions”. Without this legal equality, which originally was destined to replace the older laws and orders of the feudal society, the nation dissolves into an anarchic mass of over- and underprivileged individuals (Arendt, 1994c: 210).

<sup>15</sup> Arendt underlined that this happened “long before Hitler could pronounce ‘right is what is good for the German people’”.

<sup>16</sup> The post-totalitarian temptation that “looms after Auschwitz”, as Dana Villa puts it, is the destruction of the human capacity for action “by peaceful means” (Villa, 1996: 207).

<sup>17</sup> It thus necessarily assumes resistance against racism and exclusion.

<sup>18</sup> “True, we have become very much accustomed by modern psychology and sociology, not to speak about the modern bureaucracy, to explaining away the responsibility of the doer for the deeds in terms of this or that determinism” (Arendt, 1963: 332).

<sup>19</sup> Tradition was, of course, not seen as “directly” responsible in the sense of “enterprise participation”. Nonetheless, it has grown prejudices against politics. And despite the break, it still kept its influence and insisted on a “questionable inventory” which ignored human plurality and action. See Arendt (2005: 93–204). See also Jalušič (2006).

the cruellest, at least not at first glance, they might eventually produce the cruellest consequences imaginable.<sup>16</sup>

Arendt remarks several times that the core issue of bureaucracy as a novel form of government lies in its potential to dehumanize individuals to the extent that they start to *behave and “function” as mere cogs* in the bureaucratic machinery. This makes a devastating impact on the notions and practice of citizenship and affects human agency as such. The horror of the crime supported by this machinery, which Arendt called “administrative mass murder”, and which needed “thousands of persons, not even scores of thousands of selected murders, but a whole people” to be employed (Arendt, 1994a: 126), lay in the fact that here, one was not only in the *position of denying having intent to do harm* to the victims of the mass murder, but also in the position of being able to claim *that he has not done anything (wrong)*, and so to *feel completely innocent regarding its consequences*. Eichmann attempted to write off his own agency and participation in the Holocaust precisely by insisting on the cog-theory, that is, on his claim that he was an “innocent instrument” of the unavoidable course of events in the process of the Führer’s “higher will”. Arendt’s often misunderstood conclu-

sion about the “logic” of the rule of bureaucracy, about the “cogs in the machine”, does not, however, imply that the perpetrators were really cogs in the machine, but – as Robert Fine, and later Arne J. Vetlesen, have stressed – that such perpetrators were behaving *as if they were only cogs in the machine*. In this way, they actually became adherents of what Arendt – when trying to differentiate it from action – calls “behaviour” in her work *The Human Condition*. They started to behave as if they were non-responsible beings, *as if they had erased their political responsibility*, which in Arendt’s sense consists of agency and political care for the world. This care – along with others – is care for the preservation of the common political space as a *space of equality*, and not a kind of moral attitude or social engagement. Citizens – those who have the right to have rights – are thus responsible for preserving the basic equality of humans, even of those who are non-citizens.<sup>17</sup>

The defence of Eichmann at the process in Jerusalem showed how both the modern structure of power (bureaucracy) and its many interpreters (including modern social sciences with their prevailing interpretations for uncoupling human action from the accumulated mechanisms of power) help to create an ideology that is indispensable for proclaiming individuals powerless, and for holding judgement and human action as redundant.<sup>18</sup> At this point, Arendt also posed the question of how the whole tradition of political thinking could have been involved in preparing the ground for totalitarian enterprises.<sup>19</sup>

Taking all this into consideration, it becomes clear that there is something exceedingly risky about the belief that, in cases of mass mobilization, such as the kind that occurred under Nazi totalitarianism or during Milošević’s regime, as well as in cases of recent “collective crimes”, the dominant causes were “abuse” of power, manipulation, and the accompanying “evil” of power(ful) elites and politicians; and that the “people” (or “masses”) were “innocent”, naturally good, and simply misled. Does this belief not show how strong and convincing a force



has amassed around the notion of the complete structural powerlessness of individuals under modern power conditions? Such an ideology also made an enormous contribution to the logic of self-fulfilled prophecy in the case of the Yugoslav wars and the post-war establishment of new communities and states based on ideologies of non-responsibility for the past, and on the new techniques of exclusion from the framework of equality in the present and future. One does not have to give credence to “collective guilt” in order to see that a world view and explanations of this kind enable the spread and the further practice of the idea of masses and ethnic groups as “innocent victims”, which is one of the most problematic features of the pre- and post-conflict situations in the region of the former Yugoslavia and elsewhere. It produces “two kinds” of people: those from whom basic political potential has been more or less violently taken away, and those who have simply renounced this potential in advance, of their own accord. However, when taken together, the two faces of this double dehumanization have the same destructive effect on the significance of action, power, and the state.

### Organized innocence syndrome and post-totalitarian predicaments in the former Yugoslavia

“The concessions that many Serb leaders made at the expense of their people could not be accepted historically and ethnically by any nation in the world, especially because the Serbs have never in the whole of their history conquered and exploited others. Their national and historical being has been liberational through the whole of history and through two world wars, as it is today” (excerpt from Milošević’s speech in Kosovo, 1989 in Wilmer, 2002).

As stated above, I use the phrase “organized innocence” when taking into account the “double dehumanization” that occurs with regard to the construction of “innocence” – the responsibility relationship in the process of the rise of totalitarian domination – while alluding to the Arendtian term “organized guilt”. What Arendt calls “organized guilt” is actually a product of an ideological framework, and is a process that helps both leaders and the participating masses find an excuse for avoiding responsibility. This is why, at the Hague, Milošević could claim that not he, but the whole Serbian nation, was on trial. Moreover, making the whole population accomplices in the crime might be seen as an attempt to blur not only the line between actors and bystanders, but also that between perpetrators and victims. This creates a paradoxical situation: creating absolute and inhumanly innocent victims on one hand, and making it possible to blame these same (totally innocent) victims for all the evils in the world, on the other.

Accordingly, what would the adage “organized innocence” imply? In short, it would point out the ideological preparation process for an enterprise of organized guilt, that is, the creation of a situation where human values are inverted, where the unimaginable becomes imaginable, and where people can easily renounce their personal and collective responsibility. Some authors claim that the main problem with the denial of responsibility regarding collective crime lies in non-reflection on the past and its moral consequences. They further claim that, as a consequence of the moral inversion of a regime that “inscribes *the right to do wrong* in the very foundations of its existence”, people have a weakened capacity to distinguish between what is right and what is wrong (see Dimitrijević, N., 2006: 374). In other words, a key feature

of organized innocence syndrome is organized lying and the denial of any wrongdoing by the national collective, which does not cease to exist following the war and the crimes. But this is not the whole problem. Organized innocence is not simple denial (see Cohen, 2001). It is an *a priori* construction that provides an ideological shield against responsibility in advance; not only a marginal phenomenon, it is something that pervades the whole of society, from the masses to the intellectual elite (which was, in many cases, the main fabricator of this kind of shield). It represents a particular and rather consistent framework for the perception of the self, for interpreting one's individual and collective capacity for action; for judgement, and for one's own influence on the course of events. It also comprises a particular (usually imperialistic) point of view regarding the position of one's own national community, the relevance of political institutions, and the use of the nation-state within the globalized condition. It has a dual function: on the one hand, it enables thoughtlessness by helping people renounce their capacity for judgement, and on the other, it helps them renounce their capacity for action, thus destroying both personal and collective (political) responsibility. During the war and its accompanying crimes, it helped the elite as well as the masses behave "as if no crime had taken place at all" (see Dimitrijević, N., 2006: 380). And because the distinction between lies and truth was blurred, it could be extended into the period following the war. This framework was produced when preparations for the war were being made, and helped to create collective mobilization. It was used in the time of war to accommodate massive crime and evildoing. And it remained a major pattern and mentality of thinking after the war.

Studies on genocide and mass crime (Appadurai, 2002: 286–303; Campbell, 1998; Mamdani, 2001; Mertus, 1999; Waller, 2002; Weitz, 2003 and Vetlesen, 2005) prove that a long lasting process of dehumanization of the victim through a differentiated process of identity construction is needed in order to prepare the ground for and eventually commit collective crimes. These studies also suggest that genocides are not simple manifestations of uncontrolled outbursts of ancient hatred. Genocides took place in the framework of regimes that were pursuing utopian myths and visions that required drastic "demographic policies", that is, the drastic modification of populations. In Arendtian terms, although they target a particular group, they nevertheless represent "part and parcel of an *all-embracing demographic policy*" (Arendt, 1994c: 213, emphasis added) that can be supported by modern techniques of power, which are nowadays usually called bio-power, in line with Foucault: managing the life of populations, states, and societies (Gilroy, 2000: 6–7). It involves not only the identification, construction, and definition of the victim-target and its "reshaping" into an elusive enemy (the Other) representing a deadly threat to the community (us), *but also the other side of the same process, which is no less important: preparing the whole community to accept and mobilize itself for violence and mass crime* (Bartov, 1998). This other side basically consists of the ideological process of the self-victimization of the nation, and of the creation of a kind of "performative" victim identity (MacDonald, 2002: 54) as a basis for action, which provides "common ontological ground" (Fearon and Laitin, 2000: 876) for collective mobilization.

In the case of the former Yugoslavia, this common ground was provided – first among the Serbian population – through intense sexualization and genderization and through the (re) construction of the self through the Other, a creation of national myths, mythical re/interpretations of national history and time, and an increasing belief in the creativity of violence and the impotence of peaceful means/actions for conflict resolution. Here, racism without race in the broadest sense, as the promotion of ideas and practices of de-humanization, played a decisive

role in bringing about the conditions for the mass crime. The justification of ethnic cleansing and the genocidal ideology sprang from the regeneration of historical mythology and the revival of reputed or real existential fears. It was not only mass crimes such as the case of Srebrenica, but the whole business of “new wars” (see Kaldor, 1999), that were carried out in such a way that ordinary people, the population in general, either supported the perpetrators or directly participated in the killing, and were thus organized into guilt in the Arendtian sense. The ideological process of preparation for this, however, did not originate in a pre-given identity picture used solely for ideological indoctrination, but rather consisted of an arsenal of elements of “myth” and “truth” (see Mertus, 1999), which began to circulate and be reproduced and manipulated by the actors themselves at the time of the dissolution of the former (socialist) citizenship identity and the federal state. This helped to create a situation where, through step-by-step interventions, a condition similar to what Arendt described in the German case under Nazi rule, an “inverted order”, was established. The unthinkable became thinkable, and reworked “negative identity myths” (MacDonald, 2002: 26) began to serve as a useful means for mass homogenization, mobilization, and the *a priori* justification of and “permission” for violence and killing, while at the same time creating a world of self-deception as a powerful shield against reality (see Jalušič, 2007).

The Serbian intellectual elite was the first to reinvent this brand of Serbian tribal nationalism, which was crucial to the development of a specific “national revolution”, in which the leading role was taken over by Slobodan Milošević in 1987. It was combined with notions of Christian collectivism, Pan-Slavism, and Messianism, and with the idea that the Serbian people are the chosen ones (“Christ’s immortal people”, in the words of Orthodox priests). It resulted in a special kind of racism, which was first applied to Albanians in the 1980s, and later to other groups and communities. As a “defensive” nationalism, it legitimized special demographic policies, exclusion, and subsequent ethnic resettlement as “lesser evils”, thus paving the way for the ethnic cleansing and annihilation of certain groups. The revival of the idea of the legitimate “removal of populations” and ethnic cleansing, which originated in the 1930s, helped to create this condition of “inverse order”. Circumstances were created in which the “battle for the destiny” of the Serbian people was being waged, and where one could first imagine, and then easily “stumble” into, excesses and, finally, plan mass crimes and genocidal endeavours.

To be sure, totalitarian elements such as tribal nationalist revivals featuring racist elements did not exist only in Serbia or only among Serbs. Hierarchical images of “us” and “them” and myths of common origin and national mission developed in Croatia, Slovenia, Bosnia and Herzegovina, and Macedonia as well. In this regard, no one was “innocent”. This process began soon after Tito's death in 1980, when each ethnic group started to believe – and still believes, as Žarko Puhovski pointed out – “that it was the major victim of the communist system and that the rival group itself was the beneficiary of it” (Puhovski, 2000: 42). Thus developments similar to those that took place in Serbia also appeared in Croatia, for example, and violent solutions would have been possible under certain conditions in any of the other Yugoslav nations. But the fact that elements of tribal nationalism and violent “solutions” were present everywhere did not imply that they would crystallize into the same events.

There is an important lesson to be learned here, a lesson that confirms Arendt’s elaboration of nationalism and the nation state: with the dissolution of the federal state, the process of the creation of nation-states, based on tribal (*völkisch*) sentiment, was set in motion by more or less

<sup>20</sup> There were, of course, differences, since Slovene state building emerged from a long lasting civil society movement in the 1980s that was homogenized only after Milošević came to power in Serbia in 1987. As well, war in Slovenia lasted only ten days. See Jalušič (1994).

<sup>21</sup> The Serbian Republic of Bosnia and Herzegovina, however, functions differently.

violent means.<sup>20</sup> This means that the conditions were created for the loss of the right to have rights. However, although the point of this transgression – as shown by Arendt and others – was inherent in the elements of the sovereign structure of the nation-state itself, it did not play a decisive role *as long* as it was *politically limited*. Whether, or to what extent these elements will develop and culminate in genocide depends not on automatism and not even on the “nature” of nationalism – on whether it is “good” or “bad”, “aggressive” or “defensive”, Slovene, Serbian,

or Albanian – but on its *limitation by the state as a political institution*, by the rule of law, by constitutional government, and *especially by citizens’ actions and judgement*. Additionally, the growth of such elements can be limited internationally, but this again depends on the actions and judgement of international actors. This is why the issue of collective (political) responsibility is so important in such cases.

It is important to understand how the dissolution of the old, socialist federal state opened a space for the development of tribal nationalism and victimized identities, and thus endangered basic human equality. As soon as we move away from the framework of the state as a polity framework and a basis for citizenship equality, we can expect to encounter a deadly fusion of racism and nationalism. In Yugoslavia, the state, though authoritarian, had ceased to exist. And so did the basis of thinking and judgement once the use of organized innocence syndrome had begun to spread as a shield against these. However, such a shield against reality could not have been constructed without the readiness of people to renounce their political potential. It seemed that, in becoming a part of the collective national (and not state) body in the mythical sense, one did not have to take on personal (moral) and collective (political) responsibility. One could attempt to merge into the organism of a larger community and remain “innocent” of its workings. Only this act of dehumanization, whereby everyone started behaving as innocent victims of inevitable processes, powerful “higher structures”, or, finally, dangerous others-neighbours, could facilitate elements of tribal nationalism and the conditions for violent solutions in the form of radical exclusion and violence. This had lethal consequences wherever the state or some imitation of it could not be (rapidly) re-constructed, as in the case of Bosnia and Herzegovina, because nothing could have replaced it in time: neither the international community nor, to an even lesser degree, UN protection.

On the other hand, anywhere the state – weak though it was – had somehow been re-constructed, it acquired a more or less tribal nationalist frame, and was understood as a means of “serving” the interests of a particular (new majority) national group. Defence and protection/security ideologies took shape and began to build on new homogeneous identities and exclusionist citizenship practices. This was the practice immediately following the war. All those states that did not have or create a homogeneous source/substratum for national sovereignty – like Bosnia and Herzegovina following Dayton – seemed to be ungovernable, i.e. in need of foreign administration. Since such states lacked sufficient homogeneity, the political protagonists felt that they could hardly build effective political and citizenship models.

Following the secessions (and processes of ethnic cleansing in some areas), all legal arrangements in the former Yugoslav states – with the exception of post-Dayton Bosnia<sup>21</sup> – applied discriminatory procedures when granting citizenship to those citizens of the former mutual state who did not fall into the category of those entitled to acquire citizenship on the basis of the *ius*

<sup>22</sup> This part is based on the article I wrote together with Jasminka Dedić. I thus owe her special thanks for some of the arguments and formulations in this part of the text. See Jalušič and Dedić, 2008.

*sanguinis* principle. However, the principle of *ius soli* was only partially applied. Many times, exclusions, though having horrible consequences, seemed to be entirely “innocent” – urgent bureaucratic “measures” that had to be implemented in the wake of comprehensive strategies of ethnic cleansing and the use of terror in many parts of the former state. Throughout the former Yugoslavia, they were always accompanied by the same discourse invoking the self-victimization of proverbially innocent and honest nations. One encounters – albeit in different forms and degrees – the same language in all areas: from Macedonia to Montenegro, from Slovenia to Serbia.

The case of the erasure from the register of permanent residents in Slovenia, which is considered to be the most “civilized” and successful transitional state in all of Central and Eastern Europe, will be discussed as part of this process. Although this case would seem to represent something that could be considered a “lesser evil” in ordinary discussions about the Yugoslav mass crimes and human rights violations, I claim that it actually represents a symptomatic case of the renunciation of collective responsibility and lays bare the organized innocence syndrome as a phenomenon that developed and persisted in all regions – before, during, and after the conflict in the former Yugoslavia.

## The Erased<sup>22</sup>

“In every society there are the dregs. Alas! As a general rule, all societies aspire to decrease the quota of those. According to our opinion, with this law you will increase the quota of these dregs. And it is absolutely horrifying that the Slovene state will reward these subjects through increased tax rates. If that is the decision of the Slovene state or of the Slovene politics, the Slovene National Party will by no means support it. In the Slovene National Party, of course, we have a different solution for these subjects” (Deputy of the Slovene National Party and currently vice-president of the Parliament in Mekina, 2004: 58).

“For them [the ruling power] the world began in 1991; they do not recognize any law that existed before that. They remember nothing from before. They are drunk with statehood. They can hate me as much as they please – however, this is supposed to be a state ruled by law” (Excerpt from an interview with one of the persons erased from the Slovene register of permanent residents in Dedić et al., 2003: 118).

The remainder of this article will be devoted to a rough sketch of the case of the Erased with regard to the climate of organized innocence.

In February 1992, just before the war in Bosnia and Herzegovina flared up, the erasure of a large group of permanent residents (18,305) who originated in other republics of the former Yugoslavia took place in the newly formed state of Slovenia, and initially went almost completely unnoticed. Given the numbers of those affected, this erasure – the word describes the removal of residence data from the register of permanent residents and the consequent loss of legal status – was the result of coordinated action on the part of the executive, legislative, and judicial branches of government, the police, and the administrative authorities, and provided

<sup>23</sup> For a decade, various sources provided different estimates of the number of the Erased - ranging from 62,000 to 130,000 persons. The figure of 62,816 erased persons was given to the Slovene Helsinki Monitor by the Ministry of the Interior in 2000 (at the time when the Ministry was officially still denying that the erasure had occurred!); another often cited figure was an estimate of 83,000 erased persons, taken from a document of the Ministry of the Interior from 1996 relating to aliens' statuses. The highest estimate - of 130,000 erased persons - was promoted by the Helsinki Monitor, which, according to the author's opinion, included not only those who had lost their permanent residence but also all other nationals of the former SFRY who had resided in Slovenia prior to Slovene independence. In June 2002, the Ministry of the Interior ultimately recognized the erasure of 18,305 persons, i.e. the figure which was also accepted by the Constitutional Court (No U-I-246/02, 3 April 2003).

<sup>24</sup> There were some ethnic Slovenes who were victims of the erasure, primarily because they had not known that they were not registered in the Slovene republican citizenship register, which was a precondition for automatic conferral of Slovene citizenship. Of course, this failure must not be ascribed to them; the responsibility lies entirely with the authorities, which had failed to inform all Slovene residents about who automatically obtains Slovene citizenship and who needs to apply.

fertile ground for the large scale, systematic abuse of human rights.

The story of the erasure began on 25 June 1991, the day Slovenia declared independence as a state. Approximately 171,000 permanent residents from other former Yugoslav republics (approximately 18 percent of the population of the state of Slovenia) were granted Slovene citizenship on the basis of the new Citizenship of the Republic of Slovenia Act, while approximately 2,400 applications were rejected. On 26 February 1992, nationals of the collapsing Socialist Federative Republic of Yugoslavia who had not applied for citizenship or whose applications had been rejected became "new" foreigners, and came under the jurisdiction of the Aliens Act of 1991. This Act did not make provision for the transitional status of former Yugoslav nationals or for the automatic acquisition of alien status. Moreover, under the pretext of "free choice" with regard to citizenship application, the authorities had not informed the concerned residents what "the consequences" of non-application might be. Nobody could have anticipated that he or she would be actually choosing "freely" between acquiring full citizenship or aliens' rights and losing permanent resident status and all acquired rights. The administrative bodies "filled in" the legal void simply by *transferring* records from the register of permanent residents to the aliens register. 18,305 persons were affected – roughly the population of a large city in this small country.<sup>23</sup> This administrative act, which became known as the *erasure*, was centrally coordinated by the Ministry of the Interior and was carried out in secret without notifying the affected persons. The "new" aliens lost not only their citizenship rights, but also their permanent resident status, and so became *aliens* residing *illegally* within the territory of Slovenia (and subject to forced expulsion) who were obliged to settle their alien status anew. They were

sucked into a veritable whirlpool of bureaucratic procedures, demands and fees, which is best described as Kafkaesque.

Some of the Erased had been living in Slovenia for over 30 years; some were born there and did not even know that they lacked "proper" status. They are almost exclusively ethnic non-Slovenes (i.e. Albanians, Bosniaks, Croats, Macedonians, Montenegrins, Roma from other parts of socialist Yugoslavia and Serbs), but the group does include a few ethnic Slovenes.<sup>24</sup> Not only their socio-economic rights, such as the right to work, social security and health care, housing and pensions, etc., but also other fundamental rights, such as the right to respect for private and family life, freedom of movement, the right to personal liberty and security, the right not to be subjected to torture or degrading treatment or punishment, the right to inherent human dignity, etc., were violated. Many of the Erased lost the right to housing and their jobs, and, as a consequence of becoming foreigners without settled legal status, could not be legally employed. This meant that they were not able to contribute to their future pensions,

and some were even prevented from receiving their pensions. In some cases, the erasure led to serious consequences for the health of these individuals, or even to death. Children were deprived of a secondary education; some of the Erased lost years of education or experienced serious delays finishing their studies. There have even been cases of torture and expulsion (Dedić et al., 2003: 147–48). The narratives of the Erased reveal that they have suffered from serious psychological and personal problems due to the total isolation and social exclusion caused by the erasure (Dedić, 2003a). Many somehow managed to negotiate their status, while others left the country. There are no data on how many are still without legal status or otherwise suffering from various consequences of the erasure.

The Slovene state has still not redressed these injustices, although the highest political authorities in the Republic of Slovenia became acquainted with the problem of the Erased as early as 1993–1994, and in spite of several (albeit late) Constitutional Court judgements (in 1999 and 2003) in favour of remedying the wrongs inflicted upon the Erased. Also, “no state authority has apologized to the Erased for the injustices they have suffered due to the implementation of the erasure, nor was any individual held responsible for adopting a decision on the erasure and implementing it” (Dedić, 2003a). On the contrary, in spite of the establishment of the Association of Erased Residents in 2002 and the consequent public interventions and battles of their legal representatives, not only has the issue of the recognition of the injustice of the erasure failed to be addressed, but also the regularization of the status of the Erased. The activities of non-governmental actors, numerous newspaper articles and a book, as well as warnings from the Human Rights Ombudsman of Slovenia, the European Commissioner for Human Rights have made surprisingly little progress in this area. According to certain international observers, the issue constitutes a broader human security problem (see Sokoloff, 2005); European Union institutions (it should be noted that the issue was never made a condition for accession to the EU) even exerted pressure on the Slovene authorities to “solve the problem of persons without a regulated status” before entering the European Union (European Commission, 1998: 11).<sup>25</sup> However, in 2003 and 2004, when European Union membership for Slovenia was resolved, the political consensus was lacking to seriously address this matter and make right this shameful act of the newly established state. Instead of taking steps towards remedying the situation, the issue began to be abused by all far-right nationalist parties. Right-wing politicians claimed that the restoration of residence status would reward “aggressors” and “swindlers”, who would be able to claim astronomic compensation amounting to hundreds of billions of Slovene tolar.

The new right-wing government, which came to power in December 2004, and which also employs many protagonists of the erasure, views the adoption of a constitutional law, the aim of which is the revision of already issued supplementary decisions in individual cases of erased persons, as the only possible solution (see Kogovšek in this volume). Such a law would actually provide legitimacy for the erasure by exempting the responsible authorities and government officials from accountability, and would exclude any compensation claims by the Erased.

The answer to the questions of how such a thing could have happened and why there has been no remedy for the injustice for a relatively long time is not simple. There were several

<sup>25</sup> Slovene authorities started to act expeditiously on the question of the Erased in 1999 in order to implement the first Constitutional Court ruling, although they actually failed. In 1999 a law was adopted that enabled the acquisition of permanent residence permits by the affected, but it did not restore status to the erased persons retroactively – from the date of the erasure. In consequence, the Constitutional Court passed its second landmark decision on the Erased in 2003, when it decided that permanent residence must be retroactively restored to the applicants and declared the former 1999 law unconstitutional for various reasons (see Kogovšek in this volume).

elements involved, in particular with regard to the foundation of the new state, the definition of citizenship as a process of inclusion/exclusion, and the issue of discrimination on the basis of race and ethnicity. However, the erasure could not have happened without the ideological framing described above: the phenomenon of “organized innocence”, which is related to the problem of collective-political and individual moral responsibility in the process of building a new state. This last point pertains to the political authorities who invented and ordered the erasure; to the role of bureaucracy in the erasure, which was largely limited to mercilessly implementing the rule; and to the role of “society”, i.e. the majority of Slovene citizens, who played the roles of innocent bystanders, ignored how and when this exclusion happened and then blamed the Erased themselves for their condition.

The case of the erased residents of Slovenia represents one of the most severe cases of administrative ethnic/racial discrimination and human rights violation in post-communist Eastern and Central Europe outside the war zone area. Although the erasure can be perceived as a negative by-product of the dissolution of the former SFRY, it was *not* caused by the dissolution of the state. It contains elements of ethnic cleansing, which was carried out through administrative procedures without legal grounds, and which has been characterized by some authors as “administrative ethnic cleansing” (see Dedić, 2003). For its victims, the act of erasure meant the loss of space in the world and resulted in “civic death”. Once they had disappeared from the register and lost their legal status, many erased persons disappeared from Slovenia as well.

When the issue of the erasure was made public, it invoked actions and reactions of racial and ethnic discrimination, racism, hate speech, and intolerance. Not only certain marginal racist groups, but also leading parties and politicians, were involved in these acts. Therefore the harm that was done through the erasure affects not only the individuals who have been erased but also the legal system and public institutions. Devastating effects on the mentality concerning action and responsibility can be identified. This constitutes a “lesson” on how “institutions” can be inconspicuously “used” to harm certain groups of people, even with the approval of high political circles. In this sense, it represents the emergence of a situation of “inverted human order” of the kind addressed by Hannah Arendt in *Eichmann in Jerusalem*: a constructed world of self-deception where certain otherwise unacceptable things become normalized. It could only have occurred in surroundings where people were ready to behave *as if* they were innocent and were ready to accept a political outlook built around “lesser evils” (Dubiel and Motzkin, 2004).

## Conclusion

“We have been capable of accomplishing the task because our faith was firm and because there were no evil thoughts in our actions”.

The President of Slovenia, Milan Kučan, in his speech at the ceremony for the Declaration of Independence of the Republic of Slovenia, Ljubljana, 26 June 1991.

In the case of erasure, as in the case of the mass crimes in other parts of the former Yugoslavia, denial not only of responsibility, but of the fact of the erasure itself, was one of the dominant reactions to criticism aimed at those in power and those responsible for the erasure. They did not see anything wrong about the fact that those in power had instrumentalized the



newly established state to weed out those who “did not want Slovene citizenship”, and, consequently, perceived the Erased as exclusively responsible for their own fate. The advocates of this interpretation were also among the fiercest opponents of granting Slovene citizenship to citizens of other former Yugoslav republics permanently residing in Slovenia. This reveals the “demographic policy” (in the Arendtian sense) behind the erasure: cleansing a new state at least of those who did not enjoy the protection of citizenship status. Others, again, claim that the erasure was a consequence of the legal vacuum and of structural administrative failure, whereby those in charge are not viewed as responsible – as if some objective law or automatic process underlies what happened, and not a premeditated decision adopted by the leadership of the Ministry of the Interior.

At first glance, it seems incredible how readily people in the former Yugoslavia accept simple and dominant explanations that view the wars and crimes that took place in the region as a consequence of inevitable, almost “natural” processes – the spread of “deadly viruses of nationalism”, the effects of impenetrable state and party structures, and the power of inhumanly influential and/or evil leaders. At this point, one is only a step away from fatalistically proclaiming himself/herself to simply be the innocent instrument or victim of these indefiable workings, ignorant of and blind to what was going on, or just an obedient part of a machine that had been programmed for an unavoidable result. This, however, is only part of the problem. Not only common people, but also scholars and many intellectuals in general, have time and again fallen into the trap of viewing the dreadful outcomes of the war as automatic consequences of nationalism: a kind of biological, tribal or natural force, which, as a kind of ever-present virus or contagious disease, “broke out” in the former Yugoslavia and became a key trigger for war, killing, and genocide, or at least the main mobilizing force behind these. Arendt has drawn our attention to the fact that the “last century has produced an abundance of ideologies that pretend to be the keys of history, but are actually nothing but desperate efforts to escape responsibility” (Arendt, 2003: 51); among them are racism and tribal nationalism, which are the most important shields against the potential burden of common human responsibility. Furthermore, in *Eichmann in Jerusalem*, she claims that even the modern social sciences, which insist on determinism, help to pave the way for non-responsibility. I would argue that they provide either a purely structural or a purely intentional account of human activities, and by doing so try to explicate entire trends of history with one dimensional interpretations.

In the territory of the former Yugoslavia, the elements of organized innocence “syndrome” came into existence long before the recent wars took place. These elements formed an indispensable part of the conditions for mass mobilization, atrocities, and mass killings, while creating a certain type of condition or “mentality” that – not being seriously challenged in any of the post-Yugoslav states – remained and was used to justify the past, while serving to legitimize future exclusions, the re-creation of exclusive communities, and new post-war human rights violations. This phenomenon was – to a different extent in each case, but almost without exception – within reach in all newly established post-Yugoslav communities and new emerging states. Yet the emergence of “organized innocence syndrome” was only possible under conditions involving a particular attitude toward and understanding of the state, power, politics, and their foundations. Such an attitude was connected to racist and tribal nationalist developments and to the interpretation of the role of the state – first in Serbia, and later as the outcome of wars throughout the region. This is why it was even possible to adopt step by step “solutions” and actions that led to ethnic cleansing, rape, and massive killings and their acceptance as either the

outraged excess of an uncivilized part of Europe or as grounds for proving that such homogenization is necessary in order to create space for the new tribal, nationalist “political” units. And this is a heritage from past collective crimes: it somehow becomes possible to argue in favour of “ethnic cleansing” (albeit through peaceful means). This is why, when trying to think about and judge past crimes and the responsibility of the whole community in the former Yugoslavia, considerations limited to the issue of excessive violence and the number of deaths do not suffice. The method of rebuilding or “managing” the incipient nation-states (either through the “creation of democracy” or by establishing ethnic/tribal states) following the war and collective crimes has proven to be problematic. The outcome of these processes thwarts the notion of political responsibility by which individuals and groups can be held accountable for their individual and collective actions towards which Arendt was striving, and directly contradicts the notion of action and thinking as two possible strategies for “stabilization” of or “rebellion” against the re-emergence of totalitarian reality.

The attempt to understand the case of the Erased in Slovenia points to at least two Arendtian conclusions about the future dangers of totalitarianism in terms of elements that can eventually crystallize into problematic “solutions”. It reveals the dangers of post-totalitarian elements that loom not only “after Auschwitz”, but also “after Srebrenica”. On the one hand, it proves that “final solutions”, the “swiftest solution to the problem of overpopulation, of economically superfluous and socially rootless human masses, are as much an attraction as a warning” (Arendt, 2003: 459). On the other, it reveals the potential to extinguish the human capacity for action and judgement “by means other than terror – that is to say by peaceful means” (Villa, 1996: 207).

## References

- APPADURAI, A. (2002): Dead Certainty: Ethnic Violence in the Era of Globalization. In: HINTON, A. L. (ed.): *Genocide: An Anthropological Reader*. Malden, MA, Oxford, Blackwell.
- ARENDT, H. (1963): *Eichmann in Jerusalem: a Report on the Banality of Evil*. London, New York, Penguin Books.
- ARENDT, H. and BLÜCHER, H. (1968): *Briefe 1936–1968*. Munich, Zürich, Piper.
- ARENDT, H. (1970): *On Violence*. London, Harvest.
- ARENDT, H. (1987). *Macht und Gewalt*. Munich, Zürich, Piper.
- ARENDT, H. (1994a): *Organized Guilt and Universal Responsibility*. ARENDT, H.: *Essays in Understanding*, New York: Harcourt Brace & Company (ed. J. KOHN).
- ARENDT, H. (1994b): Social Science and Concentration Camps. In: ARENDT, H.: *Essays in Understanding*, New York: Harcourt Brace & Company (ed. J. KOHN).
- ARENDT, H. (1994c): The Nation. In: ARENDT, H.: *Essays in Understanding*, New York: Harcourt Brace & Company (ed. J. KOHN).
- ARENDT, H. (1994d): What Remains? The Language Remains. In: ARENDT, H.: *Essays in Understanding*, New York: Harcourt Brace & Company (ed. J. KOHN).
- ARENDT, H. (1959): *The Human Condition*. Doubleday Anchor Books, Doubleday & Company, Garden City, New York.
- ARENDT, H. (1986): *The Origins of Totalitarianism*. London: André Deutsch.
- ARENDT, H. (2003a): Personal Responsibility under Dictatorship. In: ARENDT, H.: *Responsibility and Judgement*. New York, Schocken Books (ed. J. KOHN).
- ARENDT, H. (2003b): Collective Responsibility. In: ARENDT, H.: *Responsibility and Judgement*. New York, Schocken Books (ed. J. KOHN).

- ARENDR, H. (2005): *The Promise of Politics*. New York, Schocken Books (ed. J. KOHN).
- BARTOV, O. (1998): Defining Enemies, Making Victims: Germans, Jews, and the Holocaust. *American Historical Review*, Volume 10, No 3.
- BENHABIB, S. (2004): *The Rights of Others: Aliens, Residents and Citizens*. Cambridge, Cambridge University Press.
- CAMPBELL, D. (1998): *National Deconstruction: Violence, Identity, and Justice in Bosnia*. Minneapolis, University of Minnesota Press.
- CENTER ZA HUMANITARNO PRAVO (2005): *Izveštaj. Regionalni pristup u suočavanju sa prošlošću*. Belgrade. Available online: [http://www.hlc.org.yu/srpski/Suocavanje\\_sa\\_prosloscu/Debate/index.php?file=1136.html](http://www.hlc.org.yu/srpski/Suocavanje_sa_prosloscu/Debate/index.php?file=1136.html) (accessed 12/9/2006).
- COHEN, S. (2001): *States of Denial: Knowing about Atrocities and Suffering*. Cambridge, Polity Press.
- DEDIĆ, J. (2003): The Erasure: Administrative Ethnic Cleansing. In: *Roma Rights Quarterly*, No 3.
- DEDIĆ, J. (2003a): *The Erasure: Eleven Years After*. Public Lecture. Ljubljana, Faculty of Social Work, 27 February, 2003.
- DEDIĆ, J., JALUŠIČ, V. and ZORN, J. (2003): *The Erased: Organized Innocence and the Politics of Exclusion*. Ljubljana, Peace Institute.
- DEVIC, A. (2003): War Guilt and Responsibility: The Case of Serbia. I. Diverging Attempts at Facing the Recent Past. *GSC Quarterly*. Available online: [http://www.ssrc.org/programs/gsc/gsc\\_quarterly/newsletter8/](http://www.ssrc.org/programs/gsc/gsc_quarterly/newsletter8/) (accessed 12/9/2006).
- DIMITRIJEVIĆ, N. (2001): *Slučaj Jugoslavija. Socializam, nacionalizam, posledice*. Belgrade, Samizdat B92.
- DIMITRIJEVIĆ, N. (2005): Moral Responsibility for Collective Crime. Transitional Justice in the Former Yugoslavia. In: *Belgrade Circle Journal*, 1–4/2005, Special Issue: Community of Memory. Available online: <http://www.eurozine.com/articles/2006-07-05-dimitrijevic-en.html> (accessed 12/9/2006).
- DIMITRIJEVIĆ, N. (2006): Justice Beyond Blame. *Journal of Conflict Resolution* (Yale), Volume 3, No 50.
- DIMITRIJEVIĆ, V. (2003): *War Guilt and Responsibility: the Case of Serbia. III. Two Assumptions of the Rejection of Responsibility: Denial of the Act and Denial of the Rule*. Available online: [http://www.ssrc.org/programs/gsc/gsc\\_quarterly/newsletter8/content/devic3.page](http://www.ssrc.org/programs/gsc/gsc_quarterly/newsletter8/content/devic3.page) (accessed 12/9/2006).
- DUBIEL, H. in MOTZKIN, G. (eds.), (2004): *The Lesser Evil. Moral Approaches to Genocide*. London, Routledge.
- THE EUROPEAN COMMISSION (1998), *Regular Report from the Commission on Slovenia's Progress towards Accession*, November 1998. Available online: [http://ec.europa.eu/comm/enlargement/report\\_11\\_98/pdf/en/slovenia\\_en.pdf](http://ec.europa.eu/comm/enlargement/report_11_98/pdf/en/slovenia_en.pdf) (accessed 12/9/2006).
- FEARON, J. D. in LAITIN, D. D. (2000): Violence and the Social Construction of Ethnic Identity. *International Organization*, Volume 54, No 4.
- GILROY, P. (2000): *Against Race: Imagining Political Culture beyond the Colour Line*. Cambridge, MA, The Belknap Press of Harvard University Press.
- GRUNENBERG, A. (2001): *Die Lust and der Schuld. Von der Macht der Vergangenheit über die Gegenwart*. Berlin, Rowohlt.
- HERZOG, A. (2004): Hannah Arendt's Concept of Responsibility. *Studies in Social and Political Thought*, No 10.
- HONIG, B. (1993): *Political Theory and Displacement of Politics*. Ithaca & London, Cornell University Press.
- JALUŠIČ, V. (1994): Troubles with Democracy. In: Benderly, J. and Kraft, E. (eds.): *Independent Slovenia: Origins, Movements, Prospects*. New York, St. Martin's Press.
- JALUŠIČ, V. (1996): *Die Gewalt und das Politische bei Hannah Arendt*. Doctoral dissertation. Vienna, University of Vienna.
- JALUŠIČ, V. (1996a): Zmešnjava v vprašanju nasilja: oblast in nasilje pri Hannah Arendt. In: *Časopis za kritiko znanosti*, Volume 23, No 179. Ljubljana, Študentska založba.

- JALUŠIČ, V. (1996b): Hannah Arendt: Politika kot možnost. In: Arendt, H.: *Vita activa*. Foreword. Ljubljana, Krtina, p. 18–49.
- JALUŠIČ, V. (2006): Vaditi v političnem mišljenju v posttotalitarnih časih. In: ARENDT, H.: *Med preteklostjo in prihodnostjo. Šest vaj v političnem mišljenju*. Foreword. Ljubljana, Krtina.
- JALUŠIČ, V. (2007): Post-Totalitarian Elements and Eichmann's Mentality in the Yugoslav Wars and Mass Killings. In: Stone, D. and King, R. H. (eds.): *Hannah Arendt and the Uses of History. Imperialism, Nation, Race, and Genocide*. New York, Berghahn Books.
- JALUŠIČ, V. and DEDIĆ J. (2008): (The) Erasure – mass human rights violation and denial of responsibility: The case of independent Slovenia, *Human Rights Review*, Volume 9, Issue 1, March 2008. Available online at: [www.springerlink.com](http://www.springerlink.com).
- KALDOR, M. (1999): *New and Old Wars: Organized Violence in the Global Era*. Cambridge, Polity Press.
- KUZMANIĆ, T. (2004): Raspad SFR Jugoslavije i naslejdstvo: narodnjaštvo – a ne nacionalizam. In: Hadžić M. (ed.): *Nasilno rasturanje Jugoslavije – uzroci, dinamika i posledice*. Belgrade: Centar za civilno-vojne odnose.
- KUČAN, M. (1991): Speech at the ceremony for the Declaration of Independence of the Republic of Slovenia, 26 June 1991. Available online: <http://www2.gov.si/up-rs/2002-2007/bp-mk.nsf/dokumenti/26.06.1991-90-92> (accessed 12/5/2008).
- MACDONALD, D. B. (2002): *Balkan Holocausts: Serbian and Croatian Victim Centered Propaganda and the War in Yugoslavia*. Manchester, New York, Manchester University Press.
- MAMDANI, M. (2001): *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda*. Princeton, New York, Princeton University Press.
- MEKINA, B. (2004): Izbrisani, prvi polčas: Odločna zmaga desnice. In: TRPLAN, T., AUTOR, S. and KUCHAR, R. (eds.): *Poročilo skupine za spremljanje nestrpnosti 3*. Ljubljana: Peace Institute.
- MERTUS, J. A. (1999): *Kosovo: How Myths and Truths Started a War*. Berkeley, Los Angeles, London, University of California Press.
- NEIMAN, S. (2002): Theodicy in Jerusalem. In: ASCHEIM, S. E. (ed.): *Hannah Arendt in Jerusalem*. Berkeley, CA, California University Press.
- PUHOVSKI, Ž. (2000): Hate Silence. In: SKOPLJANAC BRUNNER, N. et al. (eds.): *Media & War*. Zagreb, Centre for Transition and Civil Society Research.
- RAMET, S. P. (2007): The Denial Syndrome and Its Consequences: Serbian Political Culture since 2000. In: *Communist and Post-Communist Studies*. March 2007.
- SOKOLOFF, C. (2005): *Denial of Citizenship: A Challenge to Human Security*. Available online: [http://dev.justiceinitiative.org/db/resource2/fs/?file\\_id=17068](http://dev.justiceinitiative.org/db/resource2/fs/?file_id=17068) (accessed 12/9/2006).
- TRANSITIONAL JUSTICE (2006): EU War Crimes Policy in the Western Balkans, *HLC Newsletter*, No 20, 2006. Available online: <http://www.hlc.org.yu> (accessed 12/9/2006).
- VETLESEN, A. J. (2005): *Evil and Human Agency*. Cambridge, Cambridge University Press.
- VILLA, D. (1996): *Arendt and Heidegger: The Fate of the Political*. Princeton, New York, Princeton University Press.
- WALLER, J. (2002): *Becoming Evil: How Ordinary People Commit Genocide and Mass Killing*. Oxford, Oxford University Press.
- WEITZ, E. D. (2003): *A Century of Genocide: Utopias of Race and Nation*. Princeton, New York, Princeton University Press.
- WILMER, F. (2002): *The Social Construction of Man, The State and War. Identity, Conflict and Violence in Former Yugoslavia*. New York, London, Routledge.

# Phantom Irresponsibility, or Fascism in Disguise

## Introduction

In this text we will explore the emancipatory political practices that are successfully resisting modern varieties of fascism, the politics of erasure, and the imprisonment and illegalization of people. We will consider a variety of local struggles by those who have been erased, as well as the local politics of exclusion, based on Schengen and apartheid standards (Balibar, 2004). This will be done through examining the struggle of the children, friends and relatives of the *disappeared ones* from Honduras and Guatemala, and also women's fights in Chiapas and Bosnia. The comparison with Honduras is revealing because it offers an analysis of political, historical and legal responsibility, while a comparison with Guatemala allows us to consider the many political and revolutionary practices that exhibit the bravery and *joie de vivre* of urban youth. Through theoretical analysis and/or description of domestic revolutionary practices, both examples will support and answer the question: "How can we recognize the struggles of invisible, detained, imprisoned, tortured, killed, disappeared and erased people in our domestic environment?" The political activity of female refugees from Acteal illustrates how the worst horrors can be transformed through symbolic and creative power. The gathering of women and mothers from Srebrenica will show how to resist genocide with dignity even if the symbolic oppression of "democratic institutions" cannot be stopped.

The politics of erasure first appeared in Slovenia on 26 February 1992 with the systematic erasure of one percent of the population. Even though the Constitutional Court confirmed that the erasure of 18,305 people from the register of permanent residents of the Republic of Slovenia was unconstitutional in two decisions (first on 4 February 1999, U-I-284/94 and second on 3 April 2003, U-I-264/02), all political parties ("left-middle" and "right-middle") have, for sixteen years, preserved the intolerable conditions of the erased population and all those that are close to them. The European Union and other international institutions that are supposed to protect human rights, dignity and integrity have further reinforced and legitimized erasure by

<sup>1</sup> Even though Slovenia violated fundamental principles of the EU in the erasure, especially Part 6 of the EU Contract, the European Commissioner for Justice, Freedom and Security, Franco Frattini, considers the erasure Slovene internal issue. Deputies of the European United Left and the Green Nordic Left, Giusto Catania and Roberto Musacchio warned of the Europeaness of the appearance of the Erased (Newspaper *Delo*, 29 November 2006). Krivic said that only the EU could force Slovenia to respect human rights, and it will never do so (www.24ur.com, on 26 February 2007).

<sup>2</sup> In a documentary drama *For the real end of war or Rog'n'roll*, made by Film Alternative on Slovene Television, 1991. From May 1942, Rog was the centre of resistance to the occupation and home to the leadership of the Liberation front of the Slovene People. Bavčar referred to the last period of Rog when, after the World War II, Rog became a location where thousands of people, mostly collaborators with the Nazi regime such as the Slovene *Domobranci* (Slovene Home Guard) and their families were executed by special units of the Yugoslav Army in late May 1945.

“not interfering in the internal affairs of ‘democratic’ states and offering only ‘democratic’ warnings against violations.”<sup>1</sup>

Igor Bavčar, the first Minister of the Interior, who was responsible for the erasure, said in 1991 while independence was being established: “I am selecting advisors of the kind that will guarantee that no one will ever have to fear another Rog again.”<sup>2</sup> He did not mention that some people would lose everything! On the fifteenth anniversary of statehood, Bavčar was once again a ceremonial speaker. Together with Janez Janša, Prime Minister of the Republic of Slovenia, they unveiled a memorial plaque to “unity”. “Unity is the greatest Slovene potential,” Bavčar calculated, although he forgot to add that what we were truly united in was forgetting and exclusion. Fascist politics or the politics of “erasure” in Slovenia have been, for sixteen years, erasing, demonizing, terrorizing and pursuing inhabitants, who were led by precisely that “unity” into a life of total precariousness or “life at the mercy of others”.

Another tactic of fascist politics, that of “disappearing”, appeared systematically for the first time in Argentina in the 1970s, with the militarization of special groups known as *escadrons* or “death squads”. These protected the dictatorship (of army or capital) with the cruelest force and aggression. Owing to their developed methods of “removal”, the U.S. facilitated their export to Honduras (in the time of U.S. Ambassador Negroponte), Guatemala (in the time of General Montt’s junta) and other Latin American states. Death squads were in charge of transferring methods of “extermination” and

“cleansing” of the population to national armies and other mercenaries who would then form new death squads. Today we use the term *desaparecidos* (disappeared) for the victims of such politics of genocide.

In Guatemala, more than 90 percent of victims found thus far are from the indigenous, Mayan population. In the time of president Strössner (1954–1989) in Paraguay 30,000 people were said to have been “disappeared”. 50,000 people were killed and it is still not clear how another 400,000 were “removed”. In Argentina President Videla (1976–1981) took care of most of the “disappearances”, and statistics indicate that around 30,000 disappeared. In El Salvador it is estimated that 75,000 people died or disappeared during the twelve years that the state war lasted (1980–1991). The number of disappeared people in Guatemala is constantly changing, estimates are that, in the 36-year class struggle, 200,000 were killed, while another 45,000 vanished. Cases of state terror and the disappearance of parts of the population are still being discovered in Latin America today. There are many analyses and investigations that prove the presence of mass removals, killings, torture and the disappearance of people in Chile, Brazil, Bolivia, Uruguay, Mexico, Peru and Columbia. However, there is a lack of an effective policies that could demand political, historical, legal and moral responsibility from these nationally and internationally confirmed murderers.

## Places against forgetting and the recuperation<sup>3</sup> of revolutionary tradition in the case of Honduras

*One human rights violation is one too many!*

John. D. Negroponte, U.S. Ambassador in Iraq

Neoliberalism was already taking root in Latin America in the 1970s (in Western politics and social science this process was called “democratization”). Modern politics against humanity appeared and are continuing to appear solely because of the need for geo-strategic domination and the accumulation of capital. In Latin America neoliberal policies were established early and violently, the consequences of which are still evident in the massive prevalence of poverty, exclusion, illiteracy, death from curable illnesses, devastation of natural resources, lack of potable water and so on.

On 30 November 1982, sixteen families established the Committee of Relatives of Detained-Disappeared in Honduras (*Comité de Familiares de Detenidos-Desaparecidos en Honduras*, COFADEH). At that time state terrorism, injected and reinforced by the U.S., had already spread throughout Latin America. With developed methods of “removal” or “invisible disappearance”, state dictators were, in secret, almost invisible ways, “removing/killing” revolutionaries or politically active residents. Most of the victims were teachers, students, environmentalists and community leaders. Later in the 1990s and continuing into the present, journalists, lawyers and other politically “dangerous” people have also been targeted. In this way they assured a “soft”, “rapid” transition from (mostly Spanish) colonialism to dictatorships (led by special delegates from the U.S. or pro-U.S. leaders) that established turbo-neoliberal state organizations. It is interesting that a relatively strong organization of legal advisors, law writers and fighters against state terror and the systematic removal of people began in Honduras, the state with by far the smallest number of disappeared persons. Experts estimate that, since 1986, around 250 civilian victims have “vanished”.<sup>4</sup>

Honduras is also the only state in Latin America that did not have significant attempts at a social or class revolution. Although guerilla movements were active at all times, they formed very small, secret groups. Because of the dominant economic and political interests of the U.S. in Honduras, it is still known as a “banana republic”. Plantations and other major sectors of the economy are led by the transnational corporations that arose from the integration of family companies of the United Fruit Company and similar capital formations that are sometimes called “states within the state”. For the last 500 years, politics were led by a relatively small foreign elite (firstly familial, then transnational) of companies/corporations, so called *bananeros*, and the U.S. military, which enforced and implemented the geo-strategic dominance of U.S. interests in the region.<sup>5</sup>

<sup>3</sup> We had a difficult time with the term “recuperation”. We left it in the original Latin sense: *re-couperare* – “to get back, to fight back,” and also “to forgive again, to free, to solve”.

<sup>4</sup> Only civil victims are numbered among the disappeared in all the states. Members of guerilla movements are counted as victims of armed conflict.

<sup>5</sup> *Bananeros* appeared in Honduras during the time of liberal reforms (in the years 1876–1910). At that time two corporations of *bananeros* (SFSC – Standard Fruit and Steamship Corporation and UFC – United Fruit Company) developed from two big family companies (originating in the U.S.). The state allowed them to manage natural resources (rivers, soil and mines). *Bananeros* received 500 hectares of land and the right to unlimited utilization of every kilometre of railroad track they built. Workers on plantations are paid with coupons that can only be spent in *bananeros* owned stores; traveling salesmen are not permitted on the plantations. Management of the plantations and workers are “protected” by private police – *comanches*. A union organized resistance by workers managed to expel *bananeros* in the 1950s, but the *bananeros* soon returned in the form of neoliberal conglomerates, known as Dole and Chiquita, as seen on the shelves of domestic shopping centers.

<sup>6</sup> His biography mentions the cruellest actions against humanity: he was involved in a military coup in Chile; he headed the Committee on National Security during the war in Vietnam (1971–1973); he was an Ambassador to the Philippines, and after many such “security jobs” became an Ambassador to the UN. Following this he was also the U.S. Ambassador to Iraq (2004–2005). Now he is president of the Bureau for Intelligence Activities and a negotiator for reaching peace in Darfur! His Bureau has the authority to collect information on the “axis of evil” – to justify new U.S. invasions.

In the 1980s the U.S. used Honduras’ territory as a geo-strategic training base to prepare three military entities (“contras” or anti-revolutionaries for Nicaragua, as well as training of national armies and mercenaries against revolutionary movements in El Salvador and Guatemala), resulting in military and political control over all of Central America. For that purpose, the U.S. built the biggest military bases outside of the U.S. in Honduras, in order to control the national politics of the poor South. This is the period when the U.S. replaced their “interfering” Ambassador Jack Binns, who was constantly warning of the human rights violations taking place within the state, with the less troubling John Dimitri Negroponte.<sup>6</sup> After the Cuban revolution class struggles arose throughout Latin America (in some

places these are called civil war, although it was mostly a struggle of the poor, the indigenous and peasants against an elite group, supported by capital from the North), and in Honduras there were organized killings of students, youth and intellectuals.

On 12 December 2006 in Tegucigalpa, after 24 years of activity, COFADEH introduced their first initiative, detailing precisely eight “disappearances” of environmentalists in Honduras. *Straight as Pine Trees: The Memory of Building Environmental Consciousness* (COFADEH, 2006) is extremely important because it marks a real attempt to reconstruct historical events. COFADEH managed to gather enough coworkers and summoned the courage to publish it. Why is courage so important? Berta Oliva, the president of coordination of COFADEH in Honduras, says contemporary life in the state is a mixture of irresponsibility, corruption, organized crime, violence and the drug trade; that is why the mafia manages the real politics of peoples’ lives. The publication, which summarizes experts, representatives of families, and children, mothers and fathers of the vanished or exiled, is both painful and deeply emotional. As a finished product, it is a documentary of historical importance, which highlights the therapeutic dimension of public discussion, and reflects the possibility of a new resistance through story telling and pain.

In Honduras, as in most other countries of Latin America, the politics of “vanishing” is still not over. Some leading political parties, the mafia and other strong capital associations continue to use methods of “removal” without obvious sanctions. Freedom of speech and struggles against neoliberal procedures are claiming lives. Most of the disappeared and killed are never buried close to their relatives. Witnesses, neighbors and coworkers all tell stories about these killings. Under the new government of Manuel Zelaya Rosales, five politically active men have disappeared (Jorge Ruiz, Elvis Zepeda Barrientos, Jorge Luis Villalobos Balladares, David Rodrigo Villalobos Balladares and José Camilio Miranda Rosa) between June and December of 2006.

The significance of COFADEH lies in their ability to organize and combine a variety of activities to condemn the political, historical and legal impunity of murderers within the state. Among their more important activities are protests, legal and professional services, the organization of a documentation center, construction of symbolic places, therapy for children and relatives of the disappeared, and the production of alternative literature, which tells of the disappeared through comics, picture books and caricatures. These are the fundamental elements for the revival of history, revolutionary heritage and dignity. COFADEH fights every day for the release of political prisoners and the return of all political refugees (leading members



of COFADEH have often been forced to emigrate to the U.S.). In art workshops they paint portraits of the disappeared on banners and flyers. They create broadcasts for alternative radio stations, direct documentaries (the most famous one is “The Ambassador,” about Negroponte’s dictatorship<sup>7</sup>) and create literature that reveals the painful story of past and current killings in the country through visual and other materials. Every first Friday of the month at the symbolic *Plaza de la Marced* in Tegucigalpa they protest against the killing, imprisonment, and torture that marked the eighties. With legal and professional service as well as counseling services, they are opening new legal cases and preparing legal changes. They cooperate with numerous domestic and international organizations, especially those involved in human rights, and they regularly publish reports of the violations that occur in their country.

Because most war crimes and crimes against humanity that have occurred in Honduras were carried out on U.S. orders, if not directly by the U.S. military, members of COFADEH have been trying for many years to find a way to condemn those legally responsible for the killings and disappearances. Even though the International Criminal Court was established in 2002 on the basis of the Rome Statute, the U.S. gained immunity for its citizens before this Court<sup>8</sup> by signing bilateral agreements with some states. Honduras is just one of the states in Latin America that signed a bilateral agreement with the U.S., which is why the state is not allowed to prosecute citizens of the U.S., regardless of the crimes they committed in Honduras. Furthermore, criminals who committed crimes before 2002, before the International Criminal Court was created, cannot be criminally charged.

Since it is currently legally impossible to sentence someone for crimes against humanity on the national and international level (so much for the rule of law and Western democracy!), COFADEH and similar organizations help to spread the resistance to all levels of society. They claim a special place from the state that will mark the historical horrors and remind criminals and future generations of the most painful events. COFADEH is organizing a memory park, *Lugar contra el Olvido* (a place against forgetting), in which many projects will connect: besides a nature park and a plantation of trees in memory of the disappeared environmentalists, a museum has been created that will have a room to host educational workshops, a graveyard for all those who have died, and a path of memory that leads to the historical buildings in which political prisoners were tortured and killed. Since 2002 COFADEH has organized a radio show at the end of every month called *Voces Contra el Olvido* (Voices against Forgetting), where they introduce the organization’s work as well as new publications and stories of children of the disappeared.

<sup>7</sup> Directed by Erling Borgen (June 2005), Insights TV, Norway: Oslo, 58’.

<sup>8</sup> The Rome Statute introduced the principle of individual criminal responsibility for those who are responsible for genocide, crimes against humanity, war crimes and aggression. Every person of age who ordered a crime, or who helped to commit an individual or group crime, as well as any person who incited a crime is criminally responsible. The main element of the Rome Statute is Part 27, which holds that the position of a suspect is not an extenuating circumstance for avoiding criminal responsibility. The ICC can only start to prosecute criminals if one of the states that are signatories was failing to prosecute criminals, was prosecuting them in an illegal procedure, or if it was violating the legal system of that state. Instead of targeting the perpetrators of crimes, torture, killing and so on, the ICC has become a place for chasing unimportant individuals.

## Production of interstitiality and the breadth of responsibility

We have introduced a historical review of Honduras and the activity of COFADEH for easier reflection on the domestic politics of “erasure” (and also other fascist migratory and

<sup>9</sup> We are using the term “civil” or “people’s disobedience” in the context of fascist practices to more accurately emphasize the purposes and characteristics of the people’s organizing of “village guards,” as happened in the case of the Strojani family, but we are also thinking of other initiatives against refugees, and other marginalized groups emerging in the last ten years in Slovenia. With people’s disobedience against the Roma family, the Strojans the following characteristics and purposes can be identified: a) open anti-state activity (direct confrontation with the representatives of the state, government and against decisions of Parliament, against the police and its special forces); b) it was directed at only one transparent goal (exile and segregation of the Roma population); c) civil disobedience made the isolationist politics of government and the police viable. State representatives could not, even when using police force, stop the violence, so they tried to find alternative accommodation solutions in hidden locations. The escalation of fascist politics among village initiatives claimed a broad cooperation of many Ministries (for Interior, Environment and Space, Education), mayors and many other organizations and institutions.

<sup>10</sup> Politicians – those who enacted the erasure – are also (in)directly responsible for many deaths among the Erased. That is why it is understandable that information and data on erasure is still being hidden today. We can discover deaths among the Erased only on the basis of the personal stories of those who have been fighting against these policies for many years and who have been willing to share their tragic stories publicly.

Because the Erased are not dead, we cannot bury them. Because they are not dead, we can not mourn them. They are alive but should not exist, at least not in “this” place. That is why they are becoming nonexistent. It is as if they are invisible, but “surplus” nonetheless. They disturb the “order” of the system. They stick out – although not willingly. A similar kind of production of interstitiality is very important for the reproduction of capitalist systems. National versions of the production of interstitiality, reproducing “disappearance” or “erasure” for the needs of an antagonistic existence within capitalism, are defined by local executions and interpretations, heritage, and current political and other geo-strategic necessities. Capitalist

refugee politics, and other discourses and practices of the state). Besides reactionary political practices of the state apparatus (for example, the segregation of Roma children in Bršljin primary school), common people’s fascism arose in the shape of “civil” or “peoples” disobedience towards marginalized groups (for example the Šiška initiative against immigrants, initiatives against refugees in Vič etc.). One of the latest examples of civil disobedience was a manifestation of violence against the Roma family, the Strojans.<sup>9</sup>

The topic of erasure and disappearance is a serious one. In the case of Honduras as well as Slovenia, we keep talking about “interstitiality”: between live and dead bodies, places and collectivities. Also about the imaginary, yet visible people who produced revolutionary practices from which new generations learn about the absence of the dead bodies of the disappeared and the presence of the live bodies of the Erased.<sup>10</sup> Both the first and second examples are present and absent at the same time. Among these we can count, besides the disappeared of Latin America, also the missing from Srebrenica. The first were murdered but left a revolutionary gap that cannot be filled behind them. The second are alive and cannot be called back to life, so they are the dead, disabled, and ruined over the skeleton of a new, sovereign state, Slovenia.

Any serious discussion about the Erased is demanding. There are people whose basic human rights were violated in a “democratic” state. The disappeared were killed, but the Erased had all of their rights (and obligations) taken away from them. For an easier explanation of the appearance of destructive politics towards specific populations within a state, we are introducing a new political category – the *production of interstitiality*, meaning undefined structures within a defined system. Those are purposefully undefined structures, produced by the state and other apparatuses to guarantee the reproduction of exclusion, oppression and murder. This production of interstitiality is caused, in the case of the Erased or the disappeared, by a tautology between alive and dead and produces an analogy: alive – dead (erased) and dead – alive (disappeared).

systems are reaching towards antagonism in order to outgrow it. This means that they promote themselves as successful systems that abolish inequality and stratification, erase poverty, enable “democracy,” and ensure “human rights” etc. This antagonism, which is to be removed, is located in a nucleus, or starting point of the capitalist system; that is why they constantly erode and differentiate social tissue rather than connecting and reinforcing it. They fragment collective social currents, assimilate actors, and disarm the revolutionary political potentials of subjectivities and collectivities that are immanent to any sociality.

