

# **SLOVENIA: AMNESTY INTERNATIONAL'S POSITION ON RESOLVING THE ISSUE OF ERASED**

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**Amnesty International Publications**

First published in [2013] by  
Amnesty International Publications  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom  
[www.amnesty.org](http://www.amnesty.org)

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Index: EUR 68/001/2013  
Original Language: English  
Printed by Amnesty International, International Secretariat, United Kingdom

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Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories, who campaign on human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. We research, campaign, advocate and mobilize to end abuses of human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. Our work is largely financed by contributions from our membership and donations

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On 26 February 1992, some 25,671 people - about one per cent of the population of the country - were unlawfully removed from the Slovenian registry of permanent residents. They were mainly people from other constituent republics of the former Yugoslavia, who had been living in Slovenia but had not acquired Slovenian citizenship after the country became independent. Deprived of their economic, social and political rights, some were forced to migrate to other European countries. Those who stayed in Slovenia had to pretend that they were refugees or even asylum-seekers. Many lost their jobs or pension.

Erasure was a collective and systematic violation of human rights. Accordingly, Amnesty International's position on this issue is based on international human rights law and standards, especially the European Court of Human Rights Grand Chamber ruling in the case of *Kurić v Slovenia*<sup>1</sup> where the Court found that Slovenia violated the right to private and family life and the right to an effective remedy of the erased. It also found discrimination in this regard.

Amnesty International calls on the authorities of Slovenia to ensure, with no further delay, that the human rights violations faced by the erased are fully remedied in line with human rights law and standards. In accordance with UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, the organization emphasizes the need to make sure that all reparation programs are designed with the involvement and based on the needs of the erased themselves.

Amnesty International strongly believes in the importance and the outcomes of an inclusive and cooperative process, encouraging the erased and the state to discuss all feasible options and ultimate concrete solutions to ensure effective redress for all victims.

State obligations in respect to remedying human rights violations include but are not limited to accountability, non discrimination and positive obligations towards vulnerable groups. Human rights obligations also embrace the right of every individual to the full enjoyment of their rights – civil and political and economic, social and cultural.

The erased, as victims of human rights violations, should be provided with full reparations (including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition) which should aim to, “as far as possible, wipe out the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if that act had not been committed.”<sup>2</sup>

Amnesty International believes the erasure should be addressed and resolved as follows:

#### **1. Political recognition of erasure**

■ AI believes that the highest state institutions (e.g. the Parliament) should recognize the erasure as a human rights violation. It could take a form of a special resolution, acknowledging it and its consequences as a grave systematic human rights violation and

apologize to the victims.

- The authorities may wish to consider establishing a special inclusive consultation focal point aiming to provide direct access to key authorities in order to ease dialogue and facilitation between the victims and the state.

## **2. Investigation of erasure**

- The state must ensure that there is a prompt, effective, impartial and independent investigation into human rights violations. In order to meet this obligation, the government should consider options such as a special investigative body or commission of truth with appropriately high competence, sufficient resources for work and with adequate knowledge to execute an official investigation of erasure should be established. Members should be non-partisan (apolitical), if needed, foreign national experts. The erased must be consulted and consent with the composition, competence and resources of this body.
- Findings and recommendations of this investigation body must be obligatory for the state with the aim of adopting additional measures, if so required. A reasonable time-frame for work, analysis and implementation should be allowed.
- An effective, full and impartial investigation of human rights violations should be conducted on these basis. Persons or institutions found responsible should be held accountable.

## **3. Legal status measures**

- The state should immediately enforce the automatic return of appropriate legal status (now a permit for permanent residence) to all persons who were (Yugoslav-citizens) permanent residents at the moment of Slovenian independence and whose status was later unlawfully revoked (the erasure from the registry of permanent residents). The automatic return of statuses should be made available to all those affected erased without any additional conditions or administrative fees.
- Reunification of families should be prioritized and made possible without any conditions. „Family“ as a term should be regarded as wide as possible, taking into account diverse cultural traditions and types of family relationships. Children of the erased, regardless of the time or place of birth, should enjoy the same rights as erased regarding their legal status.

## **4. Damages compensation and redress (pecuniary and non-pecuniary)**

- Damages compensation (pecuniary and non-pecuniary) should be based on the minimal amounts as set by the European Court of Human Rights Grand Chamber in the case of *Kurić v Slovenia*.
- However, where the erased claim additional aggravating damages based on a consideration that the awarded compensation is not just, should have the option of judicial review to determine an appropriate mean or amount.

- Proceedings concerning claims by the erased should be resolved as a priority at all levels. Additional appropriate measures (e.g. tax exemptions or subsidies) should be given serious consideration by the authorities to complement but not replace compensation in order to ensure just satisfaction in a particular case.
- In these proceedings (whether administrative or civil) the state should consider abolishing relevant clauses of limitations in line with the human rights standards principle that such clauses should not be used to prevent effective redress for human rights violations.
- Similarly in order to secure effective redress the state should consider abolishing the *res iudicata* rule in respect of all civil or other proceedings for the erased who had already initiated such proceedings in the past, but were denied or rejected for any reason.

## 5. Children

- All children