Historical witnesses of the antagonist necessities produced by “sustainable development” policies became the most vulnerable residents in the state. Their lives depended on their own personal ability to socially network or forge solidarity through social capital and social networks. A small community of politically active people supported the struggle of the Erased. Unlike in Honduras, where supporters of the disappeared often face repression, jail and new disappearances; such agency was relatively simple in Slovenia. Not much could be achieved, although each time more was achieved than expected, at least on a symbolic level. However, solidarity with the Erased was extremely limited, especially considering the fact that such a broad population faced erasure (and similar policies). The Erased played an important role within Slovenia’s political struggle; their biographies are transferred from a closed Slovene frame to European and other international institutions, and, most importantly, they are passed on among struggles that knit together experience and knowledge for future resistance to capitalist subversion.

Although the 1970s and 1980s were marked by imperial and invasive politics in Honduras, the socio-political development could be compared to Slovenia. Slovenia was developing a socialist project within the Socialist Federative Republic of Yugoslavia (SFRY) but was not immune to the capitalist politics outside its borders. Interest in the balkanization of Yugoslav unity and equality came more from “outside” than from “inside” (more from the most powerful states in the center than from republics of the federation). In Honduras they are “removing” political subjectivities that could endanger the “process of democratization” for the successful implementation of neoliberalism. Erasure also appears as a “necessity” accompanying the change of system and authority; instead of a ceremony of “purification” inside the society, there is the systematization of “political liquidation” of a specific segment of the population. Erasure in Slovenia, as with the disappearances in Honduras, happens under the cover of political motifs, in the name of “endangering of state sovereignty” and independence because of the implementation of the market economy and broad capital interests from the West.

At the same time something more deliberate and profitable was going on. This was not only the reduction of citizens, nor was it only a bureaucratic “mistake” (excluding by political standards or because of systemic “error”, as organizations for human rights and other studies have pointed out). There was also an act of social and/or political segregation going on or a “removing” of socially and economically “surplus” people. With erasure, the state first tried to reach its primary political goal, which is dominant throughout Slovene history and is nationally conclusive: that of “national homogeneity” or “purity”. The departure of all former citizens of Yugoslavia who did not want Slovene citizenship or did not ask for it was aimed at a precisely selected population in Slovenia. It was mainly the male population, who were employed as a mobile work force in the heavy construction industry of the time in Yugoslavia and were responsible for the rapid industrialization of Slovenia, who were erased. There are estimates that around 3,000 children were hurt by erasure. Because data on erasure is not publicly accessible, it can only be guessed that it was not only a question of citizenship but

<sup>11</sup> According to the Law on Social Security, any person who cannot provide means of minimal income for himself/herself and his/her family members for reasons that he/she did not or cannot have influence over, is entitled to financial social support. If this person, without well-founded reasons, rejects, avoids or abandons activities that could lead to employment or some other way of improving the social situation for him/herself and his/her family members, he/she is not entitled to financial social support.

<sup>12</sup> Already in 2003 the *Annual Report of the Human Rights Ombudsman* was warning of erasure from the register.

<sup>13</sup> Regarding the source and assertion of the term “precariousness”, see Močnik (2006: 83-84).

also one of class. The period of industrialization had successfully ended, and Slovenia was getting ready for a notorious “transition”.

The politics of wiping out and erasing became firmly rooted in Slovenia. It became the new politics for the efficient implementation of neoliberalism – a formula for solving the hardest economical and political dilemmas (as well as the successful prosecutor of a class question). Every new political class dreams of how to improve the developmental, social, and economic markers of national statistics “overnight” and climb all the way to the top of the ladder, ranking alongside the most developed, advanced and dominant countries. While the Slovene Demos government in 1992 “helped itself” to the erasure of one percent of the population, a new right-middle government (2004–2008) artificially diminished the number of the unemployed to prove unexpected economic success; in 2005, 15,038 unemployed were erased from the registry of the unemployed “because of

violation of obligations” (almost 40 percent of them also lost financial and social support by being erased from the registry), and in 2006, 18,811 (again 40 percent of them without financial assistance, Marn, 2007).<sup>11</sup> By liberalizing the law of employment, and insurance in the case of unemployment, the government reached a constitutionally indisputable erasure of another socially vulnerable population, this time of Slovene citizens and foreigners with permanent residency.<sup>12</sup>

The politics of reproduction in interstitiality reach way beyond the erasure of the rights of residents of the Republic of Slovenia. Every erasure (re)produces a dependent population over and over again, which can then be managed in the most perverse and humiliating ways. Erasure in Slovenia was not limited to the form pointed out by researchers, journalists or human rights organizations; there was also an artificially produced precarious population and flexible workforce (*precariat*). To make precarious (*precariousation*) and to make flexible (*flexibilization*) are terms that have found their places within the social sciences lately.<sup>13</sup> The precarious constitute marked populations that are employed “at the mercy” of employers (especially marginal groups, refugees, the Erased, and other residents without documents and work visas). Their life and work (as well as the lives of their family members) are almost completely dependent on the grace, and the arbitrary will of employers. The Erased in Slovenia became the most efficiently precarious population for a number of reasons. First, they could not leave the country, otherwise they would not be allowed to return. Second, they were willing/forced to work “on the black market” in order to support themselves and their families. Third, they were willing to accept the worst paid jobs for their level of education. Fourth, they were the cheapest possible workforce for employers, because employers did not have to contribute to insurance programs, pensions etc. Finally, they were “socialized” or appropriately “re-socialized” to adapt to the work force. Other “Western democracies” or post-Fordist systems faced complex questions surrounding flexible workforces and the necessity of precariousness (people willing to work by “grace”), by adapting their restrictive/selective migratory politics to their own needs, by giving citizenship to those willing to do excess work in their “democratic” state, and by imposing extra expenses on those who did not.

But the precariousness of the lives of the Erased did not satisfy the segregationist politics of Slovenia, which further criminalized, stigmatized, victimized, demonized and marginalized them. At first it equated them with Yugoslav Army officers – widely perceived as aggressors and occupiers – to establish a political justification for the “urgency” of erasing these “enemies”, “foreigners” and even “aggressors”. The people responsible for erasure, among them the Ministers for the Interior and current Prime Minister, justified their politics with another categorization: they set about proving that the erasure “did not happen”. They claimed that it was “made up”, that the Erased were “clever”, that they wanted “huge compensation” and that their objections were more about “problems of individuals who did not arrange their status properly”. All the modifications used by politicians and the media to manipulate the lives of the Erased are today accepted as “facts”. Accusations that the Erased only wanted huge settlements have emerged since they organized themselves. Parliamentary debates have often taken place, using openly racist discourse, humiliation and degradation. What is more, politicians have invited people to use armed force. Indeed, at the time of the demonstrations of the Erased (February 2005), Sašo Peče (parliamentary deputy of Slovene National Party and vice president of Parliament) supposedly hung up a flier inside Parliament that said: “All Erased invited to the dance! Music will be played by Jelinčič on a machine gun!!!” Peče denied responsibility. The Slovene National Party blamed the Erased, activists and the media for the flier, even though only deputies had access to Parliament. Discourse of this kind was common in Parliament. The Erased were seen, especially through presentations of the opposition of the time (Slovene National Party and Slovene Democratic Party) as “scum”, “speculators”, and the “insane”. The leaders of Parliament of that period (Liberal Democracy of Slovenia and Social Democrats) did not encourage hostile discourse, but they ensured, faithful to neoliberal exclusion, that the erasure was not resolved during their reign. In fact, under this government, there was also a referendum conducted concerning the question of the “correction of injustices” for the Erased.

In Honduras as well as in Slovenia, immunity prevented those responsible for the erasure and disappearances from serving their sentences. In Slovenia immunity was symbolic, though not legal. This proves again what kind of tradition and “democracy” were being developed by the symbolic and political powers within the state. The Slovene politicians who have committed anti-constitutional actions have not yet been held criminally responsible; those responsible have not answered for their professional and political mistakes, for their greed and intolerance, or for their purposeful damage, harm, and offense to those involved. They are still working at their old professions in the political and economic elite. In Honduras, the descendants of the disappeared have at least forced a symbolic acknowledgement of the politics of genocide by the state and so symbolically were able to find human integrity. The Erased have not yet received even a symbolic apology; they continue to be introduced as criminals rather than people. They had their right to a dignified life taken from them by those responsible for the erasure. The description of the fight against fascist politics in Honduras demonstrates importance of the symbolic points of reference and symbolic capital that can be built parallel with struggles. A point comes when the dead can no longer be woken and when, by different factors – time, legal orders as well as interstate agreements and contracts – we are prevented from even partially returning dignity to the disappeared, the Erased and their families, relatives and friends by sentencing the criminals. At this point we must look towards creating symbolic points (material, political, etc.) that will be, if nothing else, a generator of future struggles and a reminder for current and future generations of the inhuman politics. Although the political struggle in Slovenia is far from the

<sup>14</sup> Gašper Kralj has been conducting research in Argentina since 2006; meanwhile he is finishing a monograph about Guatemala, which will be published in 2008 by Založba\*cf. He writes about H.I.J.O.S. separately in Kralj (2005b).

<sup>15</sup> The most visible and powerful autonomous organizations joined the initiative (for example the farmers' movement CUC, which unites 235 communities) and also the most radical, political and revolutionary urban groups. This is the first move in a broader attempt to recreate the left in Guatemala after 36 years of class war and a decade of "peace". At the same time, it is an attempt, where for the first time it becomes possible to imagine the left in geo-political context (a web of socialisms of the South, especially in Ecuador, Bolivia, Venezuela etc. and recent victory of the Sandanistas in Nicaragua).

described humanistic direction, hope has not yet died for the righting of injustices and, most of all, in the condemnation of unconstitutional actions performed by politicians.

## Revival of individual and collective memory in Guatemala

"The disappeared are currently like ghosts hanging above the worlds of the living," begins the ethnographic study of Gašper Kralj (2005b: 114), which contains the stories and reflections of "those that are always nowhere". Thus the author has engaged in revealing the socio-political context of state totalitarianism in Guatemala. Totalitarianism in Guatemala claimed 45,000 lives of political fighters who struggled against the reactionary politics of neoliberalism and genocide in the beginning of the 1980s. Through collaboration with the collective H.I.J.O.S. (*Hijos y hijas por la identidad y la justicia contra el olvido y el silencio* – daughters and sons for identity and justice, against forgetting and silence)

Kralj<sup>14</sup> offers a framework for new epistemologies, theories and research that are producing new political activities through which to analyze and develop new political practices. In continuation, we develop Kralj's notes and our own militant research with H.I.J.O.S. in Guatemala (November 2006 to January 2007).

The H.I.J.O.S. collective first appeared in Argentina (1994), followed by collectives with the same name in many other countries such as Chile, El Salvador, Mexico and Italy. In Guatemala, five sons and daughters of disappeared indigenous women formed H.I.J.O.S. in 1992. The Guatemalan collective began when the daughter of a disappeared rebel coincidentally encountered a representative of the Argentinean collective in Canada and brought the idea to Guatemala. They are all descendants of disappeared revolutionaries, and have had various experiences dealing with the politics of disappearance. The two brothers are the sons of a disappeared rebel indigenous woman who was tortured by the army and then taken away. They spent their childhood under false national identities outside their country. In order to quell suspicion, they attended military schools. Owing to the regular persecution they faced from the dictatorial authorities, the boys and their father had to move often. Their father was politically active throughout, both in Guatemala as well as in other countries; he cooperated with the establishment of autonomous Zapatista communities in Chiapas and many other movements. He also fought for exiles that fled to Bolivia from the dictatorship. After returning to his homeland at the end of 2006, he chose a broadly leftist movement, MAIZ (*Movimiento Amplio de Izquierda*). At the beginning of 2007 he encouraged the establishment of a new leftist initiative, UNACHODI (*La Union Nacional de Comunidades por los Derechos Humanos Intergrales*),<sup>15</sup> which serves to integrate the struggles of the community.

The fight in which H.I.J.O.S. of Guatemala is involved is extremely important for the elaboration of revolutionary practices. It is one of the rare movements that emphasizes "the necessity of freeing individual and collective memory of disappeared" (Kralj, 2005b: 115). The fundamental levers of modern fascism, imperialism and neoliberalism in the state are

divided by radical politics. The potential and power of revolutionary activity are growing through their theoretical recognition, and by opening up strategic points of historical struggles in Guatemala and the broader region. They still face dictatorship, however. A repeated candidate for the president of Guatemala, who will be participating in the elections in September of 2007, is Ríos Montt. Ríos Montt is the most significant dictator in Guatemalan history and is currently being protected by amnesty from the Peace Contract.<sup>16</sup> Even though the candidacy of former presidents is unconstitutional in Guatemala, Montt forced the matter by sending his own army to the capital.<sup>17</sup>

The first symbolic recuperation of history – the remembrance of the disappeared through the resuscitation of revolutionary practices – responds, in return, towards the whole social body and region where the politics of disappearing are established. “Absence” is returning to “presence”. On the day of the military parade, which celebrated the Day of the Army in 1999, H.I.J.O.S. joined the ceremony on the main square of the capital and interrupted the military celebration through both their presence and their critique of injustice and genocide. The Day of the Army has not been celebrated since. H.I.J.O.S. members were present as “witnesses of the violence of absence” and did not interrupt the parade by their activism, but they knew how to unite, define and revive “the struggle of their elders”. They were able to revive even more than the disappeared; they also revived their struggle and their sense of hope, a feeling which had been lacking in society. The children of the disappeared belong to one of the first generations that are realizing the abandoned and confounded dreams of the previous generation through their historic struggles. This generation of youth is finding sources of inspiration in the bloodiest, most denied, concealed, yet nonetheless rich revolutionary heritage. The disappeared fought against Montt’s dictatorship and genocide with weapons. H.I.J.O.S. begins to “arm the hope” (Kralj, 2005b). The Guatemalan guerillas could not afford pacifistic methods in the 1980s.<sup>18</sup> People were being attacked by death squads as well as other paramilitary, mercenary and conscripted armies. This was a period of armed rebellion all over Latin America against oligarchy, dictatorship and the invasion of the U.S.

The second symbolic recuperation of history in Guatemala concerns workers self-organizing into unions, who were pronounced enemies of the people by the national security doctrine of 1980. On 21 and 24 August 1980 the police and army killed 43 union leaders who were members of the University of San Carlos and the School of Labor Union Orientation. Through these violations of fundamental human rights and freedoms, and by the process of removal, totalitarian leaders attempted to halt popular resistance. Twenty-seven years after the killing, on 21 June 2007, H.I.J.O.S. managed, with massive support from the people, to pronounce 21 June as the National Day of Forced Disappearances. H.I.J.O.S. prepared an exhibition of silhouettes, photographs, and banners of the disappeared on the main square in front of the national palace. The square was filled with 45,000 images of the disappeared. H.I.J.O.S. does not mourn, they revive and call to life

<sup>16</sup> Many movements warned of the danger of Montt’s return to dictatorship – that is also why UNACHODI is important. Among other candidates for President, there is also the indigenous activist, Rigoberta Menchú Tum, who received a Nobel Peace Prize in 1992 and is known for her biographies of the disappeared.

<sup>17</sup> It is a formerly paid army (*patrulla de autodefensa civil* – patrol of civil self defense), which he introduced between 1981 and 1983, during his operation of “leveling grounds” (*tierra arrasada*). It consists of men between 15 and 65 years, recruited by force. By such means, he realized his political project – the building of “model villages”.

<sup>18</sup> In the 1970s there were four larger guerilla movements in Guatemala (EGP – Guerilla Army of the Poor, ORPA – Organization of Armed Peoples, FAR – Rebel Armed Forces and PGT – Workers Party). At the time of Montt’s dictatorship they united in a guerilla union called the Guatemala National Revolutionary Association (URNG), that was also the foundation for a political party of the same name. As in other countries of Latin America, guerillas lost any serious chance of political victory or compensation for injustices by signing the peace treaty.

<sup>19</sup> PRI – *Partido Revolucionario Institucional*, Institutional Revolutionary Party – institutionalized revolution from the beginning of the 20<sup>th</sup> Century and ruled the federation for seventy-one years.

<sup>20</sup> In this federal state of 3.5 million there have been exceptional circumstances since 2006. The government is establishing “peace” via a preventive federal police, that occupies the main square of the capital and controls the entering and leaving of the city by military force. We did more research on this with Matej Zonta between 21 October and 29 November 2006 ([http://www.dostje.org/Aguas/Novice/nabukadnezar\\_spodaj.htm](http://www.dostje.org/Aguas/Novice/nabukadnezar_spodaj.htm), accessed 22/6/2007). Also, see Vaneighem (2006).

the people who are not mentioned, not spoken of and forcefully forgotten. “We do not reconcile!” they declare. With their radical practices, they recuperate the dignity of people who had it forcefully taken away from them by murderers. In their nine years of activity, they were involved in occupying the abandoned places of historic union struggles as well as reinforcing the struggles against the World Trade Organization, NAFTA, the Puebla-Panama Plan, the International Monetary Fund, as well as other neoliberal plans for Central America. Just as the Zapatistas demonstrated on 1 January 1994, H.I.J.O.S. demonstrated that they do not need arms to achieve their political demands, and that they alone are the protagonists of dignity and integrity for their own lives as well as those of the broader community. They are proving just how unstoppable the subjects and/or heirs of historical “violent absence” can be if they subvert the systemic deprivation and oppression, and wage collective struggle for a different society. These are actual struggles

that have been won throughout history, even though neoliberal and other fascistic systems presents these as failures. Beside H.I.J.O.S. and the Zapatistas, we can find many other similar groups. Among them, is the symbolic capital of the women of Acteal.

The third symbolic recuperation of history – the slaughter in Acteal, Mexico – consists of a massacre of over 45 people. They were refugees who fled from paramilitary violence to a church in Acteal in Chiapas, where they sought shelter and assistance. Paramilitary groups carried out the massacre on 22 December 1997 in front of the church during the time of prayer. While the leading political party in Mexico (PRI)<sup>19</sup> ordered it, the massacre was carried out unofficially. The murdered refugees were members of a pacifist group, Las Abejas (the Bees), which united 48 indigenous villages in Chiapas. The dead were mostly women, including many pregnant women as well as children. Las Abejas were sympathizers with the Zapatistas’ goals, which was one of the primary reasons for the execution of these displaced residents. The army from a nearby military base did not respond to the massacre because, as later research has shown, they were directly involved themselves.

Relatives of the victims in Acteal displayed a significant amount of political power based on the genocide. Women from Acteal came barefoot from the Chiapas rainforest and entered “the forbidden places” in order to symbolically destroy the state’s repression. In November of 2006 the women entered Oaxaca, where people had taken over the state’s institutions some six months earlier. They supported the Popular Assembly of Peoples of Oaxaca, handing over three tons of food, water and medical aid.<sup>20</sup> Women from Acteal entered the heart of the struggle barefoot, invading the main square in the capital of Oaxaca, which had been closed to the Oaxacan people for six months and was guarded by some 4,000 federal policemen. The women entered non-violently, symbolically overwhelming the fortress of the fascist government of Ulises Ruiz in Oaxaca. Because they embodied the genocide of the poorest and the exiles, they became politically and symbolically untouchable. The police opened their cordons without discussion, and a caravan of women entered the squares and fortresses that defended fascism. This lightweight of rebellion is seen symbolically, as new struggles grew out of the dignified resistance of rebels who did not abandon their fight for a different society, one worthy of a human being. And they did this despite facing the worst of life’s loss, despite seeing their loved ones slaughtered.



Because we have not recuperated our own struggles until now, H.I.J.O.S. and the women from Acteal should serve as a reminder to us of how strong the political framework, collective and individual memory could be if we knew how to use it for the recuperation of historical struggles and for the transformation of sociality.

## Silhouettes of the disappeared and erased

*Here, where mothers are still awaiting their children,  
where time cannot bury the cry,  
I live, on the ruins.*

Indira Flamenco Vallecillo, poet from Honduras

<sup>21</sup> When eleven of the Erased went on a hunger strike on 21 February 2005 for five days and occupied the building, where the European Commission had its seat, a private security company, Sintal, removed them by force with fifteen guards. They did so after the police, the building manager and the chief of security had reassured the strikers that they had permission to demonstrate inside the building and after the media and social movements had exited the building. Violence towards the Erased started 15 minutes after the movements and media left the building, when the Erased were alone (at 11:30 pm). Because of the violence, they needed to seek medical help. This operation, like many others, showed again that there is no public space for the Erased to articulate their political demands.

In Slovenia, no horrors of physical removal or slaughter were perpetrated, but violent “individual” removals of basic human rights, psychological violence, exclusion, torture, “new age slavery” (precariousness), violent emigration from the country, violent separations of family members, imprisonments etc. did take place. The Erased were also violently removed through political action.<sup>21</sup> How do the Erased see their position in their environment? How do they feel when those “responsible for the erasure” talk about “democracy,” “human values,” and “economic progress” on radio and television shows? Neoliberalism forbids empathy and the experience of common humanity. So it happens that in everyday life there is no solidarity for those who suffer and who are treated unjustly, and when injustice strikes us we are essentially alone.

H.I.J.O.S. in Guatemala, Argentina, El Salvador, Brazil, Chile; COFADEH in Honduras, women in Acteal in Mexico, FAMDEGUA from Guatemala, *Asociación de Madres de Plaza de Mayo* in Argentina, martyrs from the Zapatista rebellion in Chiapas in Mexico, and many other witnesses are wakening the silenced “violence of absence”. Heirs of state repression and revolutionary politics reaffirm the revolutionary heritage for their dear ones in actual struggle against neoliberal, isolationist, segregationist politics. For the revitalization of heritage, they use iconography, silhouettes, portraits, murals, graffiti, publications, lyrics, flyers, pamphlets and posters, and they organize street actions and demonstrations. They compose statements, petitions and contributions; they participate in interviews and tell life stories; they prepare criminal denunciations, and try to change national laws and the Constitution. They erect memorials and pronounce state holidays to warn people of the politics of disappearance. They occupy and forcefully enter buildings where killing was perpetrated. They organize competitions for youth who do not have direct experience from the dark past on the topic of the disappeared, and they write their silenced heritage into school programs and into the history of their countries. The Erased have also started a broad, forceful struggle by establishing the Association of Erased Residents of Slovenia (2002) and later on the Civil Initiative of Erased Activists – CIIA (2005); but they did not rely on a revolutionary heritage as movements in Latin America did. The “children” of Socialism are fighting for a new identity as the Erased, and not as heirs of revolutionary tradition because that socialist tradition was oppressed, denied and erased; it is in the process

<sup>22</sup> For more on current mechanisms of revision, see Debenjak (2007) and Trampuš (2005). However, there is no thorough research available on transformation and erasure of the revolutionary heritage.

<sup>23</sup> FAMDEGUA is a union of families of the imprisoned and disappeared in Guatemala – *Asociación de Familiares de Detenidos y Desaparecidos de Guatemala*, which is similar to COFADEH in Honduras in its function.

<sup>24</sup> For an accurate description of the violence that happened on that day in H.I.J.O.S. headquarters, see the Amnesty International report available online: <http://web.amnesty.org/library/Index/engAMR340422000?OpenDocument&of=COUNTRIES%5CGUATEMALA> (accessed 20/11/2007).

of revision today.<sup>22</sup> It even seems that the more the revolutionary heritage is denied, the closer this heritage is to people. The Erased are not presented as Yugoslav workers, fathers and mothers but as the Yugoslav Army, and aggressors. The revival of an individual and collective memory is important for the oppressed, as well as their relatives and the broader society. Remembering is part of the struggle.

H.I.J.O.S., along with other children of the disappeared, confront those responsible for the disappearances and the agents/culprits of the horrors that occur daily at their jobs, and on the street; the totalitarian oligarchy, the army and police, all perpetrators of genocides and disappearances, who are still leading Guatemala. On 4 September 2000, armed men broke into the headquarters of the H.I.J.O.S. organization, where the FAMDEGUA<sup>23</sup> union also worked. The burglars destroyed documents, took computers and other office equipment, money, political and other materials prepared for workshops, demonstrations and other actions.<sup>24</sup> Following this event, H.I.J.O.S. had to call the police.

The murderers of their mothers and fathers, who are still considered “guardians of order and peace”, walked into the building. Every day is just as grotesque for the descendants of the disappeared. When they enter state offices, when they look for employment, when their documents are checked by police in the street, when they meet their neighbor, when they participate in a neighborhood meeting, or when they talk to leaders of their villages, they come into direct contact with the people who perpetrated these crimes.

The mothers and women of Srebrenica, the location of the worst crimes since World War II in Europe, reported on the twelfth anniversary of the massacre of 8,000 Muslims (12 July 2007) that they neither forget nor forgive the Serbs or Europe. Despite the women’s protests and their clearly stated wishes that the main prosecutor of the International Criminal Tribunal for the Former Yugoslavia should not visit Srebrenica at the time of the anniversary, Del Ponte, delegates of the UN, EU and other un-invited guests recklessly trampled their memories, wishes and symbolic ceremony. They used the opportunity for their own show and not for the mothers and women of Srebrenica, witnesses of the violence and genocide. The mothers also protested against the ruling of the International Criminal Court in the Hague (26 February 2007) that Serbia is not responsible for the genocide. The slaughter of 8,000 refugees was not enough. The EU, UN and other “democratic organizations” are able to oversee the “real” interpretation of history as well as the ways in which the people of Bosnia and Herzegovina will have to “appropriately” integrate their pain. This is one of the crudest interventions in human integrity. For this integrity is not measured by one’s belonging to a state or nation, though modern systems of capitalist oppression might try to convince us of this daily. These women will be forced sooner or later to eradicate their own pain and loss and to symbolically purify their own nation’s destruction. We can only hope that they will gather enough political courage and strength to continue their lonely fight, as they did at the time when the blue helmets were retreating and when the whole world forgot their reality, which they now know how to interpret and define appropriately. The Erased are only a step away from those horrors. Because they are still alive and not dead, political responsibility is not any less, but in fact greater, because these injustices are ongoing. But not for the sake of the EU

(as well known Slovene politician Borut Pahor “democratically” pointed out not long ago), but because of the lives of the Erased and also of all other social groups who became “opportunists” in Slovenia’s silent heritage, which is still manifested today in fascist and other reactionary goals. We must fix injustice and crime in Slovenia, not only symbolically but also materially and politically.

How can the nonexistent, absent, disappeared, oppressed, disabled and murdered be reached? How can a joyful smile of rebelliousness be painted, and the dignity of the mothers and fathers that suffered unimaginable violence regenerated? H.I.J.O.S. represents their parents with silhouettes and faces, collecting photographs and copying them on banners and walls. They draw bodies out of cardboard on the empty walls of streets and sidewalks, in the spaces of everyday life. Those images serve to waken and revive the absent; the painted return to social life. Those kinds of art workshops are called *teraparte*, art and pedagogic practices through which children, besides collective therapy for the absence of dear ones, inject new revolutionary power *into* society and *for* society. That is why *teraparte* is a new political practice, beyond therapy, that unifies politics, art, and pedagogy. The Erased and other social movements in Slovenia have used many of these methods and expressions, similar to those created and developed by other oppressed peoples of the world. Miran Bilek, an erased artist who made a mosaic of faces at the establishment of the organization, was never mentioned.<sup>25</sup> A colorful mosaic poster escorted the Erased to all their actions and discussions during those first years. It was the first and only direct representational practice of a multitude of portraits and their expressions. Many banners, presentations and especially actions followed that went unnoticed, and without reflection on their content. In Slovenia, nevertheless, we are still far from some political practices invented by the rebels of the ultra-neoliberal countries, although we are being pushed into a very similar social and political situation; “a mono-cultural pseudo-politics of the management establishment – the single-mindedness of the modern state” (Močnik, 2006: 70).

The children of the disappeared have the sensibility and clarity to see over this concrete frame and to create “a phantom relationship with the disappeared” (Kralj, 2005b: 115). By waking the historical consciousness of rebellious people, they revive revolutionary politics. In this way they can achieve the impossible; they can remove shameful national holidays and create their own. They enter forbidden spaces of historical killings and subordinate them. They are becoming untouchable, to the point where they carry the revolution in their own hands, on banners, in iconography, in words and shapes, and most of all in their common activity and human relationships. Here, in front of us, the Erased move – they are still alive. And we do not know how to establish phantom relationships? While they are alive, or at least “alive–dead”, we still have time to meet, feel them, hug them and struggle with them. But the path to a dignified struggle is thorny. We have already lost many on it.

## Forbidden to forget!

*Escrachar is to put out, publicly reveal,*

*to show a man's face that does not want to be noticed.*

H.I.J.O.S. Argentina

President of Civil Initiative of Erased Activists, Aleksandar Todorović, was criminally charged in 2003 by three of those responsible for the erasure. The charge stemmed from a conversation that allegedly took place after a confrontation on one of the television shows that is conceptually

<sup>26</sup> Debelak was State Secretary at the time of the unconstitutional erasure, head of Management for management-legal affairs of the Ministry of the Interior, and also a signatory of dispatch No 0016/4-14968 along with Mesojedec Prvinšek, who was also responsible for the realization of the erasure. Šter was Minister for the Interior in 1994, when Dr Ljubo Bavcon presented the Prime Minister with the horrifying consequences of the erasure. Dr Bavcon is a Professor of law who headed the Commission for the Protection of Human Rights and Fundamental Freedoms.

organized to encourage racist and fascist discourses (it was the show *Trenja* [friction] on the commercial station POP-TV). After the show, Todorović allegedly insulted Slavko Debelak and Andrej Šter and indirectly insulted Alenka Mesojedec Pervinšek<sup>26</sup> in the POP-TV building. Todorović allegedly called them “fascists”, and they subsequently hired an attorney and initiated a private case. It is interesting that, although many professionals, social scientists and people from the movement called those responsible for the erasure “fascists”, they had been, until that moment, unavailable. Now Todorović is in his fourth year of defending himself in court for this alleged insult.

An examination of terminology shows that Todorović, even if he did use the term “fascists”, should not have a difficult burden in court. The basic manual of the social sciences in Slovenia confirms this conclusion. It was created in Yugoslavia, and we can conclude that it is consistent with most of the terminology that was used scientifically and generally during that period. Because Todorović was educated under socialism, we can assume that his terminology is drawn from the period and environment in which he actively lived and worked. Slovene Lexicon of Social Sciences (1979: 92–93) offers several definitions of fascism. Among them is the following:

“Fascism introduces a special form of grand capital, which has the purpose of protecting its socio-economic, that is its capitalist arrangement, by any means. By its method fascism is the most aggressive and crude form of struggle for power and its preservation. Towards that end, it uses all manner of violence and terror. It crushes basic human and citizenship rights while it also negates the democratic political order. Furthermore, fascism commonly has a foundation in social demagoguery, representing itself as a movement of ‘workers’. [...] As a political system, it is as a special, institutionalized, autocratic political order, based on a leadership principle and one-party rule. It maintains an image of legitimacy at any price.”

Quoting a definition of fascism makes evident the objective criteria for labeling as fascists those responsible for the erasure. Indeed, the action itself, systematic erasure, is a fascist one.

So we must admit that Todorović’s statement – for now only alleged – indicates the political, moral and individual responsibility of all politicians who, for the sixteenth consecutive year, maintain the systematic, persistent, and inescapable erasure of so many individuals. During this entire period the most vulnerable population has been, together with their loved ones, manipulated and forcefully oppressed. That is why we must remember the figures and leading politicians who maintained this fascism and demand the prosecution of their responsibility legally, politically, professionally, morally and individually. In this text we designate them fascists, according to the social scientific definitions of fascism. They are as follows: Lojze Peterle, Igor Bavčar, Slavko Debelak, Alenka Mesojedec Pervinšek, Ivan Bizjak, Janez Drnovšek, Milan Kučan, Andrej Šter, Mirko Bandelj, Borut Šuklje, Darja Lavtižar Bebler, Janez Janša, Anton Rop, Rado Bohinc, Peter Jambrek, Dragutin Mate, Dimitrij Rupel etc., and the entire membership of three governments: *Demos*, Liberal Democracy Slovenia, Slovene Democratic Party (we can omit the intermediate, Bajuk’s, because it is already included in the other three).

It is forbidden to forget, conceal or hide the Erased and the disappeared who were publicly revealed a decade, or even several decades, after the original crime. The only persons who remain hidden are those responsible for these crimes. Injustice and horror must be answered for, the suffering of the living ended. This is our social alliance; if we do not adhere to it, we will become passive observers of these exclusionary and segregationist politics. Passively watching is comfortable if we allow ourselves to be immune to the lives of those around us, and if no one interferes with ours. Our social (and political) obligation is to banish over and over again any terror, genocide, oppression, contempt and humiliation that stems from the state apparatus or popular initiatives. What the Erased, disappeared and all who are close to them went through, are a large enough warning of just how much and in what way the state apparatus values human lives and how much we value ourselves. The trends present a pathetic image. The politics of disappearance continues and/or is revived in Latin America as well as in Europe. We have shown in the case of Slovenia how the politics of erasure became established as an integral part of social life. In Slovenia and in Europe there are, besides rising destruction, isolationist and selective management politics, also a strengthening of openly populist politics that forms and acts against vulnerable populations, even when the perpetrators gain no other benefit than the imaginary revenge that is achieved through their activity.

The crime of excommunication of one percent of the population, now already in its sixteenth year, is possible only because it has been cultivated and established by all the standard bearers of political parties, regardless of which place in the governing class they occupy. They use the rhetoric of the fascist idea of the homogeneity and purity of the people, and through that they reinforce a neoliberal agenda. However, it is not only the Erased, but also refugees and other sectors of the population that are not acceptable to conservative and fascistic rule. Among these are workers who have “overly protected work spaces” and “excessive salaries” and who should finally be sacrificed as a “mobile work force” in a competitive economy. That is what the strategic elite of government are saying while we remain quiet.

All social groups face the same challenge: to find those responsible for oppression and take legal, professional, moral and political action against them. It is not about lynching but about condemning and correcting injustice. It is not about warrants of arrest, because those responsible are in Parliament, and we can see their “democratic” actions daily in the media. It is also not about revealing the crimes. We have already achieved all this in Slovenia. We only have to start acting, legally, politically, professionally, morally, and socially, towards both the crimes and the criminals who instead of admitting injustice, shift their own irresponsibility onto the Erased. They have pictured their own mistakes, the erasure, as an irreversible act for sixteen years (they are right up to a point, though – the dead cannot be brought to life; and it is difficult to return health to the sick). But still, governments are irreversible; they come and go when we call on them, or our lives can become irreversible, if we allow that to happen.

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## References

- BALIBAR, É. (2004): *We the people of Europe? Reflections on transnational citizenship*. Oxford, Princeton University Press.
- BOURDIEU, P. (1983): Ökonomisches Kapital, kulturelles Kapital, soziales Kapital. In: KRECKEL, R. (ed.): *Soziale Ungleichheiten*. Goettingen: Otto Scharitz & Co., 183–98.
- COFADEH (2006): *Erguidos como pinos: Memoria sobre la construcción de la conciencia ambientalista*. Tegucigalpa, Guaymuras. Available online: [http://www.lwfcamerica.org/admin/archivos/170\\_Erguidos%20como%20pinos\\_BN\\_Ok.pdf](http://www.lwfcamerica.org/admin/archivos/170_Erguidos%20como%20pinos_BN_Ok.pdf), accessed 22/6/2007.
- DEBENJAK, B. (2007): Neprilike z zgodovino ali: Abstraktno in konkretno, Index prohibitorum. Available online: <http://www.indexprohibitorum.si/vox-commentarii/neprilike-z-zgodovino-ali-abstraktno-in-konkretno>, accessed 22/6/2007.
- DEDIČ, J., JALUŠIČ, V., ZORN, J. (2003): *Erased: Organized Innocence and the Politics of Exclusion*. Ljubljana: Peace Institute.
- GREGORČIČ, M. (2005a): *Alerta roja: teorije in prakse onkraj neoliberalizma*. Ljubljana, @Politikon, Študentska založba.
- GREGORČIČ, M. (2005b): Enotnost skozi različnost. *Poročilo za spremljanje nestrpnosti 04*. Ljubljana, Peace Institute, 186–201.
- KRALJ, G. (2005a): Komisija za resnico in pričevanje Rigoberte Menchú Tum v antropološki presoji. *Družboslovne razprave*, XXI, 49/50: 85–99.
- KRALJ, G. (2005b): Politično življenje izginulih: naracije upora v Gvatemali. *Časopis za kritiko znanosti*, 33 (222), 107–122.
- KRALJ, G. (2006): *Imaginariji nasilja in upori v Gvatemali*: doctoral dissertation. Ljubljana, Faculty of Social Sciences.
- KRALJ, G. (2007): Tovarna brez šefov. Newspaper *Dnevnik*, 5 May 2007.
- Leksikon Cankarjeve založbe (1979): *Družboslovje*. JERMAN, F. (ed.). Ljubljana, Cankarjeva založba.
- MARN, U. (2007): Krivičen izbris. Weekly *Mladina*, 2 June 2007.
- MOČNIK, R. (2003): Zidovi tulijo. Radio Študent, 4 December 2003, <http://www.radiostudent.si/article.php?sid=2772>, accessed 22/6/2007.
- MOČNIK, R. (2006): *Svetovno gospodarstvo in revolucionarna politika*. Ljubljana, Založba /cf\*.
- PAJNIK, M., LESJAK-TUŠEK, P., GREGORČIČ, M. (2001): *Immigrants, who are you?* Ljubljana: Peace Institute.
- TRAMPUŠ, J. (2005): Revidiranje zgodovine NOB. Weekly *Mladina*, 30 April 2005.
- VANEIGEM, R. (2006): *Llamado de un partisano de la autonomía individual y colectiva*. <http://www.jornada.unam.mx/2006/11/11/index.php?section=opinion&article=014a1pol>, accessed 11/11/2006.
- ZIBECHI, R. (2003): *Genealogia de la Revuelta. Argentina: La Sociedad en Movimiento*. Buenos Aires, Letra Liber.
- ZORN, J. (2004): Oris slovenskega državljanstva – od ius sanguinis k evropskemu apartheidu. *Poročilo Skupine za spremljanje nestrpnosti 04*, Ljubljana, Peace Institute, 146–67.

# The Erased Go to Heaven

In an exceptional cinematic depiction of radical political thought, Elio Petri's film *The Working Class goes to Heaven*<sup>1</sup> manages to capture the essence of a moment in time that heralded mutations in political practice and the validation of new paradigm for theoretical and practical acting. The film's hero is Lulu, a tragic byproduct of neo-Taylorist production reforms<sup>2</sup> and of the class and political recomposition that they brought about in Italy and other developed industrial nations in the 1970s. The institution of the Taylorist and Fordist factory is formed by neo-Taylorist management, mainstream trade unions, and the revolutionary unionism of the student-worker nexus. Lulu, a rather introverted and, consequently, very dedicated worker, is used to determine production norms or accords. Also known as the Tool, he soon suffers a breakdown due to the crisis in the spheres of social reproduction (consumerism and the fixation on the patriarchal nuclear family) and factory production (conflicts due to the tightening of production rhythms). The norm no longer exists; only deviation remains.

The once hard working Lulu becomes the biggest agitator in the fight against accelerating production rhythms, and for less work and more pay, and becomes a thorn in the side of both management and the mainstream trade union, which try to implement neo-Taylorist reforms through the corporate institution of social dialogue. And his newfound resolution is tempered when he befriends a patient at a mental health institution who dreams that the walls of this disciplinary institution will be torn down. Cavorting with revolutionary and autonomous union activists costs Lulu his job. But

<sup>1</sup> Elio Petri, *La classe operaia va in paradiso* (The Working Class Goes to Heaven), 1971. Petri received the *Grand prix du festival* at the Cannes film festival for this film.

<sup>2</sup> The form and content of Taylorism were determined by "two basic motives: lowering the costs for the 'factor of work' and control over the self-limitation of work productivity" (Bock, 1987: 23). Taylorist production restructuring was based on "systematic research of the dimension of time in the work process, calculation and reduction of work time used, and concern that work is done without interruptions, as well as – very closely linked to this – new systems of determining wages on the basis of 'scientific' evaluation of the place of work" (ibid.: 23–24). A similar rationalization offensive, which can be called neo-Taylorist, continued following the Second World War. The mass worker ultimately invented effective forms of resistance against this rationalization offensive. Petri's film depicts the period when clashes over the rationalization of production were at their height.

<sup>3</sup> The term “form-of-life” introduces the biopolitical paradigm which I use to reflect upon the erasure and the movement of the Erased. For Giorgio Agamben, the term “form-of-life” implies “life that can never be separated from its form, life in which it is never possible to isolate something such as bare life”. The term form-of-life “defines a human life in which the single ways, acts, and processes of living are never simply *facts* but always and above all *possibilities* of life, always and above all power. Each behavior and each form of human living is never prescribed by a specific biological vocation, nor is it assigned by whatever necessity; instead, no matter how customary, repeated, and socially compulsory, it always retains the character of a possibility” (Agamben, 1996: 151–52).

In his work *Insurgencies: Constituent Power and the Modern State*, Antonio Negri says that the “subject is mainly power, production. Of course the subject can be reduced to a pure phantom, the remains of the entirety of repressive systems: but in this case, on this reduced horizon, within these mechanisms – how great his productivity remains! At this border point the subject returns to itself in order to once again find its life principle. But the subject is not mere power, it is also action, time of action and freedom, open ‘organization’, as it is not conditioned or ordered by any teleology” (Negri, 1999: 28).

<sup>4</sup> In my book *Biopolitika: Novi družbeni boji na horizontu*, I presented the following definition of a diagram: “A diagram is unlayered, and occupied by forces that work upon one and other and produce effects as a result. The plasticity of a diagram is not determined by any teleology. It is determined by a toss of the dice; complete coincidence and mutability; Nietzschean becoming, which is anti-time and beyond the cause and effect relationship. The forms that give the diagram stability depend on the randomness and mutability of the relations of forces that occupy it. Mutability is the share of singularities of the resistance” (Kurnik, 2005: 81).

life outside of work, outside of the totality of the Fordist, Taylorist and Keynesian sphere, proves to be unbearable for Lulu. The labor movement had projected the working man’s heaven onto the institutions of industrial capitalism, which is why every hint at the life outside the factory is completely incomprehensible. Lulu does not want to be the pioneer of new forms of life<sup>3</sup> outside of industrial society and in contrast to it. In his desperation, he is drawn into the mainstream union, which finally succeeds in becoming a co-manager in the neo-Taylorist reforms. And the rehiring of Lulu is part of the deal. In the final scene of the film, Lulu and his comrades try to carry on a conversation over the roar of machines. Our hero tells them how he dreamt that they had brought down the walls of the factory and entered working man’s heaven. In reply to his comrades’ anxious inquiries into what he had seen outside the factory walls, in working man’s heaven, Lulu says “fog”.

Why have I attempted to enter a reflection on the subjective, ethical-political aspects of the erasure through the side entrance of Petri’s film? There are several reasons. First, Petri has presented a very plastic description of a turning point and potential new beginning in political practice and consequently, a new paradigm. It seems that Petri’s film grasps the future, which happens to be our present. Second, Lulu’s fate could represent the trajectory of a new antagonistic subjectivity which seeks forms of self-realization both on the level of activism and on the level of new citizenship institutions. And finally, Petri has used the media of film to produce a breakthrough analysis of society as a network of institutions in which a diagram of power particular to a given period functions.<sup>4</sup> As confirmed by Foucault and elaborated by Deleuze, this was a diagram of discipline at the time the workers went to heaven.

When one speaks of the Erased in the sense of a social movement of persons who were erased from the register of permanent residence in 1992, and of their so-called supporters and the coincidental encounter which made this struggle possible, it is also possible to describe a turning point and potential new beginning. The subjectivity of the Erased is just as tragic as Lulu’s was, and the erasure just as much an institution, that is, a particular form of the general diagram of power which, within society as a network of institutions, determines forms of subordination, the struggle for liberation, types of representation, the possibility of making enouncements, etc. However, at a certain point the working class’s ascension into heaven and that of the Erased diverge. One’s initial impression leaves an unshakeable feeling of pessimism, which arises because the new



forces were weak and divided and there were few pioneers who could have made sensible forms out of the fog, that is, new forms of life beyond industrial society and opposed to it. On the other hand, the Erased emerged at a time of theoretical and practical conjuncture of movements for global liberation. That is why the thunderous accords of the global multitude's liberation wishes often rend the fog, as do the efforts made by post-national political institutions to construct a new legitimacy.<sup>5</sup>

## A rift and a new beginning

In 1992, the criminal act of erasure deprived 18,305 persons of their status of permanent resident. Although this event conceptually extends far into the past, it encompasses dilemmas and struggles that are highly relevant for the future of liberation struggles and post-national political constructions. On the one hand, one is shocked at the premise of defining citizenship through a process of mass exclusion. This is how modern nations were formed, when it was a matter of establishing territorially delineated national sovereignties. Internal homogenization was achieved through the dialectic definition of otherness, which was excluded, dehumanized, and robbed of its rights. The Erased were constituted as *homo sacer*, as bare life, through which sovereign power was carried out directly in a state of exception. Sovereignty is unthinkable without *homo sacer*, which is why the destruction of sovereignty is crucial to liberation politics.<sup>6</sup>

Today, it is clear that globalization does not imply the end of sovereignty, but merely its transfer to the Empire<sup>7</sup>, that is, to the global regime of biopolitical exploitation. The archaism of the erasure does not lie in the fact that it represents a constitutive moment in the establishment of sovereign power, but that it is presented as a constitutive moment in the establishment of national sovereignty. The relationship between establishing national and imperial sovereignty has yet to be elucidated in this case, as it has only been analyzed indirectly, for instance, through analyses of detention centers and networking between the Erased and global social movements. Those who have dealt with detention centers in their work know that, following Slovene independence, institutions of this kind initially served to constitute exclusionary citizenship. Many of those excluded from the citizen body were detained at the detention centers and later deported from the country. This is how researchers working with immigration issues happened upon the Erased; their problem pertains to European immigration policy, part of which

<sup>5</sup> At this point I am referring to the participation of the Erased in the European Social Forum at Middlesex College in London, an autonomous space where activities took place under the heading "Life despite capitalism". This is where the first declaration of European precarious workers emerged, a declaration which led to the organization of yearly Euro Mayday parades, emerged. I am also referring to the demonstration entitled *The Invisible of Global Europe*, which took place on the same day as ceremonies accompanying Slovenia's accession to the European Union. A petition addressed to then European Commission President Romano Prodi was circulated; it demanded that he meet with a delegation of the Erased during his visit to Nova Gorica and Gorizia. The petition listed the Erased as the first citizens of the new Europe. It was also signed by a number of Italian MPs. This was the first attempt at interpolating European political institutions and the first public attempt at defining the problem of the Erased as a problem of citizenship in Europe, or, generally speaking, citizenship in globalization. These attempts became more concrete with the filing of a complaint with the European Court for Human Rights and the Caravan of the Erased to the European Parliament. These attempts were exceptionally important, as they can be understood as a contribution to defining citizenship in Europe (to use Balibar's words) or to defining global European citizenship.

<sup>6</sup> Here I am assisted by Agamben's renewed link between biopolitics and sovereignty. Foucault stated that power's interest in the population and bodies (disciplining bodies and improving the species) has nothing to do with sovereign power. Agamben attempts to find "precisely this hidden point of intersection between the juridico-institutional and the biopolitical models of power," since "the inclusion of bare life in the political realm constitutes the original – if concealed – nucleus of sovereign power. *It can even be said that the production of the biopolitical body is the original activity of sovereign power.* In this sense, biopolitics is at least as old as the sovereign exception" (Agamben, 1998: 6, emphasis as in the original). But beware! When we

speak of the destruction of sovereignty as crucial for liberation politics, we must keep two things in mind. First, the inclusion of bare life in the polis in modern politics is no longer at the edge of the political order, but the space of bare life is gradually overlapping political space. The borders of a state of exception are being erased and proliferated. This is why everywhere, bare life is continuing to become “both subject and object of the conflicts of the political order, the one place for both the organization of State power and emancipation from it” (ibid.: 9). Bare life trying to change into a form of life is everywhere coming to the fore and being liberated. The destruction of sovereignty is therefore a liberation process.

<sup>7</sup> The theory of the transfer of sovereignty from nation states to the Empire was offered in discussion for the *Journal for the Critique of Science, Imagination, and New Anthropology* when, in cooperation with Politični laboratorij, we published a Slovene translation of *Empire* and later *Multitude* (Hardt and Negri, 2001 and 2004).

<sup>8</sup> A long list of manifestations of this war could be compiled. Its most brutal expressions come from the external borders, in the immediate neighborhood of the European Union. The externalization of the politics of the rejection and selection of immigrants through detention centers for migrants and through so-called buffer zones is pushing immigration politics beyond any kind of public control that would be sensitive to human rights issues.

consists of detention and deportation. Even long after detention centers were reformed and normalized within the framework of EU integration processes, cases of detention and deportation of the Erased continued to appear. One can recall the case of the Berisha family, the head of which had been erased. Not only was this family deported; as deportees, the entire family filed for asylum, only to have their request rejected. Slovenia has normalized the criminality of the erasure (the term is appropriate in light of the state’s failure to comply with the rulings of the Constitutional Court) by ratifying European immigration and asylum policy, while the European Union has normalized the criminality of its immigration policy (this term is also appropriate, in light of the veritable war on immigrants that it has caused)<sup>8</sup> in Slovenia by integrating autochthonous forms of exclusion, by denying the fundamental rights of certain parts of the population, and through a normalizing purge.

The relationship between establishing national sovereignty and establishing imperial sovereignty therefore appears as the mutual normalization and integration of exclusionary practices. This is why, from the very beginning, networking between the struggle of the Erased and struggles against the construction of imperial sovereignty has been so important, regardless of the exceptional nature and particularities of the erasure, which are all too often overstated. An insistence on the exceptional nature and particularities of the Erased fortifies the discourse and practice of hierarchic inclusion that produces multiple orders of citizens. According to such a focus, the Erased belong to a higher order than illegal immigrants, and this notion is supposed to compensate for their inferiority in the face of those who enjoy full citizenship rights. Their reintegration into national and consequently European society is desirable only in so far as it stresses and fortifies the hierarchic system of inclusion. This idea is key to imperial sovereignty, which – unlike national sovereignty, which is exercised upon a delineated territory and projected

onto the area outside of the territory of the nation state – represents the form of biopolitical control over global flows of money, goods, and people as a work force. Hierarchic inclusion determines degrees of exploitation, access to rights, and also territorial delineations of wealth and poverty, which are no longer determined by national borders or the conceptual border between North and South, but are now projected onto urban and metropolitan centers, that is, into the heart of nation states.

For this reason, the question of the Erased was always first and foremost a question of class and political recomposition. This is also why inevitable confrontations between diverse discourses and strategies occurred within the movement of the Erased. These confrontations were just as politicized, interesting, and productive as confrontations with the nation state and opponents of the Erased, and certainly deserve special examination. The history of the struggle for

the rights of the Erased is also a history of rifts. Within these have emerged the political alternatives that pertain to the reciprocity of exclusion mentioned above.

## The subjectivity of the Erased

The struggle of the Erased signifies the extraordinary protagonism of the Erased themselves.<sup>9</sup> It has challenged the relationship between civil society and the state that emerged as a result of a clash of alternatives in the 1980s. This relationship can be briefly described as Hegelian. The institutions of civil society became locations for the presentation of social particularity with an orientation towards the idea of the state and the general interest, which was defined as integration into the global capitalist system (the introduction of a market economy, privatization and integration in so-called Euro-Atlantic integrations). The stimulus for social transformation therefore came from above, which is confirmed by the fact that practically all of civil society had been absorbed into the state.<sup>10</sup> In the conflagration of 1980s civil society, non-governmental organizations emerged as a poor substitute for civil society. Focusing on questions of human rights in the form of minority rights, these organizations supported a strict delineation between human and citizenship rights, both through discourse and practice. This stance made a particularly negative impact on the issue of immigration, as it blocked those discourses and practices that question the very existence of borders, and therefore the borders of the political and citizenship. Conflicts pertaining to immigration generally did not lead to a reconsideration of the constitution of citizenship (*politeia*)<sup>11</sup>, but rather served to fortify the distinction between human and citizenship rights, as these organizations focused their activities on the protection of human rights in lieu of citizenship rights. This is how practices of monitoring and legitimizing the treatment of detainees in the detention center for migrants or in the asylum home were developed, and, parallel to these, practices for the fortification and legitimization of the state in the sense of a state monopoly over xenophobic repression.<sup>12</sup>

This is the political terrain that the movement of the Erased must navigate. Their protagonism is validated through the tradition of a civil society that emerged at a time of economic, social, political, and state transition. Besides the elements listed above, this terrain is characterized by representation. The fortification of the distinction between human rights and citizenship rights resulted in the revocation of the right to political action, that is,

<sup>9</sup> At this point, we can speak of organized protagonism, which began with the foundation of the first Association of Erased Residents of Slovenia in 2002, and was continued with the creation of the Civil Initiative of Erased Activists. Unorganized protagonism in the form of an individual and collective position, the pride of the Erased, is therefore just as important. It has yet to be sufficiently analyzed.

<sup>10</sup> The Catholic Church maintained its illusive opposition to the state for a long time, which, of course, does not mean that it did not play a key role in the realization of the general interest in integrating society into the global capitalist system. On the contrary, through its demands for denationalization it was its main ideological founder.

<sup>11</sup> The term constitution of citizenship (*politeia*) is used by Balibar in his work *We, the People of Europe?* (Balibar, 2001). The purpose of this book and of the introduction of the term "constitution of citizenship" is a qualification of citizenship that would overcome the *aporiae* of today's national-social citizenship, which are leading to the construction of a global apartheid in Europe. The term "constitution of citizenship" makes it possible to think in the direction of expanding the current borders of citizenship. This expansion is based on Aristotle's definition of citizenship, whereby, in a given polis, the amount of citizenship is directly proportionate to the amount of democracy and power of the people. I should add that it must rest on the biopolitical character of today's societies. This means that the power of the multitude is the determining factor for the constitution of citizenship in globalization. The people are internally homogenous and externally closed, while the multitude is internally heterogeneous and externally open.

<sup>12</sup> Two differing discourses emerged as early as 2001, in a demonstration of solidarity with immigrants. The NGO discourse viewed the content of the demonstration as defending the state against the xenophobia of its citizens, while the activist discourse understood it (still in a rather utopian manner) as a demand for open borders.

<sup>13</sup> In *We, the People of Europe?*, Rancière's maxim is summed up as: "Insofar as it expresses the movement of collective emancipation, the criterion of political citizenship is the ability of a 'polity' to free itself from the forms of distribution and redistribution ('accounting'). It does not take as its objective the 'balance of profits and losses' among those who *already possess something*, be it only 'symbolic portion' of the common good, but the constitution of a 'people' (or *demos*) that begins as nonexistent on account of the exclusion of those who are considered unworthy of the status of citizen (depending on the epoch and the circumstances: slaves or servants, workers or paupers, women, foreigners, and so on). Consequently, far from being a question of granting the excluded status of victims or extending them compensatory rights within a given social order, what must be done is to reconstitute the community's universal by making 'a part of those who have no part', or by giving an unconditional right to the discourse of equality whose bearers they are historically" (Balibar, 2004: 72).

<sup>14</sup> In my book *Biopolitika: novi društveni boji na horizontu*, I have defined, with help from Foucault, the transversal codification of points of resistance against the overall integration of power. I defined it as the recomposition of public space and the reconstitution of the universal community.

<sup>15</sup> Balibar, for example, avoids a geographic definition of citizenship – "European citizenship" – and rather speaks of citizenship in Europe, wherein he mentions post-national conditions. Such reservations are suitable for several reasons, which stem from the non-existence of a European people, which can come into being only as the reconstitution of the universal of the community. A geographic adjective before citizenship also hints at national citizenship transposed onto a postnational community or a new identity for the community, which will define citizenship. Hardt and Negri are even more daring. In *Empire*, they define a demand for global citizenship. Of course, this must not be understood as citizenship in a world state. For these

the right to practice citizenship, in the case of those without citizenship. But practicing citizenship also means challenging the boundaries of the political and citizenship. However, the relationship between civil society and the state, which is strengthened in times of transition, is still far from Gramscian, if one keeps in mind that Gramsci's idea of hegemony is about social transformation and emancipation kindled by the irrepressibility of labor and needs. The role of transitional civil society does not entail challenging or altering the borders of citizenship, since it does not emphasize a reconstitution of the universal community towards the end that those without a share in it would become a part of it,<sup>13</sup> and does not even open institutions for spontaneous social movements. For this reason, non-governmental organizations do not define new rights, but rights granted by authority and realized within civil society. This ultimately serves to block the protagonism of dedicated social groups and fosters paternalism and, consequently, the reproduction of relationships of domination.

From a subjective perspective that considers the production of new subjectivities and agencies, a key element of the movement of the Erased has been their persistence in their protagonism. This element is often challenged, with either good or harmful intentions, and the confrontational nature of the erased activists often comes under attack on the grounds that it is unproductive, or even violent. But does this not imply that the protagonism of the Erased has succeeded in posing the question of borders and the constitution of citizenship? And has the way in which the Erased practice citizenship not begun to shift borders? On the level of practice, the answer is an affirmative yes. The short history of the movement of the Erased is the history of new ways of creating and participating in politics. They have certainly made a decisive contribution to the opening of public space, which is a transversal link between points of resistance.<sup>14</sup> However, they have not managed to destabilize the institution of citizenship and begin the process of its redefinition. The political terrain described above is to blame. Through discourse and practices established during transition, and through a Hegelian delineation of civil society and the state, it has prevented the problem of the Erased from becoming a problem of the constitution of citizenship, and has done so in post-national conditions – citizenship in a global Europe.<sup>15</sup> The discourses, practices, and instruments stored at the armory for social struggle proved to be weak, inadequate, and often even burdensome. The singularity of the erasure was often made into a particularity, thus legitimizing the mechanism of hierarchic inclusion which is constitutive

of imperial sovereignty. In practice, this means that the Erased were often enveloped by a public discourse aimed at the interests of the state.<sup>16</sup>

At this point, perhaps some clarification is needed. Since its very beginning, the movement of the Erased has attempted to establish a clear distinction between permanent residence, which was unlawfully taken away in 1992, and citizenship. Their entire legal and political argumentation was constructed on the specific nature of the relationship between permanent residence and citizenship, whereby all social and economic rights stem from the former, and only political rights from the latter. The reasons behind this line of argumentation are immediately understandable: the state of Slovenia had unacceptably interfered with the rights already conferred by permanent residence status. By doing so, it put citizens with permanent residence from the former republics of the SFRY on an unequal footing with foreigners from other countries who possessed permanent residence permits. The non-acquisition of citizenship in the new state should not have meant the revocation of permanent residence status. But tactical persistence in this Slovene particularity, which is the heritage of the SFRY, was never completely unambiguous. And this persistence had not been sufficiently questioned until the Erased filed an appeal with the European Court for Human Rights.

Modern citizenship – as defined to a large degree by declarations of human and citizenship rights during the French Revolution – contains two important deviations from the principles of universality, inclusion and democracy. The first is a distinction between passive and active citizenship; between inherent, equal, inalienable rights, on the one hand, and participation in the determination of means and forms for their realization, on the other. The second is the adherence of rights to nationality or citizenship through birth. This is why the arrival of a foreigner or refugee blurs perceptions of the nation state as an entity capable of guaranteeing human and citizenship rights. The actual or alleged home countries of the Erased, which were in fact determined by the state of Slovenia through an unconstitutional act, could not guarantee the human or citizenship rights of their “additional” new citizens. The tremendous suffering of the Erased, who were in many cases robbed of their dignity and even their lives, provides exemplary testimony to the essential link between human and citizenship rights, and thus consequently illuminates the urgency of putting an end to a consideration of human rights that utilizes special statuses or protective categories. Instead the equality of diversity needs to be introduced in defining the common, and in the constitution of citizenship. Tactics rooted in the political terrain described above blocked practical criticism of the concept of the nation state in the newly formed country, as well as criticism of the integration of this concept into a European Union which has established a European apartheid<sup>17</sup> regime in lieu of defining citizenship in a global

authors, it is clear that the growth of liberal institutions on the global level is impossible, which is why there can be no analogy between the nation state and the Empire. First, global citizenship is a concrete demand “that the juridical status of the population be reformed in step with the real economic transformations of recent years” (Hardt and Negri, 2001: 400). The legal coverage of the mobility of the multitude, which is dictated by capitalist accumulation, is followed by a more radical definition of global citizenship, which takes into account the autonomy of the multitude in terms of capitalist accumulation and which is defined as the general right of the multitude to control its own movement (ibid.).

<sup>16</sup> Such a discourse often led to the discipline of the protagonism of the Erased. The most shameful example was the “ban” on the public activities of the Erased in the period prior to the Parliamentary elections in 2004. This ban led to a falling out within the Association of Erased Residents of Slovenia. In the subsequent conflagration, the Civil Initiative of Erased Activists emerged, and also experienced an attempt to devalue its protagonism and falling out three years later. This time, the conservative section of the Association abandoned the search for the truth about the erasure and the project of reconstituting citizenship, and so insisted on the particularity of the erasure, condemned the public activities of the Erased themselves, and declared their self-reduction to a demand for reparations. This did not stop the protagonism of the activist section of the Erased.

<sup>17</sup> When we speak of apartheid in Europe, we are speaking of institutional racism in Europe, which develops because of the exclusion of immigrants from non-member states from the construction of European citizenship. Balibar advocates the use of the expression “apartheid” because in the EU, it is a case of “the constitution of a population that is ‘inferior’ in rights and dignity, tends to be subjected to violent forms of security and control, and must perpetually live ‘on the border’, neither absolutely inside nor totally outside. The immigrants from the East and South have in some sense left behind them the equivalents of the former South African homelands (returning to them occasionally, or sending back the resources necessary to a ‘separate development’ or to keep their families alive)” (Balibar, 2004: 172).

Europe. The paradox becomes clear when one notes that the struggle of the Erased has often contributed to the consolidation and normalization of the concept of national citizenship in Slovenia, on the one hand – by persisting in the particularity of the erasure and in the erasure as a legal error – and to the legitimacy of the hierarchy of inclusion characteristic of imperial sovereignty, on the other.

As in Petri’s film, where the labor movement projects the working man’s heaven onto the institutions of industrial capitalism, civil society or general public discourse has often projected heaven for the Erased onto institutions of the nation state. These two subjectivities are also similar because of their tragic nature, which stems from impossible necessity. Just as Lulu viewed the razing of the walls of the disciplinary institutions of industrial society as an impossible necessity, the Erased view the definition of their struggle as a struggle for citizenship as an impossible necessity. Of course, it is not a struggle for Slovene citizenship, but for that which Balibar has called *droit de cité* (the right to

citizenship rights). *Droit de cité* makes it possible to distinguish between formal citizenship and citizenship practices. At the same time, it facilitates the inclusiveness and expandability of citizenship as collective emancipation. It is a kind of driving force that opens and shifts the borders of existing citizenship institutions. The strength of Balibar’s conclusion based on *droit de cité* lies in the fact that it makes it possible to avoid referring to abstract cosmopolitanism and abstract global citizenship. Instead, the task of opening borders is executed by the basic participation of those who refer to the *droit de cité*, despite the fact that they are not citizens of a given nation state or are critical towards the borders of citizenship, both in the formal sense (criteria for inclusion in citizenship) and in terms of content (active citizenship in the sense of the collective definition of forms and ways for realizing and defining fundamental rights). It is crucial that a strategy of this kind be translated into tactics – into political demands and activism that address the question of jurisprudence within existing institutional frameworks. At this point, one must be aware of the danger that tactical moments could begin defining strategic moments. The only protection against such a turn of events, which would lead to the struggle of the excluded beginning to reproduce the system of exclusion, lies in the protagonism of the excluded themselves. Insisting on the protagonism of those who have been excluded from citizenship is therefore not an ideological gesture, but an expression of the only possible liberation strategy in a time of irreversible crises of nation states and the establishment of imperial sovereignty. To act otherwise would mean running the risk of decrying the new barbarism in the name of the old and vice versa.

## The erasure as an institution

I have placed the struggle of the Erased in an analytical framework through the duality of civil society and the state in order to examine questions pertaining to their protagonism and subjectivity. Civil society and the state stand in a dialectic relationship, and a historically important

alternative is formed, based on the direction of determination – either the idea of the state is realized in civil society institutions as discipline, normalization, and domestication, or the subversive practices of human and social transformations in civil society lead to the destruction of the state. An emphasis on historically important alternatives<sup>18</sup> is also crucial because the irreversible crisis of the nation state, which is a crisis of the nation-form<sup>19</sup>, does not mean that, in today's world, we are not in the middle of processes for defining an analogous structure for the reciprocal functioning of the economy (through the hierarchy of a division of labor) and ideology (through hegemonic normalization). The colossal biopolitical exploitation machine – the globalized apparatus of capture on the post- national level – also creates dual belonging through normalization and exclusion by defining constitutive dichotomies, which hierarchically group signs and expressions of forms of life in line with the unilateralism of capitalist valorization. Perhaps national belonging is losing its role as a pillar for all normalization and exclusionary dichotomies, but this, of course, does not mean that it has lost all significance. On the contrary, it is becoming clear that a new polar dichotomy is being defined through conflict. Some call it a dichotomy of civilization,<sup>20</sup> whereby capitalist civilization is actually implied.

Such a structure for the reciprocal functioning of the economy and ideology reveals the subversive nature of the subjectivity of the Erased, through both a reorganization of the global division of labor and through hegemonic normalization. The Erased are, in fact, a multitude in the negative sense of the word, a waste product of the consensus; in other words, that which was construed as pathological and abnormal during processes of normalization. This perspective makes it possible to elucidate the relationship between citizens of other republics of the former SFRY residing in Slovenia who acquired Slovene citizenship, and those who did not acquire citizenship and were erased. On the other hand, there is the positive definition of the multitude, as a singularity that does not allow itself to be remade as a particularity and by doing so does not allow itself to be subsumed by generality. Singularity seeks a relationship with that which is common, and not with the general. The relationship between the singular and the collective is characterized by the fact that, unlike the relationship between the particular and the general, it is always dynamic and, for this reason, redefines the idea of the universal. It bears witness to ceaseless fluctuations between the singular becoming universal and that which is common becoming singular. It seems that the potential of the Erased, which stems from the impossibility of normalizing the erasure, even though this has been the state's strategy from the very beginning (one can recall maneuvers like the Technical and Systemic Act and the insistence that the Erased be individualized and

<sup>18</sup> When speaking of a historically important alternative, I must also mention a historically unimportant alternative: the alternative between the bourgeois, Hegelian dialectical civil society and the state and the Marxist-Leninist conception of taking power. Originally in Hegel's philosophy, the power of civil society qualifies the state. If civil society is the foundation of the dialectic, then the permanent revolution is that which dialectically establishes a need for the state, and consequently its legitimacy. In later works, the revolutionary dialectic changes to a veritable theodicy. By establishing the state, the revolution once again establishes an order. The revolutionary legitimacy of the state is ultimately replaced by metaphysical legitimacy. But as Negri has found, the orthodox Marxist-Leninist "conception of 'taking power' and the vertical organization of the decisive mechanism of the capitalist dichotomy of society in relation to the state represent a genuine restoration of the Hegelian dialectic [...] Marxism has as a consequence been transformed into the old art of legitimation of the state" (Negri, 1989: 169–171).

<sup>19</sup> The nation-form is defined by Balibar in the following manner: "The nation-form is not an individuality, but a type of 'social formation', that is, a mode of combination of economic and ideological structures. It is thus also, in particular, a model for the articulation of the administrative and symbolic functions of the state, capable of taking on a central role as what Luhmann would call a 'reduction of complexity' for the groups and forces acting within a society" (Balibar, 2004: 17).

<sup>20</sup> Here I have in mind not only theories on the clash of civilizations, but also the discourse around which European neo-conservatism is being rearticulated.

<sup>21</sup> Maurizio Lazzarato defines the concept of immaterial labor as labor that produces the informational and cultural content of commodities (Lazzarato, 1996: 133). In recent years, several key works on immaterial labor in the context of the crisis of the labor theory of value, and therefore of the crisis of the regime of capitalist accumulation as analyzed by classic political economy, have been published in Slovene: Hardt and Negri (2003 and 2005) and Virno (2003). According to these theories, exploitation is no longer defined as a relationship between necessary and surplus labor, but as expropriation of the common. Exclusion (work as non-capital, as that which is not exchanged for capital) is therefore no longer understood as existence excluded from wealth, but as a living source of value, as the universal possibility for wealth. The struggle against exclusion is therefore always also a struggle for self-valorization. These considerations are also interesting in the field of status exclusion, which is obviously no longer connected only to the organization of the global social division of labor (status hierarchies support hierarchies in the labor market), but also to capital's attempts to establish a regime of exploitation as expropriation of common. Biopolitical categories (the management of the population through racial, ethnic, and cultural identities that have legal effects) hereby become categories of political economy.

<sup>22</sup> He adds that the "the unspoken, unexamined, and unacceptable assumption of the 'integration' being preached was that nothing of value or permanence could be created by black people in association with ourselves" (Carmichael, 2003: 531).

<sup>23</sup> A good example of how the separation strategy is played out in communitarism is the nation of Islam in the United States.

handled on a case by case basis), lies in their urgent calls for the horizon of a different politics and a different citizen community which is a multitude.

This is why it is crucial that we register the struggle and subjectivity of the Erased among the conflicts and paradoxes around the constitution of European political space and global citizenship in Europe. This process contains a necessary alternative, one which is being established on the basis of opposition to hegemonic normalization or opposition to a structure in which the hierarchy of a capitalistically organized social division of labor and the ideology of integration function reciprocally. The struggle against normalization in today's society of biopolitical production is becoming decisive. In the era of immaterial labor and immaterial production,<sup>21</sup> opposition to normalization broaches the very production of social wealth. Exclusion such as the erasure is rejected because it weakens us, and struggles against exclusion and normalization become new spheres for free productivity and a new production of social wealth. One could say that exclusions are new enclosures, and that struggles against exclusion are new frontiers. This realization should be included in discussions of citizenship and globalization. The inclusiveness and expandability of citizenship pertain directly to the question of the production of social wealth, and are achieved by practicing citizenship free of the borders defined by formal citizenship (be it in the form of status or as a way of participating in common affairs). Institutions existing or emerging on the European level will determine whether we will advance in the manner of a war for the movement or witness a revolution.

It seems that these alternatives were already played out in United States during the era of the Civil Rights movement. There, they were articulated mostly in connection with the dilemma of integration or separation. The integration strategy encountered obstacles presented by hegemonic normalization, which supported an unequal and hierarchically organized social division of labor. Stokely Carmichael, a key contributor to the concept of *black power*, has found that integration means *culturocide*.<sup>22</sup> The alternative strategy of separation was played out in the form of racial and religious communitarism.<sup>23</sup> Those who were aware of the pitfalls of these two alternatives on the

conceptual and strategic levels sought (like Carmichael) a way out in the form of a national liberation revolution and anticolonial nationalism. This was certainly an ambiguous way out, and one which was dictated by the still intact hegemony of a global system of nation states. Perhaps today, at a time of crisis among nation states and the nation-form, a true way out of this dilemma can be found. The barricades of nation states have fallen, and the state and capital



have effectively joined forces; on the international level, capitalist valorization and political command processes have merged and overlapped. The way out is a constitution of the multitude through which human and citizenship rights are defined as the equality of differences in cooperation for that which is common, wherein singularities are invested in defining that which is common.

It is also necessary to broach the subject of political economy in this analysis. At the time of the movement for citizenship rights, the industrial paradigm was still unproblematic. In globalization, which is defined by the submission of all aspects of life to the regime of capitalist accumulation, the industrial paradigm stands on shaky ground. Spheres of social life (ideology, tradition, culture, religion, rituals, lifestyles) that were labeled unproductive in the industrial paradigm and jettisoned to the sphere of social reproduction, and thus subordinated to conservatism, have become productive. This means that they have been hitched to the regime of capitalist accumulation or the regime of biopolitical exploitation. Through this, citizenship itself has gained a new dimension: participation in the organization of life and not only in political organization. At the same time, normalization and exclusion are becoming functions of the unilateralism of capitalist valorization.

So ends the dramaturgical arc which began with a consideration of Petri's film *The Working Class Goes to Heaven*. Through a criticism of political economy, which is demanded by globalization, we can attempt an analysis of the erasure as an institution and, on its basis, define a collective diagram of power in all current social institutions. This point would mark the nexus of the erasure, illegalized immigration, detention centers, and precarity of labour and living conditions. An analysis of this kind would make it possible to comprehend the general process of normalization as dictated by the integration of the whole of society into a regime of biopolitical exploitation. The link between ever greater overlapping of processes of rationalization in the sphere of social production and normalization in the sphere of social reproduction is thus revealed. And the question of solidarity is reconstituted. It is no longer a matter of solidarity with or among minorities, but of common action against a gigantic machine for submission, exploitation and normalization which we must face as singularities.

Translated by Michael C. Jumič

## References

- AGAMBEN, G. (1996): *Form-of-Life*. In: *Radical Thought in Italy*. Minnesota, University of Minnesota Press, pp. 151–156.
- AGAMBEN, G. (1998): *Homo Sacer: Sovereign Power and Bare Life*. Stanford, Stanford University Press.
- BALIBAR, E. (2004): *We, the People of Europe? Reflections on Transnational Citizenship*. Princeton, Princeton University Press.
- BOCK, G. (1987): »Drugo« *delausko gibanje v ZDA*. Ljubljana, Studia humanitatis.
- CARMICHAEL, S. (2003): *Ready for Revolution*. New York, Scribner.
- DELEUZE, G. (1990): *Pourparlers*. Paris, Les éditions de minuit.
- HARDT, M. and NEGRI, A. (2001): *Empire*. Cambridge, Massachusetts, London, England, Harvard University Press.

- HARDT, M. and NEGRI, A. (2004): *Multitude*. New York, Penguin.
- KURNIK, A. (2005): *Biopolitika: novi družbeni boji na horizontu*. Ljubljana, Sophia.
- LAZZARATO, M. (1996): Immaterial Labor. In: Virno, P. and Hardt, M. (eds.), *Radical Thought in Italy: A Potential Politics (Theory Out of Bounds)*. Minnesota, University of Minnesota Press, pp. 133–147.
- NEGRI, A. (1989): *The Politics of Subversion*. Cambridge, Oxford, Polity Press.
- NEGRI, A. (1999): *Insurgencies: Constituent Power and the Modern State*. Minneapolis, University of Minnesota Press.

# Invention of an “Interior Enemy” after Secession from Yugoslavia

## Interview with the Poet

Boris A. Novak

Boris A. Novak is an acknowledged Slovene poet, publicist, translator, and author of more than sixty books, translated into numerous languages.<sup>1</sup> He lectures comparative literature at the Faculty of Fine Arts at the University of Ljubljana and is one of the most socially and politically engaged intellectuals: during the Balkan wars he, in the context of International PEN, organized humanitarian aid for the refugees from the former Yugoslavia and inhabitants of occupied Sarajevo. He also stood up in defence of the rights of the Erased and the rights of the Roma who were expelled from Ambrus.<sup>2</sup>

*Lipovec Čebtron: How would you define the phenomenon of the erasure, and what consequences did it bring?*

Novak: The term erasure applies to at least 30,000 citizens erased from the register of permanent residents in 1992 because they did not apply for Slovene citizenship when Slovenia declared independence. It was a disgraceful act that led to innumerable violations of human rights. The majority of the Erased failed to apply for Slovene citizenship because they lacked information or were having great difficulties getting the required documents; this was happening at the onset of

<sup>1</sup> This interview was originally published in the Italian journal, *Il Manifesto*, 26 November 2006, page 11.

<sup>2</sup> The Roma family Strojani was expelled from their home village of Ambrus in the winter of 2006. A village mob attacked the family; however, the government solved the issue of this racial violence by moving the family to a refugee camp in another part of the country. For this choice of active support for racist behavior, the Slovene government was criticized by some European institutions: for example, the Commissioner for Human Rights visited Slovenia immediately and wrote a letter to the Slovene government. See *Thomas Hammarberg, Council of Europe Commissioner for Human Rights Letter, following his visit to Slovenia on 16 November 2006*. Online. Available at [www.coe.int](http://www.coe.int) (accessed 11/3/2008).

wars in Croatia and Bosnia and Herzegovina. Also, I believe some of these persons had considerable difficulties deciding what to do: at the time many people believed that keeping their Yugoslav passport was the least risky option. It all becomes understandable if we consider that the majority of the Erased had relatives in other republics of the former common state.

It is alarming, though, that the erasure was conducted covertly, far from the public eyes. Individuals found out they had been erased by sheer coincidence, when they made contact with state authorities and had their identity documents destroyed in their presence.

*Lipovec Čebtron: What are, in your opinion, the reasons for the erasure?*

Novak: At that time the Slovene state was striving to establish complete control over its own citizens, and did so by demonizing the “others”. The descriptions of the Erased are highly significant, saying it all: traitors to the Slovene nation, saboteurs of the Slovene state and national interests. Such a construction of the “enemy” is highly alarming. Today, these individuals are deeply dismayed by the injustices they have been experiencing, especially the most vulnerable among them: the children and the elderly. Understandably, the erasure has symbolic meaning, bound to secession from Yugoslavia, and it became an emotional foundation for various governmental manipulations.

We have witnessed a new, rather dangerous dynamic since 2004; it is related to Slovenia's entry into the European Union. I believe Slovenes – despite their majority support for entrance to the EU – experienced an identity crisis and are very uncertain regarding their future in the Union. Some racist politicians took advantage of the notion of an “endangered nation” that we carry in our collective memory as a result of our difficult past. In the absence of external threats, triggering this mechanism required the invention of an internal enemy: the Erased. A series of actions and measures followed that contradict fundamental civil norms; the referendum about the Erased for instance, conducted shortly before Slovenia's accession to the European Union, was to decide whether the Erased should be restituted their rights. The majority was deciding the destiny of a minority: this principle is controversial both ethically and legally. Numerous Slovene citizens boycotted the referendum, but the vast majority of voters (representing 33 percent of the electorate) voted against the rights of the Erased. Even though the referendum didn't have legal consequences, it exposed the presence of alarming racist tensions. Such tensions have resurfaced in recent weeks [the interview was recorded in November 2006], when a Roma family, whose members are Slovene citizens, was deported from the village of Ambrus to the other end of the country, to Postojna. The deportation was carried out by the police in agreement with the government of Janez Janša.

Let me recapitulate, that the Prime Minister Janša himself, at the peak of the crisis with the Erased, actively took part in anti-Roma rallies. It is obvious that the governing forces in Slovenia are promoting xenophobic and racist politics, even though they display tolerance and openness in front of Europe and pretend to be great humanists.

*Lipovec Čebren: Is there continuity between the unsolved problem of the Erased – this large*

*skeleton in the closet of Slovene society – and rising xenophobia towards Roma? Is it possible to consider the erasure as fertile ground from which violations of minority rights grow?*

Novak: Certainly. If the problem of the Erased was resolved, we probably wouldn't be witnessing the shameful charade staged by the villagers in Dolenjska and Notranjska today: they armed themselves in order to chase the Roma away. This is incompatible with the principles of a state governed by the rule of law: inhabitants barricading roads with fire trucks, parading guns in front of cameras or threatening Roma children with chainsaws. We are witnessing a dangerous process of disintegration of the rule-of-law. The government's passivity reveals ambivalent drives of political forces, which give support to the government and gain popularity by advocating xenophobic policies.

However, I must emphasize that the present, openly racist government is not solely responsible for this situation – the previous, inert, left-centre governments share their part of the responsibility. To a certain degree, all political parties in Slovenia are responsible because they failed to address the problems of racism and xenophobia.

*Lipovec Čebren: The fact that armed inhabitants of Ambrus were chasing the Strojna family from their houses, from their land, is symptomatic. It seems that the government is attempting to “settle the Roma problem” by deportations. It occurred also, for the first time, that entire municipalities mobilized to prevent the arrival of the family in their territory.*

Novak: The situation is alarming. So called “village watches” are being formed – organized groups that “protect” the villages. This expression has terrifying historical connotations because it was coined during World War II, at the time of Italian occupation of Slovenia, when the fascist regime founded the Ljubljana province. “Village watches” were armed mili-

tias, fighting partisans and communists; they were the precursors of official organizations of Slovene fascist and later Nazi collaborators. The obvious historical connotation of the term “village watches” made me very concerned when I heard it used by residents of various villages who were mobilizing against the Roma.

*Lipovec Čebtron: Let's get back to the Erased. For a long time you have been engaged in the struggle for the restitution of their rights; even when almost no one wanted to speak about them publicly, you tried to organize support among cultural workers. Did you experience any problems because of this?*

Novak: As a matter of fact, I did have some problems: from threatening letters and damage to my car, to physical assault. On one of the TV shows there were even shouts from the audience that they would burn my books. At the same time I would like to stress the strong support for the Erased by certain poets. We organized a poetry reading in the city centre in

front of the Prešeren monument, dedicated to the rights of the Erased, with which we tried to symbolically express that this disgrace is not happening in the name of Slovene culture.

*Lipovec Čebtron: Tomorrow (27 November 2006), a Caravan of the Erased will depart from Ljubljana, through Trieste, Monfalcone to Paris and all the way to the European Parliament.*

Novak: The Erased are unable to assert their rights in Slovenia; therefore, internationalization of the problem is the only way to solve it. I find the lawsuit, filed with the European Court for Human Rights and the Caravan with which they will try to gain support in the European Parliament both positive and necessary. It is clear that all this is not being appreciated by the government. They are bound to shout that this is an attempt to sully Slovenia's reputation and that these people are traitors. Their reaction is the same every time somebody dares to deliberate critically about Slovenia abroad.

Translated by Matija Ravitz



Rally against referendum on so called Technical Act in Ljubljana, 31 March 2004.

Photo: Leon Megušar

# Erase Camps, not People:

## An Interview with Roberto Pignoni

Roberto Pignoni is a Professor of geometry at La Sapienza University in Rome. He has taught at a number of Italian universities, and also at the University of Mogadishu in Somalia in the late 1980s. Following the country's collapse, he became involved in the field of students' rights, aiding the cause of students who had been denied entry to Italy and thus education at Italian universities. He also made a name as a translator and publicist, publishing in Italian newspapers such as *Il Manifesto* and *Liberazione*.

Recently, he has become involved in advocating the rights of Roma (especially in Italy), immigrants, and the Erased. He works with the Italian-Slovene activist/research group Karaula MiR (Migrazioni-Resistenze – Migrations-Resistances) and has also helped the Peace Institute launch a project that focuses on the rights of the Erased. Roberto's involvement in filing a lawsuit with the European Court of Human Rights has been crucial, and he also took part in the Caravan of the Erased.

*Zorn: You've worked extensively with the Erased since 2005. How has this work developed in relation to your activism in Italy?*

Pignoni: It all began with the Partisans. Together with our Italian and Slovene co-workers, we've been gathering testimonies and memories of the actions of the Partisans, that is, of the great resistance that was present during the Second World War in this region of Europe and is still actual today. Our conversations with Partisan fighters revealed that the Partisan struggle and the issue of immigration are closely linked: many Partisan fighters from Furlania were forced to emigrate following the Second World War, while the countless immigrants of today's world are forced, in a sense, to become modern Partisan fighters in order to survive. This was also the theme of the three day conference entitled *O partigiano – skupnost, izraz, govorica odpornišva*, which took place in Tarcento, Furlania, in October 2004. This meeting, which echoed throughout Italy, posed questions about the links between historical memory and political consciousness. We were interested in learning from past experiences of resistance. At this time, the Slovene participants pointed out the problem of the Erasure. And so the subject came up. The collection of memories of the Partisan struggle led us to become involved in resistance against the establishment of a detention center [CPT – *Centro di permanenza temporanea*] at Gradisca d'Isonzo, a small town near Gorizia. I was shocked not only when I learned that the authorities were establishing the detention center – even though this alone is terrible enough – but also when I learned of the planned location. The center was opened in 2006 and is located in an area that housed a number of concentration camps during the Second World War. I don't think that's a coincidence; I can see a number of historical and political analogies between today's detention centers for immigrants and the concentration camps of World War Two.

Former Partisan Riccardo Giacuzzo, who served as commander of the Trieste Italian Partisan brigade, and who moved to Piran<sup>1</sup> following the Second World War, alerted me to the surprising geographical proximity: “If you look around the detention center in Gradisca – there, very near, stood the Zdravščina concentration camp”. Zdravščina, which the Italians renamed *Poggio Terza Armata*, was one of over one hundred concentration camps built by the Italian fascist regime. In Italy, people rarely talk about this, because Italian society still doesn’t want to deal with responsibility and guilt for the fascist regime. The Zdravščina concentration camp differed from other well known concentration camps, such as Gonars and Višek (Italian Visco), because it’s where Slovene men and women from the Vipava valley who became Italian citizens in 1919 or later and were antifascist were detained and tortured. It wasn’t just a concentration camp: it was a torture center.

*Zorn: What did you do with these findings? Is it a question of how to hold a sort of mirror up to the community we live in?*

Pignoni: The surprising geographical and symbolic connection between the Zdravščina concentration camp and the detention center at Gradisca led us to begin considering the need to document the continuity between past and present. We decided to make a documentary with the very telling title *On the Other Side of the River*.<sup>2</sup> The film, which was made in 2005 with the cooperation of Italian and Slovene researchers and film makers, was shown in a number of Italian cities and at several film festivals (such as *Diagonale* in Austria). Unfortunately, it did not meet with considerable interest in Slovenia.

In the movie, we focused on two questions: who are the people being detained in Gradisca detention center, and what information does the domestic population receive about them? To answer the first question, we interviewed

<sup>1</sup> Piran is a town in Slovenia [Translator’s note].

<sup>2</sup> The film *On the Other Side of the River* was made by the research/activist group Karaula MiR, and it is supplement to this volume.

<sup>3</sup> Jasminka Dedić, Vlasta Jalušič and Jelka Zorn (2003): *The Erased: Organized Innocence and the Politics of Exclusion*. Ljubljana: Peace Institute.

people without citizenship: immigrants from different countries, refugees, and also Roma who were born and live in Italy. They are also detained in these centers, just like the Erased in Slovenia. We also interviewed some of the Erased and became closely acquainted with their life stories. I must say I was quite shocked. At that time I was also reading your book<sup>3</sup>, which helped me delve further into this issue.

We sought the answer to the film’s second question among the residents of Gradisca. We asked people leaving church after Easter Mass whether they knew of any concentration camps in the area. They responded by saying that they did not, or by mentioning far off Nazi concentration camps. Somebody even replied that the concentration camp has not been opened yet (referring to the detention center for migrants). In any case, we gathered lots of evidence that people do not know about Italian fascist concentration camps, even those who live in their immediate vicinity.

*Zorn: So, it was initially about researching and reflecting upon the connections between detention centers, concentration camps, immigrants, and the Erased?*

Pignoni: This connection was already present at most of the demonstrations against the detention center in Gradisca. When we organized a meeting in Ljubljana in February 2005 to discuss mobilization against this center, it was also attended by those of the Erased who felt that such a contextualization of the problem of the erasure would be suitable. The demonstration in Gradisca on 22 October 2005, was attended by a group of

Erased from Slovenia; I recall them carrying a picket sign saying “The Invisible of Global Europe”. Some also spoke at the demonstration that took place before the walls of the Zdravščina concentration camp, on the outskirts of Gradišče. Just like the film, this rally addressed all three aspects of the same problem: the detention and deportation of immigrants, the Erasure, and the fascist concentration camps. That’s why our slogan was “Erase camps, not people”.

One common characteristic of these phenomena is their invisibility, their secrecy. In the case of the erasure, for example, you have, on the one hand, the consequences of the erasure, the struggle of the Erased for their rights, and the political questions that stem from all this. On the other hand, we’re dealing with the invisibility of the erasure in a broader, European context. For example, in Italy I met with complete ignorance of this problem

from different groups of people. Neither trade unions nor lawyers whose field of expertise are human rights had heard of the erasure. The Slovene government and state have successfully covered up this crime for over ten years, which would not have been possible without support from abroad. Foreign governments have helped keep this problem more or less hidden. Actually, I first heard about the erasure from a group of young people who believe that this silence is unacceptable and must not be tolerated.

*Zorn: Even though the collective struggle for the rights of the Erased has been going on since 2002, the dominance of the government’s interpretation over the personal experiences of the Erased and the inability of the public at large to take a critical look at these matters have maintained the status quo. Given such conditions, you’ve managed to develop and*

Photo: Dare Čekeliš



Protest against a Detention Centre in Gradisca d’Isonzo (Italy), 22 October 2005.



*realize the idea of filing a lawsuit against the Republic of Slovenia with the European Court for Human Rights in Strasbourg. How did this idea come about, and how was it possible to file a lawsuit without financial means, keeping in mind language and other obstacles?*

Pignoni: My cooperation with the Erased intensified in the moment when I suggested out loud that we file a complaint with the European Court. I had said this before I even knew what I was getting myself into. My comrades in Slovenia, fed up with the government's passivity and the ineffectiveness of international institutions, had already more or less given up hope that this matter would be resolved, which could be seen in their hunger strike at the Šentilj border crossing, in the summer of 2005. Naturally, I wanted to convince them to give up this form of protest, as the erasure had already threatened the health of a number of individuals. They weren't easy to convince, because giving up the hunger strike could have been perceived as a political defeat. In a situation like this, you need to find a convincing and really significant reason to change the strikers' minds. Well, at the time I knew very little about the workings and conditions for filing a lawsuit with the European Court. I later realized that the Court's rules are set up so as to deter people who have suffered violence and injustice from complaining. For example, one of the main conditions for filing a lawsuit with the European Court is that all internal legal means towards a resolution have been exhausted and that no more than six months have passed since a decision was reached in the country in question. This means that, in the case of the Erased, this starts from the date the decision of the Constitutional Court was issued (that is 1999 or 2003). If you can prove that the legal means were ineffective, the six month deadline starts from the time the persons in question suffered the violation of their rights or learned of the violation in the legal

<sup>4</sup> On 31 May 2007, the European Court for Human Rights partly accepted the lawsuit of eleven Erased persons against Slovenia for processing, in a part that illuminates the connections between the erasure and the violation of the rights to personal and family life and discrimination (Articles 8 and 14 of the European Convention on Human Rights). See European Court for Human Rights web page, <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=1073052&skin=hudoc-en&action=request> (accessed 15/4/2008).

sense. At first glance, the Erased do not meet these criteria.<sup>4</sup> Fortunately, I was not familiar with all these requirements, so I didn't worry about all the problems we could encounter. I didn't even know of the Italian law firm *Lana-Lagostena Bassi*, which prepared the lawsuit. I did know that Italy had been convicted in the European Court for Human Rights in the case of the expulsion of Roma and because of the collective deportation of refugees from Lampedusa. I also knew people in these circles, so I roughly knew where to turn for lawyers who would be ready to prepare a lawsuit in the name of the Erased free of charge, and who would have the ability and experience necessary for such an undertaking.

*Zorn: I view the lawsuit as an important turning point: knowledge of the Erased and the struggle for their rights have expanded onto the transnational scene, with the Erased using a conventional method, that is, legal language, of which states have a detailed knowledge, and which they have abused in the case of the Erased. The Erased were oppressed using administrative procedures wrapped in legal language; now, they're using this language and these means for their own sake, against the state.*

Pignoni: That's true, but this type of struggle, using international institutions, is very demanding. During the intensive process of preparing a lawsuit, I asked myself if I would have even pursued this route and given the initiative for it if we had known of the European Court's narrow throat, through which only few cases can pass, and if I had had an actual idea of what this work would look like. As I said before, the initiative,

that is, the promise with no real ground, was mine. At the time I thought that once we found a suitable legal firm and decided which cases to send to the court, the Erased would sign the necessary authorizations and our work with this matter would be more or less done. But that's not how it turned out. First, we had to deal with a load of laws and their alterations and amendments, and with a mountain of individual decisions, complaints, and confirmations. Then there's the language obstacle. Together with Uršula Lipovec Čebren, I clarified the Slovene legal system to Italian lawyers, who, up until this point, had been familiar with only Italian and international law.

In a few months' time, a strong collective of dedicated individuals with very high professional standards had gathered around the case. Their operating method was that of activism. The interviews with persons who had been erased were very in-depth, precise. We had to answer specifically defined questions and hand in all documentary evidence, and finally

translate it all into Italian and English. We collected more than 60 exhaustive interviews, complete with documentation. In Rome, we once again debated the entire body of material with lawyers who had different interpretations and would constantly pose new questions. We looked for answers through group discussions with activists and the Erased. Jasminka Dedić, for example, was a great help. The lawyers of the *Lana-Lagostena Bassi* law firm were excellent, and managed to create the legal-philosophical framework for the lawsuit of eleven complainants, following the rules of the European Court and on the basis of the testimonies we had gathered and the laws.

*Zorn: You've been involved a great deal with the field of law, from translating to interpreting laws and decisions, from searching for missing information and proof etc. Was this also a major emotional investment, seeing as you've been dealing with the life stories and all sorts of experiences of concrete individuals?*

Photo: Dare Čekeliš



Irfan Beširević, an erased activist, at the meeting with Franco Frattini, the European Commissioner for Justice, Freedom and Security at the European Commission headquarters in Brussels, 29 November 2006.

Pignoni: Although the experiences of the Erased are unique, they're comparable with the experiences of both immigrants and Roma in terms of living conditions, the abuse of rights, and the inaccessibility of public services. All these groups experience extreme forms of violence and face situations where their lives are threatened. Over time, this becomes a heavy burden to bear, and their stories become our stories. I feel that high flying theoretical concepts aren't enough when it comes to real political involvement. We need more than political involvement; we need to share everyday experiences and concerns, to practice solidarity.

Zvonko's story, for example, was an important experience for all of us. Zvonko is our young friend from the Italian Roma community. He joined us on our trip to the European Parliament with the Caravan of the Erased. When he returned home he was overjoyed – he had never traveled before in his life, as he is an *apatrid*, a person without citizenship. Two days later, his sister and her boyfriend died in a fire that broke out in the Roma settlement. The poor state of the units into which the Italian government is moving Roma caused the fire. At times like this, we have to stand by the people we're working with, and that's not easy. When promoting general principles and political goals, we must not overlook the everyday needs of concrete individuals. The lawsuit at the European Court could not have been prepared if we had not shared numerous personal experiences; this is how we gained their trust.

*Zorn: In July 2006, a lawsuit was filed with the European Court of Human Rights in the name of eleven Erased persons, and few months later, a new political event was created, the Caravan of the Erased.*

Pignoni: While we were preparing the case, we came up with the idea that we must outfit this legal route with a political framework; first and foremost, we had to introduce this ques-

tion to the European Parliament. The idea and realization of the Caravan of the Erased were also collective undertakings, and, of course, it's all based on the initiative of the Erased. Roberto Musacchio and Giusto Catania, Italian members of the European Parliament, were very excited about having the Erased come to the Parliament in larger numbers, so they officially invited us. Our experience from the Caravan was very enriching; 48 individuals on a three-day group trip took part in a number of meetings, from Trieste and Monfalcone to Paris and Brussels. Visits to all three parliaments, Friuli Venezia Giulia, France, and the European Union were a success, but now we must start thinking about further activities and the possibilities that the Caravan has opened up. No one will do this for us. We are that political subject, and the Erased are key actors. The Erased differ greatly as individuals; they are united only by the negative conditions of their situation.

*Zorn: Do you feel that people unite on the basis of the negative aspect of their existence or on the basis of their approach to or strategy for collective action?*

Pignoni: I feel that the enormous potential of the Erased's political struggle has yet to be realized. The Erased are the embodiment of processes that restrict rights in a number of areas and the heralds of new struggles. For many, this connection is obvious: if we stand up for the Erased, we also stand up for ourselves and our rights, even though we haven't been Erased from the register of permanent residents. More and more people are suffering from this type of erasure or from other erasures of their rights and are increasingly exposed to social uncertainty. The reason that keeps people from mutual action is the production of scapegoats, which is a structural need of our societies. Creating scapegoats is a way for the government to maintain control over conditions of growing uncertainty, a way to redirect potentially explosive conditions.

<sup>5</sup> At the time of this interview, a similar strategy was announced in Slovenia. On 11 June 2007, Janez Podobnik, Minister of the Environment and Spatial Planning, and Zoran Janković, the Mayor of Ljubljana, signed an Agreement on Resolving the Problems of Settlements for Special Groups in the Area of the Municipality of Ljubljana. As Janković clarified, that "these are groups that partake in activities that are a nuisance and that have a negative impact on the environment and the field of sanitation", by which he meant Roma, in particular the Roma community on Koželjeva street and the Strojan family. They will find them a new home, presumably in the Vič industrial zone, "where they can continue with their activities". This measure appears to be similar to the one in Rome: the moving of unwanted groups of the population (Roma) from the city to the marginalized outskirts, which implies planned segregation and the creation of a ghetto (Slovene Press Agency at [http://novice.siol.net/default.aspx?site\\_id=1&page\\_id=2&article\\_id=12070611182426101&cid=100&pgn](http://novice.siol.net/default.aspx?site_id=1&page_id=2&article_id=12070611182426101&cid=100&pgn), accessed 28/9/2007).

In Slovenia, they managed to create the erasure. The erasure, that is, the struggle of the Erased, reveals and brings into focus something that's happening everywhere: the destabilization and reduction of rights. That's why the struggle of the Erased is a general struggle for rights. Its main characteristic is its opposition to neoliberal logic, to the privatization of services that were once public or should be public. If, for instance, Milan Makuc (an erased inhabitant of Slovenia and the first plaintiff in the case at the European Court) advocates the right to access health services, this isn't just his individual struggle, but a struggle for the right to health services in general that can benefit all Slovenes. I feel that the movement of the Erased is one of the most important in Europe at the moment, not because of their numbers, as we're dealing with only a handful of people, but because of the issues they're bringing up and the variety of ways they've taken action.

*Zorn: But the pendulum is swinging in the opposite direction, towards abandoning actions, as the case of the deportation of the Berisha family has shown.*

Pignoni: The expulsion of Ali Berisha, which was carried out by the Slovene Ministry of the Interior, is one of the cases that created the conditions for the lawsuit, because

it's a concrete and urgent case. Ali Berisha is one of the Erased, and even though the Constitutional Court prohibited the deportation of the Erased, he was issued three decisions about being removed from the country, in 2005, 2006 and 2007. The first two anti-deportation campaigns were successful; the last, unfortunately, was not. The Berisha family was deported to Germany – which I view as a repeat of the Erasure. When the Erasure occurred in 1992, a majority of Slovenes did not know anything about it; even today, most people's understanding is crooked. Unlike the invisibility of the Erased at that time, the case of Ali Berisha has been constantly visible to the public over the last year and a half. All the newspapers reported on his case. Certain European MP's raised formal questions in the European Parliament on two occasions, in November 2005 and November 2006. Everyone knew that Ali Berisha, as one of the Erased, should not be deported. Nonetheless, the family was forcibly deported to Germany, and without any public protest. That's a bad sign. A similar lack of action can be noticed in Italy of late.

*Zorn: What is going on in Italy, when you speak of a stagnation of the Italian anti-racist movement?*

Pignoni: The local and national authorities in Rome recently announced that Roma must leave the city. They used an ethnic concept for this expulsion: Roma have taken over the symbolic place of Jews and black people. They plan to move all Roma communities from the city to the outskirts, into four segregated settlements built for them, which are similar to concentration camps.<sup>5</sup> I feel that the way Roma are currently treated in Italy is even worse than what happened in Ambrus. When the Roma family was expelled from Ambrus, many in the media took a critical stance, the government's actions were denounced by a number of intellectuals, and the President of Slovenia

met with the family and expressed his support. None of this happens in Italy when the authorities publicly declare an apartheid system. Even though local authorities proclaim themselves to be politically in the middle or on the left, and in favor of a culture of human rights, they use a language that is fascistic, just like the actions that follow. Worst of all, nobody opposes them. It wasn't always like that. In 2000, for example, if we managed to get information about the forced relocation of Roma which the government had kept hidden from the general public,

we would mobilize in a few hours. Sometimes we succeeded in preventing forced removals. In recent months, however, the city was ethnically cleansed in this manner at least fifteen times, with the inhabitants scattered and the Roma settlements destroyed. Today, this takes place without organized public protests. Just three years ago this would not have been possible. This lack of mobilization, the waning of the anti-racist movement, must be understood as a symptom of broader dimensions. Its causes must be researched.

Translated by Michael C. Jumič

# Immobilized Citizenship

*The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.*<sup>1</sup>

<sup>1</sup> Treaty establishing a Constitution for Europe, Article I-2, Official Journal of the European Union, C 310, Volume 47, 16 December 2004.

<sup>2</sup> The philosophical approach to the hermeneutics of the *existence-in-common* is well defined in Jean-Luc Nancy (1990), *La communauté désœuvrée*, Paris, Christian Bourgois Editeur.

## 1.

One of the most perplexing elements of the united Europe project, the European Union, is its idea of *citizenship*. Problems arise from the fact that the idea/essence – as the only foundation of reality, to paraphrase Plato – is thought to lie beyond our comprehension, and that we, Europeans, are merely men and women trapped in a cavern the size of a continent, with truth somewhere on the outside. The difficulty with citizenship can already be found in the implication of *oneness*. When we speak

of “one” *European citizenship*, the difficulty – and consequently the inevitability – lies in determining *who* is included in this term, and *how*.

It is dramatically clear that this citizenship does not reflect a perception of Europe with a common critical conscience about its past. More precisely, the creation of Europe’s symbolic dimension has been marked over the last thirty years by the gradual, unwavering de-legitimization of the historical and deontological meanings of resistance during the Second World War, that is, of the realization of special forms of the hermeneutics of existence-in-common<sup>2</sup> as political responsibility, regardless of national belonging, which called a different “humanity” into being in Europe of fascism and collaborationism. Now that we have rendered null this experience of European existence-in-common, and thus de-legitimized the resistance, we have the nerve to believe that the repentance and self-forgiveness of European “societies” are already complete.

When establishing and forming the idea of European citizenship, and when searching for a common denominator for our identity (especially after the final salvation, the collapse of communist regimes), Schmitt’s *amicus/inimicus hostis* dichotomy can be applied to the geopolitical entity, which precedes the geographical identity in each instance, but also plays a part in its creation. Keeping this perspective in mind, it becomes clear that discussions of *one* European citizenship do not constitute an error within political-institutional discourse: the oneness referred

to does not contradict the legal and formal plurality of national citizenship, but actually complements it. This article will attempt to present a short sketch of how this complementary function has been expressed with destructive consequences for the lives of thousands.

Stories of the exclusion and violation of rights of immigrants, the Erased of Slovenia, and thousands of young Roma born and raised in Italy but forced into a condition of *de facto* statelessness or illegal residence, begin with claims to the right to citizenship. Together with the concept of the nation, citizenship produces an “anthropological” distinction between citizens and non-citizens. The element of belonging to a given “ethnic” entity, within which language, religion, and “race” legitimize processes of identification and differentiation, was introduced into discourse on the “national question” in the nineteenth century, when it served to counter the Enlightenment and revolutionary traditions. What followed is not merely a matter of the past: national citizenship remains a *paradigm* for explaining relationships of actual power between *a citizen* and *a human being* in the political community. The first concept derives from political action, and the latter is based on the resistance to non-recognition of one’s humanity. In this relationship, citizenship rights overlap with or overdetermine human rights.

The story of Zvonko Đorđević, a young Roma who was born and raised in Italy, is paradigmatic. It will be summarized in the conclusion of this article. Just like the Erased of Slovenia, Zvonko has been forced to live in a situation where violation of his civil and political rights results from the lack of legal status. His story is also the *result* of an ideology that manipulates *status civitatis* as a weapon of mass selection, while simultaneously devaluating the deepest sense of the concept of citizenship: relationships.

## 2.

The term citizenship has two meanings. One is linked to the concept of the community and evokes the sense of commonality among individuals who exist and move through the public dimension. The other applies to the form given to a community, that is, the institutions that encompass the public dimension and give meaning to the project-in-common, and also legitimize and immunize it against that which is outside. Although this semantic duality has been present throughout the entire philosophical-political tradition from Aristotle on, it should only be understood as a clarification, as it was Aristotle himself who stated that the political *corpus* consists of the union of matter and form, with matter being individuals, and form being *politeía*, the best government, through which the true *bíos politikós* is realized.

In short, one would expect the concept of European citizenship to confirm the direct coherence between matter and form, between the community of Europeans and the institutions of the European Union. However, this coherence is indirect: “Every national of the Member State shall be a citizens of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it”.<sup>3</sup> The idea of European citizenship contains a paradox, which is in fact its original and primary synthesis.

On the one hand, there is the legal function of national citizenship, which remains unchallenged, and on the other, the Union and its institutional apparatus. Étienne Balibar defined

Europe as “neither a national nor a super-national entity”, that is, a sort of hybrid which divulges the perverse and voluntaristic mechanism of exclusion through the very idea of European citizenship. Despite the idea of a Europe free of divisions between sovereign nation states as promoted by Alterio Spinelli and Ernesto Rossi in the Ventotene Manifesto (1941), and even earlier by Ernest Renan (1882), it would seem that, as a “political entity”, the European Union has integrated both elements: the nation and the state.

The construction of the Union has been carried out through the gradual dismantling of state institutions. This can be clearly seen in the absence of a European social dimension and a European welfare state; instead, the dual function of the nation has been implemented – accordingly, it is both “economic and ideological” and “administrative and symbolic” (Balibar and Wallerstein, 1997).

In this regard, a Europe of nations has the effect of a machine for *anthropological differentiation* (Rigo, 2007). This becomes even more obvious if one takes into account the recent history of the nations that emerged following the collapse of the Soviet Union and the Socialist Federative Republic of Yugoslavia (SFRY). States that joined the Union defined their new political corpus by working on two different, but inseparable, levels: by adapting their institutional profile and national legal structures to given parameters, and by determining “their own communities of citizens”, which as a rule do not match up with the communities which once resided in the former republics. One consequence of the process of Europeanization is the emergence of territory to which *new communities of citizens* have been adapted, and which has gone through a dual transformation: in the geopolitical sense, the binary construction internal/external has been turned upside down, so to speak, and in the symbolic sense, the perception of “local belonging” has been – through new legislation in the field of immigration and the recognition of citizenship – devalued for all those who have been cast out of the new communities. In other words, if citizenship as a way of functioning in public space signifies a kind of obligatory bond between subjects and the territory in which they live, on both the existential and legal levels, then the process of Europeanization has to date caused the devaluation of this relationship – the legal and existential levels are no longer in sync. Thus the legal level of the obligatory relationship determines the quality of the existential level. In this sense, citizenship rights take precedence over human rights.

In order to fully comprehend the originality of the idea of European citizenship, another element must be added to this reformulation of the obligatory relationship to public space and territory, one which is expressed as a “right” and regulated through agreements within the Union, and which forms a key spoke in the machine for anthropological differentiation – “freedom of movement” or “free flow”. The originality of the European citizenship model lies precisely in the fact that it has made that very anthropomorphic category, *mobility*, into a juridical category.

This new template of power, which is literally applied to bodies (Foucault, 2004), and which has also functioned on the level of the media since the very beginning – as the final salvation of the old continent torn in two by the Iron Curtain – rounds out the interpretative circle of European citizenship. This closure can be shown with a metaphor: a European citizen becomes a *mobilized* citizen; on the other hand, a non-European citizen becomes *immobilized* (blocked, stopped, detained). The heightening of immigration policy, in particular the rapid manifestation of detention centers, provides proof of this. Temporary residence centers, identification checks, and detention centers for “foreigners” are *effects* of this new European



community, where “deviation heterotropies” (Foucault, 2004) – that is, places arranged by society in order to delineate internal/external space, where movement is either legitimized or made impossible (stopped) – are appearing at an alarming rate.

### 3.

In the 1980s, the process of harmonizing immigration policies began in Western European countries, and at the same time a redefinition of the citizenship laws and naturalization standards occurred in both Western and Eastern Europe. When it expanded toward the East, the European Union announced its final strategy, which contains three levels of exclusion. The first pertains to the expansion of its external borders and aims to control the flow of immigration; the second faces inward, and aims to control *inferior* residents who are not European citizens (Balibar, 2001); and the third pertains to the reformulation of citizenship laws: naturalization processes are now completely determined by economic-income criteria, while at the same time the *jus sanguinis* principle has been absolutely confirmed.

In this regard, the examples from Italy and Slovenia are typical. The Slovene “erasure”, which occurred in February 1992, was the direct consequence of transition from a citizenship model based on permanent residence to a model of “ethnic citizenship”. But even if the erasure had not occurred – that is, if the Slovene government’s clandestine intervention, which harmed the 18,305 people who either had not asked for citizenship or had had their request rejected, had not been fully executed – the nationalization of the right to citizenship would have *rendered inferior* the residents of non-Slovene ethnic origin in general. When the nation was being formed, this group of residents was transformed into foreigners, since they could only request Slovene citizenship as foreigners. It is therefore possible to understand the erasure as the final tragic act in a nation’s cleansing process.

Coincidentally, in February of 1992, a new law known as Act No 91, took effect in Italy. The adoption of the new law was necessitated by growing demands from the descendants of Italian emigrants who had become citizens of traditional immigrant states (North and South America, and Australia)<sup>4</sup> for the recognition of *status civitatis* in Italy<sup>5</sup>. Three other factors which made the adoption of the new law more or less inevitable can be cited: growing number of immigrants from Northern Africa; the strengthening of a party with a liberal-racist platform – the North League (*Lega Nord*) – which had often served as a barometer for the emergence and preservation of governments; and the economic and political crisis of the SFRY.<sup>6</sup>

<sup>4</sup> The Italian Government had to put into effect the sentence of the Constitutional Court No 30/1983, which acknowledged the right to obtain Italian citizenship also for persons born after 1 January 1948, being descendants of female Italian citizen. The Constitution of the Italian Republic acknowledging civil, social and political equality between men and women came into force on 1 January 1948.

<sup>5</sup> In the South of Italy, many villages were resettled by emigrants who returned to their country of origin with the families they had formed in foreign countries.

<sup>6</sup> Since the end of the 1980s and during the following decade, the economic crisis of the SFRY aggravated strong pressures by the International Monetary Fund and the World Bank. This provoked emigration, above all of Roma communities, towards Italy. Nevertheless, it was not until 1990 that Italy, like all Western European countries, engaged in the devastation of the Balkans and in the war that resulted in flows of refugees. *La Stampa*, an Italian newspaper, published short reports provided by the Ansa press agency on 29 November 1990, a CIA Report: “Yugoslavia will disintegrate by 1992”. The news forwarded by all western press agencies was published on the National Day of SFRY, 29 November (the day of foundation of the Republic in Jajce, Bosnia and Herzegovina, in 1943), and it followed the assumed decision reached by the Congress of the USA on 5 November 1990, which approved Act No 101/513 supporting the dissolution of the SFRY through the direct financing of all new democratic formations.

<sup>7</sup> In 1986, Italy adopted the first law regulating the status of labour immigrants (Act No 943/86), followed in 1990 by Act No 39/90. It also set down provisions for asylum seekers and refugees; it introduced a yearly quota for immigrant workers. In September 1993, the Commission for preparing an overall law concerning the legal status of foreigners was established. In the period of Prime Minister Giuliano Amato's mandate, the bill prepared by the Commission did not become law. In 1994, the new Prime Minister, Silvio Berlusconi established an Interdepartmental Committee to formulate a policy, which would regulate "the invasion of migrants". In 1995, with the premature fall of the first Berlusconi government, the Constitutional Commission of the Chamber of Deputies charged MP Nespolei (of the Alleanza Nazionale Party established by the former fascists) to write up the text for a new Aliens Act. In 1996, the Prodi government established a new Interdepartmental Committee with the mandate to write up a bill. The immediate passage of this Aliens Act became the priority objective of the government: it was an indispensable condition for Italy to enter the Schengen system. In 1998, Act No 40/98 called Turco-Napolitano, was approved by the first left government. The Act introduced detention centers (*centri di permanenza temporanea*). Act No 40/98 was reported in Act No 286/98. In 2002, with the second Berlusconi government, a new law, Act No 189/02 (called Bossi-Fini) came into force, modifying immigration policy, expulsions, labour relations etc. in a restrictive way. On 24 April 2007, the Council of Ministers approved the bill to reform the Bossi-Fini Act. The text signed by Giuliano Amato, Minister of the Interior, and Paolo Ferrero, Minister of Social Solidarity, does not repeal detention centers, but rather introduces a "security culture" into Italy's current immigration policy. (In 1931, the fascist dictatorship introduced the Act of Public Safety, which restrictively regulated the presence of foreigners in Italy).

<sup>8</sup> Act No 91/1992, Article 4, paragraph 2.

<sup>9</sup> An inappropriate condition, if we consider the words of the Italian State Council (6 November 1996). It determined that a

The absence of a general law<sup>7</sup> defining the status of immigrants in Italy bolstered the political situation the moment the Italian government, which was led at the time by Giuliano Amato, adopted the Citizenship Act. Keeping in mind the discussion of citizenship as a mechanism for anthropological differentiation, it is important to point out what the 1992 Act says about the naturalization of persons born in Italy to foreign citizens.

#### 4.

Realizing that immigration was not just a "seasonal" phenomenon, but that, on the contrary, immigrants and their families were "rebuilding" the social structure and everyday life of the nation, led to creation of the Citizenship Act and its Execution Instructions (*Decreto di attuazione* No 572, 12 October 1993), through which a *de jure* distinction was introduced, involving the *quality* of life a person manages to establish in the place where he/she is born, grows up, lives, and dreams.

This Act<sup>8</sup> states that a foreigner born in Italy can acquire Italian citizenship if he/she has "legally and continuously resided in its territory until he/she has come of age", and if he/she has stated that he/she wishes to acquire Italian citizenship within one year of coming of age. The status of forced "illegality" or statelessness in which thousands of young people born in Italy found themselves was more or less the result of a formal short circuit. Specifically, Act No 91 strongly emphasizes an individual's "expressed will" to obtain Italian citizenship. But this stipulation contradicts the Execution Instructions, which state that an individual must prove "legal residence" in the territory of Italy, which he/she can only do if the situation of his/her parents had been legal and uninterrupted and had lasted eighteen years. In other words, if the parents of a child born in Italy did not have a residence permit at the time of his/her birth, his/her entry in the birth register alone does not suffice for citizenship. The legality of somebody's residence<sup>9</sup> can only be proved by the entry of the child in the residence permit of one of his/her parents.

For a number of years, the lack of an overall law defining the status of foreign citizens in Italy, together with the gradual tightening of administrative procedures mostly based on obtaining work and income criteria, slowed down the legalization process for immigrants of the first and second generation (from the beginning of the 1970s to the second half of the 1980s). The situation was critical for all those who had decided to live

in Italy, and at the same time for nearly all children born there at the end of the 1980s, that is, prior to the adoption of Act No 91 in 1992. Thousands of these children, who are now young adults, became undocumented “migrants” and stateless persons once they turned eighteen, regardless of the fact that they had attended school and spent their entire childhood and youth in Italy: if their parents did not have a permanent residence permit at the time of their birth, or had not registered their child in the permanent residence register, this legal “void”, which only a matter of several months or perhaps a year, constituted sufficient grounds for rejecting their applications for Italian citizenship.

Does this example reveal the legislator’s desire for exclusion? The essence of a problem is not hidden in the law as such, since it does not define the phenotypic characteristics of the *gens italica*. It does, however, clarify that an “Italian political community” looking towards a Europeanized future will not give the children of immigrants the opportunity to “contaminate” the nation and become a living example of a “culture of relationships” and ultimately of the idea of “relational citizenship”.

When considering requests for citizenship, that is, when checking an individual’s “uninterrupted residence”, documents that prove his/her presence and everyday relationships within the social fabric are as naught. For example, vaccination certificates, school certificates, or even the interpersonal relationships that individuals constantly create during their residence, do not count. None of the things that transform life into existence can break through the legislator’s logic, which instead speaks of “integration” on the basis of the administratively verifiable triangle of worker/income/consumer.

Today, the Italian government still demands that those who will soon turn eighteen and those who have turned eighteen and had their requests for citizenship rejected have resided uninterruptedly in Italy for eighteen years. This idea runs counter to common sense, as the very same law demands that adult foreigners have legally resided in the country for ten years in order to acquire citizenship, a period wherein they are also required to provide proof of regular income. Even if it is justifiable that a country – Italy – considers employment and a regular income as irrefutable proof of “successful integration”, it is incomprehensible that the rights of a minor born in Italy are not based on factors indicating his/her everyday relationships in his/her place of residence. It is therefore possible to argue that the Italian Citizenship Act violates Article 15 of the Universal Declaration of Human Rights and Article 24 of the International Covenant on Civil and Political Rights. Despite a draft law which would partially reform the senseless legal framework for granting citizenship to children born in Italy to foreign citizens,<sup>10</sup> nearly all the young men and women who have had their requests for citizenship rejected are trapped in a difficult, one might even say tragic, situation. The only alternative to their actual statelessness would be the citizenship of one of their parents; this would at least allow them to obtain a valid ID card, which is required in order to obtain a residence permit and find work or study.

minor has a right to obtain Italian citizenship even if the parents did not formalize “legal residence” at the time of his/her birth if three conditions have been fulfilled: 1) birth in Italy reported at the relevant office; 2) child’s parents were, from his/her birth on, legal residents; 3) such condition of child’s parents has not changed for the whole period in question (eighteen years). Although the State Council formally recognized that a minor is not responsible for failing to register his/her own birth and residence, the stability of the residence of a foreign minor in Italy is verified only if his/her parents have regularly been residents on Italian territory.

<sup>10</sup> A proposal to amend the Italian Citizenship Act (MP Bressa), which aimed to partially regulate Act No 91/1992, was introduced on 7 February 2007. If approved, the new Act will reduce to five years the pre-requirement of legal residence demanded of both parents and minors born in Italy. All girls and boys older than nineteen who have already applied for the citizenship of their parents are not eligible for this intervention.

<sup>11</sup> According to the census, the Roma population in Italy consists of 150,000 to 160,000 persons, of whom 60 percent have Italian citizenship.

## 5.

<sup>12</sup> Roberto Pignoni and Uršula Lipovec Čebren started a political campaign centered in a group of activists called Karaula MiR – MigrazioniResistenze (MigrationsResistances) in Rome, in Friuli Venezia Giulia, and in Ljubljana in 2005. In 1999, after the experience of the *Coordination Against the Wars*, Roberto Pignoni, Silvio Cinque, and Christian Picucci contacted the Roma of the shantytown in Via dei Gordiani. It was there that they met young Zvonko and his friends and started a joint political struggle for the acknowledgment of citizenship rights for Roma.

The number of young Roma who were born and raised in Italy but did not or do not have the possibility of obtaining citizenship is very difficult to determine.<sup>11</sup> This is mostly because denial of citizenship to Roma had been taboo until just a few years ago. While the issue was brought up, albeit discreetly, in connection with the situation of young persons inappropriately called “second or third generation immigrants”, it never included Roma. The myth of a nomadic Roma culture is still a touchstone both for those who deride Roma as well as for the countless non-governmental organizations that have been addressing the “Roma threat” for over two decades. This alleged threat spans two extremes of meaning, which are hypocritically abused by institutions, the media, and all political forces: “Roma threat” as a result of the horrid living conditions Roma are forced to

endure, and in light of Italian citizens who are said to be in danger.

On 15 August 2006, something unexpected happened in Rome. The Minister of the Interior, Giuliano Amato, decided to celebrate National Police Day by visiting a street in Rome, Via dei Gordiani, where one of the oldest Roma settlements in Rome is located. It is also where Zvonko Đorđević, a Roma whose request for citizenship had been rejected a year earlier even though he has lived in Rome since his birth, resides with his brothers and sisters and 250 other Roma. Zvonko’s parents came to Italy as teenagers in the 1970s. Zvonko had filed a request for citizenship a few months earlier, after the police locked up five persons in the *Ponte Galeria* Detention Center; among them were four persons who had been born and raised in Italy. Because they had not acquired Italian citizenship when they came of age (they did not meet the requirements set forth in the law), they had to request Serbian citizenship, which would give them an opportunity to acquire residence permits as foreigners if they found employment. The paradoxical consequence of this forced decision was that they became foreigners officially – even worse, “illegal foreigners” – in the country where they had been born and raised.

Two of these youths, who themselves were the parents of small children, had already been deported to the home country of their parents, Serbia, even though this constituted an obvious violation of Article 8 of the European Convention on Human Rights, and even though they had never actually been to Serbia, not even on short visits.

The experience of having his friends deported was very traumatic for Zvonko. Torn between remaining without a legal identity and facing an enormous risk by attempting to acquire one, he decided not to ask for a Serbian passport, which meant that he was without a legal identity. The Minister’s visit was a once-in-a-lifetime opportunity. Encouraged by his long time-friend Roberto Pignoni<sup>12</sup>, he confronted the Minister directly, demanded clarification of his situation, and declared himself “invisible” in full view of the cameras of the national media. “You’re right!” the Minister replied. All the major newspapers in the country reported on the event. Less than ten days later, Zvonko was detained at the *Ponte Galeria* Detention Centre. The Police Headquarters in Rome issued a deportation order which stated that Zvonko was a Yugoslav citizen and had entered the country illegally on 1 January 2001. A few days later, a

hearing was held to confirm Zvonko's detention at the Center; the judge ordered him to be released, because, as the grandson of an Italian citizen,<sup>13</sup> he could not be deported. Zvonko was rescued by the courage he had shown a few days earlier, when he addressed the Minister. The media's coverage of his story overrode all the orders with falsified dates that the Police Headquarters had issued.

On 30 January 2007, Zvonko met with Minister Amato for a second time. The confrontation took place at a public conference in Rome. The purpose of the intervention was to remind the Minister of the promise he had made five months earlier: a valid mobility document, which is a kind of passport.<sup>14</sup> Zvonko was not officially invited to the conference; however, an activist had managed to sneak Zvonko's name onto the guest list. Zvonko waited outside the meeting hall, nervously puffing on a cigarette. Finally, four hours later, his name was called. His voice filled with contagious emotion, he managed to read only two lines of a letter "I am happy to see you again, Mr. Minister, and to be able to speak with you man to man, but unfortunately still not citizen to citizen." There was nothing left to say. The disciplined silence of the audience was broken by a roar of applause, and Zvonko was cornered by young women asking for his phone number and journalists interested in his story. The undersecretary of the Ministry, Dr. Marcella Lucidi, postponed a discussion of Zvonko's situation until a later date – Zvonko finally entered the Minister's office on 19 February 2007. To avoid a document check, he was "smuggled" in, using a ministerial car.

<sup>13</sup> In Italy, illegal foreigners cannot be expelled if they live with an Italian citizen of the fourth degree of kindred (Aliens Act No 286/98, Article 19).

<sup>14</sup> Without this document, Zvonko would not be able to obtain a permit to remain in Italy. Even though he is the relative of an Italian citizen, he could not enroll in music school or move from his quarters free of risk.

## 7.

Summers in Rome are humid and suffocating, and the seaside is where everybody wants to be. Zvonko as well, but he was to learn that a jaunt to the sea could cost more than the price of a tank of gas. In late July of 2007, Zvonko was yet again detained, this time at a police station in the small town of Aversa, near Naples. Although he had obviously been without documents, he was certain he would be able to explain his situation, in light of his new "friends" at the Ministry.

He was detained on the basis of the deportation order issued nearly a year ago in Rome, which popped up in the database. Only the will and persistent intervention of anti-racist activists could stave off the worst. At 10 pm, the switchboard at the Ministry was lit up by a barrage of calls. Four days later, we were received by the vice head of the Police Administration in Rome. He was more than happy to make up for his unwitting forgetfulness: pursuant to incipient law, Zvonko was allowed to obtain a mobility document; thirty minutes later, he was able to obtain a residence permit.

It is interesting to note the Kafkaesque *drôle de guerre* that accompanied the citizenship status conferred by the new documents: apparently, Zvonko is a citizen of *Former-Jugok*. Needless to say, all attempts to locate this strange sounding geopolitical entity on a map have met with failure.

Before receiving his legal residence permit, in November 2006, Zvonko came to Brussels as part of the Caravan of the Erased; his presence was not just a chapter in his personal story. The joy he felt at his first and only travel was also due to the invitation to become politically active. In conclusion, I would like to extend this invitation to undo the bond between violence and

the law (Agamben, 2003) to all non-citizens of Europe. The only way to achieve this is by reinventing resistance-in-common, which, together with the example of political action presented above, can provide fertile ground for the seeds of a new discourse on citizenship.

Photo: Dare Čekeliš



Zvonko Đorđević, The Caravan of the Erased, 29 November 2006.

## References

- AGAM BEN, G. (2003): *Stato di eccezione. Homo sacer*. Torino: Bollati Boringhieri, Torino.
- BALIBAR, É. (2001): *Nous, citoyens d'Europe? Les frontières, l'État, le peuple*. Paris, La Découverte.
- BALIBAR, É. and WALLERSTEIN, I. (1997): *Race, Nation, Classe. Les identités ambiguës*. Paris, La Découverte.
- Dossier Karaula MiR–MigrazioniResistenze for the Italian Minister (2007): *Cittadinanza italiana negata e violazione dei diritti di cittadinanza*, 19 February 2007. Unpublished.
- FOUCAULT, M. (2004): *Utopie Eterotopie*. Naples: Cronopio (Original title *Les hétérotopies Les corps utopique*, Institut National del l'audiovisuel, Paris, 1977).
- NANCY, J. L. (1990): *La communauté désœuvrée*. Paris, Christian Bourgois Editeur.
- RENAN, E. (1998 [1882]): *Che cos'è una nazione*. Rome, Donzelli.
- RIGO, E. (2007): *Europa di confine*. Rome, Meltemi.
- SPINELLI, A. and ROSSI, E. (2006): *Il Manifesto di Ventotene*. Milan, Mondadori.

# The Production of the Erased: From Liminality to Metaphor

## Introduction

On 26 February 1992, approximately one percent of the inhabitants of Slovenia were removed from the “permanent residents” administrative category and placed into the “foreigners” category.

They were erased from the register of permanent residents of the Republic of Slovenia without any official, public notification prior to or following this measure. Although the consequences of the erasure vary from person to person, many lost their jobs, many were left without health insurance, pensions and other social and political rights, once their personal documents (including ID cards, driving licenses, passports) had been annulled. The Erased are neither immigrants nor natives in the traditional sense (some of them were born in Slovenia, and some had had permanent residence in Slovenia for years prior to the erasure); they are neither a uniform ethnic group (they belong to Bosnian, Serbian, Montenegrin, Croatian, Roma and Slovene ethnic groups) nor members of a single religion (Muslims, Orthodox, Catholics, atheists etc.). It took a decade for them to recognize the similarity of the conditions into which they had been cast by the state’s administrative system. Some of them united in two organizations: the Association of Erased Residents of Slovenia and the Civil Initiative of Erased Activists. Unlike the stereotypes that emerged among the general public (which initially recognized them as nationalists of the former Yugoslav republics, who “didn’t believe in Slovenia”, as *Chetniks*<sup>1</sup> etc.), the identity they have constructed for themselves is evasive and does not refer directly to ethnicity, but to the rights that stem from the status of a permanent resident in the political unit, which they have been part of.

Rather than being recognized as Slovene citizens or Slovene residents, they were, in administrative terms, forced to occupy non-space. They are the Erased, non-persons, below any margin, non-existent as civic and political beings. They are neither a “mixture” of different ethnic groups, nor a “hybrid”. Through their exclusion, they identify themselves as a political group and as an atypical pseudo-ethnic constellation (“Southerners”), in contrast with the Slovene

<sup>1</sup> Chetniks [Četniki] are an ultranationalist Serbian political and para-military movement. The word has a derogatory connotation in Slovene [Translator’s note].

<sup>2</sup> According to Leach (1995: 77), “the initiate who is undergoing a change of status must be separated from his (her) initial role. This separation may be represented in a variety of ways all of which may appear as part of the same ritual proceedings, e.g.: (a) the initiate may move in procession from position A to position B; (b) the initiate may take off his (her) original clothing; (c) sacrificial animals may be killed so that the life is separated from the carcase or sacrificial objects may be split in half; d) surface ‘dirt’ of the initiate may be removed by ritual washing, shaving, etc. In general these initial rites of separation have the effect of removing the initiate from normal existence; he (she) becomes temporarily an abnormal person existing in abnormal time”.

<sup>3</sup> “The general characteristic of such rites of marginality (rites de marge) is that the initiate is kept physically apart from ordinary people, either by being sent away from the normal home surroundings altogether or by being temporarily housed in an enclosed space from which ordinary people are excluded. The social separation is further emphasised by subjecting the initiate to all kinds of special prescriptions and proscriptions regarding food, clothing, and movement generally. So far as ordinary people are concerned the initiate is at this stage ‘contaminated with holiness’; being in a sacred state, he (she) is also dangerous and therefore ‘dirty’. Consistent with this ideology, the rituals which bring the initiate back into normal life again nearly always include procedures, such as ritual washing, designed to remove the contamination” (Leach, 1995: 78).

<sup>4</sup> In the rites of aggregation, the initiate is brought back into normal society and aggregated to his/her new role: “The actual proceedings in a rite of aggregation are often very similar to those of the initial rite of separation but in reverse, i.e. processions move in the reverse direction from B to A, the special costume worn during the ‘marginal state’ is removed and a new normal costume appropriate to the new normal social status is put on, sacrifices are repeated, food restrictions removed, shaven heads grow their hair again, etc.” (Leach, 1995: 78).

majority. United against the system, they have put aside their ethnic and religious affiliations in a hope of becoming valid subjects of the very system they fight against.

The process and situation into which persons in this administrative category were thrust are *theoretically* comparable to other liminal phenomena, such as neophyte (a new member of a community) initiation sequences. Besides, the concept of metaphor can be applied and its potential to unite otherwise demarcated categories. Cognitive exercises of this kind can provide a better insight into the notions of the erasure.

## The liminality of the Erased

The concept of liminality can be used to describe the status of this manifold, but marginalized group. The word *liminality* derives from the Latin word for “threshold” (*limen*) and implies all manner of interstitiality, of being betwixt and between and serves as the name for a particular phase in rites of passage (Rapport and Overing 2000: 229). Terms like *threshold* (the entrance or starting point of something), *interstitiality* (the quality of a small or narrow space between parts or things) and being *betwixt and between* (being in an intermediate position, neither altogether oneself nor altogether the other) all define *intermediate positions* (being or happening between two things, places, stages etc.), and derive from the same categorical system of rites of passage. These will be used to explain the position of the Erased.

Rites of passage or rites of transition are defined as rites which accompany every change of place, state, social position and age resulting in change of a status (ibid.). Anthropological theory has delineated three distinct phases of rites of passage, wherein emphasis and order may vary to correspond to different situations. The *rite of separation*, by which the old identity, status or frame of mind was sloughed off,<sup>2</sup> is followed by *rites of marginality*, a middle, mediatory or liminal stage where the protagonist undergoing the change (the initiate or neophyte) is neither one thing nor another but betwixt-and-between and is therefore considered to be *impure*<sup>3</sup> and, finally, by a *rite of incorporation* or aggregation through which a new identity is assumed (ibid.: 230).<sup>4</sup>

The concept of impurity which characterizes liminality as a boundary phenomenon is linked to the distinction between sacred and profane, two completely demarcated dimensions which must not be mixed, and whose borders must not cross or overlap, but must remain in their place. A border as such has no dimensions, but contains elements of both of the zones that it



separates, making it impure, extraordinary, ambiguous, timeless and thus imbued with a special value, which makes it “sacred” or “taboo” (Leach, 1995: 34). Therefore, when a person is going to a place which is considered to be holy or is preparing to perform a religious rite, he/she must cleanse him/herself of this profanity and vice versa. However, any kind of impurity is considered dangerous. According to Mary Douglas (2002: 44) dirt and impurity can be perceived as “the byproduct of a systematic ordering and classification of matter, in so far as ordering involves rejecting inappropriate elements”. Elimination of inappropriate elements is a condition for creating a system: if one is to use a single category to create a classification, all things which do not fit, must be eliminated, because their presence would otherwise corrupt the system (Šterk, 1998: 87).

Because of this, rites of marginality, like all liminoidal phenomena, are “characterized by something of the anti-structural, the transitional and processual, the creative and re-formative, the reversing, resistant and rebellious, the communal and communing” (Rapport and Overing, 2000: 234).

Using the theory of rites of passage, the Erased, both as individuals and as a category can be described as follows: after being *separated from their previous role* (status) as citizens of the former Yugoslavia, the Erased were moved from one administrative category to another, thus temporarily became *extraordinary persons* who live in *an extraordinary time* or *non-time*. They were *sent away from their everyday existence*, their pre-erasure life ceased: they could not work legally, receive medical treatment, vote, access education etc. They were placed in *an enclosed space* (detention centre), if not always physically, they were legally and social *distinguished from other categories of people* in Slovenia. They were forced to enter *the interval of social non-time*, where all of their ordinary civic activities were hindered. Their consequent stigmatization can be explained as a result of the *impurity* which they had acquired. However, a question remains: did they become *impure* before the erasure or after it, or during the erasure, which can be considered a borderline, a threshold, a starting point without temporal or spatial dimensions.

Participants in a ritual of passage are chosen based on their perceived characteristics: age, gender, marital status etc. The Erased were chosen because of their failure to apply for Slovene citizenship in 1991, or because their applications had been refused. But why was *this* criterion used? Considering that they had not applied for Slovene citizenship, or had been turned down, they could hardly be considered adequate material for the construction of a new Slovene national state. The order of phases described above presupposes the *elimination of inappropriate elements*, that is, of impurity. If the population that later became erased was perceived as a potential impurity within the nation-state, i.e. if it was felt that those who did not apply for or were not eligible to receive Slovene citizenship had to be eliminated, the erasure was just a means of putting things in order. Conversely, the theory of rites of passage shows that impurity can be seen as a *product* of the new marginal status that the Erased gained: they still lived in Slovenia, but were not Slovenes with civic and political rights, they were not real immigrants or refugees, or any other official social or political category. The uniqueness of the rules and prohibitions governing the behavior of the Erased, especially those concerning free movement across borders, employment, education, health care, encountering administrative employees etc., is apparent.<sup>5</sup> The third possibility

<sup>5</sup> A number of examples of this kind can be found in Dedić, Jalušić and Zorn (2003). See also *Tujec ne more imeti otroka* [A Foreigner Cannot Have Children], 26 November 2001, *Popravljanje napak iz preteklosti* [Reparing Mistakes from the Past], 15 July 2002, *Zgodba Jan-ka Šribarja* [The Story of Janko Šribar], 25 August 2003, *Zgodbe izbrisanih* [The Stories of the Erased], 22 December 2003, *Izbrisani s statusom kmeta* [Erased with the Status of Farmers], 19 April 2004, *Izbrisani branilci TO Slovenije* [The Erased as Members of the Territorial Defence Army of Slovenia], 8 March 2004, all from the weekly magazine *Mladina*.

<sup>6</sup> “Natural” non-dimensionality in the continuum of passing from one status to another is broken and the interruption is artificially overemphasized: in the case of the Erased by preventing a specified population from obtaining a Slovene citizenship. Thus they remained somewhere betwixt and between. In their case passing from the federation to the nation-state is overstated – this process has been made to appear difficult, a special achievement. Since the Erased have been marginalized and excluded, characteristics of liminoid phenomena can be applied to them: danger, ambiguity, reformativeness and as shown above, structure-producing anti-structuralness in the sense Karmen Šterk (1998) understands phenomena of *mana* type impurity in classical anthropological terms.

<sup>7</sup> On 8 July 1999 Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia was adopted (official Gazette No 61/1999). However this law did not provide the possibility for all the Erased persons to get back their statuses and it has not removed the legal void in the history of their residence.

is that impurity was contained in the very act of the erasure, as a non-dimensional spatio-temporal border between the status of citizens of the former Yugoslavia on one hand and of citizens of the Republic of Slovenia on the other.<sup>6</sup> Those who underwent the erasure without “cleansing” themselves once they had passed through it, kept the impurity, i.e. remained a threat to ordinary life. Because none of those who underwent the erasure were actually “cleansed” of it (no law has been introduced to compensate the lost rights<sup>7</sup> and eventually, the Erased are still widely stigmatized), it is possible to understand the erasure as a threshold, or a marker of impurity. Impurity existed before the erasure; however, an official (administrative) marker, a label for those elements which could pollute the order and place it in danger, was needed.

Another type of impurity can be elucidated through the theory of rites of passage: by being placed in the same administrative category, different ethnic, religious, educational and occupational groups shed their inner divisions (marginality is indivisible as mentioned above) – the Erased are not erased members of the Serbian ethnic group, or erased Muslims, or erased manual workers, but simply the Erased. None of the usual demarcations of exclusion that existed in Slovenia and other states of the former Yugoslavia (which even led to wars in some of the ethnically mixed places) were present in this category – all its constituents were equally erased. Taking into account the consequences of the exaggerated demarcations, it is possible to note

that the erasure, through its unifying effect, alludes to the phenomenon of stigmatization of the Balkans, in particular to the use of this *nomen nudum* as a synonym for region characterized by backwardness, lethargy, corruption, misgovernment, nepotism etc. (Todorova, 1997). Would it therefore be possible to perceive Slovenia, as a bearer of “civilization”, as having erased Balkanians in order to “civilize” them? Would that mean that the erasure was just an initiation (a kind of purgative device) into civilization? Was this the position of the Slovene politicians whose decisions made the erasure possible? Was the erasure the marker and threshold of the final act of the balkanization (wars and separation from the former Yugoslavia)? Does this also mean that the Erased who managed to acquire Slovene citizenship or permanent residence successfully passed this initiation?

A theoretical comparison with the initiation of neophytes can be used to answer these queries. In rites of passage, the initiation is a process for testing the neophytes’ abilities and educating them for the new role they would attain if they follow the prescribed rules. If the right to permanent residence is readily available only to certain categories of the population, but not to the Erased, the erasure and the legal procedures required for obtaining this right can be understood as a test of the abilities of the Erased to achieve this new role (that of the legal resident of Slovenia). In order to pass, the Erased had to achieve this new role by following rules formed and prescribed by other categories consisting of the unquestionable residents of Slovenia. In other words, if Slovene citizens are “civilized”, they have made special rules “to civilize” (i.e. legal procedures) which “Balkanians” must follow if they too wish to be perceived

<sup>8</sup> For example, such words were used by MP Saso Peče in the article *Nagrajena nestrpnost* [Intolerance Rewarded], Mladina, 1 November 2004, and also in on-line comments on articles about the Erased.

as “civilized”. This position can be discerned in the rhetoric of the Erased activists, which sees the erasure as comparable to the oppression and even to the bloodshed that took place in other former Yugoslav republics. The only difference is that the Erasure was carried out in a “civilized” manner, through administrative means. With this in mind, it is possible to conclude that both the Erased and their right-wing opponents in Slovenia, or those responsible for the erasure, rely on the same system of presuppositions: Slovenians (civilized) versus Southern, non-Slovenes (barbaric).

Besides, other characteristics of the conceptualization of the Erased can be mentioned: the negation of the erasure (right-wing politicians claim the erasure never happened, thus denying the existence of the Erased), the expulsion (the Erased have been called excrements<sup>8</sup>), the aggressors (during the independence process), the opportunists and speculators (criminals), the Humans (universal human rights are emphasized in the perception of the Erased as victims) and the self-defining subjects of rights (activist approach). Two subsystems of notions of the human can be posited: a passive notion, according to which the Erased are merely the product of the established order (from the negation of the Erased, through human excrement, to victims) and an active notion, according to which the Erased challenge the established order (that is, aggressors, criminals, activists). This is exactly what liminoid phenomena are: *antistructural, transitional and processual, creative and re-formative, reversing, resistant and rebellious, communal and communing*. Their liminal position allows such a vast array of attributes to be united within a single term. The juxtaposition of positive/negative notions within these subsystems of passivity/activity is due to the context in which utterances are made, that is, the (non) existence of a critical perspective on the dominant socio-political situation in Slovenia.

## The erasure as a metaphor

The erasure can be viewed as a metaphor in two senses. On one hand, it can refer to the liminal status of the Erased, and on the other, it can be extended to other forms of socio-political deprivation. Taking both senses into account, a metaphor can be described as a single-word figure of speech, and is usually defined as a *trope of resemblance*. As a figure of speech, metaphor constitutes a displacement and extension of the meaning of a word. This explanation is grounded in the poetical and rhetorical theory of substitution (Ricouer, 1994: 1). Figures of speech are expressions that use words in their non-literal sense or in an unusual manner in order to add vividness, beauty etc., to what is being said or written. The whole building of figures is grounded on the idea that there are two kinds of oration – literal and figural – and that rhetoric is a presentation of departure in oration (Barthes, 1990).

Metaphor is a kind of transposition of a name and, since antiquity, has been defined in terms of deviation, movement and displacement, more of a process than a class (Ricouer, 1994). It implies a comparison made by the implicit identification of different concepts, and not by their actual comparison, i.e. transfer by analogy (Bugarski, 1995). But metaphors are single-word figures of speech, that is, tropes where the *change in meaning* involves a single unit (Barthes, 1990).

“If we think of the meaning of a word as being determined by the set of contexts in which the word can be used, we can characterize semantic change as a shift in the set

of appropriate contexts for that word. Alternatively, we could view semantic change as a change in the set of referents for a word, i.e. as a change in the set of objects the word refers to. Since context and referents are simply two aspects of what we call meaning, these two characterizations of semantic change are more or less equivalent” (Stewart and Vaillette, 2001: 408).

The extension of meaning presented by the term *the Erased* refers to the dominant aspect of socio-political deprivation, thus making it possible for gays, lesbians, transsexuals, people with disabilities, ultranationalists, neo-Nazis, various activist groups, migrants, the unemployed etc., to refer to themselves as the erased from political-public spheres and sources of power. In the case of sources of power, the abstract procedure which characterizes metaphor is used: only the attribute of socio-political deprivation is evoked, and is again transferred by analogy not by actual comparison. However, by adapting the poetic-rhetorical theory of substitution, which is usually used to explain metaphors, it is possible to ask whether it was precisely the Erased that had to be “expelled” from the community, or whether some other category(ies) of deprived people could have been “chosen” to successfully play the bizarre role of *inappropriate elements* for the order of the newly formed state.

The term Erased was coined in 2002, when the Association of Erased Residents of Slovenia was founded; it has been widely accepted ever since. As a transposition of a name, this term, like other metaphors, can be defined in terms of *deviation, movement, displacement*. Metaphors owe their effectiveness to the changed context of an utterance, i.e. through the use of usual signifiers in unusual contexts, a different signified is achieved, or extraordinary meanings are reached through an unusual selection from paradigmatic-associative chains combined in a usual combination on the syntagmatic axis. Thus metaphors transcend and transform the denotative aspect. By being put in an extraordinary situation by the erasure, people who were erased became themselves extraordinary.

As a metaphor, the Erased cannot be understood without the notion of the spatio-temporal exclusiveness of the borderline phenomena, that is, the notion of the ambiguity, uncertainty, vagueness – the anti-structural nature of these phenomena in the liminal. Here, borders are extended (they cease to be artificially made “lines”) and prolonged (they cease to be artificially made “points in time”), so the demarcation pre-erasure/post-erasure on one hand, and non-erasure on the other, becomes exaggerated. However, in contrast to the liminal, metaphors have nothing on the other side. There is the first meaning of the word in its usual context and the new meaning in the new context; words can flow freely from one context to another, depending on the creativity of the utterance-maker, however, the word does not achieve a new official status, even though it might eventually be used more often in the metaphorical than in the literal sense. With the adoption of the new context, the metaphorical sense becomes the literal one. It does not constitute a phase (or temporality), but the *very end* of the cognitive process, because the effects of metaphorical procedure provide new insight into the meaning of the utterance or of the situation. But the logic is the same as the logic underlying the explanation of liminality mentioned above: metaphors, as liminal phenomena, unite otherwise demarcated categories, thus transcending ordinary divisions. By viewing the Erased as a metaphor, it becomes possible to ask if their “impurity” can ever be removed, i.e. if the consequences of the erasure can be annulled. In other words, would the Erased ever acquire the same status (not just legal, but also everyday status) as other Slovene citizens, would their stigmatization ever be diminished?

Would they ever cease to be considered a threat to the existing order – or is the liminality of the Erased inevitable?

## Conclusion

The theory applied in this article states that every system requires the Other for its formation, and that the Erased were created to serve this purpose in the newly formed Republic of Slovenia. The Erased seemed appropriate: they could be perceived as a reminiscence, a marker of Slovenia's previous status as part of the federation: "those who didn't believe in Slovenia", "those from the South", "Serbs" etc., which all mean "not us", "not Slovenes", "not civilized". It is interesting, however, that through the use of these terms to apparently distant oneself from the former Yugoslavia, its reminiscences are actually being constantly evoked, which could imply that "Slovenes" are those who cannot "cleanse themselves" of the former Yugoslavia, despite the whole procedure of the erasure; through the very act of the erasure, they seem to have petrified it. The contradiction already mentioned in the above is that the Erased fight against the same system whose legal subjects they are trying to become by using methods and invoking logic of the system itself. So what do the Erased have to offer? Not a new system, that is certain, but a new insight into the present one, into its prejudices and adopted meanings. This is why they are creative as a metaphor, but reformatively liminal in their resistance.



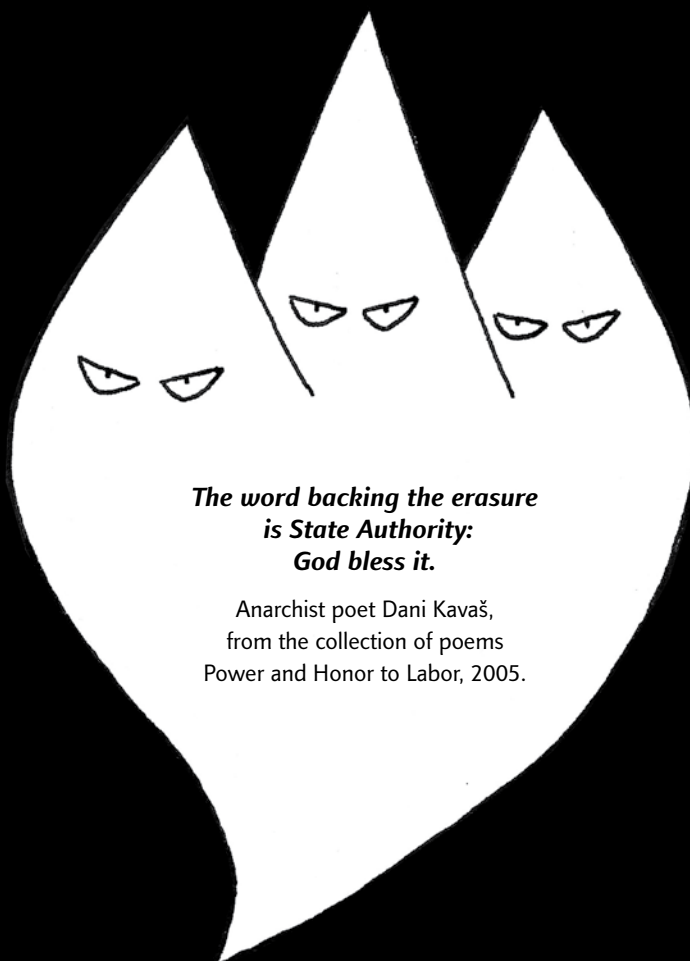
Photo: Peter Medica

[Carry on driving! We do not exist.]

Protest of the Erased in front of the Parliament of the Republic of Slovenia, 8 October 2003.

## References

- BARTHES, R. (1990) *Retorika starih. Elementi semiologije*. Ljubljana: Studia Humanitatis.
- BUGARSKI, R. (1995): *Uvod u opštu lingvistiku*. Beograd, Zavod za udžbenike i nastavna sredstva.
- DEDIĆ, J., JALUŠIČ, V. and ZORN, J. (2003): *The Erased: Organized Innocence and the Politics of Exclusion*. Ljubljana, Peace Institute.
- DOUGLAS, M. (2002): *Purity and Danger: An Analysis of the Concepts of Pollution and Taboo*. London, New York, Routledge.
- LEACH, E. (1995): *Culture and Communication: The Logic by which the Symbols are Connected*. Cambridge, New York, Melbourne, Cambridge University Press.
- RAPPORT, N. and OVERING, J. (2000): *Social and Cultural Anthropology. The Key Concepts*. London, Routledge.
- RICOUER, P. (1994): *The Rule of Metaphor: Multi Disciplinary studies of the Creation of Meaning in Language*. London, Routledge.
- STEWART, T. W., JR. and VAILLETTE, N. (2001): *Language Files: Materials for an Introduction to Language and Linguistics*. Columbus, The Ohio State University Press.
- ŠTERK, K. (1998): *O težavah z mano*. Ljubljana, Študentska založba.
- TODOROVA, M. (1997): *Imagining the Balkans*. Oxford, New York, Oxford University Press.



***The word backing the erasure  
is State Authority:  
God bless it.***

Anarchist poet Dani Kavaš,  
from the collection of poems  
Power and Honor to Labor, 2005.

# The Erasure of the Erasure

## Silence is not golden

<sup>1</sup> Barbara Hočevár: "Ime izbrisani je proizvod politične kampanje", newspaper *Delo*, 8 December 2006.

The excuse that nobody knew about the erasure and the Erased at the time the injustices were taking place is used frequently.

The people most responsible for this deed repeatedly argue that it was a consequence of the organization of state registers, and that the label Erased is merely a "political campaign product", as written in the Ministry of the Interior press release of December 2006.<sup>1</sup> However, politicians did receive due notice of what was happening to the erased individuals, and yet they did nothing. On the contrary, by giving their support to administrative procedures, which were not at all unlike those of the holy inquisition, they are directly responsible for the fate of the Erased and consequently for Slovenia's tarnished image in the world.

At the beginning of the 1990s, while I was still writing for the *Mladina* weekly magazine, I often dealt with different kinds of violations of human rights in Slovenia (cancellation of citizenship and old-age pensions, deportation of officers of the Yugoslav People's Army who had families in Slovenia, discrimination against the latter in the process of privatization of apartments, attempts to deport Bosnian refugees, etc.). In this article I wish to refresh the memory of the events taking place prior to the erasure and after it, and of how the issue became known to the public in the first half of the 1990s. It has commonly been forgotten that the erasure took place in an atmosphere of adversity and hostility towards immigrants from the former Yugoslavia.

The first suspicions about the erasure were raised by a statement issued by the Ministry of the Interior, which revealed that there were considerably fewer citizens of Slovenia after it declared independence than there had been permanent residents entitled to vote in 1991. In 1991 Slovenia had 1,962,606 permanent residents, while a year later there were only 1,947,452 citizens and 48,431 aliens, making a total of 1,995,883 residents. The new aliens (48,431) "came into being" primarily as a consequence of erasure from the register of permanent residents. Nevertheless, for many long years the Erased did not seem a topic worthy of media attention to the majority of the Slovene press. Cases where officials cut up personal documents in plain



<sup>2</sup> It was loudly opposed only by Minister of Environment Miha Jazbinšek.

<sup>3</sup> Igor Mekina, "Izgnani, deložirani, izbrisani", magazine *Mladina*, 22 November 1994.

sight of the shocked residents had been documented in minute detail before the inauguration of the first Slovene ombudsman, Ivan Bizjak, took place, before the Helsinki Monitor was established, and even before the obvious violations were noticed by Slovene courts of law, yet only by the *Mladina* magazine. The first cases of erasures and denials of entry into the country were described in 1992, while in 1994 it became clear that a special category of people was involved, i.e. the Erased.

As early as December 1992, harsh criticism was directed at *Mladina* by the then Defence Minister Janez Janša, who argued that a series of articles published by the magazine defended former aggressors and "attacked those who, in the spirit of professionalism and in accordance with decisions of the competent authorities, actually forged Slovenia's military might". While war was sweeping through other parts of the former Yugoslavia, an atmosphere of fear and a feeling of pervasive oppression of immigrants from other republics of the former Socialist Federative Republic of Yugoslavia (SFRY) was spreading through Slovenia. Proof of this were numerous procedures which were, to a great degree, reminiscent of the persecution of "internal enemies" under the former regime. These procedures included unsubstantiated deportations, annulments or rejections of applications for citizenship, old-age pensions and other rights. A special category comprised the families of military personnel, who had been heavily afflicted by the privatization of army apartments, which was conducted in a discriminatory manner in violation of the law by the Ministry of Defence headed by Janez Janša.<sup>2</sup>

In 1994 the term Erased appears in *Mladina* for the first time, accompanied by descriptions of their situation:

"The answer to the question whether human rights in Slovenia are violated only in individual cases or 'systematically' is but academic nonsense to several hundreds of those, whom the Slovene state had deported, evicted, annulled their pensions, citizenships, apartments, health and social insurance, or simply 'erased' them from the register of permanent citizens. Their stories, written down and piled away in dusty file cabinets of the Committee on Protection of Human Rights, various parliamentary committees and bored officials of Vox and offices of the President of the Republic and the Government, as well as the Helsinki Monitor and the state Ombudsman, are obviously of no interest to anyone."<sup>3</sup>

Several years later, the decisions of the Constitutional Court validated the above statement and revealed that not merely hundreds but several thousands had been erased. It should be pointed out that until the mid 1990s mass violations of human rights in Slovenia had been taking place in the absence of voiced objections from the Slovene public (with the exception of several legal experts and a few media). Robert Botteri, the then responsible editor of *Mladina*, was a rare exception. He displayed much courage and took a principled stance by enabling reporters to explore these topics. It was neither simple nor just a matter of course. Although *Mladina* had always been a liberal paper, those who wrote about the Erased and the deported were often confronted by questions from the editorial staff: "Why do we need to write about this at all?", "After all, they are the aggressors", "Do you think this will increase the number of our copies?" And the editorial office regularly received threats for publishing such articles.

<sup>4</sup> Igor Mekina, "Razhajanja med varuhi", magazine *Mladina*, 18 October 1994.

<sup>5</sup> In 1987 Tanja Petovar founded the Yugoslav Helsinki Committee in cooperation with Drago Demšar and Vladimir Šeks, and was accepted for membership in the IHF as its president. For many years she worked for numerous, mainly Norwegian humanitarian organizations, participated in UN panels, received the Bruno Kreisky award and the Swedish Edita & Ira Moris award, and was decorated by the Swedish King with the "Royal Order of the Polar Star", the highest civilian decoration for foreigners. She assisted Slovenia's Helsinki Committee to be accepted for membership in the IHF immediately, and not only after a preparatory period of two years (as, for example, was the case of the Croatian Committee headed by Ivan Zvonimir Čičak).

<sup>6</sup> The daily newspaper *Delo* has one of the largest readerships in Slovenia and has been considered as one of the most reliable newspapers [Editors' note].

Understandably, the stories of the Erased were not published with the intention to "harm Slovene democracy", but simply because some of us were under the impression that it was our duty to publish them, and perhaps especially the duty of journalists working for *Mladina*, a magazine whose "attacks" on the Yugoslav People's Army (YPA) were considered the striking fist which struck the first blow against the former Army. We were convinced that we should continue investigating and stand up in defence of everybody's human rights – even the human rights of officers of the YPA. Human rights are universal, and their defence cannot be limited in any way; it is a prerequisite to clarify such issues in order for Slovenia to establish itself not merely as a sovereign state but also a state that upholds the rule of law. Instead of praise, we received criticism, threats and criminal complaints. Colleagues from other, larger media admonished us about careers in journalism not being built this way. We were witnessing a lack of any kind of wider solidarity, including solidarity from other journalists, or of support in the investigation of these unpleasant topics.

## Xenophobia of the ombudsmen

The erasure might not have taken place, if not only state authorities, but also monitors from the civil society sphere had paid more attention to violations of rights. The post-independence euphoria blunted the activity of numerous civil society associations and NGOs who were supposed to be critical of violations of human rights. For example, national branches of Amnesty International did not wish to comment on events concerning human rights that were taking place at the time in their member states. It was also a time when Slovenia had not yet appointed an ombudsman. Also, owing to lack of supervision of respect for human rights, the first Slovene Helsinki Committee was excluded from the International Helsinki Federation (IHF) soon after Slovenia had declared independence. The Committee was headed by Stane Stanič, a former journalist, Minister of Information in the government of Lojze Peterle, and owner of *Apros & Aprost*, an agency for the promotion of Slovenia.<sup>4</sup>

The first to draw attention to unlawful erasure from the register of residents at that time was a Belgrade based lawyer of Slovene nationality, Tanja Petovar, who had founded the organization *Civic Link* in Slovenia. Petovar had already had an abundant history of struggle for human rights in the former Yugoslavia.<sup>5</sup> In Slovenia she soon became the target of vile comments published in the *Delo* newspaper<sup>6</sup> and endorsed by Stane Stanič.

The Helsinki Committee, headed by Stane Stanič, did not dispose of a single file on the alleged violations of human rights. Of course, that was not unusual in light of the committee president's willing admission that any file containing complaints of individuals concerning the actions of state authorities was "immediately handed over to the Ministry of the Interior or a similar institution". The committee of human rights thus acted as a mail box for the police ministry. In addition, the committee never made a public comment on any matter.

The annual report of the International Helsinki Federation for 1994/1995 criticised the Slovene citizenship legislation. Yet the Slovene Committee failed to take a stand on the matter. The Committee also failed to take a stand on the occasion of a vicious attack on its member Rudi Rizman<sup>7</sup>, who later quit the organization in protest.

It was impossible to set aside the impression that the two most important activities of the Slovene Helsinki Committee were the imperceptible handling of violations of human rights and attempts to discredit the supposed “competition” in public. Stane Stanič had thus cautioned that “political interests for the renewal of Yugoslavia and the economic interests of Norwegian multinationals” might stand behind the establishment of *Civic Link* in Slovenia. Moreover, the Norwegian government was allegedly hiding behind the organization, and everybody was supposed to be “unlawfully appropriating the financial resources” allegedly belonging to the Slovene Helsinki Committee. Stanič’s letters of accusation against Tanja Petovar, the managing director of *Civic Link*, were even worse. For instance, he admonished the Norwegian Prime Minister that Tanja Petovar had “Yugoslav citizenship,” and her passport was therefore supposedly null and void on the territory of Slovenia, that she was an “alien” and came from “Belgrade, where all the aggression started”. The International Helsinki Federation designated the contents of the letter as a “scandal” and “inflammation of ethnic hatred”, as well as an impermissible “attempt at stigmatization of the organization and an acknowledged IHF activist”. In 1994 the Slovene Helsinki Committee was expelled from the International Helsinki Federation.<sup>8</sup>

In the autumn of the same year, after the poor work of the Slovene Helsinki Committee had been disclosed, the more active Helsinki Monitor, headed by Neva Miklavčič Predan, became its successor. In an article published in *Mladina* on 15 November 1994, she pointed out that her organization assessed “the procedures of erasures from the register of permanent residents of persons, who were not of Slovene descent” to be “the crudest of violations”.

## Systematic denial of the right to complain

As early as July 1992, *Mladina*’s reports from the Bristol Hotel in Belgrade brought stories of deported permanent residents of Slovenia who were no longer able to enter the country. Živko Mazić from Belgrade, notorious for being the prosecutor against “the four”<sup>9</sup>, was indignant at his experience of deportation:

“A normal person would find all this quite difficult to understand. Such procedures are only commonplace in militant countries where, in accordance with the ‘principle of discretion’, administrative bodies have the right to decide whom to let and whom not to let enter the country. In countries with a normal political system, something like that is impossible. After all, ‘the discretionary right’ also negates the law, and for this reason

<sup>7</sup> Professor Rudi Rizman is a distinguished scholar of sociology (his research interests are nation-state, nationalism and similar), who completed two doctorates, at Ljubljana and Harvard University. He lectures at the University of Ljubljana and at universities around the world [Editors’ note].

<sup>8</sup> Igor Mekina, “Razhajanja med varuhi”, magazine *Mladina* 18 October 1994.

<sup>9</sup> The process against “the four” was a famous YPA trial against dissident journalists of *Mladina* Janez Janša, David Tasić, Franci Zavrl and an officer of YPA, Ivan Borštnar. They were accused of having revealed an Army secret. The military court process took place in Ljubljana, in May/June of 1988 and fortified arguments of Slovenia’s independence and accelerated the process of democratization. The process against “the four” was considered to be unfair for a number of reasons: it was held by the YPA court and not by public court, it was held in Serbocroatian (i. e. the language of the Army) and not in Slovene etc. It was seen as proof for both the inequality of the Slovene language and violation of human rights [Editors’ note].

<sup>10</sup> Igor Mekina, Svetlana Vasović "Hotel Bristol", magazine *Mladina* 28 July 1992.

<sup>11</sup> Igor Mekina, Svetlana Vasović, interview with Milan Aksentijević, magazine *Mladina* 28 July 1992.

<sup>12</sup> The Committee on Protection of Human Rights was established by the Socialist Association of Working People of Slovenia in 1988. It was a predecessor of the institution of Ombudsman introduced in 1995 [Editors' note].

<sup>13</sup> Boško K. came to Slovenia as a medical officer in 1949, and retired from duty in December 1989. A family tragedy in the beginning of 1990, when his sister committed suicide, forced him to leave Slovenia to take care of his seriously ill brother-in-law. He diligently reported his temporary absence to the Secretariat of National Defence in January 1990, and extended it until the end of 1992 because he could not return to Slovenia while a war was raging and he was without a passport. In July 1992 he was denied entry to the country at the Slovenian border, and on the same day his wife was questioned by the police about his absence from Slovenia. The situation resulted in the negative decision on his citizenship application with the argument that "Boško K. actually does not live in Slovenia". The decision was later confirmed by the court, and Boško K. then attempted to acquire an alien ID card. Although all his family members were Slovene citizens, and he fulfilled all criteria, the Ministry of the Interior turned down his application because of his "discontinuity of residence". Following the instructions of the Slovene

all modern and especially European countries attempt to avoid such procedures. In the legal systems of these countries deportations of aliens from the country always fall within the jurisdiction of courts of law, and not some sort of administrative or even police authorities as is the case in Slovenia. It is difficult to say whether this is actually in accordance with the latest Slovene legislation, but it certainly isn't in accordance with international law," pointed out Živko Mazić.<sup>10</sup>

But for many Slovenes the things happening to Mazić were merely justified revenge, since the victim of these procedures was a man who had appeared in the role of the prosecutor in the trial of Janša, Borštnar, Tasić and Zavrl in the military court of Ljubljana (see footnote 9).

In July of the same year (1992) *Mladina* also described the case of denial of entry into the country to Ivan Hočevar, a Slovene general (of the Yugoslav People's Army), and to certain other residents of Slovenia. Not only permanent residence, but also the right to visit their families was suspended for a certain category of people. "The right to visit my family cannot be taken away from me and my colleagues. This kind of issue pertains to the fundamental civic rights, moreover, to fundamental human rights. As long as Slovenia violates these rights it cannot be considered a state governed by the rule of law," pointed out the retired general Milan Aksentijević for *Mladina*.<sup>11</sup>

On 22 November 1994, *Mladina* did a cover on violations of human rights in Slovenia. The article "Deported, Evicted and Erased" gave much attention precisely to the Erased as a special area of violations of rights:

»Although we have published several in-depth reports about deportations, a special mention needs to be made of erasures from the register of permanent residents. In accordance with the new Citizenship Act, Jozo D., for example, has become an alien, although he no longer has any relatives in Croatia, and had moved to Slovenia along with all his possessions twenty years ago. Today the administrative authority is sending him to get a criminal record statement from the burnt down Modriča in order to be able to apply for temporary residence. To his surprise, his ID card was taken away, and he was erased without being notified and given the possibility to complain.»

Jernej Rovšek, secretary of the Committee for Protection of Human Rights<sup>12</sup> headed by law Professor Ljubo Bavcon, who was involved in the famous case of Boško K,<sup>13</sup> also called attention to the illegitimacy of the erasure. In *Mladina* he pointed out that "the fundamental flaw of erasures from the register of permanent residents is that administrative authorities are not

carrying out the procedure in accordance with the law, which stipulates the party's right to complain, and thus violates the right to complain as one of the fundamental human rights". At that time Rovšek also expressed the opinion that "administrative trials" were the most disputable issue in Slovenia, as they do not guarantee adversariness, i.e. the right of the accused party to defend itself in front of the administrative body: "Conditionally speaking, all our administrative procedures could be found null and void owing to 'unfair trials'. I am familiar with a verdict passed by the European Court in a civil matter, where the party filed a complaint for not having been given the opportunity to appear in court and present their point of view. The court found it to be a violation of Article 6 of the European Convention on Human Rights."<sup>14</sup>

The legal status of the Erased was annulled not only without giving them the opportunity to complain but also without even notifying them of what had happened to their status, as demonstrated by the cases of Joza D. and Boško K. (the latter is described in footnote 13) presented in a *Mladina* article. And violation of the right to complain is no trivial matter – the punishment for this kind of violation is up to one year in prison. However, it is unknown to us that any of those who committed mass violations of this right in Slovenia ended up in prison.

Today the Erased are being accused of not having arranged their legal status with the authorities, however, many of them simply could not do it because they were being deported by the police. Any contact with official authorities could mean a one way ticket – out of the country. Momir Kandić, for example, was deported although he had spent the war in a bomb shelter with his family. Šefket Suljević was brutally beaten up and deported several times, although he had joined the Slovene Territorial Defence on the day the war broke out. General Drago Ožbolt was "punished" by having his health and pension insurance taken away, and in the case of General Hočevar, employees of the Ministry of Defence illegitimately broke into his apartment (the act was later publicly condemned by judge and law Professor Boštjan M. Zupančič).

police, he even tried to get a passport from the Federal Republic of Yugoslavia, but the Yugoslav consulate twice turned down his application because he has last resided in Serbia in 1949. In the meanwhile the Ljubljana Municipal Secretariat of the Interior had erased him from the register of permanent residents. The Pension and Disability National Trust therefore suspended payment of his pension (payments are subject to permanent residence status), and as a consequence Boško K.'s health and social insurance were also revoked. When even the Slovene government did not respond to his appeals, he sunk into a deep depression and committed suicide.

<sup>14</sup> Igor Mekina, "Kršitve človekovih pravic", *Mladina* 15 November 1992.

<sup>15</sup> Dr Janez Drnovšek was elected as the member of the Presidency of the SFRY in 1989. In the same year (15 May 1989) he became President of this collective authority of the SFRY. He held this post for one year (until 15 May 1990). In the independent Republic of Slovenia, he was the first Prime Minister (from April 1992 to December 2002). Afterwards he was elected as the second Slovene President (from December 2002 to December 2007) [Editors' note].

<sup>16</sup> Milan Kučan held a number of important political positions during the Socialist Republic of Slovenia as a part of the SFRY. In the independent Republic of Slovenia, he became the President of the state. He was elected twice and held the post from December 1992 to December 2002 [Editors' note].

## Politics and public interest instead of law

Members of the Slovene military intelligence service demanded that Momir Kandić and Šefket Suljević, who had been illegitimately deported from Slovenia, submit compromising material on Janez Drnovšek<sup>15</sup> and Milan Kučan<sup>16</sup> in exchange for their return to Slovenia. The case was described in *Mladina*. The authors who uncovered the incident were subjected to an unsuc-

cessful investigation by the prosecutor's office. The estimate that unlawful privatization of apartments was being conducted to the disadvantage of residents from other republics of the former Yugoslavia and "had again made Slovenia the stage of an unusual rerun of unlawful, almost revolutionary crack-downs on internal enemies", had spurred demands by Janez Janša for the public prosecutor's office to initiate criminal proceedings against *Mladina*, and me as the author of the article. The prosecution lost the case.

A smaller portion of the Erased comprises a group of former officers of the Yugoslav People's Army (approximately 2.5 per cent of the Erased). Although they are a minority among the Erased, I am of the opinion that the erasure can only be fully comprehended in connection to this group. The state authorities had been consistently deporting erased former members of the YPA from the country on the basis of utterly generalized assessments, at least for the duration of operation "Officer", which came to an end in 1994. On the basis of similar generalized assessments, many failed to receive their pensions or lost them completely. Later, some did get them back, while some did not, although they fulfilled the same conditions. All this happened despite the fact that nothing could be proved against these officers to justify such drastic measures. Slovene prosecutors initiated long legal proceedings against four members of the former YPA on the basis of their alleged violation of rules of engagement, and ended up not being able to prove anything. For example, in January 1992 the then Prime Minister Lojze Peterle signed the "Ordinance on Advance Payment of Old-Age Pensions for Military Personnel", on the basis of which payment of pensions was unlawfully denied to members of the former YPA if they had participated in the "aggression". The term "aggression" was transferred to the national legislation from international law, and was being used so ambiguously that it enabled a series of unjust revocations of social rights. The judicial branch of authority persistently kept backing these illegitimacies: in 1992 the Slovene Constitutional Court declared the Ordinance to be in accordance with the Constitution. In the same year, the Committee for Protection of Human Rights pointed out to the Ministry of Defence that the negative decisions issued by the Ministry often "lack sufficient explanation, and deny the applicants their right to receive advance payments on the basis of generalized assessments".

In July 1992, when *Mladina* published an in-depth report from the Bristol Hotel in Belgrade on the impossible conditions in which the separated families had found themselves, Slavko Debelak, the then undersecretary of Administrative and Legal Affairs Office, gave a statement to the newspaper *Delo* saying that the police now had "a fairly good list of all persons, especially those who had left Slovenia along with the Army or entered the territory of other countries, and they shall simply not be allowed to enter Slovenia any more, even though they might have families and apartments over here". In August of the same year Slavko Debelak made a claim that "they" (the officers) "did not respond to last year's call by the Slovene authorities to change over to the armed forces of the Republic of Slovenia", and therefore "the situation has changed diametrically for them now". "We consider them to be persons who now live in a foreign country and work for a foreign authority, which has been and still is hostile to us [...]. Slovenia does not want such people to enter its territory, although they have their families in Slovenia, and are for *this reason* trying to come to Slovenia at any cost, and moreover, are daring to spread slander about Slovene procedures in various international human rights organizations [...]. They will not succeed in this", asserted the same representative of the Interior Ministry, and added that Slovenia cannot "accept these people as potential citizens". In saying so, he purposely overlooked the fact that the majority of the deported did not even want Slovene

citizenship, and only wanted to retain their rights, including the right of residence.<sup>17</sup>

Such assessments coming from top level employees of the Interior Ministry received a response from Ljubo Bavcon<sup>18</sup>, who said that “a general and non-individualized ban on entry to Slovenia for an entire group of people, who have until recently been citizens of the SFRY and have all kinds of connections to Slovenia [...] violates the principle of individuality of human rights.”<sup>19</sup> Ljubo Bavcon had started drawing attention to the first violations of human rights even before Slovenia declared independence, and continued doing so during the ten-day-war, thus becoming the target of harsh criticisms from the then Minister of Defence Janez Janša.

The fact that these decisions had not been based on law but on public opinion was also admitted by Slavko Debelak. Regarding deportations from the country as consequence of erasure, he said:

“The Ministry of the Interior is now faced with a dilemma: should it comply with the law – law being a relative matter and a reflection of our time – or also pay heed to some sort of public interest. Our decisions are brought in accordance with the Act on General Administrative Procedure, which clearly states that our decisions shall not contradict public interest. You know what the opinion of the public is. In a few moments I am going to show you the letters we are receiving. People are literally denouncing the arrivals to us. And hence we are faced with the dilemma. If we stick solely to the law, which is adapted to the conditions that arose after the aggression, we will clash with public interest, which would consequently bring about more damage than following certain things to the letter.”<sup>20</sup>

In other words: in taking decisions on denial of entry into the country – and decisions on the Erased in general – the Interior Ministry was deciding in accordance with the “demands of the people”. They were passing judgements in a manner similar to that of their historical counterparts, who had once served in the totalitarian system of the Third Reich, i.e. “according to the healthy national sense”, and acting in accordance with the wishes of those who “denounced”, bowing to the atmosphere of pogroms and xenophobia created in the disintegration of the former country. Populist criteria prevailed over law in the Ministry of the Interior.

The answer given by Slavko Debelak to a journalist, who had asked him directly, why even talk of public opinion and politics “when this is a matter of the legal system, which is binding for everyone”, was: “The legal system is always a result of politics [...]. It is precisely because of matters which now do not have the best of solutions, we have to interpret the law that is a reflection of circumstances Slovenia found itself in.” At the end of the interview the then state undersecretary himself posed a question on whether Slovenia now had more or fewer citizens than before. To the estimate that there were “more”, Slavko Debelak victoriously replied that this did not hold true:

“No. There are less. Over two million people were listed as residents before. Now we have less of those who are entitled to certain benefits from the state, and incomparably

<sup>17</sup> Igor Mekina, “Krivda in greh”, *Mladina*, 4 August 1992.

<sup>18</sup> Dr Ljubo Bavcon is a distinguished law Professor. He was one of the founders and president of the Committee on Protection of Human Rights established in 1988. This Committee was a predecessor of the Ombudsman introduced in 1995 [Editors' note].

<sup>19</sup> Maja Megla, Igor Mekina, Svetlana Vasović, “Pristna zveza”, *Mladina*, 29 September 1992.

<sup>20</sup> Maja Megla, Igor Mekina, “Rod in red”, *Mladina*, 29 September 1992.

<sup>21</sup> Ibid.

<sup>22</sup> Igor Mekina, "Izgnani, deložirani, izbrisani", *Mladina*, 22 November 1994.

more aliens. On the eve of the plebiscite 50,000 more people were entitled to vote than are now."<sup>21</sup>

Debelak thus stated as an index of success that 50,000 permanent resident had been cut off from "state benefits". What does it mean? It simply means that as many people not only lost their residence but had also been cut off from pensions, employment, social and health insurance, as well as valid documents, from ID cards to driver's licences. According to the opinion of Slavko Debelak – and obviously also of certain of his superiors, including the Minister of the Interior Igor Bavčar – these rights were merely "benefits". The state had thus truly made a saving – but it did so by destroying the health of its residents, stealing their pensions, bringing them to the social bottom, and by doing so actually forced many to move away. But the most persistent lived through it and stayed in Slovenia, and the truth started surfacing. It thus turned out that Debelak's "savings plan" actually bore a high cost for the state – the squandered reputation and tarnished image of Slovenia in the international public. The price of this indecency is understandably much harder to calculate than that of the state robbery of old-age pensions and social benefits stolen by the state from the Erased.

## "Your husband no longer lives here!"

Stories about the Erased appeared in *Mladina* as early as 1994. For example, the story of Alenka K, who described the events of 17 December 1992, when officials of the Ljubljana municipality wanted to see her husband's ID card while verifying her daughter's tax return data: "The clerk checked the computer and asked for my husband's ID card. When I gave it to her, she punched a hole in it, thus destroying it. I couldn't believe my eyes, and she only said coldly: 'Your husband no longer lives here.' I started crying. I didn't know the law, I only knew and felt that we belong together and have no other home." Her husband, a sixty-eight year old army pilot, who had been retired for twenty years and had permanent residence in Slovenia, had his citizenship application turned down by the Slovene state only because he had crossed the Slovene-Croatian border at the wrong time. In May of 1991, as in every year for the past twenty years, he went to Bosnia with his wife to get potatoes and other vegetables he was growing on a patch of land in his home village. The Ministry of the Interior established that, in spite of the fact that his family was in Slovenia he actually no longer lived in Slovenia because he had gone to Bosnia. His visit was extended to several months because of the ongoing war and lack of documents.

"After our arrival from Bosnia, we went to the police and demanded a hearing," explained Alenka K. "They told us everything was in order and that we shouldn't worry. And then my husband's citizenship, pension and health insurance were revoked. The four of us lived on my daughter's salary; she's a midwife in the Ljubljana maternity hospital." She will never forget how her husband had been erased from the register of permanent residents: "I went back in a couple of days and asked them to tell me when and how my husband had lost his permanent residence. The clerk phoned somewhere and issued me with a certificate, which stated the event took place on September 9 of the same year."<sup>22</sup>

Since M.K. had lost permanent residence, which is a condition for pension payments, he subsequently also lost his pension (which he had been receiving regularly until then). And



since social and health insurance are conditioned by the pension, he also lost those. He was left without documents, and did not receive a reply to his visa extension application from the competent authorities. “When we were trying to arrange the power of attorney for our solicitor to represent us in court, we couldn’t because my husband didn’t have valid documents. One lady came up with the idea that the matter could be resolved by ‘identification’. My daughter and I then identified him in the court as if he had died. Today he still doesn’t dare go to town alone,” Alenka K. described her experience with erasure in 1994.

Cases of the Erased involved double discrimination. Firstly, it was discrimination in regards to all other citizens, and secondly discrimination in regards to other aliens, i.e. “true aliens” from countries beyond the territory of the former Yugoslavia. Their status did not change after Slovenia became independent.

## Inquisition methods of the erasure

The Erased had found themselves in a “legal void”. The Ministry of the Interior based its administrative and legal procedures on public opinion and politics, and thus did not stick to the letter of “certain things” as Slavko Debelak defined the law.

Such actions are reminiscent of the arbitrary criminal proceedings known from the time of the Holy Inquisition. The first major change for the worse in the church’s criminal proceedings came about in the time of Pope Innocent III, who had stepped up the fight against heretics by instituting an essential new element of the proceedings. Until then one could only be charged by an accusation (*per accusationem*), and the duty of the prosecution was to demonstrate the guilt of the accused in court. Innocent III, however, introduced two novelties: the beginning of criminal proceedings *per denunciationem* and *per inquisitionem*. In the former proceeding, denunciation (*denunciatio*) was considered sound enough basis, and was not necessarily followed by proving the guilt of the accused. And in the latter proceeding, it was the duty of the judge to initiate proceedings on the basis of hearsay (*publica fama, clamosa insinuatio*) that circulated about a person. In both instances the prosecutor and judge were united in the same person, and criminal proceedings thus no longer had the characteristics of a contradictory proceeding, i.e. proceedings in which the role of the judge is independent and unbiased.<sup>23</sup>

The decision of those residents of Slovenia who had decided not to apply for Slovene citizenship was thus in some way equated with “aggression” or “high treason” and followed by punishment in the form of suppression of all rights without the possibility to complain. Former officers of the YPA, who in most cases did apply for citizenship, were punished by having their applications turned down, although no violations of war conduct had been proven against them in court. A typical case is that of B.M. from Bosnia and Herzegovina, who retired from duty in 1990. The Interior Ministry gave a reply to his application for citizenship under Article 40 of the Citizenship of the Republic of Slovenia Act which stated that “he and certain other persons cooperated with superiors in Belgrade in the preparation and implementation of the trial against ‘the four’” (for the explanation of the trial against “the four”, see footnote 9). This decision had no legal basis, but the YPA officer, who had retired from duty before Slovenia declared independence, was nevertheless “punished” for doing his work in accordance with the law of the former state, when the new state of Slovenia was not yet in existence. This does

not mean that the trial of "the four" had been justified. But the Citizenship Act does not provide for such "lustrations" as were allowed to take place by Slavko Debelak, the then undersecretary of Administrative and Legal Affairs Office, who signed this negative citizenship decision.

In 1994 the first legal victory came about, with the decision of the High Court stating that no one could be deported from the country on the basis of generalized judgements. Deportations were also being criticised by attorney of law Dušan Jelušič, a member of the Helsinki Monitor, and one of the few lawyers who at that time legally represented the most tarnished and marginalized group of people: "The principles of rule of law and the modern conception of human rights are juxtaposed to the idea that the accused must prove his innocence in court. This is opposed to the principle of alleged innocence." Instead of "the Ministry of Defence, i.e. the plaintiff, proving its claims, the pension applicant must prove his innocence". Concerning the Constitutional Court decision, which gave affirmation to the decree on non-payment of old-age pensions, Jelušič assessed that "even the Constitutional Court can be wrong" because "the right to receive a pension is also a right", regardless of the Constitutional Court's opinion that was not a right. He also pointed out the perverted logic that started spreading in Slovenia:

"Instead of talking rubbish about how clean our air and rivers shall be, the politicians should rather dedicate themselves to building a good reputation for our country. So we can say anywhere in the world that these matters are settled well here, that our citizens are satisfied, that there is no discrimination and that minorities enjoy protection. A good reputation of the country is, after all, also an important good, not only money."<sup>24</sup>

Approximately at the same time, it became known that a list of undesirable persons (who had families in Slovenia) indeed existed and had been composed in a very peculiar manner. The secret list was first issued in April 1994 and included 778 names, then 655, and in 1995 only 235 names. When the Parliamentary Committee of Defence officially requested the list from the Interior Ministry, the Ministry turned down the demand. According to the then Minister, it did so "out of operative interest". The Interior Ministry was thus hiding the list of persons banned from Slovenia even from parliamentary committees. A report of the Ministry of Defence from that time stated that "a larger number of restrictions is documented only by statements of citizens, which had not been considered relevant by the courts". In reality the Ministry was only saying that it had incriminating statements of witnesses at its disposal, but did not state their names or their statements. The same report also stated:

"The Ministries of Defence and Interior do not dispose of information that former members of the YPA, who reside in the country either as aliens or citizens of Slovenia, would pose a threat to the security and defence of the country, which is further confirmed by all military-political and security assessments conducted thus far."

A turnabout came in 1997 when, in regards to "the list of undesired persons" on the basis of which people were being turned away at Slovene borders, Mirko Bandelj, the then Minister of the Interior said the ban was to a great extent "mostly of political nature, and had no legal basis, and was thus unbearable from the point of view of rule of law and respect of human rights."

<sup>25</sup> Matevž Krivic is a renowned former constitutional judge who joined the Association of Erased Residents of Slovenia in 2002 and still advocates on their behalf [Editors' note].

Although the Minister had publicly admitted to the complete illegality of the list in 1997, this did not have much effect on the work of the Interior Ministry in the following years. In 2003 for example, a state undersecretary of the same Ministry thus claimed in an official letter to the court that their actions concerning the denial of residence to certain individuals in Slovenia had been “completely lawful”.

## The wind of xenophobia drowns out the warnings

Large numbers of respected legal experts kept silent for many long years following the erasure. The published stories had almost no effect for a long time, either. The procedures, which were clearly unlawful even to complete legal laypersons, kept taking place, and the state failed to respond with any kind of investigation. In a country where an investigative committee was established for every trivial lapse, nobody seemed to care about serious violations of human rights. This almost complete silence on the part of Slovenes, which encompassed legal experts, intellectuals, journalists, writers, politicians and professional advocates of human rights alike – is one of the darkest sides of this sad story.

The return of Matevž Krivic<sup>25</sup> – who kept his principles by giving separate opinions even during his mandate in the Constitutional Court – from the highest branch of judicial power to life as a common citizen, gave new impetus to the search for solutions to the mass violations of



Photo: Dare Čekeliš

Hunger strike of the Erased at the office of the European Commission in Ljubljana, 22 February 2005.

human rights in Slovenia. The adoption of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia did not prevent the establishment of the Association of Erased Residents of Slovenia, whose members, aided by Matevž Krivic, demanded rectification of the injustices. On many occasions Krivic pointed out that the Ministry of the Interior kept denying the complete unlawfulness of the erasure, which had been a “legal disgrace and a civilizational scandal”, despite that this was now stated clearly in a Constitutional Court decision.

At present we do not know how to define the erasure, which was a mass violation of human rights, more precisely within the scope of criminal law. The international law defines the most serious mass violations of human rights on the basis of colour, language, religion, nationality or ethnicity, etc. as ethnic or population cleansing. “Population cleansing [...] covers a wide range of phenomena from genocide at one end to subtle pressure to emigrate at the other. Between these extremes there lie expulsion and mass population transfers. [...] But what about milder forms of population removal, such as putting pressure on a certain category of people to emigrate by making their life so uncomfortable that they decide to leave? Wouldn’t that amount to a kind of ethnic cleansing?” asks Andrew Bell-Fialkoff, in his investigations into the history of ethnic cleansing.<sup>26</sup>

The erasure certainly was some sort of cleansing, i.e. administrative ethnic cleansing. It was carried out on the basis of instructions given internally by the then Minister of the Interior Igor Bavčar, who at the time served in the *Demos* government of Prime Minister Lojze Peterle (this government was in power from 1990 until April 1992). Two published documents bearing the signatures of Igor Bavčar and Slavko Debelak also disclosed where this “wind of xenophobia”, as it was later dubbed by Ljubo Bavcon, blew from. In June 1992 the Minister Igor Bavčar suggested to the government of Prime Minister Janez Drnovšek that rights in the case of the Erased should be “considered irrelevant”. And the document signed by the then undersecretary Slavko Debelak showed that the police were deporting the Erased from the country without any legal basis or written decision. New Ministers of the Interior came into office (Andrej Šter, Ivo Bizjak, Mirko Bandelj, Borut Šuklje, Peter Jambrek and Rado Bohinc), but the policy of erasure remained the same. The same were also long-term Prime Minister Janez Drnovšek (with the exception of a short period of government of Andrej Bajuk in 2000), and the President of the Republic Milan Kučan. However, responsibility for the erasure cannot be limited only to the person and work of individual politicians. According to the provisions of international law, subordinates are also responsible for mass violations of human rights, if they knew about them, and did nothing to prevent them, when they should have prevented them. In Slovenia the Committee for Protection of Human Rights was cautioning about mass violations of fundamental human rights and liberties as early as 1994. In March 1994 it addressed a letter to Prime Minister Janez Drnovšek pointing out that a concealed policy might be at work behind the slow and unsympathetic resolution of the situations of certain residents of Slovenia, and that the final goal of this policy was that “certain people would ‘voluntarily’ move out of Slovenia” and Slovenia would thus “be rid of the so called non-Slovens”.

In November 1994 Ljubo Bavcon, the president of the Committee for Protection of Human Rights and Professor of law, gave an interview for *Mladina*, where he said the following:

“The inefficiency of the strivings of the Committee for Protection of Human Rights and Liberties in the past year or two is corroborated by the Report on Violations of Human

Rights signed by Neva Miklavčič Predan of the Helsinki Monitor. This report states the same precise phenomena the Committee had been bringing to public attention and also discreetly point it out to the competent state authorities and finally, in the spring of this year, also to the Prime Minister. Despite his assurances that the policy of state authorities concerning non-Slovenes would change, in reality no changes had taken place. And nothing happened because the poison of national and political intolerance, hatred and fundamentalism had seeped into Slovenia. For some time now this poison has been disseminated by certain 'totalitarian democrats' within the leadership of their political parties, faithfully backed up by a 'squadron of journalists' and several so called intellectuals. Subsequently, this produced an atmosphere of fear among state officials, who dare not issue positive administrative or legal decisions when non-Slovenes or suspicious Slovenes are concerned. While the Committee had the full support of what is called 'civil' society, the Catholic Church, intellectuals and journalists in its striving for the establishment of human rights before the onset of intolerance and hatred, the few, and unfortunately rare individuals among us who strive for human rights, had been left completely powerless to fend for themselves."<sup>27</sup>

Spomenka Hribar<sup>28</sup> and Mateja Kožuh Novak<sup>29</sup> also spoke up against the mass violation of rights. In an interview for *Mladina*, Spomenka Hribar criticised "the policy of universal denial of the right to enter the country to former officers, who had families in Slovenia":

"I am of the opinion that we shouldn't be making people lose their homeland. A similar idea had been expressed in a letter addressed to your editorial office by Dr Mateja Kožuh Novak, and I think she thus performed an important humanitarian deed. What are children, who'd lost their fathers this way, guilty of? This shouldn't be happening in Slovenia."<sup>30</sup>

## The nights of the long erasers

How was it possible for such mass violations of human rights to take place in Slovenia? Could such an extensive police operation for erasing permanent residents from the register truly be performed only by the police and administrative apparatus? What is the meaning of the support given by the silent majority and of the silence of the majority of the media? Why had so many "intellectuals", in the years following the declaration of Slovenia's independence, given up the disclosure and analysis of the phenomenon of mass violations of human rights?

American historian Daniel Goldhagen shocked the German and world public with an investigation of *Hitler's Willing Executioners*<sup>31</sup>, where he proved that great masses of Germans had been accomplices and willing perpetrators of Nazi crimes. The mass erasure of permanent residents of Slovenia from state registers would also have been impossible without a compliant bureaucratic machinery, greased with barely concealed nationalism.

<sup>27</sup> Igor Mekina, "Izgnani, deložirani, izbrisani", *Mladina*, 22 November 1994.

<sup>28</sup> Dr Spomenka Hribar is an intellectual and renowned public person who started her career in the early 1960s [Editors' note].

<sup>29</sup> Dr Mateja Kožuh Novak a renowned public person, MP and physician [Editors' note].

<sup>30</sup> Igor Mekina, Svetlana Vasović, "Zmagovalci in poraženci", *Mladina*, 8 September 1992.

<sup>31</sup> Daniel Jonah Goldhagen (1997), *Hitler's Willing Executioners: Ordinary Germans and the Holocaust*. USA: Vintage.

<sup>32</sup> Kosta Čavoški (1989), *O neprijatelju*. Prosveta, Belgrade, page 158–160.

<sup>33</sup> The Technical Act was supposed to solve the issue of the Erased partly, and in purely technical terms. The Act, which was never implemented, would have registered those who had already re-acquired their resident's statuses retroactively, from the date of the erasure until their status of permanent resident was issued. The majority of the referendum voters did not support this law [Editors' note].

In 1934 Herman Göring published an article in the US, in which he wrote that National Socialists had denied the right of legal defence to enemies of the people because the Nazis consciously opposed "false lenience and false humanism" and showed no support for different kinds of legal and juridical "inventions". The night of the Long Knives followed soon after. A top German legal expert, Carl Schmitt, attempted to justify the brutal killings of Hitler's opponents in the article *The Führer Upholds the Law*. Trials of "internal enemies" had moved to the National and Special Courts, where after 1935, verdicts were passed on the basis of "common national sense". The Nazi lawyer Hans Frank declared

that there was no independence of law against National Socialism, and Himmler's Gestapo aide, Werner Best, went on to explain that the police were acting legitimately as long as they were carrying out the "will of the people". The will of the people had been validated by a plebiscite.<sup>32</sup>

A reign of terror can begin in complete innocence, with great words about democracy and the will of the people, and end up with fundamental human rights being trampled. At first the rights of the disliked individuals and minorities, and in the end of all those who dare have a different opinion. In the weeks leading up to the referendum on what was called the Technical Act on the Erased<sup>33</sup>, many comments were published, claiming that comparisons between the events in Slovenia and National Socialism were utterly unfounded. While it is true that Slovenia is not a non-democratic dictatorship, similarities can be drawn in terms of attempts to undermine the rule of law, and are thus very much founded.

The latter is corroborated by the statement made by Slavko Debelak that the Ministry of the Interior merely abided by the law and public interest (see above). The attitude expressed by his statement is not fundamentally different from the quoted statement of Werner Best on a police force which acts "legitimately" as long as it is carrying out the "will of the people". This kind of public interest or will of the people was also reflected in the statement of Irena Oman, the president of the Petitions Commission, when in November 1993 she answered the families that had been broken up as consequence of the deportation of family members. She wrote that the Commission "agrees with the explanation provided by the Ministry of the Interior" and therefore informs the Erased and deported who wish to return to their families in Slovenia "of the still existent possibility for families to reunite and live on the territory of another republic". Similarly, Bavčar's successor, Minister of the Interior Ivo Bizjak, wrote in one of his letters that the Erased who had left their families in Slovenia "had been given an unobtrusive option by Slovenia to decide whether to leave or not Slovenia, and subsequently also their families."

In October 1994 a question concerning the separated families was posed in the Parliament by then MP and former Ljubljana mayor, Danica Simšič. The written answer, signed by the Minister of Labour, Family and Social Affairs, Rina Klinar, states that Article 22 of the National Border Control Act gives border police the authority to "refuse or deny entry to an alien into the country for reasons of maintaining law and order". Minister Klinar claimed it was "an authentic right of the state" to be able to "make sovereign decisions on whom to let or not let enter the country", and that the Erased could be denied entry by the border police in the form of "an oral decision, to which they cannot object".

In the period following the second Constitutional Court decision (2003), a larger number of respected individuals overtly started advocating violations of human rights and discrimination

against the Erased. The front of discrimination advocates prior to the referendum on the Technical Act comprised a wide variety of people, from Andrej Šter (former Minister of the Interior), Tadej Labernik (former journalist and ambassador to Bosnia and Herzegovina) and Borut Trekman (right hand of the Minister of Foreign Affairs), to cultural figures like the actor Polde Bibič and former member of the Presidency of Slovenia, Matjaž Kmecl. Among those who advocated discrimination was the Slovene writer, Viktor Blažič, whose involvement went to prove that even a victim of violation of human rights can surprisingly quickly turn into an advocate of violation of rights.

The arguments of this colourful group were varied yet equally unfounded. According to some the Erased did not exist at all; others pointed out the necessity of protecting national interests, and yet others stressed that righting the wrongs would come at a great cost. Seemingly better founded arguments were those given by Slavko Debelak, former undersecretary at the Ministry of the Interior, and Andrej Šter, former Minister of the Interior, who are both directly responsible for the onset of the problem. Debelak, for example, claimed that, if all resident of Slovenia who did not acquire citizenship “were left in the register of permanent residents and would automatically become aliens, the fundamental principle of statutory law, i.e. the principle of optionality, would have been automatically violated”. Contrary to this, experts from the Council of Europe attending meetings organized in cooperation with the Ministry of the Interior at the time of the mandate of Slavko Debelak described the example of new citizenship given “without option” and without special application to all permanent residents of the Austro-Hungarian Empire when it fell apart. Slovenia, however, had chosen a different model, which was certainly more restrictive and included all the atrocious consequences, and was also in contradiction of the Statement of Good Intent.

It is also in the nature of international legal norms that sudden changes in the rights of individuals, implemented in a secession process without the participation of the afflicted, and that preclude “foreseeable legal expectations and certainty derived from the law”, are impermissible. In other words: it is utterly unequivocal under the fundamental principles of legal certainty and rule of law that every person who in the course of their life had legally acquired permanent residence, personal documents, driver’s license or, for example, property in Slovenia, had every right to expect that, after Slovenia became independent, these rights – regardless of whether they opted for the status of citizen or alien – would not be unilaterally abolished. However, despite timely warnings about the unlawfulness of such actions, this is precisely what took place in Slovenia, through the agency of those who failed to act in accordance with the principles of a state governed by the rule of law, and instead gave in to a wave of xenophobic nationalism and hatred against the former co-citizens.

Translated by Matija Ravitz

# Deported to Death

<sup>1</sup> All towns mentioned in this article (Celje, Brežice, Ribnica, Ptuj etc.) are located in Slovenia, unless stated otherwise [Editors' note].

## Erasure and deportation

The life stories of the Erased are often tragic. Leo Tolstoy once wrote that “happy families are all alike, every unhappy family is unhappy in its own way”. This especially holds true for Dragomir Petronjić, an erased Serb, born in Prijedor, Bosnia and Herzegovina (hereinafter Bosnia). Dragomir has been a permanent resident of Celje<sup>1</sup> since 1979. The calamity that has befallen his family is that they were searching for him for a decade and a half, from that tragic September of 1992 until September 2007. In that year of 1992, during the war in Croatia and Bosnia, the Slovene police handed Dragomir over to Croatian officials against his will, or “sent him off” to Croatia, where all trace of him was lost.

The Slovene police only keep records of deported aliens from 1997 on, and it is therefore unknown how many similar cases had taken place in Slovenia. The Helsinki Monitor alone is familiar with approximately ten similar cases, which luckily did not end as tragically, even though the police proceedings were similar.

Thus, for example, Mojmir Kandić, who had been employed by the Yugoslav People's Army, was deported from Brežice on the basis of an “oral order”, while Šefket Suljević from Ribnica was deported several times in a similar manner, although his family lived in Slovenia, and he joined the Slovene Territorial Defense immediately after Slovenia declared independence. In addition to having been deported three times, he had also been beaten and threatened with death. Kemal Sadik, who had lived in Slovenia since 1979, accompanied his seriously ill son Adil to treatment in Germany, and learned, on returning to Slovenia that all his documents were invalid, that he had been erased. Marjan Kompara, head of the Ljubljana Aliens Department used scissors to cut up his passport, and told him to go to Macedonia to get a new one. When Kemal asked him how he should cross Croatia and Serbia to get to Macedonia without a passport or any other document, Kompara answered that he should “get wings and fly to Macedonia”. Following this episode, the police made several attempts to deport him from Slovenia, as with Slavko Pejić,



<sup>2</sup> Svetlana Vasović: "Što narod neće pozlatiti", *Vreme* weekly newspaper, No 679, Belgrade, 8 January 2004.

<sup>3</sup> Svetlana Vasović: "Slučaj Antona Debevca", *Politika*, 8 October 2006 and "Nacija ABCHMS", *NIN* weekly newspaper, Belgrade, 5 April 2007.

who had suffered three heart attacks, and the employees of the Aliens Department benevolently advised his wife to divorce her husband, as in that case her income at least would reach the official minimum of social security, which is set as a condition for obtaining Slovene citizenship. After an employee of the Aliens Department had taken and destroyed all the documents belonging to Mirjana Učakar, who is a Slovene, born in Ptuj, she did not dare leave her house for many years, fearing she might be deported. At long last she was extricated by documents she acquired from Croatia, which proved the birthplace of her father and enabled her to finally arrange her residence in Slovenia.

Also comparable is the story of Janko Šribar, a Slovene from Izola. As he was returning from work in Germany, the police took away all his documents and removed the registration plates from his car because, according to their data, Janko was a Croatian citizen, although he had submitted three certificates proving Croatia had never considered him a citizen.<sup>2</sup> A similar destiny was shared by Anton Debevca, a Slovene from Kamnik, who also accidentally found out he had fallen into the bureaucratic chasm of the erasure, from which he was rescued by former school mates from Serbian Vršac, who sent him Serbian documents, on the basis of which Anton later acquired Slovene documents.<sup>3</sup>

## Criminal proceedings

The tragic story of the Petronjić family began to unfold on Wednesday, 2 September 1992, when two traffic policemen from the Šentjur police station pulled over a car driven by Dragomir Petronjić. Three days prior to that, on Sunday, 30 August, Dragomir had returned home from working in Austria to extend the validity of his passport.

On that fateful Wednesday Dragomir was driving to Šentjur to meet his friend Marija. The police patrol pulled him over, inspected his documents, and not offering any explanations, took away his driver's license and ID card, although both documents were valid.

"They let him drive on. The two policemen told him to wait at his address the following day so they could return the documents. He didn't feel threatened or guilty. He didn't even know what the problem was. On 3 September around noon, two policemen paid us a visit and asked for Dragomir. He had to leave with them. We realized that something must really be wrong when they handcuffed him like a criminal in front of our apartment building," remembers his sister Dragojla Popović.

Neither his sister, nor his daughter, who was underage at the time, knew for the following two years (until 1994) that Dragomir was "sent off across the Slovene Croatian border" on that very day. After countless inquiries with the police and the court of law in Celje, Dragomir's sister received an answer stating precisely that from Marko Pogorevc in Ljubljana, the then adviser to the government and head of the Interior Minister's Office, which was led by Minister of the Interior, Andrej Šter. In the letter Pogorevc informed Popović that her brother had been deported for having allegedly resided illegally in Slovenia for five months "from 1 April to 2 September 1992". The supposed "illegal residence", however, was not established by the

border police at the Šentilj border crossing, where only four days prior to his arrest Petronjić was allowed entry into Slovenia from Austria. Marko Pogorevc also explained to Petronjić's sister Dragojla that such police proceedings were "commonplace" at the time:

"Our policemen did not directly hand your brother over to Croatian security officials but merely gave him verbal instructions or demanded that he take a regular train from Slovenia to Croatia."

But Dragomir would never have departed to a war region of his own free will, and it could only have taken place under duress, i.e. with a police escort. The existence of such an escort is further proven by a police note with the precise date and place of the border crossing noted down: Dragomir Petronjić left Slovenia at 17:10 by way of the Rogatec border crossing on 3 September 1992.

Pogorevc's letter, dated to 15 March 1994, and addressed to the Petronjić family actually uncovered no new information as to the disappearance of Dragomir. At that time the family still fostered hopes that Dragomir, being a Serb, was interned in one of the Croatian prisons or POW camps. With the war in Bosnia coming to an end in 1995, the family's hopes were raised again, but only until Dragojla received a reply from Croatia in the form of a letter from the then head of Department of Search and Reinforced Surveillance at the Croatian Ministry of the Interior. In letter No 511-01-28-3811/95 MK, chief Peroš describes how Dragomir's "handover" from Slovenia was handled:

"According to the record on handover of combat and labor capable refugees, citizens of Bosnia and Herzegovina, which took place at the Kamensko Vinjane border crossing (on the Croatian Bosnian border) with the aim of repatriating them to their native country, a group of refugees was handed over to the authorities of the Republic of Bosnia and Herzegovina, and it included your brother, Mr. Petronjić Dragomir, son of father Rade, born on 20 February 1959, in Gradin, Prijedor, Republic of Bosnia and Herzegovina."

The letter ends with a note that Dragojla Popović should "contact the authorities of Bosnia and Herzegovina for any further information". Damir Mašić, an employee of the Bosnian embassy in Ljubljana expressed doubts as to the accuracy of the description of the course of Dragomir's journey between Slovenia and the Vinjani border crossing on the Croatian-Bosnian border, because it did not seem likely to him that such a journey could have been undertaken in the time of the heaviest fighting.

A reconstruction of Dragomir's deportation indicates that Dragomir was transported in a period of two days over a distance of several hundred kilometers: in all likelihood the Slovene police, aided by their Croatian counterparts, handed him over to the authorities of the then Herzeg-Bosna, i.e. to units of the Bosnian Croats, who live in that particular part of Bosnia and were at that time waging a war against the Serbs and the authorities in Sarajevo.

Does one need reminding that Dragomir was a civilian, a worker and a resident of Celje (Slovenia), and was deported by the Slovene police to a war region and handed over to the side that saw a national enemy in a person of Serbian nationality? In a region where mass murder of civilians was taking place at precisely that time, he was perceived as a "combat capable person", and thereupon treated as a POW.

## Erased a second time

Taking heed of Peroš's advice, Dragojla turned to all kinds of addresses in Sarajevo, but her inquiries remained unanswered until September 2007. Only at the end of the 1990s, when a public debate ensued following the Slovene Constitutional Court's decision on the illegality of the erasure secretly performed by state administration on 26 February 1992, did Dragomir's family realize that their son, brother and father had been a victim of erasure from the registry of permanent residents of Slovenia. The driver's license taken away from him was actually a valid document, although his passport had indeed just expired.

In the archives of the Celje courthouse, we uncovered a record of misdemeanor in file No P2722/92 (access to this file was possible until 2004!). This document showed that a misdemeanors judge fined Petronjić for his expired documents in the amount of 1500 Slovene tolar (6.3 euros) and ordered him to pay a lump-sum court fee in the amount of 1000 tolar (4 euros) (he had been denounced to the judge by the Šentjur police station). The file showed that Dragomir paid the fine immediately. Although the misdemeanors judge never imposed "the security measure of deporting an alien from the country", the police nevertheless deported him from the country several hours later. He then disappeared, and his daughter and sister, who still live in Celje, decided to fight "all the way" to find out the truth about Dragomir's death, and see those responsible for his tragic fate punished.

Archived documents showed that there were four cases in 1992 in which misdemeanors judges in Celje imposed the security measure of deportation of an alien from the country, but



Photo: Dare Čekeliš

Dragojla Popović and Roberto Pignoni holding a photo of Dragomir Petronjić in front of the European Parliament in Brussels, 29 November 2006.

<sup>4</sup> His correct ID number was 2002959501076.

<sup>5</sup> The president of the court of Celje avoided providing an answer to the following questions submitted to him in writing: 1) Why did the police decided to bring the case in front of a judge in Celje, and not in Šentjur? 2) How many similar cases have been processed by the court of Celje, and were all the defendants then deported from Slovenia? 3) Has anyone responsible for the fate of Dragomir Petronjić been made accountable, or has any legal action been taken against those responsible in this case?

Dragomir's was not among them. The provisions of international conventions also binding Slovenia, forbid deportations of aliens to war zones. The two policemen who dealt with Dragomir Petronjić, and in the process met his family and saw with their own eyes that he had been a permanent resident of Celje for many years (he had also graduated from school there), still arbitrarily declared him an "illegal migrant from Bosnia and Herzegovina", handcuffed him and deported him to a region, where the bloodiest war in Europe since WWII was raging. In addition to violating international conventions, the two policemen also placed themselves above the authority of the judge. It seems they decided to deport Dragomir on the basis of instructions given at the time by the leadership of the Slovene police or

the Ministry of the Interior (see dispatch by Slavko Debelak from 27 February 1992, published at the last page of this volume as a supplement).

At present, the archives of the Celje courthouse no longer hold Dragomir's file. On 7 March 2007, I received a reply from Darko Belak, president of the court, regarding the disappearance of Dragomir Petronjić (case P2722/92). He explained that a decision on violation of Article 80/6 of the Aliens Act was issued following a summary procedure:

"On the basis of this decision the defendant Petronjić, personal identification number: 2009959599176, permanent address Kozarska 106, Prijedor, was fined 1500 tolar and ordered to pay a 1000-tolar lump-sum court fee. The fine was paid the same day the payment order and the decision on violation were issued. The decision became final on 12 September 1992. The case was determined by a misdemeanors judge in Celje; since it involved a summary procedure it was determined by a judge, who was on duty according to a prearranged schedule and was conducting the proceedings in cases where perpetrators were brought in by the submitter [i.e. the police – author's note] for an immediate procedure under Article 109 of the General Offences Act. Hence it ensues from the above described that the judge did not issue an order for the deportation of an alien."

The written statement of the president of the local court of Celje shows that the judge indeed had not ordered Petronjić removed from the country. It is unknown, however, why the two policemen were in a such hurry on that afternoon of 3 September to bring Dragomir in to stand trial in front of a judge on duty. The personal identification number written down in the decision issued at that time by the misdemeanors judge, and later copied by the current president of the court is incorrect (as many as two digits are transcribed incorrectly!). Dragomir was born on 20 February of 1959, and not September, as is incorrectly stated in the decision on defendant Petronjić.<sup>4</sup>

Another important realization ensues from Belak's letter. The Celje police deported Dragomir to a war zone a week before the decision brought by the misdemeanors judge even became final!<sup>5</sup>

Dragomir fell victim to erasure a second time - first he was erased from the register of permanent residents, and a second time from the archive of the Šentjur police station. On 9 March 2007,

we received only a dry answer that “the archive of the Šentjur police station regrettably no longer holds information concerning the case you are inquiring about, because the appointed time for archiving such matters is five years”. While conducting the inquiry into his fate, the police spokeswoman nevertheless found out that the name and family name of this citizen are presently still included in the list of permanent residents of Celje dating to 1979. The question then arises, how is it possible that on 3 September 1992, the policemen treated Dragomir as an alien without documents, if it is still evident from the archives today that he was a resident of Celje?

The silence of the president of the local court of Celje that followed questions about similar cases, and about responsibility for the deportation of Dragomir (or cooperation in other illegitimate deportations of the Erased) goes to show that nobody has been made accountable.

## Breach of international law

On 25 September 2007, the Petronjić family received a notice from the Bosnian authorities informing them that Dragomir’s remains had been found in a mass grave in the vicinity of Jajce, Bosnia and Herzegovina. The pathologist established that Dragomir had also been tortured before he died of a gun shot to the head in September of 1992. The bones of his arm, leg and several ribs had been broken, and two meters of rope which was used to tie him before he was executed was found lying alongside his remains.

Dragomir’s family is deeply shocked and will never understand why Slovenia declared him a refugee, if he was a resident of Slovenia and should have been treated as any other resident of the country.

The explanation of the Chief Police Directorate regarding Dragomir Petronjić’s case was that he should have pointed out that deportation to the intended region would put his life in peril “and then the veracity of his claims would have been checked”. In that case he could have applied for asylum in accordance with the Asylum Act, and the Slovene state would have had to house him in one of the refugee centers, which were at that time situated in almost all administrative units on the territory of Slovenia, explained the police representative.

The described stating of the provisions of the Aliens Act by the police is highly controversial, since the Act states that “Deportation or expulsion of an alien to a country in which his/her life or freedom might be endangered because of race, religion, nationality, membership of a special social group or political conviction, or to a country in which the alien might be exposed to torture or to inhumane and humiliating treatment or punishment, shall be prohibited”. This provision results from the principles of international law, and the deportation of Dragomir Petronjić is therefore not only in breach of domestic law, but also in breach of international law.

However, despite the war in Croatia and Bosnia in the first half of the 1990s, the Slovene police leadership issued guidelines to all competent agencies on 27 February 1992, instructing them that police should take persons without residence permits to the state border and expel them “without any decision whatsoever from an administrative office” (signed by Slavko Debelak). In so doing, the constitutional right of the Erased and other deported persons to appeal was encroached upon. And to this day, the public prosecutor still has no interest in establishing who is responsible for the death of Dragomir Petronjić.

Translated by Matija Ravitz

# The Erasure: The Proposal of a Constitutional Law as the Negation of the Rule of Law

<sup>1</sup> No: EVA 2005-1711-0027, 8 December 2005.

<sup>2</sup> [www.amnesty.si](http://www.amnesty.si) (accessed 9/8/2007).

## Introduction

Pursuant to pressure from the international public and decisions issued by the Constitutional Court, in the spring of 2007 the government of the Republic of Slovenia re-started the efforts to gain support for the Draft Constitutional Law amending the *Constitutional Law for the Implementation of the Basic Constitutional Charter on the Independence of the Republic of Slovenia*<sup>1</sup> (hereinafter Draft Constitutional Law). Its aim is supposed to be a resolution of the problem of the erasure and the Erased. The Draft Constitutional Law was prepared as early as the fall of 2005, but the Minister of the Interior made it inaccessible to the public by marking it as an internal act. Only the representatives of the political parties had access to it, so that the government could test whether it would be possible to gain the two-thirds majority in the National Assembly needed to pass a constitutional law (as stipulated in Article 174 of the Constitution of the Republic of Slovenia).

From the start, the public has demanded that the Draft Constitutional Law be publicly available. However, only on 10 April 2006 was the designation “internal” removed from the document after the Information Commissioner of the Republic of Slovenia decided that the Draft Constitutional Law had to be available to the public, in accordance with the Freedom of Information Act, which was invoked by both a journalist from the weekly magazine *Mladina*, Siniša Gačič, and Amnesty International Slovenia.<sup>2</sup> On 30 October 2007 the government confirmed the Draft Constitutional Law and sent it to the National Assembly for adoption.

The majority of the political parties renounced support for the Draft, including Democratic Party of Pensioners of Slovenia, Liberal Democracy of Slovenia, Social Democrats and *Zares – nova politika*, meaning that a two-thirds majority was not secured. The official position of these parties is that they will not support the law because it is not in accordance with the Constitutional Court’s decisions.

<sup>3</sup> Decision of the Constitutional Court of the Republic of Slovenia, No U-I-246/02-28, 3 April 2003 (2003 decision) and Decision of the Constitutional Court of the Republic of Slovenia, No U-I-284/94, 4 February 1999 (1999 decision).

The purpose of this article is to show why the content of the Draft Constitutional Law is not appropriate for resolving the problem of the erasure and the Erased, and to show how it clashes with the Constitutional Court's decisions and with the legal principles generally in place.

## The 2003 Constitutional Court decision

The Draft Constitutional Law is not in accordance with the 1999 and 2003 Constitutional Court decisions<sup>3</sup> – the two most important decisions concerning the erasure. With the 2003 decision, the Constitutional Court annulled some provisions of the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia of 1999 (hereinafter ARLSC). The ARLSC was adopted in 1999, after the Constitutional Court had issued its first important decision concerning the erasure. In this decision, the erasure was found to be unconstitutional, and the Court ordered the government and the legislator to reinstate the status of the Erased retroactively (i.e. from 26 February 1992, when the erasure was carried out) and to adopt a new law to enable the Erased to regulate their status.

The following findings of the 2003 Constitutional Court decision are relevant for an assessment of the Draft Constitutional Law:

- the ARLSC is not in accordance with the Constitution because it does not recognize the status of the Erased retroactively;
- the ARLSC is not in accordance with the Constitution because it does not provide the possibility for regaining permanent residence to those of the Erased who were forcibly expelled from Slovenia owing to their lack of legal status;
- the three-month deadline for applying for permanent residence, as specified in the ARLSC, is too short;
- the legislator is obliged to change the stated disparities within six months of the publication of the Constitutional Court decision (the deadline was 4 October 2003);
- the Ministry of the Interior was ordered by the Constitutional Court to issue supplementary decisions recognizing permanent residence retroactively for all Erased who had already managed to re-gain their permanent residence under the ARLSC or Aliens Act.

The reasons that certain articles of the Draft Constitutional Law are not in accordance with the 2003 decision will be explained below.

## The implications of a constitutional law procedure as a means of resolving the problem of erasure

The main purpose of the selection of this form (a constitutional law, as opposed to an ordinary law) is to interfere with the constitutional basis of the independence of the Republic of Slovenia, and to change it so that all follow-up measures that led to the erasure would be made compliant with the law and the constitution.

In other words, the constitutional law would legitimize and justify all legal and administrative measures that led to the erasure. It would bypass all Constitutional Court decisions concerning

the erasure (at the moment there are at least eight), through which the Constitutional Court has persistently and consistently annulled the legal provisions and administrative measures that caused the erasure.

The selection of the constitutional law procedure is based on the opinion that the Constitutional Court is not competent to assess the constitutionality of constitutional laws or the Constitution (but only laws implementing acts and other general acts, as stipulated in Article 153 of the Constitution). If an ordinary law were adopted in order to resolve the problem of the erasure, it would again be subject to assessment by the Constitutional Court and, considering the role that this Court has played so far in the case of the Erased, would almost certainly be annulled. Taking into account the fact that the Constitutional Court has already issued at least eight decisions about the same content, and that the majority of the provisions from the Draft Constitutional Law contradict the Constitutional Court's decisions, it can be concluded that the form of a *constitutional law* has been selected solely for the purpose of bypassing the Constitutional Court. However, the author is of the opinion that, if the form of constitutional law is abused, the law in question would also be subject to assessment by the Constitutional Court.

## The content of the Draft Constitutional Law – interfering with the basis of independence and negating the Constitutional Court's decisions

### 1. Basic points

The Draft Constitutional Law is problematic not only because of its form, but also because of its content. This law's content does not aim to implement the Constitutional Court's decisions or to resolve the problem of the Erased.

The most important substantial goals of the Draft Constitutional Law:

- to exclude the individual and objective responsibility of those who committed the erasure;
- to bypass the Constitutional Court decisions;
- to enable new trials and the further withdrawal of the status of permanent residence;
- to exclude the possibility of compensation for material and non-material damage caused to the Erased.

### 2. Interference with the basis of independence

The adoption of the Draft Constitutional Law would formally and materially interfere with the basis of the independence of the Republic of Slovenia. By adopting this Constitutional Law, the legislator would actually be amending the Constitutional Law for the Implementation of the Basic Constitutional Charter of the Independence of the Republic of Slovenia of 25 June 1991 (which is the basis for the current Constitution and all legislation which followed). Article 13 of this Act stipulates that citizens of other republics who, on the day of the plebiscite on the independence of Slovenia, had a permanent residence address in Slovenia and actually lived there, are equal in their rights and duties to citizens of the Republic of Slovenia until they receive



citizenship of Slovenia under article 40 of the Citizenship of the Republic of Slovenia Act or until the dates specified in Article 81 of the Aliens Act (except for the right to own property). Ten more articles (Article 13.a – 13.i) would be inserted between Articles 13 and 14 of the Constitutional Law; these would change the basis of independence and justify all further legal and administrative measures that led to the erasure. The provisions of the Draft Constitutional Law would therefore be inserted into the text that served as a basis for the independence of the country.

<sup>4</sup> People did not acquire Slovene citizenship either because they had not asked for it, for various reasons, or because they had asked for it but had their requests rejected and were later erased.

<sup>5</sup> The Constitutional Court also stated that the condition of actual uninterrupted residence excludes all those who were forcibly expelled from Slovenia and therefore were prevented from obtaining a permanent residence permit. See Section 9.

### 3. Individual and not collective treatment of the Erased

The Draft Constitutional Law specifies an individual assessment of cases for resolving the problem of the Erased. Instead of collectively reinstating rights that were collectively taken away because of a single criterion (i.e. that these persons did not obtain Slovene citizenship)<sup>4</sup>, rights would be returned individually, following a consideration of numerous conditions (analyzed below in detail). The numerous conditions and individual circumstances of the cases, which were NOT examined when permanent residence status was taken away, would be of key importance for the return of this status.

### 4. The possibility of obtaining the status of permanent residence

Paragraph 1 of Article 13.a of the Draft Constitutional Law states that, “a person who has actually and uninterruptedly lived in Slovenia since 23 December 1990 may obtain a permanent residence permit”. This is very problematic for many reasons; however, the most problematic part is the word *may*. Considering that the status of permanent residence was arbitrarily taken away from at least 18,305 persons without any legal decision, and without prior notice, this status *should* be returned. The word *may* means that the officials will have the right of discretion, which will enable them to deny permanent residence, even if the person in question fulfills all the conditions.

The standard of “actual uninterrupted residence” is also very problematic. An analysis of this standard reveals two conditions: that the person in question has actually lived in Slovenia (not just formally) and that he/she has lived in Slovenia uninterrupted (and not occasionally, with longer interruptions). In its 2003 decision, the Constitutional Court stated that the standard of actual uninterrupted residence is an undefined legal standard which must be further defined by the legislator (this has yet to happen); until it is, it has to be interpreted by the administrative or judicial body on a case by case basis.<sup>5</sup> And in the provision of Article 13.a, the state tried to define certain conditions that would help administrative or judicial bodies interpret it, but this approach is inappropriate at its very core. This demonstrates a lack of understanding or knowledge about the life situations of the Erased. The status of permanent residence should have been returned, regardless of whether the people in question had actually and uninterruptedly resided in Slovenia, because, in many cases, this was impossible *owing to the erasure*. Only persons who had *not* been erased could have lived in Slovenia actually and uninterruptedly. The conditions defining “actual uninterrupted residence” will be analyzed below.

## 5. The children of the Erased

Paragraph 2 of Article 13.a of the Draft Constitutional Law states that a permanent residence permit can be granted to minors who had actually and uninterruptedly lived in Slovenia since birth. This provision is said to be humane and to respect the right to family reunification as defined by Article 8 of the European Convention on Human Rights and the principle of the best interest of the child as defined in Article 3 of the Convention of the Rights of the Child. However, it is problematic because the right of an erased child to the restitution of his/her permanent residence depends on the right of his/her erased parents to restitution. If parents are not able to prove their actual and uninterrupted residence in Slovenia, their children will not be able to prove it. The same goes for paragraph 2 of Article 13.b, which also enables the children of the Erased to obtain permanent residence under the same conditions.

## 6. The introduction of additional conditions for obtaining status

In addition to the condition of actual uninterrupted residence, paragraph 3 of Article 13.a of the Draft Constitutional Law introduces an additional condition. In order to re-obtain their status, erased persons are required to have already applied for permanent residence in the past. This means that persons who have yet to apply for permanent residence do not fulfill the conditions for obtaining it in accordance with the Draft Constitutional Law. The Draft states that this condition is necessary in order to discern whether a given erased person had an interest in regularizing his/her status in Slovenia, which would prove that Slovenia was a “centre of life interests” for this person. This condition blurs the fact of the erasure: the erasure was an illegal and unconstitutional act perpetrated by the authorities, and is still illegal and unconstitutional, regardless of whether or not the erased persons have expressed an interest in living in Slovenia. It is as if the state were to posit that a physical attack on a person is less criminal or even justifiable if the victim did not complain or demand prosecution. Additionally, the idea that application for permanent residence proves that Slovenia is a “centre of one’s life interests” is contrary to the results of research on the erasure: the officials at many administrative units throughout Slovenia refused to accept applications for permanent residence from erased persons (a one-armed man from the administrative unit in Ljubljana became infamous for this practice).<sup>6</sup> Officials used a number of different pretexts for their actions; the most common reason was that an application cannot be accepted until all annexes are enclosed (which goes against Article 65 of the General Administrative Procedure Act, which states that the administrative body is obliged to accept the application, while the applicant is obliged to obtain additional documents within an additional time limit, and to append them to the application). This brings up the question of how state authorities would deal with an erased person whose application had not been accepted for consideration; how could the erased person in question prove it?

Furthermore, even if an erased person had fulfilled all the conditions, the official would still have the discretionary right to not grant status to the applicant (owing to the word *may*), which puts the Erased in a very uncertain position. And even if permanent residence were to be granted, it would – again – not be granted retroactively (from 26 February 1992, when the erasure took place), but only from the moment the application was filed. This directly contradicts the 2003 Constitutional Court decision, which declared the ARLSC to be unconstitutional precisely because it does not grant status retroactively. All decisions which grant

permanent residence to the Erased are declaratory by nature (and constitutive), and therefore must take effect retroactively. As the Constitutional Court stated in its 2003 decision, the Erased already had permanent residence at a certain address and did not change it, but were deprived of it by the state. This served as the basis for supplementary decisions issued to 4,093 erased persons by the Ministry of the Interior, under Minister Rado Bohinc, in 2004. Pursuant to the Constitutional Court's orders, these decisions granted status from the day of the erasure (26 February 1992) to the day permanent residence was granted.

Under the conditions set out in paragraph 3 of Article 13.a of the Draft Constitutional Law, only the following persons could re-obtain permanent residence:

- i. erased persons whose applications had been denied or rejected, or to whom status was not granted by the administrative body, although it should have been, according to the law, or
- ii. erased persons whose applications were denied because of the wars in the territory of the former Yugoslavia, which prevented the persons in question from obtaining the documents required for the procedure.

As it derives from the explanation of the Draft Constitutional Law, the first situation refers to the “functioning of the state administration”. Given the vague nature of this language, it is difficult to understand what the state had in mind. However, on the basis of indent “i”, it is evident that the state would like to give another chance to those whose applications had been denied or rejected. Arguably, this provision represents a form of legal remedy, by which the state indirectly admits that the procedure by which the Erased had to re-apply for the permanent residence that they had already possessed was unfair and contrary to the rule of law. It would also be possible to obtain permanent residence in cases where a decision should have been issued, but was not: this formulation refers to applications which were filed under the ARLSC but were never decided upon.

The second situation, stated in paragraph 3 of Article 13.a, indent “ii” (the inability to enclose documents), shows that the state does, after all, understand how difficult the situation of the Erased was: even if they had fulfilled the conditions for regaining their status, in many cases, they could not prove it, owing to the non-functioning state systems in war zones on the territory of the former Yugoslavia. The state therefore indirectly recognizes that administrative units first erased people from the register of permanent residence and then required them to fulfill impossible conditions; even if they tried, they would probably fail.

## 7. Issuing supplementary decisions

The next problematic provision is paragraph 3 of Article 13.b of the Draft Constitutional Law, which defines a possibility for obtaining a supplementary decision from the day an application was filed. This is intended for erased persons who had already re-obtained permanent residence on the basis of the ARLSC. Three problems can be identified:

- The need for this provision is questionable, because the supplementary decisions could have been issued directly on the basis of the 2003 Constitutional Court decision. This decision was used by the Ministry of the Interior to issue supplementary decisions to 4,093 erased persons in 2004.
- In order for a supplementary decision to be issued, the provision requires that the Erased fulfill the conditions set out by the Draft Constitutional Law, which are different from the provisions of the ARLSC, on the basis of which they re-gained permanent residence.

Accordingly, they would have to fulfill different conditions for different periods of residence in Slovenia; and these would have a retroactive effect! Also, the conditions themselves are unacceptable (see comments above).

- Under this provision, the Erased would re-obtain permanent residence only from the day the application was filed, but not from the day of the erasure (26 February 1992), which directly contradicts the 2003 Constitutional Court decision.

## 8. Slovenia as a centre of one's life interests

The provision of paragraph 1 of Article 13.c sets out the conditions for the fulfillment of the standard of actual uninterrupted residence. The main problem of this provision is that it does not take into account people who were erased because of circumstances completely beyond their control. For example, an eighteen-year old Serbian boy with a permanent residence, and with a brother, two sisters, and parents living in the Republic of Slovenia, is sent home from military service in Croatia following the dissolution of Yugoslavia. He decides to visit his grandparents, who are ill, in Kosovo before returning to Slovenia and looking for employment. When he wishes to return to Slovenia in December 1991, the Serbian border police stop him at the Croatian-Serbian border and refuse to let him pass because he does not have a document showing that he served in the army in Serbia or that he is excused from military service. This eighteen-year-old cannot return to Slovenia in time and misses the deadline for applying for citizenship. He later manages to return, but it is too late; he has already been erased. He endures in a situation without status, but he cannot work, study, or obtain social, health or pension insurance, and is therefore forced to consider other options for regularizing his status. He finds out that he can obtain Serbian citizenship, returns to Serbia, and hopes that he will be able to return to Slovenia legally on a visa and arrange his status. However, his plans are changed by the wars that took place in the Balkans beginning in 1992 and in Kosovo beginning in 1999. As a Kosovo Serb, he is forced to leave Kosovo as a displaced person and moves to Serbia. After the wars, he manages to visit his parents, sisters and brother in Slovenia on a visa; because he does not want to reside in Slovenia illegally, he returns to Serbia, and his visa expires (once, the police deported him even though his visa was still valid). In the meantime he manages to work regularly for seven years and to raise a family. Today, he is still among those erased persons who do not have any status in Slovenia, although five years ago, when he first managed to visit Slovenia, he applied for citizenship and a permanent residence permit under the ARLSC. Of course, none of this would have happened if the Slovene authorities had not erased him. His citizenship request has already been denied (an appeal was filed with the Administrative Court) because the state concluded, on the basis of his employment history, that he had worked in Serbia for seven years and so could not prove his actual and uninterrupted residence in Slovenia. The question is whether or not the fact that he worked and raised a family in Serbia can be used against him in the process of discerning the fulfillment of the condition of actual uninterrupted residence. Does this mean that his ties to Slovenia are weaker (considering that he spent 18 years of his life in Slovenia and that his family members are still there) and that he does not see Slovenia as a centre of his life interests? The fact that he worked and raised a family does not prove that. It only proves that he cares about what goes on in his life, and that he wanted to have a family and children, to provide for them and to raise them. If he had not been erased, he would most likely have lived, worked, and raised a family in Slovenia.

This story shows that this erased person, like many others who are in a similar position, will not be able to prove actual uninterrupted residence in Slovenia and therefore will not be granted permanent residence, which means that the Draft Constitutional Law will not have achieved its goal (i.e. to resolve the problem of the erasure). The fact that the erasure stripped a number of people of one of their most important ties to Slovenia (permanent residence), and forced many to leave, must be stressed. Now, the state wants them to show that they remained in Slovenia for fifteen years uninterrupted without permanent residence, or to prove effective ties. In many cases, both are impossible *because of the erasure and its consequences*.

## 9. The condition of actual uninterrupted residence

The provisions of paragraph 2 and 3 of Article 13.c of the Draft Constitutional Law give examples where the interruption of actual residence in Slovenia does not affect the fulfillment of this condition. It includes cases when the absence lasted for a maximum of one year, regardless of the reason; cases when persons in question would be sent abroad by a legal entity of Slovenia in order to work, study, or receive health treatment; cases where they were working on a Slovene vessel; and also if they had been forcibly expelled from or denied entry to Slovenia.

However, these provisions are not applicable in the case of the young man described above. First, he did not return to Slovenia, because Serbian border police would not let him leave. He left Slovenia for a second time, owing to the unbearable burden of illegal residence in the country and the constant threat of forced expulsion, and yet again, could not return because of war. These provisions also do not cover the case of another erased person who had left Slovenia to work in Italy before independence, but could never return because he had been erased, or the case of a person who went to Germany because Slovenia wanted to expel him to Albania, where he had never set foot in his life. These provisions only mention a handful of situations for erased persons who do not fulfill the conditions of the Draft Constitutional Law. These provisions show that, with the exception of the situations mentioned in paragraph 2 and 3 of Article 13.c, the authorities expect the Erased to have resided in Slovenia for fifteen years without any kind of legal status – an impossible, inhumane, and unreasonable condition. The provisions do not consider the fact that the Erased had no intention of leaving Slovenia, but were forced to do so by the erasure. When viewed together with the demand for the individual treatment of the Erased, this provision makes it clear that some erased persons would never get their status back if the Draft Constitutional Law were adopted.

## 10. Moving out of Slovenia with the intent of leaving permanently

The provision of paragraph 4 of Article 13.c states that the conditions for obtaining permanent residence are not fulfilled if the person in question left Slovenia with the intent to leave for good. Considering the nature of the erasure – the inescapability of illegality, the constant threat of expulsion, the inaccessibility of employment, study and also denial of health treatment, pensions and social benefits for which the Erased had made contributions for a number of years – it is impossible to expect that the Erased would not leave Slovenia and try to normalize their lives elsewhere. They did not leave Slovenia by choice, but were forced to do so by the illegality of their situation.

In the case of those that left Slovenia by choice, Article 45, paragraph 2 of the Aliens Act states that the competent body may withdraw permanent residence from a person who does

<sup>7</sup> Aleksandar Todorović, conversation for Radiotelevizija Slovenia's online chatroom, 24 February 2006. Available at [http://www.rtv slo.si/modload.php?&c\\_mod=rtvchat&op=chat&func=read&c\\_id=280](http://www.rtv slo.si/modload.php?&c_mod=rtvchat&op=chat&func=read&c_id=280) (accessed 15/4/2007).

not reside in Slovenia. This article can always be used for any foreigner living in Slovenia, making such a provision in the Constitutional Law unnecessary.

There is also the question of how a competent body will determine whether a person remained outside Slovenia by choice or because he/she could not return. And how can a person claim he/she was expelled, since there are no official records of the deportations of the Erased? Taking into account the discretionary right of the competent body and the fact that there are no official records on deportations, the competent body will most likely doubt the claims of deported erased persons and opt to believe that they left the country by choice.

## 11. Restrictive exclusion clauses

The provision of Article 13.d of the Draft Constitutional Law stipulates exclusion clauses, according to which the Erased would not obtain permanent residence, even if they fulfill all requirements. The first five indents of paragraph 1, Article 13.d. define stricter conditions for the Erased than for other foreigners in Slovenia, thus discriminating against them. Every state has the right to withdraw a permanent residence permit from a person who is a threat to public order and safety; a final conviction for a serious offense can provide proof that the person in question does indeed represent a threat to public order or safety. In accordance with the Aliens Act, which generally regulates the conditions under which foreigners may reside in Slovenia, the withdrawal of a residence permit is not automatic. It can only be carried out if a foreigner has received an additional penalty – the “deportation of a foreigner from the state”. The possibility (and not the obligation) of issuing this penalty is defined by Article 40 of the Penal Code of the Republic of Slovenia. Therefore, the exclusion clauses set out in Article 13.d of the Draft Constitutional Law, which can prevent the issue of a residence permit to an erased person, would only be acceptable if erased persons who had been convicted of a crime in Slovenia had received this additional penalty, that is, deportation from the state. But how does the state justify the fact that the Erased are – again – put in a less favorable situation than other foreigners? Let's not forget that the Erased had already been discriminated against, because other foreigners in Slovenia, who were not citizens of other republics of the former Yugoslavia and so did not apply for citizenship, were not erased.

The provisions of indent six, paragraph 1 and paragraph 2 of Article 13.d (involvement or employment in the Yugoslav People's Army – YPA) blur the severity of the erasure and attempt to justify it. The argument that the Erased deserved to be erased, that it is their own doing because they were allegedly members of the YPA, which carried out aggression against Slovenia, are not consistent with the facts. According to available data, only two to three per cent of the Erased had any kind of involvement with the YPA, although this figure also includes people with ranks as well as other employees, such as nurses, cooks etc.<sup>7</sup> They could hardly be perceived as having carried out aggression towards Slovenia and tried to prevent its independence. If any of the Erased had committed any of the crimes listed in chapters 33, 34 and 35 of the Penal Code (crimes against the security of the Republic of Slovenia and its constitutional order, crimes against the defense power of Slovenia, and crimes against humanity and international law), and if this had been proven in court by the issue of a final decision, and the person in question had received the main penalty and an additional penalty in the form of deportation from the state, the exclusion would be justified. However, even in these cases the person in question should

have been granted permanent residence from the date of the erasure (26 February 1992) to the date of the finality of the court decision.

## 12. Another 6-month time limit

The provision of Article 13.e of the Draft Constitutional Law states that the Erased must file an application for permanent residence within six months after the entry into force of this law. Again, the time frame set out by this provision is very short. We should keep in mind that the three-month time limit set out in the ARLSC was declared unconstitutional by the 2003 Constitutional Court decision. The Court stated that:

“In spite of the stated time limit for entry into force of ARLSC, the time limit of three months to file an application for permanent residence permit was extremely short. In setting the time limit, especially preclusive, the legislator should also have taken into account personal and other circumstances that would have prevented the beneficiaries from filing their applications on time. [...] Above all, it should take into account that the citizens of other republics considering the long-term non-regulated legal situation could not expect that such a short time limit would be prescribed for regularization of their status, and above all they could not have expected that missing such a short time limit would mean losing the right to re-gain a permanent residence permit. They justifiably expected that for the regularization of their long-term non-regulated legal situation a longer time limit would be set. Setting a longer time limit also would not hinder the fast examination of the applications, because an open deadline does not mean that the applications already filed could not be examined.”

Considering that the 2003 decision and the Draft Constitutional Law set out to resolve the same problem – the status of the Erased – the proposed six-month period shows that such a short time limit is – again – inappropriate. It is understandable that the state authorities prefer predictability, which would be achieved with a relatively short deadline, but the fact that the erasure took place over 15 years ago, combined with the fact that the state has an obligation, or at the very least the decency, considering the damage done, to set out a sufficient period for the Erased to claim the restitution of their violated rights. It would be most appropriate if there was no time limit at all, but if this is not feasible, it should not be shorter than three years. This would be appropriate, even if the Erased would have to wait for this period of time for their situation to be resolved.

Paragraph 3 of Article 13.e requires the active involvement of the erased person applying for permanent residence; otherwise, the procedure is to be terminated. This provision demonstrates a lack of understanding of the situations in which the Erased found themselves in real life. If we return to the case of the then eighteen-year old boy who went to Kosovo to visit his grandparents, and who still resides there today, it is impossible to expect that, having filed an application, he will be able to respond to every letter sent by the administrative body. This means that, if a competent body were to demand that applicants provide additional documents every few months, documents that their lawyers could not provide, the applicant would have to apply for a visa to come to Slovenia. If the applicant did not get a visa, he/she would not be able to come to Slovenia, and his application would be considered withdrawn. There are also

cases where persons became homeless following the erasure, and had no address. It is not very likely that these persons would have received letters from the administrative body on time; their applications would also be considered withdrawn. Clearly, the state is not aware that the erasure put people in various extreme situations, owing to which the rules generally used for administrative procedures cannot be used. The state could avoid all this if the status of the Erased were resolved collectively, the same way it was taken away, and not on a case by case basis.

### 13. Expanding reasons for new trials

The provisions of the first three paragraphs of Article 13.h of the Draft Constitutional Law introduce additional reasons for new trials concerning the return of permanent residence status. A new trial would mean that the procedure by which a final decision was issued can be renewed, i.e. if new evidence or facts have become available. This option for a new trial could be used for any procedure where the Erased already re-obtained their permanent residences, even if there was no particular reason for the renewal of the trial. Consequently, the Erased would again be put in a less favorable situation than other foreigners with permanent residence in Slovenia. The provisions allowing for new trials would put them in a completely insecure situation, where they would never know whether their case were a subject to a new trial or not. This would be aggravated by the fact that the deadline for the start of a new trial would also be extended by the Constitutional Law: the general time limit for a new trial in accordance with the General Administrative Procedure Act is one month from when new facts or evidence are found (a relative time limit), or three years after the final decision (an absolute time limit). The Draft Constitutional Law introduces new time limits: six months from the discovery of a reason for the new trial, or one year from the enforcement of the Constitutional Law. The Draft also

Illustration: Franco Juri



[The Constitutional Court decision], [Constitutional Law]



<sup>8</sup> This brings up questions of the Constitutional Court's jurisdiction, particularly the question of whether individual decisions can be issued directly, on the basis of Constitutional Court decisions, or whether a law must first be passed for this purpose. An analysis of these questions surpasses the scope of this article, and must be dealt with elsewhere.

proposes expanding the circle of authorized persons who can initiate new trials (public prosecutor, public defender, Ministry of the Interior or administrative unit), although in accordance with the General Administrative Procedure Act, only the applicant or the body that issued the decision may initiate a new trial. These provisions are considerably and unreasonably strict towards the Erased, and put them in a position of discriminatory disadvantage compared with all other applicants involved in any kind of administrative procedure. These provisions could bring about situations where permanent residence is withdrawn from the erased person once again, if the person in question is found not to fulfill the conditions set out by the Draft Constitutional Law. In such cases, the state would legitimize the erasure as well as the legislation which was later annulled by the Constitutional Court.

#### 14. New trials concerning supplementary decisions

The provision of Article 13.h, paragraph 4 of the Draft Constitutional Law introduces an obligation for new trials in all cases where the Erased were issued supplementary decisions in 2004 by the Ministry of the Interior, under Minister Rado Bohinc, pursuant to the order of the Constitutional Court. This is one of the most extreme provisions of this Draft. It directly contradicts the 2003 Constitutional Court decision. Since the position of the authorities is that the 2004 supplementary decisions were issued without any legal basis, all supplementary decisions could be expected to be annulled, which would violate the 2003 Constitutional Court decision once again.<sup>8</sup>

#### 15. Limiting the right to compensation

Finally, the Draft Constitutional Law introduces an extreme and probably unconstitutional provision in Article 13.i, which limits the right to compensation by waiving responsibility for damages caused to the Erased by the state and by the officials who were carrying out the administrative practices that led to the erasure.

First, the first paragraph stating that “the Erased have the right to compensation” directly contradicts the next five paragraphs. All paragraphs except the first exclude the right to compensation to such an extent that the right to compensation becomes a non-right. In so doing, the Draft Constitutional Law makes it totally impossible for an erased person to get any kind of compensation for the material and non-material damage he/she has suffered. The provision of paragraph 3 goes so far as to declare that all actions carried out by the administrative state bodies and the state officials are legal if they acted in accordance with the laws that were in place at the time – even though all these laws were later annulled by the Constitutional Court! This provision contradicts the right to compensation and tort law in general, and is clearly discriminatory. In accordance with this provision, the Erased as a group are the only people in the entire country who are prevented from accessing compensation, even though it would be difficult to find another group which has suffered as a result of state actions as much as the Erased have.

Furthermore, paragraph 4 of Article 13.i gives conditions for the right to compensation with the activity of the Erased: the right to compensation will not be recognized for erased persons

who have not yet applied for permanent residence and who have not used all available legal remedies. By introducing such a provision, the state is ignoring the fact that the erasure was committed by the state authorities, *ex officio*, and that, accordingly, the statuses should have been returned to the people *ex officio*, without expecting the persons concerned to resort to the courts (including the Constitutional Court) to secure their rights.

Furthermore, the provision of paragraph 5 excludes the right to compensation for non-material damage, even though it is virtually impossible to put a price on the non-material damage done to the Erased – how does one assess broken families, the deprivation of liberty, deportation, the inability to enroll in school, serious health problems, homelessness, harassment, and fear of deportation? Paragraph 5 also limits the right to compensation for material damage to 835 euros. One shudders to think how many lost pensions, child benefits, unemployment benefits, health service bills, monthly rental payments and tuition fees, as well as administrative and court costs, will go uncompensated.

The Draft Constitutional Law ends with an extreme provision in paragraph 6 of Article 13.i, which states that the general statutes of limitations should be used for compensation claims; in any case, it is presumed that the beneficiary of the compensation found out about the damage on 12 March 1999 (the date the 1999 Constitutional Court decision was published). This provision should be read together with the general principles of the right to compensation. Specifically, the Obligations Code states that the time limit for claiming compensation is three years from the date the person found out about the damage (relative statute of limitations) and five years from the date the damage was done (absolute statute of limitations). In accordance with the provisions of paragraph 6, one can calculate that the state would be able to shield itself by claiming that all statutes of limitations expired on 20 March 2003 – that is, three years from the presumed date.

Although the provisions mentioned here cannot be understood as anything more than the state exercising its superiority at the expense of the wronged individuals, they also reveal a fear of facing the responsibility the state should feel for thoughtless, nationalistically colored acts from the past. The case of eleven erased residents that is now before the European Court for Human Rights deserves mention – if it determines that the European Convention on Human Rights and Fundamental Freedoms has been violated, this Court will bypass the Slovene legal code when awarding damages.

## Open questions: responsibility, just requit, and the status of overlooked groups of the Erased

As the above analysis has shown, the Draft Constitutional Law is not in accordance with the Constitutional Court's decisions. But the Constitutional Court's decisions do not settle all of the questions pertaining to the Erased. Even complete compliance with and implementation of these decisions would not completely resolve the question of the erasure.

Questions like responsibility for the erasure and requit or damages (wherein the problem of expired statuses of limitation is particularly pertinent), as well as the status of subgroups of the Erased not comprised in the decisions in question, in particular the 2003 decision, would remain unanswered. The Constitutional Court's 2003 decision only applies to those who had already received a permanent residence permit. But what about the Erased who had their

applications for permanent residence permits rejected, or those who never received a decision, even though they filed a request? Or those who could not ask for status because they had been deported? Or those who only managed to obtain a temporary residence permit? Or those who never received a supplementary decision, even though, keeping in mind the Constitutional Court's decision, they should have?

The Constitutional Court's failure to state its position regarding whether the status of the Erased should be resolved collectively (the same way it was taken away, which is also the position of the advocates of the Erased) or individually, is also problematic. The law that allows some of the Erased to resolve their status (ARLSC) still stipulates the condition of actual, uninterrupted residence in the Republic of Slovenia. With its decision, the Constitutional Court made this condition relative (it would only be necessary to prove actual residence, and not actual uninterrupted residence) and defined it as a legal standard that must be supplemented in each concrete case, but at the same time stated that the required conditions must at least correspond to the required conditions for obtaining citizenship. Regardless of the unique circumstances in which they found themselves following the erasure, all Erased have one thing in common – the original sin of the erasure, which caused individuals to end up in such different situations in the first place. It would therefore be contrary to the principles of proportionality, legality, and security of law if circumstances that did not exist when the erasure occurred, and were thus not taken into account when the Erased had their status taken away, were considered when awarding permanent residence permits.

## References

- Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia, Official Gazette RS, No 61/1999, 30 July 1999.
- Aliens Act, Official Gazette RS, No 61/1999, 30 July 1999 and subsequent amendments.
- Aleksandar Todorović, Conversation for Radiotelevizija Slovenia's online chatroom, 24 February 2006, [http://www.rtvsllo.si/modload.php?&c\\_mod=rtvchat&op=chat&func=read&c\\_id=280](http://www.rtvsllo.si/modload.php?&c_mod=rtvchat&op=chat&func=read&c_id=280) (accessed 15. 4. 2007).
- Amnesty International Slovenia: AIS obžaluje vrnitev izbrisane v Nemčijo, Press release, 15 February 2007, <http://www.amnesty.si/clanek.php?id=631> (accessed 15. 4. 2007).
- Basic Constitutional Charter on the Independence of the Republic of Slovenia, Official Gazette RS/I, No 1-4/1991, 25 June 1991.
- Constitutional Court of the Republic of Slovenia, decision No U-I-284/94, 4 February 1999.
- Constitutional Court of the Republic of Slovenia, decision No U-I-246/02, 3 April 2003.
- Constitutional Court of the Republic of Slovenia, decision No Up-211/04, 2 March 2006.
- Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, Official Gazette RS/I, No 1-4/1991, 25 June 1991.
- DEDIČ, J., JALUŠIČ, V., ZORN, J. (2003): *Erased: Organised Innocence and the Politics of Exclusion*. Ljubljana: Peace Institute.
- Draft Constitutional Law amending the Constitutional Law for the Implementation of the Basic Constitutional Charter on the Independence of the Republic of Slovenia, EVA: 2005-1711-0027, 8 December 2005.
- General Administrative Procedure Act, Official Gazette RS, No 80/1999, 1 October 1999 and subsequent amendments.
- KRIVIC, M. (2007): *Politični zločin, ne "administrativna napaka"*. Pravna praksa, No 9/2007.

Makuc and others vs. Republic of Slovenia, lawsuit with the European Court of Human Rights and a request for temporal provision, 4 July 2006.  
Penal Code of the Republic of Slovenia, Official Gazette RS, No 63/1994, 13 October 1994 and subsequent amendments.

# Argumentation and Rhetoric in the Case of the Erased

## Public argumentation

On 26 February 1992, the Republic of Slovenia perpetrated a large-scale political and humanitarian crime when it erased 18,305 legal inhabitants from the register of permanent residents. This heinous act went unnoticed for seven years, and came to light only in 1999 through a Constitutional Court ruling. The government has to some extent implemented this Court's decision, thereby introducing new injustices. In 2003 the Constitutional Court ruled in favor of the Erased for a second time. Despite these two decisions, which declared that the removal from the register of permanent residents was unlawful, and ordered residence status to be returned retroactively, and despite numerous appeals from international institutions, the government still persists in its intent to adopt a constitutional law that would address this problem in opposition to Constitutional Court decisions (on a case-by-case basis). Further criticism directed at the government came in the form of the European Commission against Racism and Intolerance (ECRI) annual report for 2007. Like all previous attempts, recommendation that the Slovene authorities should "implement the April 2003 decision of the Constitutional Court in good faith and without further delay", were dismissed by the government. The current government, under Prime Minister Janez Janša (Slovene Democratic Party - SDP), adheres to the conviction that the ideal solution for the Erased would be the adoption of a constitutional law, and distributed a draft for such a law to parliamentary parties in 2005. However, a consensus could not be reached. Because the two-thirds majority required to pass the law is highly unlikely, it seems that the legislature is content with a stalemate.

In 2007, on the fifteenth anniversary of the erasure, the content of public argumentation was no less oppressive. The public and political debates surrounding this anniversary were rather modest and made little impact, even if one does not take into account their content and quality. The reason for this was media censorship – the pro-government media (and much of it has become pro-government over the past few years) has been avoiding the

<sup>1</sup> See Radio Television Slovenia, News on 26 February 2007. Available online: [http://www.rtvsllo.si/modload.php?&c\\_menu=1&c\\_id=134909](http://www.rtvsllo.si/modload.php?&c_menu=1&c_id=134909) (accessed 27/3/2007).

<sup>2</sup> Matevž Krivic is a renowned former constitutional judge who joined the Association of Erased Residents of Slovenia in 2002 and still pursues advocacy on their behalf [Editors' note].

<sup>3</sup> European Commission against Racism and Intolerance, Third Report on Slovenia, adopted on 30 June 2006 made public on 13 February 2007. Available online: [http://www.coe.int/t/e/human\\_rights/ecri/1-ecri/2-country-by-country\\_approach/slovenia/slovenia\\_cbc\\_3.asp#P482\\_82957](http://www.coe.int/t/e/human_rights/ecri/1-ecri/2-country-by-country_approach/slovenia/slovenia_cbc_3.asp#P482_82957) (accessed 25/3/2007).

subject in order to spare the government legitimate criticism. MP Branko Grims, a member of the SDP, the largest party in the ruling coalition, has, on a number of occasions, claimed that the only way to resolve the case of the Erased is through a constitutional law: "If anyone has been wronged during the processes that created an independent Slovenia, we should right this wrong. But those who were calculating over Slovene independence should not benefit by this".<sup>1</sup> This idea, which plays a key role in the public's perception of the erasure, serves to psychologically persuade the masses that the Erased are profiteers who have stolen from the livelihood of Slovenes. However, political reactions have been rare, even in a year that saw the issue echo in Europe following the meeting of a delegation of the Erased with various EU Committees and the anniversary of the erasure. The EU Petition Committee even addressed the Slovene government about this issue and left the petition open, a situation which Matevž Krivic<sup>2</sup> views

as a very positive outcome. Nonetheless, on the occasion of the fifteenth anniversary of the erasure, those who have been observing the erasure and its effects are most uneasy. Not only are the Constitutional Court's rulings not being implemented, but the general public debate is repeatedly showing itself to be oppressive and opposed to a reasonable, just solution. Persuaded by public debates, a majority of Slovene citizens persist in their belief that the Erased have not been wronged, and that, furthermore, it is all about a bunch of speculators. This view leaves very little hope that those in power will earnestly strive to find a solution.

The discussions to date have focused mainly on the legal background of the story, and all analyses have generally dealt with legal explanations and causes. At the same time, a different perspective has come to characterize public perception of the erasure – years of demonization and attempts to discredit, together with rigged public debates and nasty private discourse, have resulted in a miserable state of dialogue on the subject and a complete absence of logical argumentation. One could say that even the usual situation of exchange from different perspectives, whereby one presents his/her views and either succeeds in convincing others or not, has not been established.

In the passages below, logical argumentation will be used to construct a detailed analysis of certain reactions to the fifteenth anniversary of the erasure. It will become evident that the misunderstanding of and solution to the problem of the Erased lie not only in legal *manqué*, or disregard for legal principles, but in fact in the entire political debate over the subject, and in the unbelievably demagogic, logically absurd claims that have become generally accepted and valid. A democratic atmosphere mandates good, argumentative discussion because poorly formed legal and logical arguments result in a tarnished public image and an absence of political will. And the ECRI described a key cause for concern with the following words: "ECRI is deeply concerned at the tone prevailing in Slovenian public and political debate concerning the 'erased' since its last report. It regrets that this part of the Slovenian population has on many occasions fallen hostage to merely political considerations, including the exploitation of their situation as a vote gainer, and that the debate around the position of these persons has steadily moved away from human rights considerations".<sup>3</sup>

The concrete analysis presented below will focus mainly on one short passage, which, regrettably, reveals many of the fallacious arguments accepted by the public. This passage was signed by MP Branko Grims, a member of the ruling Slovene Democratic Party, and was published on his party's webpage.

## An analysis of Grims' text

The text is dated 26 February 2007, and is entitled *On the Fifteenth Anniversary, it Is Time for a Constitutional Law*.

"The problem of the so-called 'Erased' is inseparably linked to the question of the fundamental values of our country, and especially to the independence of Slovenia. In fact, the problem that is persistently presented in Europe in false claims made by certain Slovene ultra-leftists – that 18,500 people had their citizenship in Slovenia taken away following the declaration of independence – does not exist at all. The truth is actually quite the opposite: every resident had the possibility of acquiring citizenship following independence, and Slovenia is the only country in Europe to have behaved this democratically! As far as a solution is concerned, the position of the Slovene Democratic Party has been the same all along. If anyone has been wronged during the processes that created an independent Slovenia, we should right this wrong. But those who were 'calculating' over Slovene independence should not benefit by this. This can only be done by the individual handling of each case, which would be impracticable in absence of the constitutional law, owing to the deficient ruling of the Constitutional Court. Because a consideration of the constitutional law would, on the one hand, reveal all the manipulations, and, on the other, elucidate facts pertaining to the independence of Slovenia, certain political parties have categorically rejected any discussion of a constitutional law. But without a discussion of the constitutional law, no compromise on such a law can be reached. We would like to once again warn those who categorically reject a discussion of the constitutional law, and count on long term political gain (new voters) by doing so, that they are forcing Slovenia into an unpleasant situation, and making it necessary to constantly explain problems pertaining to Slovene independence abroad, when Slovene independence is something we should all be justifiably proud of. Soiling Slovenia's reputation and preventing the adoption of the constitutional law, all because of some internal political 'calculations', did not pay off in the 2004 elections, nor will it pay off in future elections. On the fifteenth anniversary of the transfer from the permanent residents' register to the register of non-residents (which, of course, is not an 'erasure of citizenship' at all), we would especially like to point out the fact that nearly 60 percent of the respondents to a public opinion poll were for settling this matter through constitutional law, while less than a quarter were against. And at the beginning of 2004, President Dr. Janez Drnovšek and parliamentary president Borut Pahor were in favor of the constitutional law. But unfortunately, the radical wings of the Social Democrats (SD) and Liberal Democracy of Slovenia (LDS) won out, and, in the end, an agreement was not reached. Instead of proceeding in the direction of handling each case indi-

<sup>4</sup> An argument *ad hominem* is made when one attacks a person or the speaker instead of focusing on the conclusion of his/her argument, i. e., when one tries to refute claims by disproving the credibility of the speaker or by pointing out the inconsistency between his/her claims and the circumstances in which he/she is defending these claims. In itself, there is nothing wrong with such a technique; it becomes fallacious when the personality or situation one is referring to is not relevant for the conclusion he/she is defending. This fallacy appears in two different forms: discrediting a person by attacking his/her character (interest or motives, character or sex, race or nationality, etc.); and discrediting a person on the basis of inconsistency between his/her claims and the circumstances they defend. Neither form constitutes sensible evidence against a conclusion, because neither human character nor one's circumstances have any impact on the truthfulness of a conclusion. See Walton (1987).

<sup>5</sup> *Translator's note:* The Slovene word for erased, "izbrisan", like its English translation, is derived from the verb "izbrisati", to erase. The adjective "prebrisan" is derived from the same verb stem "-brisati", but took on a life of its own as the language developed. It means *clever, tricky, sneaky*.

<sup>6</sup> *Translator's note:* The Slovene word "odpisan" is an adjective formed from the verb – "od-pisati" (see above note). Its similar construction and phonetic likeness to "izbrisan" open up a number of creative linguistic possibilities. It means *written off*.

vidually, the SD-LDS government began issuing decisions without checking information, which quickly disintegrated into a farce, as scores of decisions were sent to non-existent addresses, or even to addresses on streets that do not exist. We at the Slovene Democratic Party firmly believe that it would be best for Slovenia's reputation in the world if all political parties were to agree to a debated dialogue on this problem and to establish a truly positive attitude towards Slovene independence, in their actions and not only in their words, which would mean that they agree to immediately begin the process for adopting the constitutional law for which a draft was prepared by the government of the Republic of Slovenia several months ago."

Branko Grims' statement, which is also the official statement of the ruling SDP, contains several of the basic argumentative "strategies" that have appeared in debates over the erasure in recent years. To a certain extent, it is uncommitted and relies on *ad nauseam* effects, that is, the self-evident nature of stated untruths, which have taken hold among the public in recent years and have come to life through stereotyping. The author also repeats basic arguments which have been used in public, media, and political discourse in recent years, which is why it is possible to understand this statement as "paradigmatic". This recycling of things that have "already been heard" is rather characteristic of Grims' statement. Below, a short discursive-analytical demonstration of the fallacies and fraudulent statements that appear in his text will be presented. The text has been "read" sentence by sentence, and this structure will be reflected in the following pages. All logical, albeit minimized clarifications of the argumentative fallacies will be presented in footnotes, in order to make it easier for readers to follow the text. However, individual fallacies *per se* are not the focus of this article, but rather their use in a short, concrete, but illustrative, example. Each excerpt will be given a number and written in italics.

(1) "...the problem of the so-called 'Erased'..."

When Grims mentions the problem of the so-called "Erased", wherein the idiom "so-called" could also have been written in quotation marks, he is obviously going for an *ad hominem* argument.<sup>4</sup> A particularity of the language of certain right wing politicians and intellectuals in recent years has been their attempt to discredit simply by using linguistic-symbolic devices available in writing and speech. The Erased have been discredited not only through the use of labels such as "prebrisani"<sup>5</sup> or "self-erased", and sometimes even "odpisan"<sup>6</sup> (it is interesting to note that this *lapsus linguae* has been inadvertently uttered by several politicians), but also



<sup>7</sup> The idiom “so-called” and quotation marks obviously have a similar meaning: because quotation marks cannot be used in speech (although one can follow a statement by saying “quote – unquote” or making a quotation signal with his hands), they can be replaced by saying “so-called”.

by placement with quotation marks and through the use of the idiom “so-called”.<sup>7</sup> “So-called-ization” has recently become a frequent practice for discrediting a political opponent or groups which one would like to depict as not worthy of serious consideration. Civil society and experts are usually the recipients of this privilege. So-called-ization has become a part of the political and cultural battle, as if “those who are not with us are lost in quotes”. Placing the Erased in quotation marks is an attempt to take away the legitimacy of descriptions of their “status”. The title of Pavel Ferluga’s article in the journal *Ampak, The Erased and the “Erased”*, is paradigmatic. This linguistic-symbolic technique for discrediting one’s opponent(s) can also be duplicated, as Grims has done, by using both “so-called” and placement in quotes.

(2) *“...the problem which is persistently presented in Europe in false claims made by certain Slovene ultra-leftists...”*

In this sentence, the author is again using an *ad hominem* argument, which could be paraphrased as: those who do not support our opinion about the erasure are ultra-leftist. Of course, it is not true that only ultra-leftists are striving for a solution to the problem of the Erased, and even less true that that is precisely what those striving on their behalf are. The epithet “ultra-leftist” is obviously meant to have a pejorative connotation, and does not describe any political group in Slovenia. It is mainly used by the Slovene Right to compromise individuals with whose positions it disagrees. The mention of “persistent presentation in Europe” carries added weight: Don’t complain and don’t “rat on us” abroad, because when you do, you’re distorting favorable perceptions of Slovenia, that is, the real “truth”.

(3) *“...18,500 people had their citizenship in Slovenia taken away following the declaration of independence – does not exist at all.”*

This statement has the form of a straw man. The essence of this argumentative fallacy lies in the way it puts an incorrect thesis in an opponent’s mouth, one which he/she would not even defend, and then seemingly succeeds in refuting it. It is well known that the advocates of a legal solution to this problem do not claim that the Erased had their citizenship taken away, and that this problem – and here Grims is correct – does not exist. It is well known that they were illegally erased from the register of permanent residents because they had not filed an application for citizenship by the set date, for a number of reasons. Also, the author has not even made an effort to correctly report the number of erased persons – 18,305.

(4) *“If anyone has been wronged during the processes that created an independent Slovenia, we should right this wrong. But those who were ‘calculating’ over Slovene independence should not benefit by this.”*

This argument has been common in debates and comes off as repentant: the wrong must be made right, but not for all the Erased. But what forms the basis for a division between those who have been wronged and those who have not? This unjustifiable gesture in the form of a

distinction and a demand for the individual resolution of cases is not only legally untenable, but based on imaginary pretenses. First, Grims uses an irrelevance fallacy: although the erasure took place on 26 February 1992, he addresses it in terms of independence processes. The only link between the independence processes and the illegal erasure is that the latter is a result (intentional or unintentional) of the former, that is, of the gradual amendment of the legislation. In terms of content, the two events are unrelated, and their actual relation is not relevant, unless one would like to justify the erasure by linking it to the behavior of certain actors during the apparently “sacred” independent processes, when it is said to have been made clear who was “ours” and who was not. Those who were not “ours” could have their constitutional rights violated as “we” saw fit! The second sentence, which describes the erasure using allegations of calculation on the events in Slovenia (without making clear exactly what the Erased were calculating about, except the future development of the country), reveals that this reading is correct. Yet again, a straw man argument is presented: it is not a question of who benefited from the erasure, but of the illegality of the act itself. Even if someone had benefited by this (which was not the case), the illegality of the erasure would still remain, as would demands for the return of status pursuant to the Constitutional Court’s ruling.

(5) *“This can only be done by the individual handling of each case, which would be impracticable in absence of the constitutional law, owing to the deficient ruling of the Constitutional Court.”*

This thought is obviously *contra legem*, against the law, and a *non sequitur* in terms of logic. In the legal sense (which will not be addressed here), a case by case review would probably be unacceptable. In the argumentative sense, the fact that an injustice has been done does not lead to the conclusion that one can select those for whom this injustice will be repaired (not for those who calculated about independence – unproven generalization). The illegality holds in all cases. The question of whether the Constitutional Court’s ruling is really deficient and cannot be realized without a constitutional law is of a legal nature, and is examined elsewhere (see Neža Kogovšek’s article in this publication).

(6) *“Because a consideration of the constitutional law would, on the one hand, reveal all the manipulations, and, on the other, elucidate facts pertaining to the independence of Slovenia, certain political parties have categorically rejected any discussion of a constitutional law.”*

Grims’ formulation is *ad hominem* from circumstances: he has set up the opposition with reasons for their doing what they are doing and why they are doing it as they are doing it. And at the same time, he is muckraking: perhaps they have been manipulating the situation and covering up certain facts pertaining to independence. Instead of allowing the opposition to take a stance on the constitutional law as such, he has imputed egoistic motives based on covering up certain facts. Refusing a discussion (if this thesis holds) in no way constitutes an attempt to prevent the revelation of manipulation and facts pertaining to independence. *Ad hominem* from circumstances is a technique for discrediting an opponent based on stating his/her personal interests and circumstances as a reason for his/her actions, even though they do not (necessarily) affect the fallacy or truth of a statement (in this case the opposition’s beliefs, which are the reason they are opposed to the adoption of the constitutional law).

(7) “We would like to once again warn those who categorically reject a discussion of the constitutional law, and count on long term political gain (new voters) by doing so, that they are forcing Slovenia into an unpleasant situation, and making it necessary to constantly explain problems pertaining to Slovene independence abroad, when Slovene independence is something we should all be justifiably proud of.”

The first part has already been discussed: long term gain for those who reject a discussion of a constitutional law is an unproven *ad hominem* from circumstances. The rest of the sentence constitutes an emotional appeal.<sup>8</sup> The author wishes to arouse negative feelings against the object, as if Slovenia is being put in an unpleasant situation, but has not produced convincing reasons. In its content, it is another *ad hominem* argument, but Grims has decided on a tactic for appealing to the public, as if to say: look how they are making us look bad. This maneuver, one that is very common in political rhetoric, is used to arouse feelings of revulsion and hatred towards the person against whom one is arguing. Accordingly, the finale of the sentence is a reference to patriotic feelings: Slovene independence is the pride of the nation. The same reference behind the listing of reasons in the previous excerpt is used; by creating the problem of the Erased and by dealing with them, we are casting our nation’s independence in a negative light. Behind this view, however, there lies something of a hushed confession: we should keep quiet about the Erased, or our nation’s independence will look bad. Quite the contrary – it will not, because the two are unrelated, as shown above. And even if a closer link between the two could in fact be found, this would not mean that one should remain silent about the erasure.

(8) “Soiling Slovenia’s reputation and preventing the adoption of the constitutional law, all because of some internal political ‘calculations’, did not pay off in the 2004 elections, nor will it pay off in future elections.”

This sentence is a continuation of the above excerpt. It cites the negative motives of those who are pointing out the problem. “Calculations” and the soiling of Slovenia’s reputation have now been added to the *ad hominem* argument: it is all a conspiracy by the opposition, or somebody else, to damage the ruling coalition. Grims’ fallacy again lies in the fact that he has not proven a link between “motives” of this kind and the opposition’s conclusion, but has rather refuted this conclusion by discrediting critics of the government.

(9) “...we would especially like to point out the fact that nearly 60 percent of the respondents of a public opinion poll were for settling this matter through constitutional law, while less than a quarter were against.”

Not only is the proposed solution *contra legem* and not in line with the Constitutional Court’s ruling, but the author has now appealed to public opinion polls. And these are irrelevant by their very nature: they can monitor the pulse of democracy, and the *vox populi* is a

<sup>8</sup> The fallacy of emotional appeal takes place when one appeals to emotions instead of rational evidence when defending his/her claims. The strategy behind this kind of conclusion consists of using emotionally colored language to arouse excitement, joy, sadness, etc. in one’s opponent, thus convincing him/her to accept one’s claims. In most cases, the premises are far from being relevant to conclusions, and serve only as a tool for manipulating listeners and achieving a desired positive or negative reaction. For this reason, arguments of this kind are a common product of demagoguery and propaganda. See Walton (1987).

<sup>9</sup> The fallacy of appealing to the public implies drawing conclusions from premises that most people hold. Instead of forcing one's opponent to adopt one's beliefs by appealing to rational reasons, one states widespread public opinion or general popularity in order to back his/her claims. This type of argument is similar to appeal to authority, differing from it only in the fact that the claims in question are not based on expert opinion, but on the beliefs of the majority. It often appears in commercials, where consumers are encouraged to buy a certain product on the grounds that it is the one that most people use. See Šuster (1988).

strong indicator at election time, but they cannot carry weight in matters pertaining to constitutional law, and especially not when it is a matter of implementing a Constitutional Court decision. In terms of content, Grims has used an "argument or appeal to the public", also known as the fallacy of appealing to public opinion<sup>9</sup>: something is true because the people or the majority think it is true. The fallacy of the argument is clear: if 88 percent of people think that UFOs exist, this does not mean that they are right and that such things actually do exist.

(10) *"Instead of proceeding in the direction of handling each case individually, the LDS–SD government began issuing decisions without checking information, which quickly disintegrated into a farce, as scores of decisions were sent to non-existent addresses, or even to addresses on streets that do not exist."*

Following a *contra legem* suggestion that sidesteps the content of the Constitutional Court's decisions, the author once again appeals to emotions by poking fun at every solution that does not accord with his ideas, that is, by pointing out the allegedly bizarre and harmful consequences of such a course of action. When the previous government began sending out decisions, a farce ensued. That is tantamount to: "Whoever does not do what we want seems silly and their actions disintegrate into farce". Of course, the possibility of a confusing situation (and it is possible that Grims is exaggerating and generalizing) does not tip the scale towards no longer sending out decisions. Finally, it is not clear why the "individual treatment" proposed by Grims would not produce the same situation, or how it would prevent it.

(11) *"We at the Slovene Democratic Party firmly believe that it would be best for Slovenia's reputation in the world if all political parties were to agree to a debated dialogue on this problem and to establish a truly positive attitude towards Slovene independence, in their actions and not only in their words, which would mean that they agree to immediately begin the process for adopting the constitutional law..."*

Here the initial fallacy is *ignoratio elenchi* (ignorance of the refutation), an irrelevance of the straw man type: Slovenia's reputation is irrelevant to the resolution of the illegal erasure. And so is a positive attitude towards independence. Once again, Grims' line of thought has strayed off course: when we discuss this problem, we are discussing what would be good for Slovenia and Slovene independence, and not a solution to the problem of the Erased. The sentence ends with a forced choice, yet another *contra legem*: "A constitutional law or nothing. Our solution or no solution." Grims' gesture has not only been perverted because he is forcing his own solution, but, in particular, because it contradicts his appeals for an argumentative dialogue (sic!). It is clear that one who is calling for an exchange of arguments must not put their own arguments forth as the only acceptable arguments. To do so is to abuse an appeal to argumentation: this nonchalant call for an intelligent, balanced, debate actually hides the fact that all the principles of such a debate have already been rendered null.

## Some additional surpluses in argumentation

Other statements made upon the fifteenth anniversary – and there have not been very many, owing to media censorship and selectivity, and also because of the political *status quo*, which suits the government – could be found. These statements are explicitly characterized by demagogic deception, a patronizing position, and indifference; regrettably, these elements currently hold sway in public discourse on the subject.

Jože Tanko (SDP) claimed that “it wasn’t about an erasure, but the transfer from one type of record to another. Those who voluntarily refused Slovenia’s benevolent offer of citizenship, wishing to keep ties with the former state, were transferred to this register.”<sup>10</sup> Tanko has overlooked the fact that the “transfer” from one register to another presumes erasure from the former. Characteristic descriptions of the good intentions and benevolence of the Slovene authorities once again appear in the form of an argument *ad misericordiam* (out of pity), which changes nothing: even if the authorities had acted benevolently, that does not mean that they were not in error when they committed the erasure, or that they did not do so intentionally. The statement “We behaved benevolently, that’s why we couldn’t have behaved illegally” is a fallacy of relevance.<sup>11</sup> The alleged benevolent offer and the administrative erasure which followed, and which had terrible consequences for the lives of thousands and constituted a violation of citizenship and constitutional rights, are not inherently connected.

In the same newspaper, Jakob Presečnik (Slovene Peoples’ Party) said that “it’s a question of principle, whether or not they believed in independent Slovenia. The erasure is the failure of people to cooperate with the situation that had arisen in Slovenia, and many did not believe Slovenia would really become independent.”<sup>12</sup> This argument is yet another *ignoratio elenchi* (ignorance of refutation), that is, irrelevance: having been Erased is the result of illegal erasure from the register of permanent residents, because individuals did not apply for citizenship in time, and not of a “belief” in independent Slovenia. If it had been based on “belief”, this statement would constitute an unthinkable confession of administrative segregation and genocide. Presečnik’s statement is unthinkable because it reveals too much and alludes to an intentional differentiation based on nationalism, which the author obviously supports. He is saying: If you want to be our citizen, you must believe in our country at all times.

Sašo Peče (Slovene National Party) said: “We can only speak of the self-erasure of the memory of individuals. In the independence period, they didn’t want any kind of settled status. They want to erase the collective memory, and acquire the right they had renounced in the past.”<sup>13</sup> The author’s statement is on the level of an *ad hominem* argument: he has set up the persons he is referring to with the wishes and convictions which are said to have led to the erasure, and has done so in a way that makes the Erased look bad, and furthermore ascribes to them the intentional revision of history (they erase collective memory). Here, he is obviously playing with the verb “to erase”, but is not doing so very consistently: if someone erases person X from his/her memory, he/she cannot attempt to erase someone else’s memory of person X, because by doing so, he/she admits that the first task has not been accomplished.

<sup>10</sup> See Borut Mekina: *Kaj je izbris in kdo so izbrisani*, Newspaper *Večer*, 27 February 2007.

<sup>11</sup> Appeals to pity, benevolence, and good intentions are very common in discussions of the Erased: “And it’s a fact that many persons who did not acknowledge the fact of independence, of the independent state of Slovenia, have been included in this category. Other countries would have proclaimed such persons *personae non gratae*, and would have been within their rights to do so. Slovenia was merciful and generous in this period.” Jože Jerovšek, deputy of the SDP, weekly magazine *Mladina*, 14 November 2003. Available online: [http://www.mladina.si/tednik/200345/clanek/slo-tema-jure\\_trampus/](http://www.mladina.si/tednik/200345/clanek/slo-tema-jure_trampus/) (accessed 5/4/2007).

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

However, no analysis of arguments can clarify why, and under what conditions, a discourse in which logical fallacies and deception prevail becomes politically dominant. Because the problem of the Erased spans a period that saw several government formations, both right and left, the realization that deceptive devices have been used applies to all. A good reason must get to the root of the problem, and not only focus on parliamentary politics. When Vlasta Jalušič speaks of the “organized innocence” of Slovenes in light of the victory of the politics of exclusion, that is, a kind of systematic blind spot in our behavior, she is suggesting a possible answer. Self-perception that claims that “[t]he smallness and past oppression render this nation and its state (through an a priori absolution from any responsibility) incapable of doing wrong to anyone,”<sup>14</sup> could provide the key to an explanation. A political community’s belief that it is above error is no guarantee to avoid systematic oppression and making various mistakes – in this case argumentative and logical mistakes. A community that considers itself ultimately innocent would not want to recognize the folly and hollowness of discrediting statements, shifting the topic to an irrelevant topic, or emotions. Moreover, in considering itself eternally innocent, it can be inconsiderate, unconscionable, immoral, and lacking in any sense of a legal order. In short: the unresolved case of the Erased proves how very undemocratic and lacking in rule of law our state is and also proves that we feel the principles of balanced, argumentatively grounded debate to be as naught.

However, another theory lurks behind this idea of “organized argumentative blindness”, and shows that the blindness of these actions is the conscious work of those involved, and that

Photo: Romano Martinis



Mirjana Učakar (left) at the Press Conference before departure of the Caravan of the Erased, Ljubljana, 27 November 2006.

<sup>15</sup> See Borut Mekina: *Mehko etnično čiščenje v Sloveniji*, Newspaper *Večer*, 26 September 2002.

<sup>16</sup> See [http://www.zofijini.net/mediji\\_izbrisani.html](http://www.zofijini.net/mediji_izbrisani.html)

they are in fact not all that blind. Certain documents show that, in 1992, deputies consciously supported creation of the circumstances which ultimately led to one of the largest violations of human rights in Slovene history.<sup>15</sup> Of course, the key political actors of that period have been replaced, but a sense of solidarity probably dictates a certain degree of ignorance in their successors. It is difficult to assess how much this influences their public argumentation, but it has had a near certain impact on the taking of political sides.

A psychological reason can also be posited for the poor quality of argumentation: xenophobic irrationalism lies behind the debates – it is supplied in pure form by right wing and conservative parties (SDP, New Slovenia Party, Slovene Peoples' Party) and the self-titled "civil society initiatives" that serve as their satellites, while parties with a nationalist bent (Slovene National Party) and those backed by the Slovene Church tend to take a more instrumental and principled approach. This explains why, in many cases, defenses against left-wing charges of prejudice and abuse contain a hint of Freudian *Verneinung*: "It's not true that we are opposed, that we're xenophobic, that we have denied human rights". It often happens that an accusation is grotesquely refuted in the form of an incredible, over the top, counter-accusation: "In fact, the left is xenophobic, towards Sloveneness, and intolerant of independence" (Janez Janša); or, in the case of the church: "Anti-Catholic motives have led the left to support a mosque" (theologian Ivan Štuhec). In a political constellation where one must be a sort of masochist in order to analyze arguments, statements of the "We're not xenophobes, you are" and "You don't care about human rights, you're trying to buy voters" type reveal the intolerance that lies at their core.<sup>16</sup> Regardless of one's political or psychological motives, poor argumentation is inexcusable; unfortunately, it is beginning to enforce itself with ever greater intensity in general public discourse, and is winning out not only in the sphere of politics, but in all spheres of social life.

Translated by Michael C. Jumič

## References

- DEDIČ, J. JALUŠIČ V. and ZORN J. (2003): *The Erased: Organized Innocence and the Politics of Exclusion*. Ljubljana: Peace Institute.
- HANSEN, H. V. and PINTO, R. C. (eds.) (1986): *Fallacies: Classical and Contemporary Readings*. University Park: Pennsylvania State University Press.
- ŠUSTER, D. (1988): *Moč argumenta*. Maribor: Pedagoška fakulteta.
- URŠIČ, M. and MARKIČ, O. (1997): *Osnove logike*. Ljubljana: Filozofska fakulteta.
- WALTON, D. (1987): *Informal Fallacies*. Amsterdam: John Benjamin's Publishing Company.

# Chronology of the Erasure 1990–2007

## 1990

**21 November** – The National Assembly of the Republic of Slovenia passes the Plebiscite on the Sovereignty and Independence of the Republic of Slovenia Act.

**6 December** – The Assembly of the Republic of Slovenia issues a Plebiscite on Sovereignty and Independence of the Republic of Slovenia (Official Gazette of the Republic of Slovenia No 44/90). Parliamentary parties and groups adopt an agreement affirming that the political position of the Italian and the Hungarian national minorities, as well as that of members of other Yugoslavian nations residing in the Republic of Slovenia, would not alter regardless of the outcome of the Plebiscite. The Assembly of the Republic of Slovenia adopts the Statement of Good Intent calling upon all residents to vote for an independent Slovenia, namely for a sovereign, democratic and social state governed by the rule of law. Among others, the statement says, “Likewise, it shall guarantee members of all other nations and nationalities the right to overall cultural and linguistic development, and to all those who have their permanent residence in Slovenia that they can obtain Slovene citizenship, if they so desire”. The Statement of Good Intent concludes as the following, “The Plebiscite on the Sovereign and Independent Republic of Slovenia is therefore committed to the best traditions of humanism and civilisation, Slovenian and European history, and a pleasant future for Slovenes and other inhabitants of the Republic of Slovenia” (Statement of Good Intent).

**23 December** – The Plebiscite on the Sovereign and Independent Republic of Slovenia. Majority of residents (88.2 per cent) vote for Slovenia’s independence; the electoral body includes all individuals with permanent residence in the Republic of Slovenia (<http://www.ukom.gov.si/10let/>).

## 1991

**15 May** – The National Assembly of the Republic of Slovenia initiates proceedings considering the proposed Aliens Act prepared by the Internal Affairs Secretariat of the Republic of Slovenia (Ministry of the Interior, 2004a: 1).

**24 May** – Participating in discussions taking place in three Committees representing legislative authorities at that time, two political parties, the League of Communists of Slovenia – the Party of Democratic Renewal and



the League of Socialist Youth – the Liberal Party, propose an amendment to Article 81 of the Aliens Act. The proposed amendment stipulates that “citizens of SFRY holding citizenships of SFRY republics other than Slovenia, who do not submit applications for the citizenship of the Republic of Slovenia, but have permanent residence registered or are employed in the Republic of Slovenia on the enactment day of this Act, are granted permanent residence permits in the Republic of Slovenia” (Dedić, Jalušič, Zorn 2003: 141). On 3 June, the Executive Council of the Assembly of the Republic of Slovenia pronounces positively on the motion. To the Chamber of the Communes, the amendment is proposed by Jože Zakonjšek, while Dr Lev Kref and Metka Mencin propose the amendment to the Socio-political Chamber, and Dejan Murko to the Chamber of Associated Labour. The amendment is rejected, despite warning expressed by a number of deputies. The reason given for the rejection of the amendment states that the matter in question will be subject of the reciprocal agreements that the Republic of Slovenia will, in conformity with international law, sign with other states emerging in the territory of the former SFRY<sup>1</sup> (Newspaper Večer, 26/11/2002, 12/3/2003, Constitutional Court decision No U-I-284/94).

**5 June** – The Citizenship of the Republic of Slovenia Act is adopted.<sup>2</sup> Article 40 reads: “A citizen of another republic that had registered permanent residence in the Republic of Slovenia on the day of the plebiscite of the independence and sovereignty of the Republic of Slovenia on 23 December 1990, and has actually been living here, shall acquire citizenship of the Republic of Slovenia if within six months of the entry into force of this Act, he/she files an application with the administrative authority competent for internal affairs of the community where he/she has his/her permanent residence”. The Aliens Act is also adopted, which in Article 81 determines: “Until a decree as part of an administrative proceeding determining granting the citizenship of the Republic of Slovenia is final, provisions of this law do not apply to citizens of SFRY, who are citizens of other republics and submit citizenship of the Republic of Slovenia applications within six months since this act entered into force. SFRY citizens, who are citizens of other republics and do not submit citizenship applications within the time period determined in the previous paragraph, or their applications were rejected, become subjects to the provisions of this law two months after expiration of the deadline set for citizenship applications or until a final decision has been issued” (Official Gazette of the Republic of Slovenia, No 1/1991 on 25/6/1991).

**25 June** – The National Assembly of the Republic of Slovenia adopts the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia Article 3 stipulates: “The Republic of Slovenia guarantees the protection of human rights and fundamental freedoms to all persons in the territory of the Republic of Slovenia irrespective of their national origin, without any discrimination whatsoever, in accordance with the Constitution of the Republic of Slovenia and the international treaties in force.” Furthermore, it adopts the Constitutional Act Implementing the Basic Constitutional Charter on the Sovereignty and Independence of the Republic of Slovenia. Article 13 stipulates: “Citizens of other republics of the former Yugoslavia who, on the day of the plebiscite on the independence and sovereignty of the Republic of Slovenia, 23 December 1990, were registered as permanent residents of and actually live in the Republic of Slovenia shall have equal rights and duties as the citizens of the Republic of Slovenia until they acquire citizenship of the Republic of Slovenia under Article 40 of the Citizenship of the Republic of Slovenia Act or until the expiry of the time limits determined in Article 81 of the Aliens Act.” And Article 5 of the Declaration of Independence of the Republic of Slovenia stipulates: “The Republic of Slovenia is a legal entity and a social state [...]. Slovenia pledges to observe human rights and civil liberties. It shall protect and guarantee the rights of the autochthonous Italian and Hungarian national communities, as well as European achievements of industrial democracy, above all socio-economic rights [...]” (Official Gazette of the Republic of Slovenia, No 1/1991 on 25/6/1991).

<sup>1</sup> Reciprocal agreements – including the question of the citizens of the former SFRY residing in Slovenia – were never introduced.

<sup>2</sup> Successor states of the former SFRY regarded former republic citizenship as the foundation for the new nation state citizenships (Dedić, Jalušič, Zorn 2003: 37).

<sup>3</sup> This is stated in the Constitutional Court decision No U-I-284/94 issued in 1999.

<sup>4</sup> This is the official number confirmed by the Ministry of the Interior in 2002, and included in the decision issued by the Constitutional Court. It remains unclear how they arrived at the given number. In material prepared for a press conference entitled *Foreigners and Citizens' Statuses*, organised by the Ministry of the Interior, it only states that the situation had been investigated in cooperation with administrative offices. According to the explanation given, this number includes individuals who later acquired either temporary or permanent residence, or Slovene citizenship (14,100), and individuals registered as persons without regulated status in the Republic of Slovenia (4,205). "Depending on various sources, estimations regarding the actual number of erased individuals ranged between 83,000, a number deriving from a document regarding foreigners' administrative affairs No 0012/1-252/62-96, prepared by the Ministry of the Interior, issued on 4 March 1996 (but the number deriving from this document is inaccurate, since it states the number of foreigners registered on 31 December 1995), and 62,816 – a number that the Helsinki Monitor received from the Ministry of the Interior in December 2000. However, the Helsinki Monitor of Slovenia claimed the total number of erased persons was much higher, approximately 130,000" (2001 Helsinki Monitor Slovenia Report in: Dedić, Jalušič, Zorn 2003: 42). Since it is impossible to establish a correct number, we normally refer to the data provided by the Ministry of the Interior in 2002 – 18,305 persons.

all its responsibilities are no longer legally binding upon expiration of the moratorium. Moreover, the National Assembly concludes that all adopted acts, including the Aliens Act, must actually be implemented" (Ministry of the Interior 2004a: 2).

**26 December** – Expiration of the six-month period set for submission of applications for Slovene citizenship under Article 40 of the Citizenship of the Republic of Slovenia Act. Applying under the given Act, approximately 172,000 individuals acquire Slovene citizenship.

**26 June** – As of this date, the Secretariat for Internal Affairs of the Republic of Slovenia, informs all municipal administrative offices for the interior in the Republic of Slovenia of the implementation of the Aliens Act, emphasizing that as of 26 February 1992, all persons that have not applied for Slovene citizenship – and do not enjoy equal rights and obligations as citizens of the Republic of Slovenia as of this day – must be treated as foreigners and should therefore be directed to regulate their foreigner status. Additionally, the Secretariat states that valid documents issued by competent authorities in Slovenia become invalid, owing to those individuals' altered legal status (Ministry of the Interior 2004a: 2).

**26 June – 7 July** – The ten-day war in the Republic of Slovenia (<http://www.ukom.gov.si/10let/pot>).

**7 July** – The Brioni Declaration defining a three-month suspension from implementing the Declaration of Independence is adopted. The Brioni Declaration also introduces a moratorium on implementation of the Aliens Act (Ministry of the Interior 2004a: 2). Igor Bavčar, then Minister of the Interior, informs the Parliament about the independence legislation, including the Aliens Act: "This Act, which is directly linked to the Citizenship of the Republic of Slovenia Act, was implemented in a manner allowing us to treat citizens of other republics as Yugoslavian citizens, and not as foreigners. All individuals who are not citizens of the Republic of Slovenia will be regarded as foreigners upon expiration of the moratorium. However, citizens of other republics of former Yugoslavia who either have or will attempt to apply for our citizenship under Article 40 of the Citizenship of the Republic of Slovenia Act will not be treated as foreigners prior to 25 December 1991" (TV show *Tarča* 2003 in: Zrim 2005: 42–3).

**2 October** – During a common session, the National Assembly of the Republic of Slovenia discusses standpoints and provisions (Nos. 000-01/00-3/36, 000-01/90-5/69 adopted on 1 October 1991) upon expiration of the three-month moratorium determined by the Brioni Declaration which have to do with the subsequent implementation of independence documents. The National Assembly concludes that the anticipated agreement on future connections among republics of the former SFRY and peace on the territory of the once common state was not reached because of unfulfilled obligations determined in Annex 1 and Annex 4 of the Brioni Declaration. Thirteen years later, the Ministry of the Interior of the Republic of Slovenia states: "As Slovenia, which has met all its obligations determined by the common declaration and both annexes, is not held responsible for the given demands, therefore the National Assembly of the Republic of Slovenia concludes that

1992

**26 February** – Citizens of one of the republics of the former SFRY, other than the Republic of Slovenia, who have not applied for Slovene citizenship under Article 40 of the Citizenship of the Republic of Slovenia Act, or whose citizenship applications were rejected, are now treated under the Aliens Act of the Republic of Slovenia (Paragraph 2, Article 81 of the Aliens Act). Overnight, the Ministry of the Interior annuls their legally acquired statuses of permanent residents in the Republic of Slovenia – in its official capacity it erases them from the register of permanent residents of Republic of Slovenia, without adequate legal foundation and without sending them an administrative decision or otherwise informing the persons in question.<sup>3</sup> This act strips 18,305<sup>4</sup> persons (approximately one per cent of Slovenia's population) of the legal basis for existence, since it takes away all the rights bound to permanent resident status.<sup>5</sup> Regardless of actual dates of expiration, their documents become void and are often destroyed. Often through fraudulent persuasion the erased persons were asked to visit the administrative office to check their documents, but when they handed in the documents demanded, administrative officials annulled these. Some of them were left without any explanation whatsoever, while others were told to apply for foreigner status at the Aliens Office. Because of the ongoing war in the former SFRY, many of them were not able to do so (they were unable to obtain documents from other republics of the former SFRY), while others acquired the documents demanded from their birth towns (in the former SFRY republics) with great difficulty and extensive costs (Krivic in Dedić, Jalušič, Zorn 2003: 147-8).<sup>6</sup>

**27 February** – The Ministry of the Interior, the Secretariat for Administrative Legal Affairs sends a letter No 0016/4-14968 entitled "Implementation of the Aliens Act – Instruction" to all municipal administrative bodies for internal affairs in the country, as well as to Ljubljana City Secretariat for the Internal Affairs. In it, they are informed that as of 28 February 1992, all citizens of other republics of former Yugoslavia who have not applied for citizenship of the Republic of Slovenia or whose applications were rejected (and since then two months have expired) fall under the Aliens Act. The given document, signed by the undersecretary Slavko Debelak, head of the Secretariat for Administrative Legal Affairs, states: "It is therefore required that all these persons begin arranging their status as of this date. Parallel to this, the examination of records shall also begin. [...] At this time, it is realistic to expect numerous problems pertaining to persons who shall become foreigners as of 28/2-1992, and who until now have requested neither temporary nor permanent residence. We warn you that the documents they possess, even if they have been issued by competent bodies within our state and are still valid, are no longer valid for these persons owing to their changed status. [...] Ambiguities arise due to different interpretations of the provisions for the cancellation of residence and the forced removal of an alien according to Articles 23 and 28 of the Aliens Act, particularly in cases where aliens are residing here illegally [...].<sup>7</sup> [I]f an alien resides in the territory of the Republic of Slovenia longer than permitted by paragraph 1 of Article 13, or resides

<sup>5</sup> Consequences of the erasure include loss of health insurance, impossibility of legal employment or loss of employment, waiver of the right to earned pension, impossibility of buying real-estate, obstacles to education, family separation (caused by expulsion or formally, as family members were left out from the official data on households), detention and deportation, violation of the right to formal parenthood recognition, impossibility to enter into any sort of contractual relationship, invalidating driving licences, exclusion from political participation, daily exposure to personal will of the police and other officials, impossibility to apply for social assistance and other rights bound to permanent resident status: the right to maternity allowance, national pension, income support, allowance for war-disabled persons, the right to childbirth grant, alimony compensation, care in general and specialised social institutions, care in substitute families, disability compensation, allowance for personal care etc. (Dedić, Jalušič, Zorn 2003: 134-5, Newspaper Večer, 24/2/2004).

<sup>6</sup> There are also a number of people who were born in Slovenia and were therefore unable to obtain the required documents. Consequently, there are individuals who acquired the documents from other republics of the former SFRY based on fabricated data and submitted them to the Aliens Office, since that was the only possibility for them to apply for a permanent residence permit.

<sup>7</sup> Regarding the fact that the erased were stripped of registered permanent residence permits as of this day, and that all their identification documents were annulled, they were suddenly given the role of undocumented foreigners and hence treated equally to people who entered the Republic of Slovenia illegally.

<sup>8</sup> The letter was publicly revealed only in 2004. Because of the existence of a legal vacuum regarding the status of non-citizens in 1992, there was a possibility for such formal directive serving as instructions for officials deciding on the cases.

beyond the expiry date of a temporary residence permit, an authorized competent person of the Interior [police] may accompany said person to the state border and show him across the state border, without any decision whatsoever from an Administrative Office" (Ministry of the Interior letter No 0016/4-14968).<sup>8</sup> Examination of records meant, among other things, that from March 1992, municipal offices for internal affairs started to transfer all

non-citizens previously included in the computerized register of permanent residents existing since early 1980s to the record of foreigners in such a manner that, "[...] their names alone included a note that they have been treated under Article 81 of the Aliens Act, and that their residence remains unknown since 26 February 1992, or that they currently reside on the territory of the former Yugoslavian republic in which they were born, although their permanent residence addresses [in Slovenia] were officially known. Hence, they presupposed the legal fiction that they lived somewhere else, in an unknown place. Officials working with the computerized record used the function 'change a foreigner', instead of the function 'enter a foreigner'. This proceeding is applied only when the actual situation differs from the formal one, which is why the administrative office alone, or in cooperation with other offices, should immediately start proceedings to annul this discrepancy. They obviously have not initiated the proceeding" (Newspaper Večer, 24/1/2004).

**6 May** – The Government of the Republic of Slovenia considers the information on implementation of the Aliens Act in parallel with the proposed agreement abolishing the visa regime imposed on citizens of other republics of the former SFRY. The proposal confirms that all republics have already adopted the given proposition, with the exception of the Ministry of Foreign Affairs of Serbia and Montenegro, which is unwilling to recognize independence of the Republic of Slovenia and the Republic of Croatia, and thus offered a negative response (Ministry of the Interior 2004a: 2).

**13 May** – The Government of the Republic of Slovenia adopts a decree on strict implementation of the Aliens Act provisions regarding entry visas for Yugoslav citizens (i.e. citizens of former republics of Serbia and Montenegro). Ministry of the Interior passes a directive stipulating that citizens of Yugoslavia are allowed to enter the Republic of Slovenia only on the basis of valid travel documents issued by competent authorities. In practice, this meant that border control authorities of the Republic of Slovenia had to reject citizens of these countries trying to enter the Republic of Slovenia without travel documents issued by competent authorities of the same republics (ibid.).

**4 June** – The Minister of the Interior, Igor Bavčar, addresses "Open questions on executing the Aliens Act" (letter No 0016/1-8-010/3-91) to the Government of the Republic of Slovenia, suggesting that the Government should be acquainted with the situation faced by citizens of other republics of former SFRY who have not applied for Slovene citizenship under Article 40, or whose citizenship applications have been rejected, and to give an opinion since it is a politically sensitive matter, producing financial consequences. In this document Bavčar wrote: "According to our estimates, there are 40,000 persons who, by force of law or on the basis of a negative decision regarding citizenship, became foreigners and are arranging their residence status in the Republic of Slovenia. To date, the practice of receiving applications for permanent and temporary residence has shown that most applications draw on existential reasons, which are said to justify the reason for residence in the Republic of Slovenia (long-term residence in the Republic of Slovenia, employment, marriage to a citizen of the Republic of Slovenia, real estate holdings, etc.)" (Ministry of the Interior document No 0016/1-8-010/3-91). He also mentions that the Ministry of the Interior had received 800 applications for permanent residence by 1 June 1992, and emphasizes growing problems regarding temporary residence, since the Municipal administrative office of Ljubljana alone issued more than 5,000 temporary residence permits by the given day. He emphasizes that "deciding on applications for permanent residence presents a special problem, because two legal positions have emerged. The first respects the notion of 'acquired rights', by which the case of a negative decision would

constitute one-sided revocation of rights which these persons had already acquired prior to 23/12-1990 or 25/6-1991. According to this interpretation, all persons who, by the previous stipulations, had a registered permanent residence in Slovenia would retain permanent residence regardless of the change in status. The second position derives from an interpretation of the law which grants the possibility of acquiring a permanent residence permit only after 3 years of legal temporary residence" (Ministry of the Interior document No 0016/1-S-010/3-91). This dilemma is said to be of essential importance, since it is a matter of addressing existential rights guaranteed by the state. Nonetheless, the question as to who should be issued permanent residence status remains open, even more so since already acquired permits are difficult to revoke. The Minister of the Interior concludes the letter as follows: "The Ministry of the Interior believes that in the independence phase of the Republic of Slovenia, all rights of citizens of republics of the former Yugoslavia, which are derived from international conventions and interstate agreements, were respected. The independence legislation [...] granted these persons free choice on their status to the greatest possible extent. This is why we feel that, in further proceedings, acquired rights must not be of account, as they were consciously forfeited, and that for this reason the determinations of the Aliens Act must be thoroughly followed" (Ministry of the Interior document No 0016/1-S-010/3-91). Participants present at the Government's session discussing the above mentioned documents voted for the interpretation stated by Igor Bavčar (Newspaper Večer, 26/2/2005).

**3 September** – Since individuals erased from the register of permanent residents were not able to fulfill conditions to obtain permanent residence, as determined by the Aliens Act – they were not able to fulfill the requirement of three-year uninterrupted residence in Slovenia on the basis of temporary residence permit – the Government adopted decree No 260-01/91-2/5-8 at its 18<sup>th</sup> session. This decree stipulates that the condition concerning uninterrupted residence is also fulfilled in cases when individuals had permanent residences registered on the territory of the Republic of Slovenia for at least three years and had actually been living here before provisions of the Aliens Act entered into force.<sup>9</sup> Nonetheless, the decree still anticipates that the erased persons regulate their status themselves, meaning that they should submit permanent residence applications, while the state has never informed the Erased of the adopted decree<sup>10</sup> (Constitutional Court decision No U-I-284/94).

## 1994

Tanja Petovar establishes the Civic Link, Office of Human Rights of the Helsinki Monitor of Slovenia, which is, besides the Committee on Protection of Human Rights and Fundamental Freedoms, probably the first institution to face the problem of the erased persons. According to the long-term president of the Helsinki Monitor, Neva Miklavčič Predan, this organization met a large number of erased persons facing difficulties with regulating their status as early as in 1994. Therefore, the Helsinki Monitor included the issue of the Erased as the central issue of all their annual reports published prior to 2002 (Newspaper Večer, 1/4/2004, Helsinki Monitor of Slovenia reports).

**13 May** – Following two years (1992–1994) of written, verbal and telephone appeals to Slavko Debelak and then Minister of the Interior, Andrej Šter, regarding the illegal and hostile acts of the Ministry of the Interior towards individual non-Slovenes, Prof Ljubo Bavcon, former Chairman of the Committee on Human Rights and Fundamental Freedoms,<sup>11</sup> holds a meeting with then Prime Minister of the Republic of Slovenia, Janez Drnovšek.

<sup>9</sup> The authorities issued 1,468 permits in 1992, 763 permits in 1993, 361 permits in 1994, 312 permits in 1995, 640 permits in 1996, and 1,259 permits in 1997. Altogether, the authorities issued 4,893 permanent residence permits (Constitutional Court decision No U-I-284/94).

<sup>10</sup> In its decision No U-I-284/94 issued in 1999, the Constitutional Court also concluded that, when realising that the Aliens Act was inapplicable for citizens of other republics, the Government should have suggested that the legislative authority regulate their legal status, instead of interfering in legislative competences with its decree (Constitutional Court decision No U-I-284/94).

<sup>11</sup> The above-mentioned committee predeceased the later established Office of the Human Rights Ombudsman. It addressed similar issues, in a similar manner.

During their meeting, the Prime Minister promises immediate abolition of such policies: "Nothing has happened following that seemingly promising meeting with the Premier. I find this a sufficient signal that this entire issue is not a matter of individual violations of legal provisions and human rights, but rather a systematic state policy of expelling unwanted non-Slovenes from the country" (Open Letter of Prof Ljubo Bavcon, Newspaper Dnevnik, 10/5/2003).

**14 November** – Blagoje Miković submits the first complaint against the Aliens Act to the Constitutional Court. He is followed by several other individuals, but the Constitutional Court actually starts processing the complaints only three years later, precisely on 24 June 1998 (Constitutional Court decision No U-I-284/94).

## 1995

Establishment of the Office of the Human Rights Ombudsman, which points to the matter of the Erased in its first annual report. This issue has been included in the Ombudsman's annual reports ever since (Special reports of the Office of the Human Rights Ombudsman, 2004).

**20 November** – Constitutional Court declares unconstitutional the demand for a referendum on revision of citizenship statuses acquired under Article 40 of the Citizenship of the Republic of Slovenia Act (Constitutional Court decision No U-I-266/95).

## 1996

**4 March** – Minister of the Interior, Andrej Šter, addresses a document entitled "Administrative procedures regarding foreigners – response" (No 0012/1-252/62-96) to the president of the National Council, Dr Ivan Kristan. In his letter, Šter replies to "[...] questions raised regarding the time limit and number of pending administrative procedures regarding foreigner status, namely proceedings for acquisition of permanent and temporary residence permits, and proceedings for acquisition of Slovene citizenship, with special consideration of individuals – officers of the former Yugoslav People's Army, who have for decades been residing on the territory of the Republic of Slovenia. Those persons are said to have been forcefully removed from population registers and have already spent five years without identification documents" (Ministry of the Interior document No 0012/1-252/62-96, 1996: 1). Regarding legislation adopted in 1991, which governs the area of legal status of citizens of other republics of the former SFRY with permanent residences registered in Slovenia beforehand, the Minister of the Interior states the following: "Municipal administrative offices for internal affairs [...] transferred these persons from the existing register of permanent residents to the register of foreigners when the provisions of Article 8 of the Aliens Act entered into force. As of the given date, these individuals had to regulate their foreigner status under the Aliens Act, while they were obliged to register their residence only on the basis of prior regulated residence permits or work permits. They were also *ex lege* removed from the central register of citizens of the Republic of Slovenia. The central population register is a set of municipal registers of permanent residents and a computer-managed record of permanent residents, citizens of the Republic of Slovenia [...]; therefore, removing foreigners, citizens of other republics of the former SFRY, from this register only enables adjusting those given records to this provision. The demand for automatic granting of the status of foreigner holding a permanent residence permit [...] is therefore impossible to fulfill" (Ministry of the Interior document No 0012/1-252/62-96, 1996: 2). Moreover, he states that administrative offices, as well as the Ministry of the Interior, were accepting applications for permanent residence permits or work permits submitted by those individuals ("citizens of other republics of the former SFRY *sur place*") even after 26 February 1992, "[...] which was guided by the specific emergence of foreigners

in Slovenia as a consequence of the country's independence and subsequent solving of the situation *sur place*. In certain cases, the need for regulated foreigner status emerged only later. The entire situation gradually led citizens of other republics of the former SFRY to regulate residence permits in the Republic of Slovenia. Based on existing computer records, the Ministry of the Interior concludes that several thousand people who were living here before the country's independence and have never regulated their foreigner status for various reasons, still live in the Republic of Slovenia" (Ministry of the Interior document No 0012/1-252/62-96, 1996: 2). In the following, the Minister refers to the legislation governing entrance, residence in the country, and expulsion, as well as identification documents for foreigners. Subsequently, he submits data acquired from the computer record to the National Council of the Republic of Slovenia. The record shows there were 80,181 individuals denoted as foreigners on 31 December 1995; of those, there were 35,260 individuals holding foreigner status, 20,432 individuals with expired foreigner status, and 24,489 individuals who have never regulated foreigner status in the Republic of Slovenia. This number is augmented by 2,955 individuals who have already submitted applications for permanent or temporary residence permits.<sup>12</sup> "The given information shows that computer data includes 44,921 persons registered as 'foreigners', whose residence permits have expired or who have never regulated their legal status in the Republic of Slovenia, while it also remains unclear whether they actually reside on the territory of the Republic of Slovenia [...]. In the majority of cases, these are foreigners *sur place*, who were prior to 26 February 1992 registered in the register of permanent residents and are now 'burdening' the record of foreigners. It is possible to assume that the majority of these foreigners no longer live in Slovenia, since more than half of them have never arranged for aliens or temporary refugee protection status in Slovenia" (Ministry of the Interior document No 0012/1-252/62-96 1996: 4).<sup>13</sup>

**16 July** – In its document Agenda 2000 – Commission Opinion on Slovenia's Application for Membership of the European Union, the European Commission states the following: "The Slovenian authorities have not yet settled nationality issues arising from the break-up of the former Yugoslavia. Persons residing permanently on Slovenian territory and wishing to obtain Slovenian nationality had the possibility to do so until 25 December 1991. More than 98 per cent of applicants obtained it. Since then, 16,000 new applications have been lodged; 6,000 were accepted and 900 rejected. An issue still to be resolved concerns a group of around 6,000 stateless people who for various reasons have neither asked for Slovenian nationality nor claimed refugee status. The Government will be taking appropriate steps to resolve this problem" (Agenda 2000 – Commission Opinion on Slovenia's Application for Membership of the European Union, 1997: 20). As the Republic of Slovenia nonetheless received a positive opinion on accession, it entered the first round of negotiations over EU accession in December 1997, and officially initiated them on 31 March 1998.

## 1998

An EU delegation visits the Ministry of the Interior demanding that Slovenia regulates the status of citizens of succession states of the former SFRY residing in the Republic of Slovenia with unregulated status (Dedić, Jalušič, Zorn 2003: 142).

**5 November** – Among others issues, the Regular Commission Report on Slovenia's Progress towards EU Accession 1998 prepared by the European Commission states the following: "Delays concerning citizenship claims are still fairly numerous, although decreasing. Slovenia has not yet solved the problem of persons without a regulated status. UNHCR estimates that there are currently around 5,000–10,000 persons without legal status

<sup>12</sup> In brief, there were 83,136 foreigners registered in the Republic of Slovenia on 31 December 1995.

<sup>13</sup> Although the document does not provide a precise number of erased people, or a number of erased people residing in Slovenia, it proves that the Slovenian authorities were already aware of the situation of former permanent residents of Slovenia in 1996, but they did not address the issue until 1999.

<sup>14</sup> Constitutional Court decision issued in April 2003 suspended the three-month deadline as groundless and (too) short.

(mostly citizens of the former SFRY republics) in Slovenia. There has been an increasing commitment to solve the issue by a special law aiming at regulating the position of the persons concerned" (Regular Commission Report on Slovenia's Progress Towards EU Accession 1998: 12).

## 1999

**4 February** – Ruling in the cases of Blagoje Miković and Vojislav Tomić, the newly composed Constitutional Court issues decision No U-I-284/94, stating that certain articles of the Aliens Act do not comply with the Constitution and that the erasure was an unconstitutional act, since it lacked legal basis. Moreover, the decision refers to a legal vacuum, as the status of the erased persons was not regulated following the six-month period set for citizenship applications. "The principles of the rule of law were violated, as the law did not regulate the transition of legal status held by citizens of other republics with registered permanent residence in the Republic of Slovenia, where they have actually been living, into foreigner status" (Constitutional Court decision No U-I-284/94). In addition, the Constitutional Court judges state that the Aliens Act should not be applied in the case of the erased persons, who were thus pushed into a considerably worse position than other foreigners, which makes it discriminatory. The Constitutional Court orders the legislator to align the Aliens Act with the Constitution within six months, while expulsion of the erased persons must be suspended during this period of time. In Article 1 of his separate affirmative opinion, one of the judges, Dr Lojze Ude, warns that a different interpretation of the Aliens Act, which would not have led to the erasure, would have been possible (Dedić, Jalušič, Zorn 2003: 52-3, 142, Constitutional Court decision No U-I-284/94).

**10 June** – In their decision No U-I-89/99, Constitutional Court judges rule that Paragraph 3 of Article 40 of the Citizenship of the Republic of Slovenia Act does not comply with the Constitution, as it applies stricter conditions for the Erased than for other foreigners, since their citizenship applications can be rejected on the basis of an arbitrary opinion of internal affairs authorities about an applicant being a danger to the public order of the Republic of Slovenia. Constitutional Court judges state that the legislator's decision to include an additional condition was not based on a well-supported argument outweighing legitimate expectation (Constitutional Court decision No U-I-89/99).

**1 July** – Issuance of decision No Up-333/96, in which Constitutional Court judges repeat arguments given in their decision No U-I-284/94 that Article 81 of the Aliens Act does not comply with the Constitution. Therefore, the Constitutional Court rules that a competent administrative office "[...] is bound to re-include complainants in the register of permanent residents of the Republic of Slovenia and grant them driving licenses valid until a new act regulating the status of citizens of other republics of former SFRY is adopted" (Constitutional Court decision No Up-333/96).

**8 July** – The National Assembly adopts the Act Regulating the Legal Status of Citizens of the Former SFRY Living in the Republic of Slovenia (hereinafter ARLSC). Its Article 1 permits issuance of a permanent residence permit to every "citizen of another country emerging from the former SFRY (in the following: foreigner) with permanent residence registered in the Republic of Slovenia on 23 December 1990, who has been living in the Republic of Slovenia ever since, or to a foreigner residing in the Republic of Slovenia on 25 June 1991, who has been living in the Republic of Slovenia uninterrupted since, regardless of provisions determined in the Aliens Act [...], if he/she fulfils conditions included in this Act". The Act comes into force sixty days following publication in the Official Gazette (29 September), while residence applications can only be submitted within three months<sup>14</sup>, meaning that the deadline expires at the end of 1999. During the given period of time, the administrative office received 12,931 applications; 12,199 individuals had acquired permanent residence permits under the



ARLSC by 31 December 2006 (ARLSC, The Foreigners and Citizens' Statuses Press Conference of the Bureau for Administrative Internal Affairs of the Ministry of the Interior on 19 June 2002, Online newspaper 24 ur, 14/2/2007).

**15 July** – Issuance of Constitutional Court decision No Up-60/97. In it, the Constitutional Court judges reassert arguments given in their decision No U-I-284/94 that Article 81 of the Aliens Act does not comply with the Constitution of the Republic of Slovenia, and offer directions similar to those included in the Constitutional Court decision No Up-333/96 (Constitutional Court decision No Up-60/97).

**19 September** – In its Regular Commission Report on Slovenia's Progress Towards EU Accession in 1999, the European Commission states the following: "Slovenia has addressed the problem of former Yugoslav citizens without regulated status (5,000–10,000 people) by adopting a law in July 1999 which allows these people to apply for permanent residence in the three-month period following the entry into force of the law" (Regular Commission Report on Slovenia's Progress Towards EU Accession 1999: 16).

## 2000

**18 May** – Constitutional Court decision No U-I-295/99 annuls three paragraphs of the ARLSC, since limitations regarding acquisition of permanent residence permits exceed conditions determining cancellation of a foreigner's permanent residence permit (internal material of the Peace Institute, written by Neža Kogovšek).

## 2001

**27 November** – Aleksandar Todorović begins a ten-day hunger strike on the parking lot in front of the Ljubljana Zoological Garden (personal correspondence with Aleksandar Todorović, 5/4/2007).

**29 November** – Speaking at a press conference presenting a new Aliens Act, Minister of the Interior, Rado Bohinc (United List of Social Democrats, hereinafter ULSD), gives the number of foreigners living in Slovenia with various legal statuses. Those include individuals with permanent residence permits, temporary residence permits, and individuals granted temporary protection. Referring to the first group, Bohinc mentions 8,000 foreigners *sur place* from the former Yugoslav republics (Newspaper Delo, 30/11/2001).

## 2002

**26 February** – Establishment of the Association of Erased Residents of Slovenia in Ptuj. Municipal authorities initially hindered registration of the association, giving several arguments: the association has political goals (one of them is a campaign to amend the existing legislation); the use of the word 'erased' in the association's name is misleading; furthermore, the association's initial name read "Association of Erased in the Republic of Slovenia – Association for Human Rights", however the use of the syntax "Republic of Slovenia" is forbidden. The Administrative Office of Ptuj subsequently gave way to pressure from the founders of the association and their legal representative, former Constitutional Court judge Matevž Krivic. The association publishes its first public statement beginning as follows: "On this day, exactly ten years ago, the Republic of Slovenia removed at least 83,136 persons (according to our information from 1996) from the register of permanent residents of the Republic of Slovenia. To this day, we are unfamiliar with the legal basis for this act. Further activities undertaken by legislative, administrative and executive authorities give indisputable proof that those activities

<sup>15</sup> It is necessary to emphasize that data provided by the Ministry of the Interior shows there were almost 13,000 applications for the permanent residence permit submitted under the ARLSC in three months alone. It is impossible to conclude how many of those persons were erased, as the given Act anticipates the granting of permanent residence permits also to individuals who were living in the Republic of Slovenia on the day of its independence without registered permanent residence, and have actually been living on its territory uninterrupted ever since. Nonetheless, this information (especially when also regarding the number of people who have already regulated their legal status) shows the extent of the problem faced by people who spent a decade without permanent residence permit in Slovenia.

<sup>16</sup> ECRI representatives first visited Slovenia in February 1997. However, the ECRI Report published in March 1998 does not refer to the Erased.

<sup>17</sup> If the person requesting Slovenian citizenship has a command of the Slovenian language; if the person has not been sentenced to a prison sentence longer than one year in the country of which he/she is a citizen or in Slovenia; if the person's naturalisation represents no threat to the public order, security or defence of the State; if the person submits a declaration that by obtaining citizenship of the Republic of Slovenia, he/she agrees with the legal system of the Republic of Slovenia (the Citizenship of the Republic of Slovenia Act).

were planned and systematic and were aimed at 'ethnic decontamination', which partly succeeded" (Association of Erased Residents Public Statement). Additionally, they call upon state authorities to undertake consideration and immediate solving of the situation.

**10 June** – The Constitutional Court of the Republic of Slovenia receives a complaint against ARLSC, filed by the Association of Erased Residents and the Helsinki Monitor of Slovenia (Dedič, Jalušič, Zorn 2003: 143).

**19 June** – Speaking at a press conference "Foreigners' and Citizens' status" of the Ministry of the Interior, the Minister Rado Bohinc offers the first official numbers of erased persons. A document prepared for the occasion reads: "Owing to various estimations regarding the number of the erased persons, ranging from 83,000 to 130,000, the Ministry of the Interior and administrative units have examined the situation and concluded that there were altogether 29,064 such individuals registered in the register of permanent residents of the Republic of Slovenia on 25 February 1992. Following 25 February 1992, 7,339 persons acquired Slovene citizenship on the grounds of regular naturalization, 4,210 persons acquired a permanent residence permit for foreigners and 2,551 persons acquired a temporary residence permit for foreigners. Altogether, 14,100 people regularized their status in the Republic of Slovenia. However, it is evident that 9,528 persons terminated their permanent residence prior to 26 February 1992, and that 1,231 persons terminated their permanent residence after 25 February 1992. The register also includes 4,205 individuals with unregulated status" (Ministry of the Interior Press Conference, 19 June 2002). The same document states that 12,931 person applied for permanent residence permits under the ARLSC between 29 September and 29 December 1999 and that the authorities had resolved 9,514 of them positively by 17 June 2002 and that there are another 1,010 applications that were submitted under provisions of the Aliens Act. The Ministry, however, later concluded that these procedures should rather be carried out under the ARLSC.<sup>15</sup> Of all applications submitted under the ARLSC, 2,405 remained unsolved to the date above.

**July** – The Helsinki Monitor of Slovenia files criminal complaints against Igor Bavčar, Minister of the Interior at the time of the erasure, Rado Bohinc, then Minister of the Interior, and Marko Pogorevc, then director general of the Police Administration. In its complaints, the Helsinki Monitor accuses them of erasing 83,560 individuals from the register of permanent residents of the Republic of Slovenia, an act which resulted in several violations of their human rights. Furthermore, the Helsinki Monitor impeaches the accused on charges of genocide (Newspaper Večer, 2/8/2002).

**21 – 23 October** – Second visit of the European Commission against Racism and Intolerance (ECRI) to Slovenia (ECRI Second Report on Slovenia 2003).<sup>16</sup>

**25 October** – The National Assembly adopts the Act Amending and Supplementing the Citizenship of the Republic of Slovenia Act. In Article 19, the Act states: "An adult person who had permanent residence registered in Slovenia on 23 December 1990 and has been living on the territory of the Republic of Slovenia uninterrupted ever since, can apply for the citizenship of the Republic of Slovenia within one year since this Act entered into force", if he/she also meets other requirements determined by the same Act.<sup>17</sup> The Act enters into force on 29

November 2002. Based on its Article 19 there were 2,959 applications submitted, of which 1,729 had been resolved positively by 31 December 2006 (Online newspaper 24 ur, 14/2/2007).

**26 October** – The first public appeal to the state and public published by members of the Association of Erased Residents warning about the still ongoing unconstitutional situation and that the only legal solution to the given problem would be restoration of foreigner permanent residence status to all erased persons, valid as of 25 February 1992. At the same time, they inform the state that it would eventually have to face the problem of those erased individuals who have been expelled from the country, or those whose entrance to Slovenia has been rejected on the basis of the list of unwanted persons that the state was allegedly still using despite its illegality (Association of Erased Residents' first Appeal to the State and Public).

**8 November** – Session of the Internal Affairs Committee of the National Assembly discussing the Government's opinion about the constitutional complaint against the ARLSC. Representative of the parliamentary Legislative and Legal Services Tina Bitenc Pengov maintains that the state's proceedings towards the Erased have at all times been correct and legally founded; nonetheless, she permits a possibility that proceedings in certain individual cases were illegal. At the same time, she expresses a rather negative position regarding the possible restoration of their status from February 1992. Having signed the opinion prepared by the parliamentary Legislative and Legal Services, the Committee allows for the initiative to be submitted to the Constitutional Court (Newspaper Večer, 9/11/2002).

**23 December** – A roundtable "Who are the persons erased from the register of permanent residents?", Evening of Multitudes, organized by the Dostje! movement and Club Gromka at the Autonomous Cultural Zone *Metelkova* city, Ljubljana ([www.dostje.org](http://www.dostje.org)).

## 2003

**24 February** – Opening of the first Week of the Erased with a roundtable "Erasure: Legal Error or Ideology – Whose?", organized by the Association of Erased Residents in the Cultural and Congress Centre *Cankarjev dom* in Ljubljana ([www.dostje.org](http://www.dostje.org)).

**25 February** – Continued activities within the framework of the Week of the Erased at the Faculty of Social Sciences in Ljubljana, with a roundtable "People Without" (*ibid.*).

**26 February** – General assembly of the Association of Erased Residents in the *Pri Jovotu* restaurant, and protest gatherings in front of all key state institutions in Ljubljana (*ibid.*).

– Association of Erased Residents' second appeal to the state and the public. Members of the association express their disappointment with the modest reaction to their first appeal. Therefore, in expectation of rulings by the Constitutional Court, they state: "We are confident of a favorable ruling. Hence, we are wondering if the Government and the National Assembly, as well as political parties, intend to disregard this decision, as they did with the one issued in 1999" (Association of Erased Residents' second Appeal to the State and Public).

**27 February** – Briefing organized for representatives of foreign embassies in Slovenia at the Faculty of Social Work in Ljubljana ([www.dostje.org](http://www.dostje.org)).

**7 March** – Association of Erased Residents informs the Council of European Commissioner for Human Rights, Alvar Gil-Robles, about the issue of the erased residents of the Republic of Slovenia (Letter of the Association of Erased Residents, 7/3/2003).

**27 March** – Association of Erased Residents files a criminal complaint against the deputy Zmago Jelinčič Plemeniti and the Government's secretary-general Mirko Bandelj for their hate speech against the Erased on the television show *Trenja* on 6 March 2003. Zmago Jelinčič Plemeniti is charged for his statement that "[...] democratic Europe would throw those people on trucks, train wagons or planes and send them back to their home

<sup>18</sup> Complying with the Constitutional Court's decision, the Ministry of the Interior decided to return permanent residence status as of 26 February 1992 only to individuals with permanent residence permits, and thus excluded those who had in the meanwhile acquired citizenship or temporary residence permits. However, it remains unclear, how they established the given number.

<sup>19</sup> Andrej Šter, Borut Trekman, Polde Bibič, Tadej Labernik, Matjaž Kmecl, Evgen Bavčar, Dane Zajc, Niko Grafenauer, Viktor Blažič, Vinko Beznik, Tone Horvat, Srečko Lisjak, and others.

countries", while Mirko Bandelj stated that a person "who has committed anything against this country has no business here". The public prosecutor rejected the criminal complaint ([www.dostje.org](http://www.dostje.org)).

**3 April** – The Constitutional Court (decision No U-I-246/02) rules that certain articles of the Act Regulating the Legal Status of Citizens of the Former Yugoslavia Living in the Republic of Slovenia (ARLSC) do not comply with the Constitution, since they deny permanent residence to citizens of other republics of the former SFRY, who, on 26 February 1992, were removed from the register of permanent residents of the Republic of Slovenia, from that date onwards. Therefore, it orders the Ministry of the Interior to annul discrepancies with the Constitution within six months. The Ministry should send the so-called subsidiary decision to all individuals who have already acquired permanent residence status and in this way restore their status for the period between 25

February 1992 and the date they acquired permanent residence permits. Moreover, the Ministry must prepare a new law for those persons who have not acquired any residence permit in Slovenia, also within six months. Furthermore, the ARLSC does not comply with the Constitution, as it does not clearly define what exactly is meant under the criteria of actual uninterrupted residence, and does not take into account the special situation of individuals who have been expelled from Slovenia. The Constitutional Court also rules that the three-month period set for submitting applications under ARLSC in 1999 was too short (Constitutional Court decision No U-I-246/02).

**15 April** – Speaking at a press conference organized by the Ministry of the Interior, the Minister Dr Rado Bohinc (ULSD) and the head of the Immigration and Naturalisation Secretariat, Alenka Mesojevec Prvinšek, present measures to be prepared by the Ministry on the basis of the Constitutional Court's ruling regarding resolution of the legal status of the erased persons. The Ministry is said to adopt two measures: a new law enabling granting of permanent residence permits for 4,025 people still without status, while 7,310<sup>18</sup> individuals already holding permanent residence permits should be issued subsidiary decisions recognizing their permanent residence status as of February 1992 (Newspaper Večer, 16/4/2003).

**18 April** – Andrej Šter, the Secretary at the Ministry of the Interior and one of the former Ministers of the Interior, assembles a group of nineteen intellectuals (writers, artists, diplomats etc.),<sup>19</sup> which sends a public appeal to the President of the Republic, President of the National Assembly, and to the Prime Minister, acting as a protest against the decision of the Constitutional Court. None of the addressees either responded or commented on the public appeal (Newspaper Večer, 19/4/2003).

– At its press conference, the Slovene National Party (hereinafter SNP) appeals to the National Assembly to reject the decision of the Constitutional Court, as it predominantly refers to people who opposed Slovenia's independence. Furthermore, the Party states that the erasure from the register of permanent residents of the Republic of Slovenia has never taken place; rather, these people were not registered in the register of citizens of the Republic of Slovenia, since they themselves have never wished so (Newspaper Večer, 19/4/2003).

**7 May** – The Parliamentary Legislative and Legal Services states its opinion about the Constitutional Court decision regarding the Erased. Among others things, it warns that the implementation the Constitutional Court decision in compliance with legal practice implies no constitutional court impact evaluation, and that the legislator is hence liable to change it with a law (Ministry of the Interior 2004b: 1).

**11 – 14 May** – The Council of Europe Commissioner for Human Rights, Alvaro Gil-Robles, visits Slovenia; during a press conference organised on the second day of his visit, he puts forward the problem of the Erased and the necessity of resolving their situation (Newspaper Večer, 13/5/2003).

**May** – On behalf of the SNP, deputy Sašo Peče submits an initiative to the Constitutional Court to reassess the constitutionality and legality of the ARLSC, since he believes that the Constitutional Court exceeded its powers

when it took over the role of legislator and “made an entirely unreasonable decision” (Newspaper Delo, 30/12/2003, 5/2/2004).

**20 May** – A constituent committee of the regional department of the Association of Erased Resident of Slovenia, named *Obala* Association of Erased Residents, takes place in Portorož (Newspaper Delo, 21/5/2003).

**2 June** – Evaluating the fifth periodical report on Slovenia, the UN Committee on the Elimination of Racial Discrimination (CERD) states that it monitors Slovenia’s progress in managing citizenship issues. The Committee expresses its concern about the vast number of persons living in Slovenia without citizenships who face administrative problems in meeting the legal requirements for obtaining residence permits and are hence deprived of healthcare and other social rights (CERD in Lawsuit “Milan Makuc and others against Slovenia” filed at the European Court of Human Rights, 4/7/2006).

**23 June** – Speaking at a press conference, the Minister of the Interior Rado Bohinc (ULSD) explains that the law on the Erased, intended to implement the Constitutional Court’s decision, is ready to be sent into the coalition coordination. He states that expert service will have to study 22,311 files, and allegedly issue approximately 12,000 subsidiary decisions restoring permanent residence status of the Erased for the period from the erasure to the issuance of the already granted permanent residence permits. The Minister says that legal experts do not share a common opinion as to whether the Ministry should start issuing subsidiary decisions immediately (Ministry of the Interior 2004b: 1).

**8 July** – Publication of the Second Report of the European Commission against Racism and Intolerance (ECRI). The chapter “Issues of Particular Concern” pays special attention to the problem of the Erased, in a section “Situation of the ex-Yugoslav minority groups”. Among others conclusions, the report states the following: “In general, ECRI encourages the national authorities to adopt an approach which is as generous as possible, in order to counter the strong feelings of injustice experienced by many people whose name has been removed from the registry of permanent residents. As regards all persons belonging to the ex-Yugoslav minority groups, ECRI considers that persons who were born in Slovenia and/or who have lived the main part of their life in Slovenia should not be considered as foreigners or as nationals of another country where, in many cases, they have never even lived” (ECRI, Second Report on Slovenia 2003: 21-2).

**17 July** – Members of the Association of Erased Residents start a protest march from the coastal area of the country to the capital, Ljubljana, ending it with the Association’s assembly convened in the *Pri Jovotu* restaurant, on 20 July. Participants at the meeting issue the third appeal to the state and public, stressing that the Government is – regardless of the clear decision issued by the Constitutional Court – still stalling an actual solution to issues pertaining to erased persons, and that its acts are predominantly directed against the court’s decision (Association of Erased Residents’ Third Appeal to the State and Public, [www.dostje.org](http://www.dostje.org)).

**24 July** – The Ministry of the Interior rejects allegations about stalling the resolution of the erased persons’ situation. Namely, the Ministry explains that the draft of the law on permanent residence of foreigners holding citizenship of other republics of the former SFRY in the Republic of Slovenia, who had permanent residence registered in the Republic of Slovenia on 23 December 1990,<sup>20</sup> has already been submitted to coalition coordination. In addition, the Ministry announces it will begin issuing subsidiary decisions in September (Ministry of the Interior 2004b: 1).

**30 July** – Deputy Zmagor Jelinčič Plemeniti, president of the SNP, addresses a parliamentary question to the Minister of the Interior, Rado Bohinc (ULSD), referring to the legal basis pursuing issuance of subsidiary decisions to the erased persons (Ministry of the Interior 2004b: 1).

**28 August** – The Expert Council of the Public Administration – a council comprising several legal experts headed by Dr Rajko Pirnat, calls for issuance of subsidiary decisions to the erased persons on the basis of the law, rather than directly on the basis of the Constitutional Court decision. They believe that only such solution would represent a legal foundation for subsidiary decisions (Newspaper Delo, 29/8/2003).

<sup>21</sup> »United Leaves« is a word-play twisting the name of the United List of Social Democrats Party.

<sup>22</sup> Jelena Aleksić, Dr Aleš Črnič, Dr Marta Gregorčič, Drago Kecman, Ivana Kecman, Gorazd Kovačič, Matej Kovačič, Dr Anton Kramberger, Bernarda Naglič, Alenka Pokovec, Peter Sterle, Boštjan Šaver, Dr Blanka Tivadar, Dr Gregor Tomc, Matjaž Uršič, Ljuba Valič, Helena Zalokar and Jože Zalhtic (Newspaper Večer, 16/10/2003).

– The non-parliamentary Party of the Slovene Nation initiates a campaign in Maribor, organized to collect signatures for a referendum against a “package solution” for the Erased, that is, against the anticipated return of permanent residence status (Newspaper Delo, 29/8/2003).

**4 September** – Minister of the Interior Dr Rado Bohinc presents the law implementing Article 8 of the Constitutional Court decision No U-I-246/02-28, ZIOdlUS246/02, the so-called Technical Act, which “[...] regulates the conditions for and proceedings regarding issuance of permanent residence decisions to a citizen of another republic of the former Yugoslavia who had permanent residence registered in the Republic of Slovenia on 23 December

1990 and on 25 February 1992, and who has already acquired a permanent residence permit under the Act Regulating the Legal Status of Citizens of the Former Yugoslavia Living in the Republic of Slovenia [...], or the Aliens Act [...]” (Act Implementing Article 8 of the Constitutional Court of the Republic of Slovenia decision No U-I-246/02-28, ZIOdlUS246/02).

**7 October** – The “United Leaves”<sup>21</sup> campaign to open space for politics, dialogue and manifold possibilities. Demonstration organized at the headquarters of the United List of Social Democrats Party in Ljubljana. The aim of the campaign is to point to the Party’s role in the erasure and the delayed solving of the problem (www.dostje.org).

**8 October** – Demonstration in front of the Parliament, organized by Association of Erased Residents and the Social Forum, aimed at highlighting the unnecessary introduction of the Technical Act, since the Constitutional Court decision alone serves as a sufficient foundation for issuance of subsidiary decisions. “Slightly more than twenty white uniforms suddenly blocked the road in front of the Parliament building in Šubičeva Street. With their bodies lying on the street, they made a ten-meter wide inscription ‘erasure’, while posters erected on both sides of the street announced to passing drivers, ‘Keep driving, we don’t exist!’” (www.dostje.org, Newspaper Večer, 9/10/2003).

– The National Assembly rules that the Technical Act will be assessed by a shortened procedure, which would enable adoption of the law as early as October. The opposition protests the decision, since contrary to regular procedures, shortened ones do not allow for a detailed debate, necessary because of the extensive political and public-financial consequences expected to occur upon solving the problem of the Erased (Newspaper Delo, 9/10/2003).

**9 October** – The Government considers the Act on Permanent Residence of Aliens, Holding Citizenship of Other Republics of the Former SFRY, in the Republic of Slovenia, Who Had Permanent Residence Registered in the Republic of Slovenia on 23 December 1990 and 25 February 1992, called also the Systemic Act, intended to provide an integral solution to the status of four categories of erased persons: those who have not yet obtained any status; those holding temporary residence permits and their children, and individuals, who acquired the permanent residence permit on grounds of family ties. The Act is set to regulate the status of the first three categories as of February 1992 on in an official capacity, whereas the last category includes individuals who have already acquired Slovene citizenship and will have to ask for retroactive recognition of permanent residence permits on their own (Newspaper Delo, 10/10/2003).

**14 October** – Appeal issued by sociologists<sup>22</sup>, thus publicly calling upon the Government and the National Assembly to “[...] accept and render legal both political and material responsibilities for the erasure of residents of the Republic of Slovenia from the register of permanent residents” (Newspaper Večer, 16/10/2003).

**15 October** – Publication of a report of the Council of Europe Commissioner for Human Rights, Alvaro Gil-Robles, prepared on the basis of his visit in May, which refers to the Erased as to a problem emerging from the country’s transition period. The Commissioner writes: “The early execution of the Constitutional Court decision

is essential for regulating the situation of these persons in an appropriate manner. The President of the National Assembly assured me that the law would be amended in order to comply with the Constitutional Court opinion. The Minister of the Interior informed me that the process for giving retroactive effect to the status of permanent residence has been started, and the legislative process towards providing a new time limit will be initiated without delay" (Report by Alvaro Gil-Robles, Commissioner for Human Rights, based on his visit to Slovenia, 11–14 May 2003).

– The Parliamentary Committee on Internal Affairs considers and adopts the Technical Act by the shortened procedure, thus preparing it to be sent for second consideration at the October sitting of the National Assembly (Newspaper Večer, 16/10/2003).

**16 October** – Expiration of the deadline for adoption of the Systemic Act set by the Constitutional Court in decision No U-I-246/02.

**22 October** – Roundtable "The Roma Without Citizenship and/or Identification Documents in Slovenia", organized by the European Roma Rights Center from Budapest and the Information and Documentation Center of the Council of Europe in Ljubljana.

**28 October** – Regular session of the National Assembly discussing the Systemic Act. The opposition parties Slovene Democratic Party, Slovene National Party and the New Slovenia – the Christian People's Party (hereinafter SDP, SNP and NSi respectively) express strong antagonism to the proposed law, mostly due to possible financial consequences. Estimates prepared by anonymous experts state that compensation claims filed by the erased persons could reach as high as 600 billion Slovene tolar (two and a half billion euros). The perception that solving the problem of the erased individuals would represent "degradation of the foundations of independence" is emphasized. Deputy Janez Janša (SDP) says he is, "[...] 'deeply touched by the struggle for human rights, especially when it comes to political interests, and barely hide his tears.' This is not a matter of principle and of making up for injustice, but in Janša's belief rather a matter of 'a political and ideological alliance of friends or adherents from the time of Slovenia's independence, particularly from the period of opposition to its independence'" (Newspaper Večer, 29/10/2003).

**29 October** – Regular sitting of the National Assembly discussing the Technical Act. The views expressed by political parties do not differ from those expressed the previous day. Following an extensive debate, the majority of deputies vote for the proposed Technical Act by the shortened procedure (Newspaper Večer, 30/10/2003).

**5 November** – Following a motion from a group of advisors (first signed by Marjan Maučec from the Slovene People's Party, herein after SPP), the National Council passes a veto on the Technical Act. They give two reasons for the veto: namely, that the law does not anticipate financial consequences and that it is unnecessary, since equal content is already being rendered by the Systemic Act. Hence, the law reenters the parliamentary procedure (Newspaper Delo, 4/11/2003; Newspaper Večer, 6/11/2003).

**6 November** – Press conference on publication of the book "The Erased: Organized Innocence and the Politics of Exclusion", written by Vlasta Jalušič, Jasminka Dedić and Jelka Zorn, and on opening of an exhibition "Dreams are allowed today" presenting documentation connected to the erasure, the Alkatraz Gallery, Autonomous Cultural Zone *Metelkova* city in Ljubljana ([www.mirovni-institut.si](http://www.mirovni-institut.si)).

**15 November** – During the second European Social Forum in Paris, a transnational group of activists "erases" the Embassy of the Republic of Slovenia and makes an inscription erasure in both Slovene and French in front of it. The action is aimed at expressing solidarity with the Erased, to point to the delayed resolutions of their status, and to limit the growth of racist discourse on the part of the media and authorities ([www.dostje.org](http://www.dostje.org)).

**25 November** – The last session of the National Assembly discussing the issue of the Erased. The National Assembly again initiates debate on the Technical Act, and a few minutes before midnight, 51 deputies vote against the National Council's veto. Prior to the voting, the SPP parliamentary group unexpectedly withdraws its support for the law. In his 30-minute speech, Janez Janša (SDP) refers to four alleged aggressors against

<sup>23</sup> This is already the fourth initiative for a referendum on the technical law, with the difference that the first three initiatives were submitted by Franc Majcen from Gornja Radgona – with the help of the non parliamentary Party of the Slovene Nation –, but the National Assembly rejected all of them before the technical law was adopted (Newspaper Večer, 29/10/2003, 4/11/2003).

Slovenia – former members of the Yugoslav People's Army, who are said to be enjoying political and social rights in Slovenia and even to have demanded compensation (Newspaper Večer, 26/11/2003; Newspaper Dnevnik, 27/11/2003; Newspaper Večer, 28/11/2003).

**1 December** – Jože Kreuh, former member of the SDP, begins collecting signatures among residents of Mežica, demanding that the citizenship of Marko Perak, vice-president of the Association of Erased Residents, be annulled, since he allegedly took part in the attacks on Holmec in 1991 (Newspaper Večer, 2/12/2003).

– Campaign of the Erased and their supporters called “Warrant for the Arrest” exposing those responsible for the erasure. A large number of posters showing the faces and names of governmental officials responsible for the erasure and its long-lasting consequences emerge in Ljubljana ([www.dostje.org](http://www.dostje.org)).

**2 December** – On behalf of 30 opposition deputies (13 of the SDP, eight of the NSi, four of the SNP, four of the SPP, and one of the Slovenian Youth Party), deputy Branko Grims submits an initiative for a subsequent referendum on the Technical Act, as well as an initiative anticipating collection of 40,000 signatures of the electoral body to back up the referendum demand, because the National Council has rejected the motion for a referendum on the Technical Act (Newspaper Večer, 3/12/2003; 4/12/2003).<sup>23</sup>

**3 December** – Press conference held by members of the Activist Association for the Erased, who organized the “Responsible for the Erasure – Warrant for the Arrest” campaign three days earlier. In their statement, which is signed by 12 activist groups members of the association write: “The erasure is a logical consequence of aggressive nationalism implemented by both the left and the right political options. [...] Only the courage of the Erased, who stepped out of their catacombs, organized themselves, and began demanding a return of suspended rights, showed that the seemingly non-conflict and linear history of Slovenia in recent two decades obtained its own entangling net, as well as a predicted outcome”. They add that the Warrant for the Arrest was prepared to give faces and names also to those who were responsible for the erasure, not only to its victims ([www.dostje.org](http://www.dostje.org), Newspaper Delo, 4/12/2003).

**8 December** – At its correspondence sitting, the Government reaches an opinion regarding demands for a subsequent referendum on the Technical Act, submitted by 30 deputies. The Government suggests that the National Assembly send the referendum initiative for an assessment by the Constitutional Court, since “[...] the Government believes that human rights are not and cannot be the subject of referendum voting, as such a motion would violate the constitutional principle of the legal state” (Ministry of the Interior 2004b: 2).

**9 December** – Extraordinary session of the National Assembly assessing the referendum initiative and its compliance with the Constitution. Deputies had a week's time to reach their decision, meaning that the given deadline expired on this day. However, since the decision on the constitutional assessment is only adopted at the night session, a few minutes before midnight, the demand is sent to the Constitutional Court only in the early hours of the following day – meaning that they missed the official dead-line (Newspaper Večer, 11/12/2003).

– Mladen Balaban, vice-president of the Carinthia regional committee of the Association of Erased Residents organizes a press conference in Mežica, at which a number of erased individuals face Jože Kreuh, the initiator of the petition for withdrawal of Marko Perak's citizenship, and reject allegations regarding Perak's activities during the independence war (Newspaper Večer, 12/12/2003).

**11 December** – A public debate discussing the erasure, which takes place in Menza pri koritu, Autonomous Cultural Zone *Metelkova city*, Ljubljana. Organized by the Activist Association for the Erased, the debate aims to highlight political trading with the Erased, and to the Government's refusal to rectify injustices created by the erasure ([www.dostje.org](http://www.dostje.org)).



<sup>24</sup> Starting with those who first acquired permits for permanent residence.

<sup>25</sup> The status of the constitutional law, which requires that a two-thirds majority of deputies vote, would, among other things, open the possibility for disrespecting the ruling of the Constitutional Court, because it would no longer be competent to judge the act.

**16 December** – The parliamentary Legislative and Legal Services rejects the statement that the National Assembly missed the deadline for assessing the constitutionality of the initiative for a subsequent referendum on the Technical Act, since the motion was allegedly adopted in due time, that is, before the expiration of the seven-day deadline (Newspaper Delo, 17/12/2003).

**22 December** – The Constitutional Court rejects the National Assembly's demand for an assessment of the potential unconstitutional consequences of the referendum on the Technical Act, since the National Assembly missed the seven-day deadline set by the Referendum and Public Initiative Act. Furthermore, the Constitutional Court concludes that unconstitutional consequences already occurred on 16 October, and states that any delay in implementation of the Constitutional Court ruling issued in April prolongs the unconstitutional situation. Hence, a possible rejection of the Technical Act by the anticipated referendum will not cancel the obligations of the National Assembly and the Ministry of the Interior to implement the given decision of the Constitutional Court (Ministry of the Interior 2004b: 2).

**30 December** – Extraordinary session of the National Assembly, at which deputies adopt the ordinance on the calling of a referendum on the Technical Act. The deadline set for holding the referendum is 15 February 2004 (Newspaper Večer, 30/12/2003).

– Minister of the Interior Dr Rado Bohinc (ULSD) announces at the session of the Committee on Interior Politics that if the Technical Act is rejected at the referendum, the Ministry of the Interior will start issuing subsidiary decisions directly on the basis of the Constitutional Court decision (Newspaper Večer, 31/12/2003).

**31 December** – A group of 33 coalition deputies submits a request for assessment of the constitutionality of the ordinance on the calling of a referendum on the Technical Act to the Constitutional Court. They propose that the Constitutional Court freeze the realization of the ordinance on the calling of a referendum until it has reached a decision (Ministry of the Interior 2004b: 3).

## 2004

**7 January** – President of the Republic Dr Janez Drnovšek states that everything must be done in order to prevent the holding of the irrational referendum and that deputies will have to find a legal procedure for the withdrawal of the Technical Act. He also says that the government coalition should engage in serious discussions with the opposition on adoption of the Systemic Act (Ministry of the Interior 2004b: 3).

**8 January** – Minister of the Interior Dr Rado Bohic states at the press conference after the meeting of the government that the Ministry will shortly start issuing subsidiary decisions according to the chronological order.<sup>24</sup> Hereby, coalition parties try to convince the opposition to withdraw the initiative for the referendum. They also offer that parties would in this case jointly annul the already adopted law and find a compromise solution, presented in the Systemic Act, which would also include the content of the Technical Act. Deputy Janez Janša (SDP) states that the referendum cannot be called off and expresses his belief that after the referendum deputies would have to decide on a new way to settle the discrepancy between the ruling of the Constitutional Court, the actions of the National Assembly and the actual situation. He thinks the discrepancy can be "diminished by defining with the Systemic Act on the Erased that payment of compensation for the past is not viable and that individual cases will be handled individually. The dilemmas with the Systemic Act might be avoided if this law had the status of a constitutional law" (Newspaper Večer, 9/1/2004).<sup>25</sup>

– Deputy Janez Janša (SDP) announces an interpellation against the Minister Rado Bohinc (ULSD) if the latter starts issuing subsidiary decisions without a legal basis. At the same time he announces a subsequent revision of

<sup>26</sup> He first submitted the proposition at the beginning of a debate within the parliamentary Committee on Domestic Policy on 15 October 2003, when even the ruling coalition voted against his motion, as it believed that naming those responsible would hinder reaching a compromise with the opposition (Newspaper Večer, 16/10/2003).

<sup>27</sup> Among them Dr Alenka Šelih, Dr Boris A. Novak, Ciril Zlobec, Dr Slavoj Žižek, Dr Ljubo Bavcon, Dr Spomenka Hribar, Dr Jože Mencinger, Dr Lucija Čok, Dr Niko Toš, Dr Robert Blinc, Vinko Möderndorfer, Dr Dušan Nečak, Dr Rudi Rizman, Dr Vlado Mihelj, Dr Marko Kerševan, Dr Ljubica Marjanović Umek, Dr Bojan Borstner, Viki Grošelj, Dr Darja Zavišek, Dr Svetlana Slapšak, Dr Ludvik Horvat.

already issued decisions and criminal prosecution of the Minister or officials who would issue these decisions (Newspaper Večer, 9/1/2004).

**9 January** – The Constitutional Court rules that the implementation of the ordinance on the calling of a referendum on the Technical Act is suspended until a final decision is reached, since the court must first rule if the demand of the submitters is legitimate (Ministry of the Interior 2004b: 3; Newspaper Večer, 10/1/2004).

**12 January** – Commencement of discussions on the Systemic Act on the Erased and public presentation of opinions organized by the parliamentary Committee for the Interior Politics at the request of SDP. The discussion, which lasts seven hours, is also attended by members of the Association of Erased Residents and their advocates. Nevertheless, the discussion doesn't differ from previous discussion related to the Erased as regards content. Jožef Školč (Liberal Democracy of Slovenia, herein after LDS) formally proposes for the second time that the Ministry of the Interior prepare a chronology of responsibility for the erasure and enclose it with the Systemic Act (Newspapers Večer and Dnevnik, 13/1/2004).<sup>26</sup>

**13 January** – President of the National Council Janez Sušnik addresses a letter to the President of the National Assembly, Borut Pahor, in which he proposes the possibility for a political solution to the issue of the Erased. He proposes that the problem of the Erased be regulated in a single law, while the initiators of the referendum should withdraw the referendum in exchange (Ministry of the Interior 2004b: 4).

**14 January** – Minister of the Interior Rado Bohinc, (ULSD), in his statement for the Slovene Press Agency, doesn't exclude the possibility that the problem of the Erased could be settled with a constitutional law and reiterates that it is inappropriate to decide on this issue by referendum (Ministry of the Interior 2004b: 4).

**17 January** – Council of Europe Commissioner for Human Rights Alvaro Gil-Robles in his letter to Ombudsman Matjaž Hanžek mentions that the decision of the Constitutional Court must be implemented immediately and that the state must start issuing subsidiary decisions in order to settle the problem of the Erased once and for all (Newspaper Delo, 17/1/2004).

**19 January** – The second meeting of representatives of parliamentary parties aimed at adjusting different propositions put forward to solve the problem of the Erased and presentation of several drafts of the constitutional law. The deputies fail to reach an agreement (Newspaper Večer, 20/1/2004).

**20 January** – Roundtable "Erased Responsibility" organized in the Cultural and Congress Centre Cankarjev dom by the Forum for the Left ([www.mladina.si](http://www.mladina.si)).

**21 January** – The government adopts a new proposal of the Systemic Act, which is presented at a press conference by the Minister Rado Bohinc. This is a substitute for and an upgrade of the previous proposal of the Systemic Act, which has already passed first reading in the National Assembly. It includes two compromises: the revision of already carried out procedures for granting the status of a foreigner and the restrictions in the area of compensation rights. Representatives of the Ministry of the Interior as well as the opposition leader, Janez Janša (SDP), state that they want the new law to have the status of a constitutional act. Minister Rado Bohic also states that the Ministry will postpone the issuance of subsidiary decisions to the Erased until political discussion on the issue is concluded. If a compromise solution is not reached soon, the Ministry of the Interior will start issuing subsidiary decisions directly on the basis of the Constitutional Court decision (Ministry of the Interior 2004b: 4; Newspaper Večer, 22/1/2004).

– One hundred and eighty-six eminent persons<sup>27</sup> sign an appeal for legal and ethical responsibility, believing that respect for human rights cannot be dependent upon referendum results. Therefore, they call for an

immediate solution of the problem in line with the decision passed by the Constitutional Court (Newspaper Večer, 22/1/2004).

– The Academic Committee of the Ljubljana Graduate School of Humanities (ISH) addresses a sharp protest letter “against the violation of human rights and the endangerment of the constitutional order caused by the realization of ‘direct’ democracy of the referendum type and a street-media campaign” to the competent institutions, international institutions and the general public (Newspaper Večer, 22/2/2004).

**22 January** – The parliamentary Legislative and Legal Service establish that the Government did not submit the new proposal of the Systemic Act in compliance with the rules of procedure of the National Assembly and that it thus cannot be accepted into parliamentary procedure. One of the given reasons is that the proposal does not clearly define the assessment of the financial consequences of the Act for the national budget. The President of the National Assembly, Borut Pahor (ULSD), therefore urges the Government to amend the legislative proposal. After representatives of the Government amend the proposal and again submit it to the National Assembly, the parliamentary Legislative and Legal Service establish that the Government cannot table the new proposal of the Systemic Act, because the initial proposal already went through first reading in the parliament (Newspaper Večer, 23/1/2004).

– A group of 33 deputies of coalition parties amends the demand (first signed by Miran Potrč, ULSD) for the assessment of constitutionality of the ordinance on the calling of the referendum on the Technical Act. They propose that the Constitutional Court judge on the constitutionality of the contested law from the point of view of human rights as well as that the Government and the National Assembly state their opinions on the amendment of the demand. Until then, the Constitutional Court should suspend the judging (Ministry of the Interior 2004b: 5; Newspaper Delo, 23/1/2004).

**26 January** – The Constitutional Court rejects the demand of 33 deputies for the judgment of constitutionality of the ordinance on the calling of the referendum on the Technical Act and orders the National Assembly to set a new date for the referendum (Ministry of the Interior 2004b: 5).

**28 January** – Former president Milan Kučan labels the inter-party negotiations on the Erased as a delaying and evading of responsibility. He believes the adoption of the constitutional act was a formal possibility, but not in a way that would deprive the Erased of the possibility of a constitutional complaint. As regards the issue of subsidiary decisions, Milan Kučan states that the Constitutional Court reached a decision on this issue in April 2003 (Ministry of the Interior 2004b: 5).

**29 January** – The newspapers Večer and Delo publish evidence that the Ministry of the Interior has restored the status of permanent resident from 25 February 1992 till 2000 (date of acquisition of the permit for permanent residence in compliance with the ARLSC) to some individuals on the basis of the Constitutional Court decision Up-333/96 issued in 1999 (Newspapers Delo and Večer, 29/1/2004).

– The National Council proposes that the National Assembly amend Article 13 of the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, which could entirely settle the issue of the Erased (Ministry of the Interior 2004b: 5).

**30 January** – The parliamentary Committee on Interior Politics, with incomplete attendance (members of the committee from parties SDP, NSi and SNP obstruct the meeting) prepares the text of the Systemic Act for second reading in the National Assembly. Members of the Committee propose amendments, which are the result of inter-party negotiations, among others, the limitation of compensation, the possibility of revision of already issued permits for permanent residence and selectivity in the retroactive return of the status of permanent residence (Newspaper Delo, 1/1/2004; Ministry of the Interior 2004b: 5–6).

**2 February** – At its extraordinary session, the National Assembly reviews the proposal for the Systemic Act for the second time. However, the session is reminiscent not of a parliamentary session but “[...] of a unique pre-election TV debate [...]. [A]fter six hours, the discussion on the Systemic Act is interrupted, as a new date

<sup>28</sup> Speaking for daily newspaper Večer exactly one year later, the Minister of the Interior of the subsequent mandate, Dragutin Mate, states that issuance of subsidiary decisions terminated on 31 January 2005 (Newspaper Večer, 19/2/2005). A few months later, he gives different information, saying issuance of subsidiary decisions ended on 31 July 2004 when they had issued 4,107 subsidiary decisions altogether (Newspaper Večer, 1/3/2005, 2/3/2005). However, Mate changes his mind again almost three months later, saying that Ministry of the Interior stopped issuing subsidiary decisions as early as May 2004 (Newspaper Večer, 23/5/2005).

for the referendum on the Technical Act is being set. Yet, following a renewed polemical discussion, the majority rejected the proposed date, and the opposition left the hall, whereas deputies of the government coalition nonetheless proceeded with the second reading of the Systemic Act on the Erased" (Newspaper Delo, 3/2/2004).

– At 11.16 p.m., while coalition deputies are still in session, the opposition parties SDP and NSi submit an initiative for the collection of signatures in support of the preliminary legislative referendum on the Systemic Act, signed by more than 1,000 voters, in the main parliamentary office (Ministry of the Interior 2004b: 6; Newspaper Delo, 4/2/2004).

– Shortly before midnight, twenty-three deputies of the SDP, NSi and SNP opposition parties – first signed by France Cukjati (SDP) – submit in parliamentary procedure a proposal for the amendment of Article 13 of the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia (Newspaper Delo, 4/2/2004; Ministry of the Interior 2004b: 6).

– Speaking at a press conference, the president of the Constitutional Court, Dragica Wedam Lukič, reiterates that the decision of the Constitutional Court is binding and that the only constitutionally admissible method for omitting the Constitutional Court decision is changing the Constitution itself. In principle, the Constitutional Court cannot judge the conformity of the constitutional law with the Constitution, unless it establishes that it is an abuse of the constitutional law with the purpose to regulate an issue that is not a constitutional subject (Ministry of the Interior 2004b: 6).

**3 February** – The Ministry of the Interior starts issuing subsidiary decisions on permanent residence to the Erased directly on the basis of Article 8 of the Constitutional Court decision dated 3 April 2003.<sup>28</sup> "The Minister believes issuance of decisions restoring the status of the illegally erased to be a constitutional duty of the Ministry of the Interior and the Government, as well as a political responsibility of the state, aimed at regulating the matter before the domestic and international public" (Ministry of the Interior 2004b: 6).

– President of the National Assembly Borut Pahor (ULSD) submits an initiative for the collection of signatures in support of a preliminary legislative referendum on the Systemic Act to the Parliamentary Legislative and Legal Service (Ministry of the Interior 2004b: 6).

**4 February** – Opposition parties withdraw the proposal of the constitutional law from legislative procedure, stating that the Ministry of the Interior has already started issuing subsidiary decisions; hence, there is no sense in looking for any solution to the problem of the Erased (Newspaper Delo, 5/2/2004).

– President of the Republic of Slovenia Janez Drnovšek, in a public statement, urges the coalition and opposition parties to seek consensus and to call a referendum as soon as possible – although a referendum is irrational in his belief. In principle, the President also supports the issuing of subsidiary decisions and the adoption of the constitutional law in the form proposed by the National Council, and in this way respecting the ruling of the Constitutional Court (Newspaper Delo, 5/2/2004).

**5 February** – Deputies of the LDS, ULSD and the Democratic Party of Slovene Retirees parties submit a demand to held an extraordinary session of the National Assembly, and propose 4 April as the date for the referendum (Ministry of the Interior 2004b: 7; Newspaper Večer, 7/2/2004).

– The Parliamentary Legislative and Legal Service considers that the referendum question, referring to the Systemic Act, could result in anti-constitutional consequences; therefore, President of the National Assembly, Borut Pahor (ULSD), proposes that the National Assembly debate the constitutionality of the content of the referendum demand (Ministry of the Interior 2004b: 7; Newspaper Večer, 7/2/2004).

**10 February** – Following nearly seven hours of discussion in extraordinary session, the National Assembly sets 4 April as the date of the subsequent legislative referendum on the Technical Act. Furthermore, the National Assembly submits the initiative for the preliminary referendum on the Systemic Act, for judgement by the Constitutional Court (Newspaper Delo, 11/2/2004).

– Speaking at a press conference in the name of the Helsinki Monitor of Slovenia, Neva Miklavčič Predan demands that all the Erased be re-instituted as residents of Slovenia, emphasizing that the Erased are entitled to Slovene citizenship, not only to permanent residence. Moreover, she says they should also receive their delayed pensions and health insurance, as guaranteed by the Constitution, and adds that the offered solutions to the situation - the constitutional law and Technical Act, as well as the referendum - are unacceptable (Ministry of the Interior 2004b: 7-8).

**13 February** – A group of seven deputies (three from the Youth Party of Slovenia, three from the SPP, and the representative of the Hungarian minority) prepare a proposal for a constitutional law on the Erased. They state that the proposal will not be submitted into parliamentary procedure until signatures of 60 deputies – a two-thirds majority, as required for adoption of a constitutional act - are collected (Newspapers Delo and Večer, 14/2/2004).

**14 February** – In his interview for the daily newspaper Večer, Minister of the Interior Rado Bohinc, states that he has no intention of initiating a procedure aimed at establishing responsibility for the erasure. He says that, “[t]he competent bodies had 12 years to decide over this issue within the framework of their duties, awarded by the law. I see no serious reasons to establish responsibility twelve years later. Even more so, since I am determined to settle the issue and get it off of the agenda of Slovene political reality” (Newspaper Večer, 14/2/2004).

**24 February** – Opening of the Week of the Erased with a public debate “Freedom is Diversity – Rights for All!”, organized by the Dostje! movement. One press release issued by the organizers reads: “The vision of Slovenia, Europe and the world, fostered by new-age fascists is grotesque. It is a vision of apartheid, of walls, with the Erased and other excluded groups remaining on the other side, while on this side are the prisoners of the ethno-Nation. [...] Where do the walls in Slovenia stand and where are they built? There is a wall, which erased 18,305 people twelve years ago. This wall simply does not want to fall” (www.dostje.org).

**25 February** – “The Day for Demolishing the Walls of Exclusion” – demonstration in front of the premises of the SDP in Ljubljana, organised by the Dostje! movement. A statement marking construction of a symbolic wall reads: “The wall that we built symbolises the politics of hatred, instigation and apartheid, which has in the last couple of months become the exclusivist politics of the authorities, especially of the Slovene Democratic Party. The wall is a symbol of hatred towards diversity, variety and freedom, set up by those whose power depends on spreading fear. [...] Those who are actually building the wall were left on the other side this time. They themselves can now experience the feeling of being excluded, walled in, left without a way out. The wall of hatred offers no room for dignity, respect and freedom” (www.dostje.org).

– The Association of Erased Residents convenes a meeting with representatives of foreign embassies in cooperation with the Information and Documentation Centre of the Council of Europe in Ljubljana (Newspaper Dnevnik, 25/2/2004).

– A group of seven deputies, who have unsuccessfully set out to gather 60 signatures in support of their proposal for the constitutional law, submit the proposal to the President of the National Assembly, Borut Pahor (ULSD), who is to decide on future actions (Newspaper Dnevnik, 25/2/2004).

**26 February** – “A Demonstration of All Types of Erased Persons” takes place in the Ljubljana Park Zvezda. Its aim is to show solidarity with the Erased and other less privileged groups, and to point to the fact that human rights cannot be subject to a referendum vote (www.dostje.org).

– The general assembly of the Association of Erased Residents prepares its fourth appeal, which is sent directly to the Council of Europe Commissioner for Human Rights, Alvaro Gil-Robles, and the European Commission

<sup>29</sup> The three previous Association of Erased Residents appeals were sent to “the state and general public”, whereas the fourth was sent only to the above-mentioned European institutions, owing to recent events in the Slovenian political arena.

against Racism and Intolerance (ECRI).<sup>29</sup> The appeal describes the latest events, which in their opinion do not point to a solution to the problem of the Erased (Association of Erased Resident’s Fourth Appeal to the State and Public).

– The Constitutional Court rejects the initiative of the SDP and NSi for the calling of a preliminary legislative referendum on the proposal of the Systemic Act, since parts of the question do not comply with the Constitution (Newspaper Večer, 27/2/2004).

**27 February** – The SDP files an interpellation against the Minister of the Interior, Dr Rado Bohinc (ULSD) (Ministry of the Interior 2004b: 9).

– “Story Telling” event of the Erased at the Faculty for Social Work in Ljubljana (Newspaper Dnevnik, 25/2/2004).

– President of the National Assembly Borut Pahor (ULSD) calls upon the initiators of the referendum on the Systemic Act to define their position towards possible continuation of procedures – he wants to establish whether they would insist on the essentially reduced referendum question. The initiators withdraw the initiative (Ministry of the Interior 2004b: 9).

**5 March** – Holding a meeting with the President of the National Assembly, Borut Pahor (ULSD), representatives of deputy groups fail to reach consensus on the constitutional law on the Erased. The draft proposal prepared by seven deputies was signed by thirteen deputies (four Youth Party deputies, three SPP deputies, three LDS deputies, two ULSD deputies, and the representative of the Hungarian minority). At least 20 signatures are required for the proposal to be submitted into parliamentary procedure. Following the meeting, Borut Pahor explains that negotiations on the issue of the Erased will continue, with the constitutional law remaining one of the possibilities for the settlement of the problem (Ministry of the Interior 2004b: 10-11).

**7 March** – Janez Janša and Andrej Bajuk submit a second initiative for a preliminary legislative referendum on the Systemic Act, which was signed by nearly 4,000 voters. They claim that the Act is bad and unfair for the citizens. President of the National Assembly, Borut Pahor (ULSD), submits the initiative for assessment by the Parliamentary Legislative and Legal Service (Ministry of the Interior 2004b: 11; Newspaper Večer, 18/3/2004).

**19 March** – The Parliamentary Legislative and Legal Service concludes that a part of the referendum question on the Systemic Act is not sufficiently clear. Therefore, President of the National Assembly Borut Pahor demands that Janez Janša (SDP) and Andrej Bajuk (NSi) adequately amend the question (Newspaper Večer, 20/3/2004; Ministry of the Interior 2004b: 11).

**24 March** – President of the National Assembly Borut Pahor receives the amended referendum question on the Systemic Act from Janez Janša and Andrej Bajuk and sends it to the Parliamentary Legislative and Legal Service, which later concludes that the amended question is not clear either (Newspaper Večer, 25/3/2004, 26/3/2004).

– Beginning of calls for a boycott of the referendum on the Technical Act. Representatives of the government parties LDS, ULSD, President of the Republic Dr Janez Drnovšek, Forum for the Left and the Association of Erased Residents join the appeal. At the same time the opposition calls for a high turnout (Newspapers Dnevnik and Večer 25/3/2004; Newspaper Večer 27/3/2004).

**30 March** – The interpellation against Rado Bohinc (ULSD) is turned down. The interpellation was submitted by ten deputies of the SDP, and supported by the NSi, SNP, SPP, and partly by the Youth Party (Newspaper Večer, 31/3/2004).

**31 March** – Constitutive session of the Forum 21 Association – an association for political, economic, development, social, cultural and ethical issues, whose initiator and president is former President of the Republic of Slovenia, Milan Kučan, with numerous directors of the largest companies in the country and other famous individuals from culture, sport and science acting as its constitutive members. The purpose of the Association

<sup>30</sup> The agenda of the National Assembly included the third reading of the Systemic Act, but a discussion about the law was actually enabled by the referendum initiative; the National Assembly cannot adopt a law that might be put to referendum.

is to be politically engaged in the society, which would enable critical reactions to important issues and offer solutions, rather than try to take over decision-making levers. At the constitutive session, they adopt a statement on the Erased, calling upon all citizens to reconsider their participation in the referendum, since it is “[...] a disgrace for democratic Slovenia and therefore harmful for the country’s reputation and respect” (Newspaper Večer, 1/4/2004).

– At the regular session of the National Assembly deputies decide on the referendum initiative on the Systemic Act, but fail to pass the demand for the assessment of constitutionality, because of the lack of quorum. The session is obstructed by SDP, NSi and SNP deputies, who believe that the National Assembly violates the rules of procedure since it is considering a constitutional judgement of the referendum initiative within the framework of the third reading of the Systemic Act (Newspaper Večer, 1/4/2004).<sup>30</sup>

– Protest rallies aimed at warning about the irrationality of the referendum and calling for its boycott, take place in Ljubljana and Koper. A demonstration demanding rights and dignity, entitled “The Erased are We/Ours!” takes place in Ljubljana, organized by the Association of Erased Residents, the international PEN, the Dostje! movement, and the Forum for the Left. Taking part in the demonstration, several distinguished individuals express their support for the Erased ([www.dostje.org](http://www.dostje.org)).

**1 April** – Regardless of the repeated obstruction of the session by deputies of the SDP, NSi and SNP, deputies of other parliamentary parties declare that the assessment of the constitutionality of the second initiative for a referendum on the Systemic Act is urgent (Newspaper Večer, 2/4/2004).

**2 April** – Prime Minister Anton Rop (LDS) announces the termination of the coalition contract with the SPP; according to an official explanation, the termination was triggered by the party’s support for the interpellation against the Minister of the Interior, Dr Rado Bohinc (ULSD) (Newspaper Večer, 6/4/2004).

**3 April** – Organisations Forum for the Left, Zofie’s Lovers, Youth Forum of the ULSD, Forum for Pohorje, Radio Marš, Peace Coalition, Pekarna and Ljubor, jointly form the Maribor coalition for the boycott of the referendum and organise a cultural event entitled “Boycott Xenophobia and Intolerance” in Pekarna Autonomous Cultural Center. Invitations to the referendum serve as event tickets, which visitors burn in front of the entrance expressing their protest (Newspaper Večer, 5/4/2004).

– A rally procession leading from Prešern Square towards Cultural and Congress Center Cankarjev dom in Ljubljana, which is organised by the Forum for the Left and the Dostje! movement issues another warning about the irrationality of the referendum. Rally participants burn invitations to the referendum as a sign of protest (Newspaper Večer, 5/4/2004).

**4 April** – Referendum on the Technical Act, subsequently called the technical referendum. The question reads, “Are you in favour of enforcement of the Act on the Implementation of Article 8 of the Constitutional Court decision No U-I-246/02-28 (ZIOdlUS246/02, EPA 956/III), adopted by the National Assembly on 25 November 2003?”. Slovenia has 1,625,805 registered voters, of which 511,321 or 31.1 per cent cast their votes at the referendum. 94.7 per cent of voters voted against the Act, 3.8 percent supported it, while 1.5 per cent of all ballots were invalid (Newspaper Večer, 5/4/2004).

**5 April** – The opposition parties offer a withdrawal of the initiative for the referendum on the Systemic Act, if the coalition parties discard the Systemic Act and restart negotiations on the constitutional form of the law instead. Government parties reply that they will wait for the assessment of constitutionality of the referendum initiative. With three ministers – members of the SPP – offering their resignation, and after the annulment of the coalition contract with the SPP, the coalition loses its constitutional majority in the National Assembly. At the same time, the SDP and NSi parties call upon the Government to resign and call early elections (Newspaper Večer, 6/4/2004).

<sup>31</sup> Romano Prodi never responded to the letter.

<sup>32</sup> “A citizen of another country, successor of the former Yugoslavia (in continuation: foreigner), who had a permanent residence at the territory of Slovenia on 23 December 1990 and actually lived in Slovenia from this day and a foreigner who lived in Slovenia on 25 June 1991 and has lived in Slovenia without interruption from that day will, irrespective of the provisions of the Aliens Act (Official Gazette of the Republic of Slovenia, No 91-I, 44/97) receive a permit for permanent resident if he/she fulfils other conditions stated in this act” (Article 1 of the ARLSC).

<sup>33</sup> Thus, if the deputies conclude that the main purpose of the referendum initiative is to delay adoption of the Act, they can reject it themselves.

**23 April** – Association of Erased Residents sends a letter to the president of the European Commission, Romano Prodi, asking him to receive them during a public celebration marking Slovenia’s entry to the European Union, taking place in Nova Gorica on 1 May. They inform Prodi that the given date will turn the Erased of Slovenia into the Erased of the European Union. Expressing their support for the Erased, Slovene and Italian supporters address an appeal to Prodi, saying “Never again erased, but citizens of a new Europe”. The letter of support is also signed by more than 40 Italian deputies. Further, the appeal states: “Europe as we dream it, the European political and social arena promoting rights and justice, to the birth of which we would like to contribute, cannot and should not have any erased persons. The historic event of enlargement and the imminent first step of the constitutional process must contribute to the formation of a real ‘European citizenship’, which will be expanding and inclusive, and will hence outgrow affiliation to individual national states as well as assure full enjoyment of human, citizenship, political and social rights to everyone living on the territory of the European Union regardless of their origin” ([www.dostje.org](http://www.dostje.org)).<sup>31</sup>

**30 April** – Attending a demonstration in Nova Gorica, approximately 200 erased persons and their Italian and Slovene supporters warn that, on Slovenia’s entry to the European Union, the problem of the Erased remains unsolved.

**1 May** – Slovenia’s accession to the European Union.

**15 May** – SNP deputy Sašo Peče submits an initiative for judgment of the constitutionality of Article 1 of the ARLSC to the Constitutional Court (Newspaper Večer, 16/5/2004).<sup>32</sup>

**17 May** – Slavica Letica from Izola (member of the SDP Youth Forum) submits to the National Assembly the third initiative for gathering signatures for calling a preliminary referendum on the Systemic Act, which was signed by 3,000 voters. In their explanation, the initiators express their disagreement with possible adoption of the Act, which would enable “swapping of the roles of the victim and the attacker” (Newspaper Večer, 18/5/2004). They also believe that adopting the Act in the current form could have extensive, long-term consequences for the economic and social situation in Slovenia, as well as for its internal relations (*ibid.*).

**20 May** – Drawing upon the opinion of the Parliamentary Legislative and Legal Service, President of the National Assembly, Borut Pahor (ULSD), proposes submission of the third referendum initiative for assessment by the Constitutional Court, since the question is neither clear nor precise. The National Assembly should at the same time evaluate whether the purpose of the initiative was only to delay the adoption of the Systemic Act<sup>33</sup> (Newspaper Večer, 21/5/2004).

**21 May** – Coalition deputies fail to reject the third initiative for calling the preliminary legislative referendum on the Systemic Act, because of insufficient presence of deputies. Immediately before the voting, four opposition parties (SDP, NSi, SPP, SNP) announce obstruction of the session and leave the hall (Newspaper Večer, 22/5/2004).

– A member of the executive board of the SDP, Branko Grims, submits the fourth initiative for gathering of signatures for calling a preliminary referendum on the Systemic Act, which was signed by 1,251 voters, to the President of the National Assembly, Borut Pahor (ULSD) (Newspaper Večer, 22/5/2004).

**24 May** – Based on the opinion of the Parliamentary Legislative and Legal Service, President of the National Assembly, Borut Pahor, suggests that the fourth referendum initiative should also be submitted for assessment by the Constitutional Court. Again, he states that the question is not clear, while the National Assembly should estimate whether the intention of the initiative was only to delay the adoption of the Systemic Act (Newspaper Večer, 25/5/2004).



**25 May** – With 44 votes in favour and none against, the ruling coalition (LDS, ULSD and Democratic Party of Slovene Retirees) rejects the third referendum initiative, which was supposedly intended only to delay the adoption of the Systemic Act. Opposition parties obstruct the vote (Newspaper Večer, 26/5/2004).

**28 May** – The Committee on Interior Politics proposes that the National Assembly and its deputies reject the fourth initiative for the referendum – as was the case of the third initiative –, and discourages submission of the initiative for assessment by the Constitutional Court (Newspaper Večer, 29/5/2004).

**31 May** – With 45 votes in favour and none against, deputies - in the absence of the opposition parties - reject the fourth initiative for a referendum on the Systemic Act, since its allegedly sole intention was to block the adoption of the Systemic Act (Newspaper Večer, 1/6/2004).

– Slavica Letica files a complaint to the Constitutional Court due to the rejection of the third referendum initiative (Newspaper Večer, 1/6/2004).

**June** – Publication of a special report “The Issue ‘of the Erased’ in Annual Reports of the Ombudsman for the period 1998 – 2003” by the Office of the Human Rights Ombudsman (Special report, Office of the Human Rights Ombudsman, 2004).

**5 June** – Aleksandar Todorović, president of the Association of Erased Residents, resigns his post.

**9 June** – Branko Grims (SDP) files a complaint with the Constitutional Court, owing to the rejection of the fourth referendum initiative. He believes that the decision of the National Assembly was a brutal and unfounded intervention in the right of citizens. The Constitutional Court should, upon his proposal, also decide whether spreading fabricated statements regarding Slovenia’s independence beyond its borders constituted an act of “*spreading hatred and intolerance against the Republic of Slovenia and its citizens*” (Online newspaper 24 ur, 9/6/2004). In connection with this, he mentions the statement of an “Italian radical leftist”, who supposedly stated that he would, together with the Peace Institute, hold demonstrations in Nova Gorica, because his “colleagues from Slovenia informed him that 30,000 people were deprived of their citizenship in Slovenia” (ibid.). Believing the Peace Institute to be financed by the Government through taxpayers’ money, Grims states that the Constitutional Court should also verify activities performed by the Institute, since its members submitted the aforementioned information to certain EU member states (ibid.).

**13 June** – National elections for the members of the European Parliament.

**23 June** – The Constitutional Court confirms the constitutionality of the decision of the National Assembly not to call a referendum on the Systemic Act, which was proposed by Slavica Letica. In its ruling, the Constitutional Court states that this was already the third initiative for the same law, adding that the first two initiatives, equal in content, have already been rejected by the Constitutional Court. Consequently, the Court established that the third initiative is aimed at preventing the adoption of the law and thus constitutes an abuse of the right to referendum (Online newspaper 24 ur, 23/6/2004).

**8 July** – The Constitutional Court rejects the fourth initiative for a referendum on the Systemic Act, which was submitted by Branko Grims (SDP), and thus confirms the correctness of the decision reached by the National Assembly. The latter rejected the initiative because it was supposedly submitted with the aim of delaying the adoption of the law (Online newspaper 24 ur, 8/7/2004).

**29 July** – A public debate on the erasure and a screening of the film *Rubbed Out*, by Dimitar Anakiev take place in the Student Cultural Centre within the framework of the third conference People’s Global Action in Belgrade.

**25 August** – Deputies of the opposition SDP, NSi, SPP, SNP, and a former Youth Party deputy submit a draft proposal for an amendment of the constitutional law on the Erased into parliamentary procedure. They propose an amendment of the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia with new articles defining strict criteria for erased persons to acquire permanent residence status retroactively from the day of erasure. Government parties oppose the proposal, since they believe that with

regard to both procedural and substantive reasons, it is impossible to adopt a constitutional law one month prior to the national elections (Online newspaper 24 ur, 25/8/2004).

**26 August** – Following a reaction of the coalition parties to the proposed amendments to the constitutional law, a group of deputies from the SDP, NSi, SPP, SNP and Youth Party parties submits the fifth initiative for a preliminary legislative referendum on the Systemic Act to the National Assembly (Newspaper Delo, 28/8/2004; online newspaper 24 ur, 26/8/2004).

**31 August** – The parliamentary Committee on Interior Politics supports the opinion of the Parliamentary Legislative and Legal Service and suggests that the National Assembly do not call a preliminary legislative referendum on the Systemic Act, since an eventual submission of the initiative would only prolong the unconstitutional situation (Online newspaper 24 ur, 31/8/2004).

**1 September** – Following a polemical debate and obstruction on the part of opposition parties, the National Assembly rejects the fifth initiative for a preliminary legislative referendum on the Systemic Act by 46 votes in its favour (Newspaper Delo, 2/9/2004).

**8 September** – The SNP expresses public indignation at not being able to gather enough deputy votes for convocation of an extraordinary session of the National Assembly at which the proposed Systemic Act could be submitted for a third reading and rejected. Hence the constitutional law on the Erased could be adopted in this mandate, "should adequate political will be attained" (Online newspaper 24 ur, 8/9/2004).

**10 September** – Jože Kreuh files charges against the Minister of the Interior, Rado Bohinc, who allegedly did not respond to his request for the annulment of Slovene citizenship of the vice-president of the Association of Erased Residents, Marko Perak, and the president of the Association of Erased Residents' regional committee for Carinthia, Mladen Balaban (Online newspaper 24 ur, 10/9/2004).

**3 October** – Parties of the former opposition win elections to the National Assembly of the Republic of Slovenia.

**16 October** – Within the framework of the third European Social Forum at Middlesex University in London, Aleksandar Todorović presents the erasure, its consequences and the forms of organisation of the Erased.

**29–31 October** – Karaula MiR (*Migration/Resistance*) organises a three-day science-and-art event *O partigiano*, presenting the issue of the Erased in Friuli-Venezia Giulia, Italy.

**12 December** – Association of Erased Residents' Executive Board sends a letter to the Government of the Republic of Slovenia and the media, warning that, "The political power has now fallen into the hands of three political parties (and Democratic Party of Slovene Retirees), regardless of the fact that they resorted to unethical means (misleading the public with lies and untruths) when blocking late and only partial attempts of the previous Government to somehow finally settle the problem of the Erased after a 12-year delay. They have thus also assumed responsibility for settling the still open issue of the Erased" (Association of Erased Residents' letter to the Government and the media, 12/12/2004).

**Mid-December** – The Government decides to terminate the procedure for adopting the Systemic Act, which is already in third reading. Speaking to journalists, newly appointed Prime Minister Janez Janša (SDP) states that it is clear "[...] that this Government will not adopt the Act, since we have claimed even before that the proposed Act is not only bad, but also does not lead to any solutions" (Online newspaper 24 ur, 21/12/2004). Negotiations on the formation of the coalition allegedly include an agreement that the constitutional act, which will soon be prepared, be adopted in the course of time. Since the adoption of the act doesn't depend on the coalition alone, the parties will try to obtain consent from the opposition before the act in question is eventually submitted (*ibid.*).

## 2005

**26 January** – During his meeting with the Human Rights Ombudsman, Matjaž Hanžek, Prime Minister Janez Janša (SDP) states that the Government would once again tackle the issue of the Erased. At the same time, he again expresses his view that the constitutional law would be the only solution to the given problem (Online newspaper 24 ur, 26/1/2005).

**18 February** – The Erased announce a five-day hunger strike aimed at drawing attention to the 13<sup>th</sup> anniversary of the erasure. They also warn that the new Government is pushing the problem of the Erased into oblivion (Online newspaper 24 ur, 18/2/2005).

**21 February** – At noon, eleven members of the Initiative Committee of the Erased start a warning hunger strike in the building where the seat of the representative of the European Commission in Slovenia is situated. The strike is to last until 26 February. The hunger strike marks the beginning of the third Week of the Erased, and is aimed at expressing their demand for respect of the Constitutional Court decision. Erwan Fouere, head of the representative of the European Commission in Slovenia visits them at 1 p.m. The private security service Sintal guarantees that it will not prevent the strike, since those on strike are not harmful either to other individuals or to the property. Moreover, speaking live at 10 p.m. on the national television news programme, a representative of Sintal reiterates that they have no intention of forcibly removing the individuals on hunger strike, and that they will even leave toilets open overnight, but only on the condition that supporters of the Erased withdraw from the building during the night. Following withdrawal of media representatives and supporters of the Erased shortly before midnight, fifteen security officers forcibly remove the striking individuals from the premises. "Protestors from the group of the Erased on hunger strike were forcibly dragged along the floor and thrown out of the entrance hall. During the attack on protesters, Sintal security guards insulted them by calling them names. Some protestors were taken to the Emergency Room of the University Medical Centre in Ljubljana for treatment of inflicted injuries" (Online newspaper 24 ur and newspaper Večer, 22/2/2005).<sup>34</sup>

– In his answer to the individuals on hunger strike, Prime minister Janez Janša (SDP) refers to the Government's intention to table its proposal for a constitutional act, which will handle cases individually and says that injustices will only be repaired in cases where the competent administrative organs made mistakes (Online newspaper Dnevnik and online newspaper 24 ur, 21/2/2005).

– President of the National Assembly, France Cukjati (SDP), rejects a debate on the special report of the Office of the Human Rights Ombudsman on the Erased, arguing that the given subject was not put on the agenda in compliance with the Procedural Rules of the National Assembly (Online newspaper 24 ur, 21/2/2005; online newspaper Večer, 22/2/2005).

**22 February** – The number of individuals on hunger strike is reduced to seven, for health reasons. The remaining individuals continue the strike at an ad hoc location at Cultural and Congress Center Cankarjev dom, where they are, in addition to representatives of the Helsinki Monitor of Slovenia and Amnesty International Slovenia, visited by representatives of deputy groups from the LDS, ULSD, Democratic Party of Slovene Retirees and SPP. They agree to meet in the National Assembly the following day (Online newspaper 24 ur, 22/2/2005).

**23 February** – The individuals on hunger strike meet with a group of deputies from the ULSD, LDS, Democratic Party of Slovene Retirees and SPP. They propose firstly that the deputies should attempt to reach consent within their own parties, which would help in bringing the problem to the European level. Secondly, the Erased believe that the deputies should form a group, which would have the task of settling critical problems faced by the Erased; the group should consist of deputies, representatives of the Erased, NGOs, activist groups and supporters of the Erased. Thirdly, they ask them for help in seeking a location to continue their hunger strike (Online newspapers Dnevnik and 24 ur, 23/2/2005).

<sup>34</sup> Even though charges were filed, none of the Sintal security officers has ever been held responsible for forcible eviction. On the other hand, the owner of the premises, Nova Ljubljanska banka, has denounced the group of protestors for damaging a carpet with cigarette burns in the lobby where the hunger strike took place (Online newspaper 24 hours, 6/5/2005).

– During the visit of the Erased to the National Assembly, a poster is stuck on the door of the SNP deputy group in the National Assembly, saying: “All the Erased are invited to a dance, where you will be entertained by Zmago Jelinčič playing a machine gun”. Sašo Peče, vice-president of the SNP party initially admits that their deputy group stuck the poster, but later denies any involvement, saying the content of the poster first appeared three years ago in the form of graffiti in Vič-Ljubljana, and later also on the internet (Online newspaper 24 ur, 23/2/2005; online newspapers 24 ur and Večer, 25/2/2005).

– Members of the youth forum of the LDS party read out loud the special report of the Office of the Human Rights Ombudsman on the Erased during their walk around the parliamentary building. Symbolically fixing the report to the main door, they protest against the fact that the National Assembly refused to discuss the report (Online newspaper 24 ur, 23/2/2005; newspaper Večer, 24/2/2005).

**24 February** – The head of the representative office of the European Commission in Slovenia, Erwan Fouere, meets with the Erased in his office and gives each individual on hunger strike three minutes time to explain his opinion or situation. He assures them that he will continue monitoring the process of settling their issue (Online newspaper Večer, 25/2/2005).

**25 February** – As a result of positive reactions to their protest and because they could not find an appropriate location, a group of the Erased terminates their hunger strike ahead of the previously determined time (Online newspaper Dnevnik, 25/2/2005; online newspaper Večer, 26/2/2005).

**26 February** – The Association of Erased Residents marks the 13<sup>th</sup> anniversary of the erasure with the First Appeal to Slovene and European authorities (Open letter of Marko Perak, online newspaper Večer, 16/12/2005).

**4 March** – The international secretariat of Amnesty International in London sends a special report on the Erased, “Slovenia: Restore the Rights of the ‘Erased’”, to the media around the globe. Among other things, the report demands that the Slovene authorities explicitly and publicly admit the discriminatory nature of the erasure and ensure that the status of permanent residence of the Erased is reinstated retroactively (Online newspaper Večer, 5/3/2005).

**16 April** – The Erased establish their second association in Koper – The Civil Initiative of Erased Activists (Slovene acronym CIIA). Aleksandar Todorović is appointed president of the new association. Speaking at the constitutive meeting, Todorović states that the association’s activities will be devoted to the final regulation of the status of the Erased (Online newspaper Večer, 18/4/2005; online newspaper 24 ur, 16/4/2005).

**26 May** – The Council of Europe Advisory Committee for the Framework Convention for the Protection of National Minorities calls on Slovenia to make increased efforts to solve remaining problems concerning the erased residents of Slovenia and their legal status, including access to citizenship, and social and economic rights (Second Opinion on Slovenia, adopted on 12/5/2005 by the Council of Europe, ACFC/OP/II (2005)005).

**2 July** – Nine Civil Initiative of Erased Activists representatives start a hunger strike at the Šentilj border crossing in support of Ali Berisha, an Erased person born in Kosovo, who fled to Germany following a failed attempt by the Slovene authorities to deport him to Albania in 1993. After he had lived in Germany for twelve years, German authorities wanted to deport him to Kosovo, although they would have to return him to Slovenia. The association demands that the Ministry of the Interior assure Ali Berisha a permanent residence permit in compliance with the ruling of the Constitutional Court, but the Ministry rejects their demand (Online newspaper 24 ur, 2/7/2005; online newspaper Večer, 4/7/2005).

**3 July** – The Association of Erased Residents’ Executive Board in its statement denies support for the hunger strike as a means for settling such problems, but shares its indignation over statements given by the Ministry of the Interior (Online newspaper 24 ur, 3/7/2005).

**14 July** – Simultaneously with the discussion of the Special Report of the Office of the Human Rights Ombudsman on the Erased, parliamentary deputies discuss the proposal of the recommendation of the

Parliamentary Committee on Petitions, Human Rights and Equal Opportunities that the issue of the Erased should be regulated by the Systemic Act, which has already passed two readings. With 49 in its favour, the National Assembly rejects the proposal, since the parliamentary majority believes the law would represent a basis for unjustified compensation payments, and therefore supports the constitutional law. At the same time, Branko Grims (SDP), urges the Human Rights Ombudsman to resign. During the same session, Minister of the Interior Dragutin Mate (SDP) states that the Ministry is planning to prepare “a constitutional law or a law, which would be acceptable and would provide a solution for the entire issue” (Online newspaper 24 ur, 14/7/2005). A group of people, including external experts, are intensively working on the act (ibid.; online newspaper Večer, 15/7/2005).

– A group supporting the individuals on hunger strike urges the Slovene authorities with a petition “Give the Erased Their Rights Back” to explicitly and publicly recognise the discriminatory nature of the erasure, to assure reinstitution of their permanent residence status with retroactive validity, and to make sure that all affected individuals have access to reparation for injustices (Online newspaper 24 ur, 4/7/2005).

– Amnesty International Slovenia issues a statement expressing support for the individuals on hunger strike (Online newspaper 24 ur, 4/7/2005).

**18 – 21 July** – Only three of the nine individuals who went on hunger strike persist; therefore, they (together with their supporters) move to the Autonomous Cultural Zone *Metelkova city* in Ljubljana, where two of them continue their strike. They are visited by deputy Majda Potrata (Social Democrats – renamed from United List of Social Democrats), while the President of the National Assembly, France Cukjati (SDP), sends them a letter urging them to end the strike, since the Government coalition has serious intentions of settling the problem of the Erased in such a way as to correct the injustice done to those who suffered (Open letter of Matevž Krivic, online newspaper Večer, 22/7/2005).

**23 July** – A seminar “Slovenia and Friuli-Venezia Giulia: Experience of Hospitality and Repressive Politics”, discussing migration issues in Slovenia and Italy, is organised by Karaula MiR in Udine, Italy. Representing the Erased, Irfan Beširević presents problems faced by the Erased and the reasons for their hunger strike.

**21 – 25 July** – The two individuals persisting with the hunger strike and their supporters move to the UNICEF’s central office in Ljubljana, in order to point to the problem of 3,000 erased children. They are received by the executive director of UNICEF Slovenia, Maja Vojnovič and the vice-president of the executive committee, Jožef Kunič. They assure that they would try to acquire information referring to the issue of children, and that they will do whatever is possible within their capabilities and competences to settle the problem (Online newspaper 24 ur, 21/7/2005; online newspaper Večer, 22/7/2005).

**24 July** – A documentary film “On the Other Side of the River – Dall’ altra parte del fiume” by Karaula MiR is publicly screened in front of the UNICEF building in Ljubljana to support the hunger strike.

**25 July** – The two individuals on hunger strike and their supporters move to the central office of the UNHCR in Ljubljana, where they present the organisations’ representative, Gregory Garras, with their suspicions about the embezzlement of data on the number of refugees from the former Yugoslavia and on possible concealment of money for their accommodation in Slovenia. Among the Erased were individuals who were forced to report in Slovenia as refugees from war areas in the 1990s.<sup>35</sup> Aleksandar Todorović stated that Slovenia managed to acquire UN funds to finance accommodation of refugees by filling up part of the refugee population with erased residents of Slovenia. On the other hand, among the Erased there are also individuals who had been deported from Slovenia and had thus actually become refugees.<sup>36</sup> “Following his meeting with Garras, Todorović stated

<sup>35</sup> Certain erased individuals arranged for temporary refugee status in Slovenia, enabling them to acquire IDs for refugees and access to the rights related to this status, for example basic health care insurance. Nonetheless, those individuals, as a rule, lived in their own homes and therefore were not integrated into the humanitarian network dedicated to refugees from former Yugoslavia.

<sup>36</sup> There is information about several individuals (including Ali Berisha and his family) who were forced to ask for refugee status in their home countries, or in other states, above all EU member states. They were treated as refugees from former Yugoslavia, some of them even from Slovenia.

<sup>37</sup> Next to international pressure, the deportation is on 16 November prevented by the Administrative Court, which annuls the deportation decision issued by the Ministry of the Interior, upon legal initiative on the part of the Berisha family's legal representative, Matevž Krivic. The ruling is confirmed by the Supreme Court in May 2006 (Internal document on the deportation of Ali Berisha; online newspaper Večer, 17/11/2005).

that this is a tragedy of the people who had been living in Slovenia legally but were later deported from the country and were declared refugees still in 2003. A substantial number of the Erased were initially proclaimed illegal residents, and later reclassified as refugees [...]. Among them are people who were born in Slovenia and were therefore equal to other citizens" (Online newspaper 24 ur, 25/7/2005). Following the visit at the UNHCR office, and based on their supporters' initiative that a legal and political process presenting the situation of the Erased at various European institutions would commence in the fall, the individuals terminate their hunger strike (ibid.).

**18 – 21 October** – Discussion on the erasure at a public screening of the "On the other side of the river" documentary film, organised by Karaula MiR in the Italian cities of Udine, Monfalcone, Trieste and Cividale del Friuli.

**22 October** – Civil Initiative of Erased Activists' (CIIA) members take part in the all-Italian protest demonstration in Gradisca d'Isonzo, where the Italian authorities attempt to open one of the biggest detention centres in Italy ([www.dostje.org](http://www.dostje.org)).

**11 November** – Amnesty International Slovenia launches an international urgent campaign and calls on its members to send appeals to the Slovene authorities to prevent deportation of Ali Berisha and his family from Slovenia to Germany and subsequently to Kosovo, scheduled for 18 November (Online newspaper 24 ur, 14/11/2005).

**14 November** – A press conference organised at the Cultural Artistic Center France Prešeren in Ljubljana, with Ali Berisha and other speakers (Maurizio Gressi – Committee for the Promotion and Protection of Human Rights from Rome, Nataša Posel – Amnesty International Slovenia, Aleksandar Todorović – Civil Initiative of Erased Activists, Roberto Pignoni - Karaula MiR) warning about the uncertain fate of the Berisha family (Invitation to the press conference).

– Italian members of the European Parliament Giusto Catania and Roberto Musacchio pose a deputy question to the European Commission, demanding that the European Commission state its position on the problem of the erasure, and even more precisely on the anticipated deportation of the Berisha family. At the same time, the German Embassy in Ljubljana receives an official request to inform the German Government that Ali Berisha is an erased person, adding that taking part in the deportation of an erased would be an illegal act (Online newspaper 24 ur, 14/11/2005).<sup>37</sup>

**19 November** – Aleksandar Todorović presents the problem of the Erased at a meeting of the European Left in the Austrian city of Klagenfurt, convened under the aegis of the First Interregional Conference.

**23 November** – The European Monitoring Centre on Racism and Xenophobia from Vienna presents the European Parliament with its annual report on discrimination against minorities in European Union member states in the areas of employment, residence and education. The part referring to Slovenia includes reference to the problem of the Erased (Online newspaper Večer, 24/11/2005).

**25 November** – Drawing on a special report issued by the Amnesty International Slovenia, the UN Committee for Economic, Social and Cultural Rights expresses grave concern over the erasure and the subsequent disrespect for the Constitutional Court decisions, and urges Slovenia to "to take the necessary legislative and other measures to remedy the situation of nationals of states of the former Yugoslavia who have been 'erased' as their names were removed from the population registers in 1992. The Committee strongly recommended that Slovenia restore the status of permanent residents to all the individuals concerned, in accordance with the relevant decisions of the Slovene Constitutional Court" (Open letter of Marko Perak; newspaper Večer, 16/12/2005).

**28 November** – In one of its letters, Amnesty International Slovenia warns the President of the European Commission, José Manuel Barroso, about the problem of the Erased and urges him to assure that Slovenia

respects European Union standards and human rights (Online newspaper Dnevnik, 28/11/2005).

– Member of the European Parliament Mojca Drčar Murko (LDS) submits a deputy question to the European Commission. Following her reference to the final conclusions of the UN Committee on Economic, Social and Cultural Rights regarding fulfillment of the International Covenant on Economic, Social and Cultural Rights, dated 25 November 2005, and to the intention of the Slovene Government to adopt the constitutional law on the Erased, Drčar Murko asks the Commission: “Does the European Commission intend to take tangible measures to ensure that Slovenia implements EU standards and its body of law, given that thousands of people, many of them of Roma origin, are still being denied their basic human rights?” (<http://drcar-murko.si/en/vsebina.php?id=96>, accessed 14/3/2007).

**10 December** – The Association of Erased Residents makes a statement on World Human Rights Day, pointing out that the Slovene Government ignores not merely the ruling of the Constitutional Court, but also all international appeals related to the situation of the Erased. Furthermore, it is intentionally misleading the public with announcements of the constitutional law, whose sole intention is to by-pass the rulings of the Constitutional Court (Online newspaper 24 ur, 11/12/2005).

**14 December** – The Ministry of the Interior submits a proposal for the Constitutional Law on the Amendment of the Constitutional Law Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia (EVA 2005-1711-0027) for negotiation. Bearing a confidentiality mark, the contents of the draft law remain unknown to the public. Minister of the Interior Dragutin Mate (SDP) only states that the law provides for individual treatment of the Erased and considers the possibility that “an individual might have suffered an injustice”.<sup>38</sup> The Minister also says: “Look, the word individual does not mean a certain number. I cannot agree with your diction that the number is five or ten. These are injustices that could have affected only individuals. But there can be as many as 18,000 individuals” (Online newspaper Večer, 15/12/2005). The Government initiates a discussion on the constitutional law, but, while trying to present the proposal to opposition parties and attain broader consensus, Ministers interrupt the discussion (Online newspaper 24 ur, 14/12/2005; proposal of the Constitutional Law on the Amendment of the Constitutional Law Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, EVA 2005-1711-0027).

**15 December** – The European Commission answers the question posed by the member of the European Parliament, Mojca Drčar Murko (LDS). Its answer says: “The Commission does not have general competence as regard fundamental rights under the terms of the Treaties on the European Union and establishing the European Community, and may only intervene in the event of fundamental rights violations in the field of the application of Community legislation. The decision of the Slovenian Constitutional Court concerns a subject – the person who should be registered as Slovenian citizens – which is under the competence of the national authorities and has no relation with Community Law. For this reason, the Commission has no competence to intervene in this particular case. If a person considers that his or her fundamental rights have been violated, the possibility of appealing to the European Court of Human Rights, after the exhaustion of all domestic remedies, offers him guaranteed protection as the ultimate means” (<http://drcar-murko.si/en/vsebina.php?id=96>, accessed 14/3/2007).

**24 December** – The opposition LDS party concludes that the proposed constitutional law is not an appropriate basis for the regulation of the status of the Erased, since it does not comply with the rulings of the Constitutional Court. The SD and Democratic Party of Slovene Retirees express similar opinions (Online newspaper Večer, 24/12/2005, 10/1/2006, 17/1/2006).

<sup>38</sup> After the law becomes public on 10 April 2006, it turns out that only those who have already applied for the permanent residence status in the past, but were rejected owing to pettifogging by the bureaucracy or because they could not submit documents because of war conditions, could ask for a return of status, whereby each case would be handled individually (Online newspaper Večer, 1/12/2006).

<sup>39</sup> In this period, coalition parties begin using opposition parties' disagreement with the constitutional law as an argument for the non-settlement of the situation of the Erased.

## 2006

**9 January** – President of the Republic Dr Janez Drnovšek again urges deputies to settle the problem of the Erased as soon as possible. At the same time, he expresses his opinion that the proposed constitutional law does stand as an acceptable basis for further reconciliation among political parties (Online newspaper 24 ur, 9/1/2006).

**13 January** – LDS president Jelko Kacin gives an answer to Janez Drnovšek's letter. Among other things, he states that, "the majority of questions regarding the Erased can be solved both simply and quickly. The ruling of the Constitutional Court must be respected and implemented directly, and simply in the same manner as they were erased. The same authorities which erased them, can and must re-register them in order to annul mistakes made and correct injustices done" (Online newspaper Večer, 14/1/2006).

**16 January** – Answering the letter of President Janez Drnovšek, Borut Pahor (SD) states that, although not an ideal solution, the constitutional law is probably the only possible one. He therefore agrees with Drnovšek that the constitutional law is an acceptable basis for further reconciliation. At the same time, Pahor emphasises that the SD deputy group does not share his opinion about the given issue (Online newspaper Večer, 17/1/2006; online newspaper 24 ur, 19/1/2006).

**19 February** – Attending a general assembly in Ljubljana, the Association of Erased Residents' members again point to the fact that the problem of the Erased, although 14 years have passed since the erasure, has not been yet solved, regardless of various international institutions putting increased pressure on Slovenia. They also state: "All international forums, which have already concluded their discussions, demand that Slovenia solve the problem of the Erased in compliance with the rulings of the Constitutional Court – every action taken by the Slovene Government since the elections has been dedicated to exactly the opposite goal: how not to implement the ruling of the Constitutional Court - either with the help of the constitutional law, which would evade judgment of the Constitutional Court, or by not taking any step at all. At the same time they want to deflect responsibility onto the opposition, if the latter decides not to take part in the anticipated trick with the constitutional law" (Online newspaper 24 ur, 19/2/2005).<sup>39</sup>

**21 February** – Under the motto "Rebellion against political and legal violence", the Civil Initiative of Erased Activists (CIIA) marks the 4th Week of the Erased with a protest rally in front of the Parliamentary building in Ljubljana. As a sign of protest against the obvious disrespect for the ruling of the Constitutional Court, they intend to enter the premises of the National Assembly peacefully and stay there until authorities start respecting the ruling. They also point to the National Assembly disregarding the judicial branch of the authority for the last three years. Therefore, they do not intend to respect the National Assembly either. Since the police prevent them from entering the premises of the Parliament, the Erased and their supporters block traffic with a peaceful walk across the pedestrian crossings in front of parliament and thus express their disagreement (Online newspaper 24 ur, 21/2/2006; online newspaper Večer, 22/2/2006).

**2 March** – The Constitutional Court issues ruling No Up-211/04. It rejects the decision of competent administrative authority that the permanent residence permit cannot be issued under the ARLSC in cases when an individual does not provide proof of his/her actual uninterrupted residence in Slovenia, owing to circumstances beyond the control of the applicant (i.e. inability to return because of war conditions, in particular, refusal on the Slovenian-Croatian border). The Constitutional Court also rules that administrative organs should act directly on the basis of Constitutional Court decision issued in April 2003, since the new law defining detailed criteria for the establishment of actual uninterrupted residence has not been adopted yet (Constitutional Court decision No Up-211/04).

**29 March** – The Council of Europe Commissioner for Human Rights issues the second Follow-up Report on Slovenia. The Commissioner regretfully concludes that the issue of the erased persons not only remains



unsolved, but has also gained political connotations: "The issue of erased persons continues to be a divisive and politically charged issue in Slovenia and is the subject of heated debate. Regrettably, the issue has been frequently used by some political factions as a campaign tool. [...] The Commissioner urges the Ministry of the Interior to immediately continue and finalise the issuance of supplementary decisions giving retroactive effect to the permanent residence permit of all those persons who are entitled to it. As regards the enactment of the law regulating and reinstating the status of the remaining erased persons, the Commissioner urges the Slovenian government to definitely resolve the issue in good faith and in accordance with the decisions of the Constitutional Court. Whatever the appropriate legislative solution may be, the current impasse reflects poorly on the respect for the rule of law and the Constitutional Court's judgements in Slovenia" (Follow-up Report on Sloveni a, 2003–2005, Assessment of the Progress Made in Implementing the Recommendations of the Council of Europe Commissioner for Human Rights 2006: 10).

**26 April** – Anti-racist demonstrations, "Swarming against Discrimination", take place in Ljubljana. Participants protest against the amended Asylum Act because it reduces the rights of asylum seekers. Furthermore, they point to the still unresolved problem of the Erased, and to the amended Employment and Insurance Against Unemployment Act (Online newspaper 24 ur, 26/4/2006).

**23 May** – Amnesty International includes Slovenia in its Annual Human Rights Report 2005. In it, Amnesty International expresses its concerns about the failure of the Slovene authorities to take proper measures and prevent further violation of the erased persons' human rights, which sheds negative light on Slovenia's human rights protection (Online newspaper 24 ur, 23/5/ 2006).<sup>40</sup>

**25 May** – Speaking at a press conference, deputies Branko Grims and Zvone  erna  (both SDP) reiterate the party's position on the settlement of the problem of the Erased and warn about the delay, which was in their opinion caused by the opposition preventing the attainment of consensus for the adoption of the constitutional law. Furthermore, Branko Grims says that the SDP wants to influence the opposition through the public to eventually support agreement with the proposed constitutional law (Online newspaper Ve er, 26/5/2006).

**4 July** – The Italian law firm, Lana Lagostena Bassi, files a lawsuit "Milan Makuc and Others Against Slovenia" with the European Court of Human Rights. The lawsuit was filed on behalf of eleven erased individuals whose bare existence is jeopardised owing to their non-regularised legal status in Slovenia. One of the law firm's press releases reads: "The lawsuit is a result of common endeavours of a network of individuals and organisations in Slovenia and Italy. It applies to the erasure, which pushed the complainants into a highly vulnerable social condition and a legal position without prospects. Ever since the erasure, they have been subjected to provable abuses and torments on the part of the Slovene authorities" (Online newspaper 24 ur, 7/7/2006).

**7 July** – The Embassy of the Erased (*Ambasciata dei cancellati*) opens its door during a cultural festival, "Station Topolo – Stazione Topolo", in Italy, which, for a number of years, has held musical, theatre, art and different multimedia events. Speaking at the opening of the festival, its organizer, Donatella Ruttar, states that the region near the Slovenian-Italian border aims to promote the rights of the Slovene minority, which was exposed to systematic repression and segregation for more than 100 years. They have therefore decided to express their solidarity with the Erased (Online newspaper 24 ur, 7/7/2006).

**22 July** – Individual erased persons express their solidarity support for the protest against the Detention Centre in Postojna, convened by the Network for Permanent Visit in cooperation with other participants in the *No Border Camp* taking place in Gorizia. The aim of the demonstration is to express a demand for the closing down of such institutions and the need for a redefinition of European citizenship ([www.dostje.org](http://www.dostje.org)).

**16 October** – In front of the Supreme Court, members of the Civil Initiative of Erased Activists stage annulments of personal documents, as they experienced this at the time of the erasure. The show's intention is to express support for Aleksandar Todorovi , who is facing a lawsuit by former Minister of the Interior Andrej

Šter, former state Secretary at the Ministry of the Interior Slavko Debelak, and former state under-Secretary at the Ministry of the Interior Alenka Mesojedec Prvinšek. Following the television show *Trenja* in 2003, Todorović allegedly stated that they were fascists, who belonged at the Hague and not in the civilised world, when referring to their role in the erasure (Online newspaper 24 ur, 16/10/2006; online newspaper *Večer*, 17/10/2006).

**9 November** – The European Roma Rights Centre addresses an official letter to the Ministry of the Interior, expressing its concern over the threat of deportation for Ali Berisha and his family to Germany. They demand an immediate suspension of all the deportation procedures (Internal document about the deportation of Ali Berisha).

**14 November** – Several erased individuals support a protest under the motto, “We are all Gipsies under Janša’s rule”, organised in Ljubljana. The aim of the protest is to express disagreement with the eviction of the Roma family, the Strojans, from their home, which was carried out by the Slovene Government because of opposition by other residents of Ambrus to the family (Online newspaper *Večer*, 15/11/2006).

**17 November** – The Administrative Court rules the second attempt to deport Ali Berisha and his family from Slovenia, which was announced by the Ministry of the Interior, to be unjustified, either (Online newspaper *Večer*, 18/12/2006).

– The European Court of Human Rights in Strasbourg accepts the lawsuit filed in July 2006 by the lawfirm Lana, Lagostena, Bassi from Italy, for discussion as a priority procedure (Online newspaper 24 ur, 27/11/2006).

**27 November** – The Civil Initiative of Erased Activists organises the “Caravan of the Erased: from Ljubljana to Brussels” aimed to back up the lawsuit filed at the European Court of Human Rights. In their press release participants state: “The Caravan of the Erased will start in Ljubljana on 27 November 2006 and will pass Italy and France on its way to the European Parliament in Brussels, where it will arrive on 29 November 2006. We, the Erased of Slovenia will thus answer a call of European parliamentarians to inscribe our experience of exclusion and denial of basic human rights on the agenda of the most acute European problems. On 29 November, the case of the Erased will be presented to the European Parliament. [...] In 2004, the Republic of Slovenia became member of the European Union: the endless list of all conditions the country had to meet on its way to the European Union did not include retribution of the rights stolen from the Erased. Slovenia is presiding over the European Union in 2008, with erasure once again not being an obstacle to the country’s highly respectable function. Thus, it is evident that the issue of the Erased is not a hindrance to Slovenia’s participation in processes that the public perceives as assurances of democracy. [...] Erased residents of the Republic of Slovenia – now residents of the European Union – are wondering, why Europe remains silent? What are its true norms, values and visions?” At the same time, they stress there are many different kinds of erased individuals living in Europe and that the erasure is undoubtedly a European problem. Therefore, there is an urgent need to redefine the concept of citizenship and permanent residence. They end their statement saying: “We demand the right to residence for all the excluded, invisible, and for all Erased of Europe! The residence permit and the right to citizenship should become fundamental democratic norms!” Organizers of the Caravan address a letter to all Slovene politicians and members of the European Parliament, requesting their support. However, Aurelio Juri (SD) is the only one to express his support, while member of the European Parliament Mihael Brejc (SDP) reacts very negatively (RTV Slovenia and online newspaper 24 ur, 27/11/2006).

– Participants in the Caravan are received by federal councillors Igor Kocijančič (*Partito di Rifondazione Comunista*), Igor Dolenc (*Partito dei Democratici di sinistra*), Bruna Zorzini (*Partito dei Comunisti Italiani*), Alessandro Metz (*Partito dei Verdi*) and federal representative for culture and education Roberto Antonaz at the Federal Assembly of Friuli-Venezia Giulia in Trieste. They promise the participants to support the adoption of a special resolution, which would define the Erased as European citizens and thus urge Slovenia to solve the problem. Following that, the participants of the Caravan are received in front of the Fincantieri shipbuilding yard in Monfalcone by members of the metalworkers trade union FIOM, who express their solidarity in the joint fight against the loss of already acquired rights (Online newspaper *Mladina*, 2/12/2006; online newspaper *Večer*, 8/12/2006).

– Prime Minister Janez Janša (SDP) makes a comment on the Caravan of the Erased on the news programme *Odmevi* broadcast by the national television Slovenia, stating the issue is “[...] a distorted image. Europe forms its opinion on the basis of distorted information and reporting that those are people without any status today. They do not know that this problem dates back to 1992 and that the majority of these people demand their status for the past period, for the period from 1992 when they did not regularise their permanent residence or citizenship, and the time they eventually regularised it. At the moment, there are no residents without status in Slovenia” (Online newspaper Mladina, 2/12/2006).<sup>41</sup>

**28 November** – Participants in the Caravan are received at a press conference in the French Parliament, organised by former member of the European Parliament of the Green Party (*Les Verts*) Martine Auroy, Martin Bullard and Noil Mamere (*Les Verts*), Patrick Braouezec (*Parti Communiste*), Serge Blisko (*Parti Socialiste*), and Etienne Pinte of the *UMP* Government party. The press conference is also attended by the Slovene ambassador to France, Janez Šumrada, who reiterates the official position of the Slovene Government regarding the erasure, and states that the problem has allegedly been settled.<sup>42</sup> French deputies nonetheless promise to write a letter to President Jacques Chirac asking him to urge Slovenia to settle the issue before taking on the presidency of the European Union at the beginning of 2008. Participants in the Caravan later attend a public discussion organised by *Intermittents* (an organisation of part-time employees), *Act up Paris* and *9ème collectif des sans-papiers* (an organisation struggling for the rights of undocumented individuals) in Paris. The discussion should above all unite different movements supporting the universality of rights, regardless of residential or work status (Online newspaper Mladina, 2/12/2006; online newspaper Večer, 8/12/2006).

– Italian members of the European Parliament Giusto Catania and Roberto Musacchio issue their second deputy question to the European Commission, demanding that the European Commission state its position on the problem of the Erased, and especially on the situation of the Berisha family ([www.europarl.europa.eu/](http://www.europarl.europa.eu/)).

– Minister of the Interior Dragutin Mate (SDP) explains that the Government has unsuccessfully tried to reach consensus with the opposition parties on the constitutional law on the Erased. At the same time, he says that the word Erased by no means expresses what happened in Slovenia in 1992, and that none of the individuals in question became a stateless persons, as they have had citizenship in other countries on the territory of the former Yugoslavia (Online newspaper 24 ur, 28/11/2006).<sup>43</sup>

**29 November** – The Caravan arrives at the European Parliament in Brussels. They present the issue of the Erased during a discussion on human rights, organised by the United Left of Europe and the Nordic Green Left (GUE/NGL). Afterwards, there is a press conference with members of the European Parliament, Roberto Musacchio and Giusto Catania (*Partito della Rifondazione Comunista*),<sup>44</sup> who invited the Erased to the European Parliament. They stress that the Erased are a European problem and that European Union institutions should actively participate in the settlement of the issue, especially by exerting pressure on Slovenia, which is the first of the new member states of the Union to assume the European Union presidency. They say it is “simply unacceptable that the European Union, on the one hand, promotes human rights and condemns their violation, while, on the other hand, the country presiding over the European Union is systematically violating

<sup>41</sup> The Prime Minister's statement is refuted by Borut Mekina in his article stating that there are definitely at least 110 individuals without status, who are being treated at the Clinic for Persons Without Health Insurance in Ljubljana and in Maribor. An analysis by the Ministry of the Interior from 2003 also showed that 4,025 individuals from the group of the Erased did not have a regularised status, while the analysis issued in January 2006 showed there were still 4,090 such individuals (Online newspaper Večer, 1/12/2006).

<sup>42</sup> Above all, he mentions that all citizens of former Yugoslavia knew they had dual - republic and federal – citizenship; therefore, the Erased should have been aware of the consequences of not applying for Slovene citizenship in 1991. Next to that, he says that the question of the Erased would soon be solved by the already prepared constitutional law.

<sup>43</sup> For the most part, the issue of the Erased is not *de jure*, but *de facto* statelessness (See: Blitz 2006).

<sup>44</sup> The other two speakers at the press conference were participants in the Caravan, Roberto Pignoni and Aleksandar Todorović.

<sup>45</sup> Deportations of the Erased were already prohibited by the Constitutional Court in 1999, in its decision No U-I-284/94.

them" (online magazine Mladina, 2/12/2006). Later on, the Erased and their supporters attend a session of the Committee on Civil Liberties, Justice and Home Affairs (LIBE), where they present representatives of political groups of the European Parliament (including Slovene member of the European Parliament, Mojca Drčar Murko, LDS) with complications related to the erasure. Participants in the session decide to organise a special meeting about statelessness in the European Union.

The final act of the Caravan is a meeting of four participants of the Caravan with the Vice-president of the European Commission and Commissioner for Justice, Freedom and Security Franco Frattini, who promises to consider the issue of the Erased and make an official inquiry with the Slovene Minister of the Interior, Dragutin Mate (Online newspapers Delo and Dnevnik, 1/12/2006; online newspaper Mladina, 2/12/2006).

– In his electronic mail addressed to all members of the European Parliament, Slovene member of the European Parliament Mihael Brejc (SDP) presents the position of the Slovene Government on the problem of the Erased. Among other things, he guarantees the issue will soon be settled by the constitutional law. Moreover, he writes that the Association of Erased Residents of Slovenia is not supportive of the Caravan; therefore, it is unknown whom the Caravan is actually representing. His letter is contradicted by member of the European Parliament Mojca Drčar Murko (LDS), who sends members of the European Parliament the letter from the legal representative of the Association of Erased Residents, Matevž Krivic, stating that the association's representatives decided not to participate in the Caravan because of its political implications. Nonetheless, they support every action taken for the benefit of the Erased (Online newspaper Večer, 30/11/2006; e-mails of Mihael Brejc and Mojca Drčar Murko).

## 2007

**25 January** – The European Commissioner for Justice, Freedom and Security, Franco Frattini, replies to a deputy question on how the European Commission plans to assure that Slovenia would eventually correct violations of the rights of the Erased. The question was posed by Italian members of the European Parliament Giusto Catania and Roberto Musacchio (GUE/NGL). They claim that the Erased constituted a violation of fundamental principles of the European Union, especially of Article 6 of the Treaty on the European Union, which defines that the European Union is based on the principles of freedom, democracy, respect for human rights and fundamental freedoms, and for the rule of law. They especially highlight the case of Ali Berisha, who was at that time, as an Erased person still detained, together with his wife and five children in the Postojna Detention Centre. Franco Frattini in his answer states that the European Union is not competent to intervene with the Slovene authorities regarding the issue of the Erased and explains that the entire issue is a matter of national legislation (Report on Radio Študent).

**1 February** – Slovene authorities forcibly hand over Ali Berisha and his family to German authorities on the basis of the Dublin Convention, since all family members entered the asylum procedure upon their arrival in Slovenia. Despite warnings from the Civil Initiative of Erased Activists, Association of Erased Residents, their attorney Matevž Krivic that Ali Berisha is an erased individual<sup>45</sup> who is one of the plaintiffs at the European Court of Human Rights, the Slovene authorities decide to return him to Germany, where he asked for asylum in 1993, following his deportation from Slovenia. The decision is also criticised by the Amnesty International Slovenia: "An individual without status in Slovenia, who was erased in 1992 from the register of permanent residents, was forcibly returned to Germany, which demonstrates the Government's view of the issue of the Erased and indicates the lack of readiness to finally settle the issue" (Online newspaper 24 ur, 2/2/2007). At the same time, the Amnesty International Slovenia urges the Slovene authorities to retroactively return permanent

residence status to all erased individuals in compliance with the rulings of the Constitutional Court, and thus provide for the correction of injustices, including compensation (ibid.).

**13 February** – Publication of the third, most extensive report of the European Commission against Racism and Intolerance (ECRI) on Slovenia. The Erased are once again included in the Specific Issues Chapter. The report makes a direct recommendation that Slovenia should in good faith and without further delay implement the decision of the Constitutional Court. It also emphasises that the Erased are – along with certain other groups – often the target of racist, xenophobic and intolerant speech in Slovene politics. Hence, ECRI “[r]egrets that this part of the Slovenian population has in many occasions fallen hostage to merely political considerations, including the exploitation of their situation as a vote gainer, and that the debate around the position of these persons has steadily moved away from human rights considerations” (ECRI, Third Report on Slovenia 2007: 30).<sup>46</sup>

– Speaking at a press conference, Prime Minister Janez Janša (SDP) says his Government is the only Government so far with a wish to settle the issue of the Erased, which is why it will not withdraw the proposal of the constitutional law (Online newspaper Večer, 14/2/2007).

**26 February** – Marking the 15<sup>th</sup> anniversary of the erasure, and the fifth anniversary of formation of the Association of Erased Residents, the Week of the Erased is organised at an initiative of the Civil Initiative of Erased Activists at the Social Centre in Autonomous Cultural Zone Rog. The anniversary is an opportunity for the first staging of a theatre play “The Erased Ltd”, directed by Franci Slak. Actors are predominantly erased individuals (Invitation to the Week of the Erased 2007, www.tovarna.org, 26/2/2007).

– Association of Erased Residents’ representatives attend a session of the European Parliament Committee on Petitions, which also reviews their petition urging European Union institutions not to allow the violation of fundamental legal principles and respect for human rights in Slovenia, especially in the light of Slovenia’s presidency of the European Union in 2008. Additionally, they demand a political evaluation of actions taken by the Slovene authorities in the case of the Erased. The Committee decides to leave the question open and to address a question to the Slovene Government on how it plans to resolve the issue (Online newspaper 24 ur, 26/2/2007; online newspapers 24 ur and Večer, 27/2/2007).

– The European Office of the Amnesty International informs the Parliamentary Committee of the European Parliament on Citizenship Freedoms, the commissioners of the European Commission and the German European Union presidency about the problem of the erasure and expresses its concern over the inefficiency of the Slovene authorities in settling the issue (Online newspaper 24 ur, 26/2/2007).

– In his statement marking the 15<sup>th</sup> anniversary of the erasure, Branko Grims (SDP) writes that the Government still insists on its proposal of the constitutional act as the only possible solution for the problem of the Erased. He also states that SDP remains firm in its position that “[...] if anyone suffered injustice in the process of gaining Slovenia’s independence, they must be compensated; but those, who made calculations about the gaining of independence, should not enjoy any benefits” (Online newspaper Večer, 27/2/2007).

**27 February** – Opening of a documentary photo exhibition “The Erased – Resistances” by Matej Zonta in the Info point at the Autonomous Cultural Zone *Metelkova city* and screening of the film *Rubbed Out* by Dimitar Anakiev at the independent Social centre Rog in Ljubljana. The activities were organised within the framework of the Week of the Erased (Invitation to the Week of the Erased 2007).

– Association of Erased Residents’ members organise a press conference and present sample compensation lawsuits, which are meant to be filed by those erased individual, who received subsidiary decisions in 2004 (Online newspaper Večer, 28/2/2007).

– Representatives of the SNP, NSi and SPP once again stress their support for the constitutional law as the proper solution to the issue of the Erased (Online newspaper Večer, 28/2/2007).

<sup>46</sup> In its reply to the ECRI Third Report on Slovenia, the Slovene Government presents potential introduction of the constitutional law as the fulfillment of the Constitutional Court decision from 2003 and in its explanation of the erasure plays down its deliberateness, racist character and damaging consequences.

**28 February** – The editorial board of the *Journal for the Critique of Science, Imagination, and New Anthropology* organises a public debate “The Erased Go to Heaven”, under the aegis of the Week of the Erased at the Faculty of Social Sciences in Ljubljana. Furthermore, they screen short films presenting activities taken by the Dostje! movement and by the Erased, in the independent Social Centre Rog (Invitation to the Week of the Erased 2007).

**1 March** – First public screening of the *Caravan of the Erased* film by Dražena Perić in the Social Centre Rog, Ljubljana (Invitation to the Week of the Erased 2007).

**7 May** – Speaking at a press conference, Prime Minister Janez Janša (SDP) states that the Government’s hands, as regards the issue of the Erased, are still tied, owing to the complicated legal situation, although it would be beneficial to remove the issue from the agenda before Slovenia’s presidency of the European Union. At the same time, he once again stresses that the problem can only be settled by a constitutional law (Online newspaper Večer, 8/5/2007).

**31 May** – The European Court of Human Rights decides that the lawsuit “Milan Makuc and Others against Slovenia” is partly admissible and thus accepts it for further deliberation (European Court of Human Rights, Third Section Partial Decision as to the Admissibility of Application No 26828/06 by Milan Makuc and Others against Slovenia).

**26 June** – The Committee of Civil Liberties, Justice and Home Affairs (LIBE) organises a Seminar on Prevention of Statelessness and Protection of Stateless Persons within the European Union, also presenting the issue of the Slovene erasure.

## List of abbreviations

**ARLSC** – Act Regulating the Legal Status of Citizens of the Former SFRY Living in the Republic of Slovenia

**LDS** – Liberal Democracy of Slovenia

**NSi** – New Slovenia – the Christian People’s Party

**SD** – Social Democrats (since 2 April 2005, renamed from United List of Social Democrats)

**SDP** – Slovene Democratic Party

**SNP** – Slovene National Party

**SPP** – Slovene People’s Party

**ULSD** – United List of Social Democrats (on 2 April 2005 renamed to Social Democrats)

## Selected References

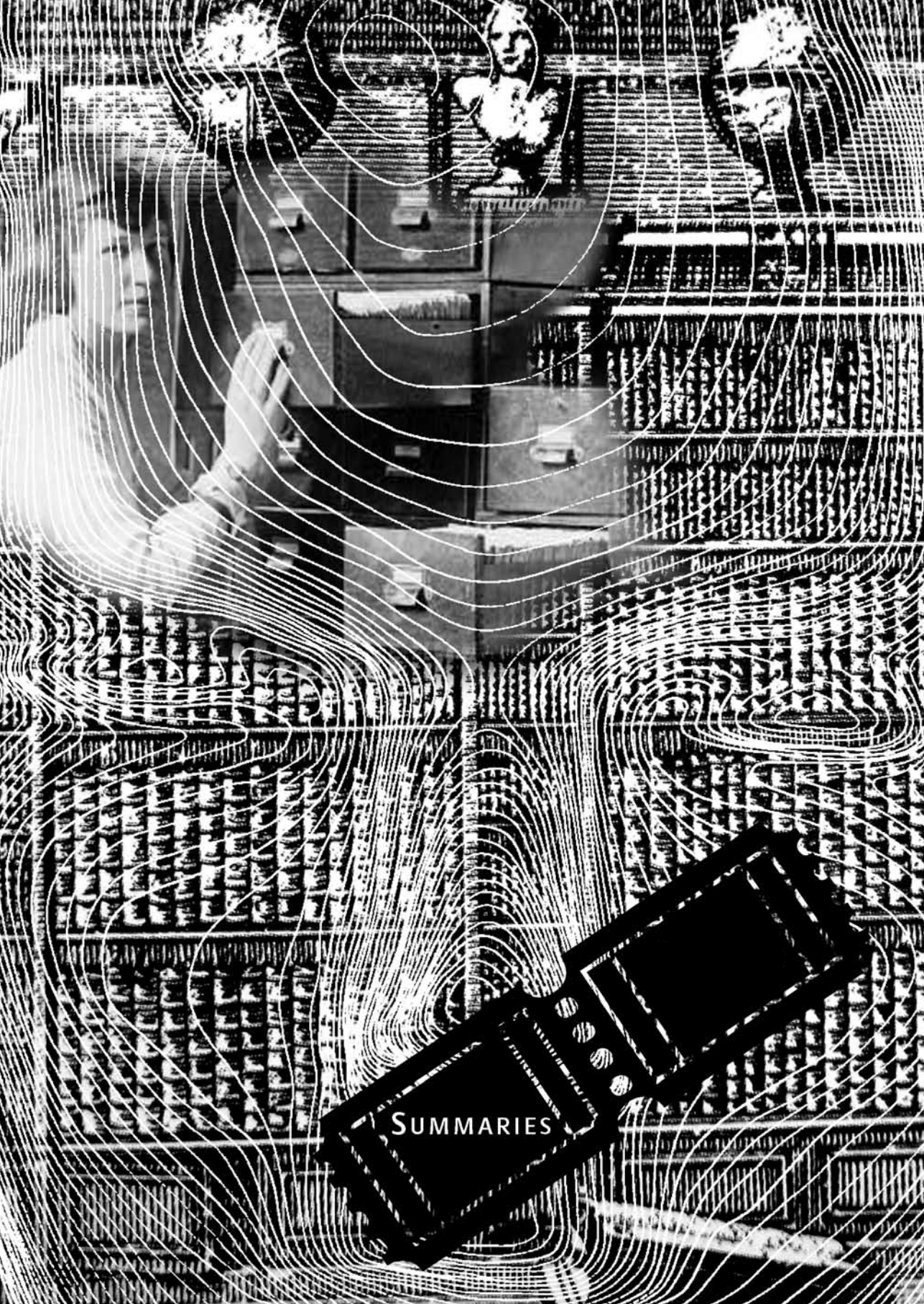
BLITZ, B. (2006): Statelessness and the social (de)construction of citizenship: political restructuring and ethnic discrimination in Slovenia. *Journal of Human Rights*, 5: 453–479.

DEDIČ, J. JALUŠIČ, V., ZORN, J. (2003): (2003): *The Erased: Organised Innocence and the Politics of Exclusion*. Ljubljana, Peace Institute.

Ministry of the Interior (2004a): Zgodovina problematike izbrisanih, Ureditev statusa državljanov drugih držav naslednic SFRJ po letu 1991 in implementacija zakonodaje. Available online: [http://www.mnz.si/si/upl/gl\\_novin/izbrisani/ZGODOVINA.doc](http://www.mnz.si/si/upl/gl_novin/izbrisani/ZGODOVINA.doc) (accessed 27/9/05).

Ministry of the Interior (2004b) Pregled dogodkov po odločbi Ustavnega sodišča (U-I-246/02). Available online: [http://www.mnz.si/si/upl/gl\\_novin/izbrisani/kronologija.doc](http://www.mnz.si/si/upl/gl_novin/izbrisani/kronologija.doc) (accessed 27/9/05).

ZRIM, K. (2005): *Kršenje človekovih pravic v primeru »izbrisanih«*. Bachelor’s thesis. Ljubljana, Faculty of Social Sciences.



SUMMARIES





# ONCE UPON AN ERASURE

44 Borut Mekina

## A Monument to the Erased

The author begins his article with a description of a discussion that took place in the Slovene Assembly in 1991 when deputies of all three chambers voted on the Aliens Act. This Act then led to the erasure or, rather, to the punishment of those otherwise permanent residents of Slovenia who had not applied for Slovene citizenship. The author proves that the motives behind this were primarily local, and congruent with those presented in the Chamber of the Communes; they were less in the interests of the employers and employees as represented in the Chamber of Associated Labour; even less the in interests of "high" politics of the Socio-political Chamber and of the government itself. Even though those deputies who voted for the "erasure" never explained their reasons for this, the author nonetheless tries to explain their motives. He does this through the cases of the persons erased from the register of permanent residents. The author concludes his article with parallels from Hannah Arendt's interpretation of fascism, with which she brought attention to the potential dehumanization of which the modern state is capable.

Keywords: the Erased, fascism, the Assembly of the Republic of Slovenia, Aliens Act, bureaucracy.

52 Jelka Zorn

## "We, the Ethno-citizens of Ethno-democracy" – The Formation of Slovene Citizenship

The rules and laws of independence, whom to include into the initial citizenship pool and how to include them, established an ethno-citizenship, the

by-product of which was the erasure of certain sections of the population. This article deals with those parts of the parliamentary discussions that took place during the passing of the Citizenship of the Republic of Slovenia Act and the Aliens Act, and that are important for the understanding of Slovene citizenship and erasure.

These discussions contained arguments that (from today's perspective) can be understood as either backing or trying to prevent the erasure, even though the fact of the erasure of people from the register of permanent residents never became a focus of public discussion in any of the three chambers of the Slovene Assembly. The erasure shows not only how a group of people become deprived of their rights, but also how this action could become meaningful for the majority population (i.e. actual citizens) who were also prey to uncertainty and the lack of social and legal security (the rise of unemployment, worsening access to housing, the commercialization of health care insurance, etc.). The process of Slovene independence can be understood as a confrontation between understanding the Slovene state either as an instrument of the rule of law or as an instrument of the Nation, ethno-national belonging and loyalty. Although both tendencies were present, the very fact of erasure revealed which one became dominant.

Keywords: erasure from the register of permanent residents, the Socio-political Chamber of the Assembly of the Republic of Slovenia, nationalism, Citizenship of the Republic of Slovenia Act, independence, foreigners, ethnocentrism, political equality, Statement of Good Intent.

71 Uršula Lipovec Čebrown

## The Metastasis of the Erasure

This article analyses the experiences of illness and exclusion of four individuals from the Slovene part of Istria, who were erased from the system of public health in Slovenia. The article draws on some theoretical concepts of socio-cultural epidemiology and medical anthropology as well as on data gathered by the Medical and Counseling Clinic

for Persons without Health Insurance in Ljubljana. Apart from the life stories of these four individuals, the article offers an analysis of the causes of their illnesses and the itinerary of their medication. In this, the experiences of exclusion from the medical institutions in Slovene Istria are foregrounded. Also discussed are some phenomena that contribute to the health of the Erased such as the aforementioned Clinic, gestures of solidarity made by individual health workers, and the importance of Article 7 of the Health Care and Health Insurance Act, which provides for urgent medical care for individuals otherwise without health insurance in Slovenia.

Keywords: the Erased, public health care, exclusion, medical anthropology, socio-cultural epidemiology, experiences of illness, etiology, Istria.

95 Vlasta Jalušič

### Renouncing Political Capacities: Organized Innocence and the Erasure of Citizenship Responsibility in Post-Yugoslav Nation-state Building

This article offers a tentative analysis of some problematic "post-totalitarian" elements that can be found in the processes of establishment of the post-Yugoslav nation-states and that have their origin in the time before, during, and after the period of wars and collective crimes. Deploying the thought of Hannah Arendt, the author asks questions about some features of the new post-war communities and their nation-states, such as the following: Why are these communities based on ideologies of non-responsibility for the past and how it is reflected in the newly established "citizenship" and national identities? In what way are new exclusions produced within the framework of a nation-state's "demographic policies"? The article describes the "organized innocence syndrome", which can be identified as a conditioning commonality of all the newly established states. Special attention is paid to the post-war case of the Erased (inhabitants from the former Yugoslavia) in Slovenia. The example of the Erased is contextualized through a background

of incidents in other parts of the former Yugoslavia, thus including the period of preparation for the war (population mobilization and introduction of elements of terror), events from the time of war (mass crimes like the genocide in Srebrenica) and after the war (silence about the past, occurrence of new exclusions and resistance to facing collective responsibility and individual guilt).

Keywords: organized innocence, guilt and responsibility, war, collective crimes, state and citizenship, nationalism, Hannah Arendt, the Erased, Yugoslavia, Serbia, Slovenia.

115 Marta Gregorčič

### Phantom Irresponsibility, or Fascism in Disguise

This article examines those emancipatory political practices that successfully resist contemporary forms of fascism, the politics of erasure, detention of people and the process by which they become illegal. It reflects the domestic struggles of the Erased as well as the local politics of exclusion that are based on Schengen and "Apartheid" standards. It does this through the struggles of children, friends and relatives of the "disappeared" in Honduras and Guatemala, while also discussing the struggle of women in Chiapas and Bosnia and Herzegovina. Comparison with Honduras is interesting because it offers an analysis of political, historical, and legal irresponsibility. On the other hand, the comparison with Guatemala engenders the rethinking of a number of political and other revolutionary practices that embody the core courage and *joie-de-vivre* of urban teenagers. Both cases are used for theoretical analysis and/or the description of domestic revolutionary practices. The political activity of women refugees from Acteal reveals how the greatest horrors can be transformed into symbolic and creative power for action, while the actions of women and mothers from Srebrenica show – in the event of being unable to stop the symbolic oppression of "democratic institutions" – how to resist with dignity even after genocide.

Keywords: the Erased, the disappeared, genocide, cultural and political practices, the production of in-betweenness, political and legal responsibility, repressive politics, fascism.

133 Andrej Kurnik

### The Erased Go to Heaven

The article is an attempt to analyse the protagonism of the Erased. Such an analysis clarifies the reciprocity of the constitution of national and imperial sovereignty, the crisis of nation-formation, and enables the transfer of some fundamental alternatives in the history of political thought and practice to the level of emerging post-national citizenship. The analysis, which starts with Petri's film, *Working Class Goes to Heaven*, is built upon a biopolitical paradigm and the notion of the constitution of citizenship as a practice that shifts citizenship boundaries.

Keywords: biopolitics, national sovereignty, imperial sovereignty, nation-formation, the Erased, constitution of citizenship, globalization.

156 Imma Tuccillo Castaldo

### Immobilized Citizenship

It is impossible to think politically about the "fate" and "mission" of the EU without a definition of European citizenship. The crisis of the nation state has left us with a heavy legacy: national citizenship has become a mechanism for anthropological differentiation. The human rights abuses (those occurring to the Erased in Slovenia and to many Roma born in Italy but treated as "illegal" persons) all begin with the "restoration" of that civil status that marks the paradigm of exclusion. When establishing and forming the idea of European citizenship, and when searching for a common denominator for our identity (especially after the final salvation, the collapse of communist regimes), Schmitt's *amicus/inimicus hostis* dichotomy can be applied to the geopolitical entity, which precedes the geographical identity in each instance, but also plays a part in its creation.

Keeping this perspective in mind, it becomes clear that discussions of *one* European citizenship do not constitute an error within political-institutional discourse: the oneness referred to does not contradict the legal and formal plurality of national citizenship, but actually complements it. This article will attempt to present a short sketch of how this complementary function has been expressed with destructive consequences for the lives of thousands.

Keywords: European citizenship, civil status, free flow, non-citizenship in Italy, immobilized existence.

165 Marta Stojić

### The Production of the Erased: From Liminality to Metaphor

This article analyses the phenomenon of erasure from an anthropological perspective. Through the deployment of the theory of ritual, the Erased can be theorized as a liminal phenomenon. The Erased as administrative category have, from the beginning of the 1990s onwards, gone through processes akin to those of initiation and have found themselves in a "permanent" condition of being "in-between". Aspects of liminality such as the notions of exclusiveness, ambiguity and impurity can be further assessed with the help of the concept of metaphor and its assumed potential to unite otherwise demarcated categories. The result of such cognitive play is an insight into the presuppositions of notions about the (non)erased.

Keywords: the Erased, liminality, metaphor, uncleanliness, order, anthropological perspective.

174 Igor Mekina

### The Erasure of the Erasure

This article describes the events before and after the erasure, and how this act became publicly known in the first half of the 1990s. A frequent excuse concerns the statement that while the erasure was occurring, nobody actually knew about it. What is forgotten in this is that the erasure happened in an

atmosphere that was hostile towards immigrants from former Yugoslavia. The excuse that “nobody knew” what the problem was does not hold. Descriptions of cases of the Erased were meticulously presented in the weekly *Mladina*. This article tries to show how the euphoria of independence numbed many civil society associations that should otherwise have been critical of human rights abuses and how the various institutions of the state started acting according to “feeling” instead of in accordance with the law. In this way, they gave in to the atmosphere of pogrom and xenophobia that was created at the break-up of Yugoslavia.

Keywords: erasure, *Mladina*, administrative ethnic cleansing, Ministry of the Interior, xenophobia.

190 Svetlana Vasović

### Deported to Death

This article deals with an example of an erased person that proves some victims of the erasure were deported and shows the possible consequence they could have faced. Dragomir Petronjić was a Serb born in Bosnia-Herzegovina and a permanent resident of Celje, Slovenia, since 1979. Dragomir's family searched for him for more than a decade and a half, ever since one tragic day in September 1992 when the Slovene police handed him over to their Croatian colleagues against Dragomir's will. In turn, the Croatians handed him over to authorities of the Bosnian Croatians. The article reveals what happened to Petronjić and the process of his family's search for him.

Keywords: the Erased, Dragomir Petronjić, the expulsion of foreigners, police, international law.

196 Neža Kogovšek

### The Erasure: The Proposal of a Constitutional Law as the Negation of the Rule of Law

At the time of the publication of this article, the question of the erasure still remains unresolved.

This is despite much pressure from the international community and despite many (sadly not implemented in full) decisions passed by the Constitutional Court. Towards the end of 2005, the government presented its proposals as to how to solve the problem of the Erased by passing a Constitutional Law. After the contents of this draft law were revealed, it became evident that the proposal was unsuitable, and in opposition to rulings made by the Constitutional Court. Furthermore, the implementation of this law would only provoke new injustices. Thus, it did not gain a two-thirds majority backing among members of the Slovene Parliament. The proposal is still cited as a way to solve the problem of the Erased. Its contents, however, remain basically unchanged. This article tries to show why the proposal is unacceptable, and where it comes into contradiction with the constitutional order of the Republic of Slovenia. The article finds that the Draft Constitutional Law excludes the individual and objective responsibility of those who committed the erasure; negates all previous efforts of the Erased themselves, the Constitutional Court and other actors trying to solve the problem of the Erased; allows for the renewal of the previous process and hence a further removal of permanent resident status, and excludes the possibility of compensation for material and other harm caused by the erasure. Therefore, the aim of this article is to contribute to the situation whereby the proposer of the law would stand down from this draft law and its views, and to encourage finding a solution that would actually set right the injustices committed by the erasure.

Keywords: erasure, Constitutional Court, Constitution, Draft Constitutional Law, Statement of Good Intent, actual continual residence, retro-activeness, permanent residence, independence of the Republic of Slovenia.

## Argumentation and Rhetoric in the Case of the Erased

The article analyses the argumentative power of some opinions voiced in the public and political discourse about the Erased. One general finding concerning this, is that during political discussions that touch upon legal argumentation and law, the power of argumentation present is extremely weak, and that logical errors and ruses prevail in them. These deny credibility to most of the arguments that oppose solving the problem of the Erased through the decision passed by the Constitutional Court. The arguments made by the Slovene Member of Parliament, Branko Grims, put forward on the fifteenth anniversary of the erasure, and as the official position of the government itself, are analysed in detail. The conclusion to the article finds that the dominant discourse of argumentative mistakes and ruses crucially influences the negative image of the Erased, and contributes to the fact that this mass abuse of human rights has not been politically adequately dealt with to date.

Keywords: the Erased, politics, argumentation, arguments, errors of opinion, ruses, human rights.

Ministry of the Interior  
Secretariat for Administrative Legal Affairs  
Department for Public Order and Peace, Passports and Foreigners  
Ljubljana, 27 February 1992  
Dispatch No 0016/4-14968

To all Municipal Administrative Offices for the Interior  
in the Republic of Slovenia and the Ljubljana City Municipality Office of the Interior

Subject: Execution of the Aliens Act - Instruction

With the expiry of the date on Article 81 of the Aliens Act (Official Gazette of the Republic of Slovenia, Volume I, No 1/91), as of 28/2-1992, the provisions of the Aliens Act shall take effect for all citizens of other republics who did not request citizenship of the Republic of Slovenia, or for whom two months from the issuance of a negative decision have passed. It is therefore required that all these persons begin arranging their status as of this date. Parallel to this, the examination of records shall also begin. For this purpose, the project for the computerized management of aliens' records has already been created, for which training will also be carried out. This will be carried out by region, regarding which you will be informed in due time.

At this time, it is realistic to expect numerous problems pertaining to persons who shall become foreigners as of 28/2-1992, and who until now have requested neither temporary nor permanent residence. We warn you that the documents they possess, even if they have been issued by competent bodies within our state and are still valid, are no longer valid for these persons owing to their changed status.

Ambiguities arise due to different interpretations of the provisions for the cancellation of residence and the forced removal of an alien according to Articles 23 and 28 of the Aliens Act, particularly in cases where aliens are residing here illegally, or coming to our country in an illegal way (in most cases they are even without means for survival).

Police units insist that in such cases an Administrative Office of the Interior must issue a decision on the revocation of residence, which is not in conformity with the law.

Pursuant to Article 23 of the Aliens Act, residence may only be revoked for those foreigners who reside in the territory of the Republic of Slovenia on the basis of a valid passport, issued visa, entry permit, or permanent residence permit. Only in these cases may the municipal Administrative Office of the Interior issue a decision on the revocation of residence on the basis of the behest of operative police units. If an alien has come to our territory in an illegal manner and resides here without a permit, we may use only Article 28 of the cited Act, pursuant to which, if an alien resides in the territory of the Republic of Slovenia longer than permitted by paragraph 1 of Article 13, or resides beyond the expiry date of a temporary residence permit, an authorized competent person of the Interior [police] may accompany said person to the state border and show him across the state border, without any decision whatsoever from an Administrative Office [underlined by editors].

Copies sent to:  
- Department of Criminal Investigations  
- Administrative Office of the Interior  
- etc.

Head of the Secretariat for  
Administrative Legal Affairs



*[Signature]*  
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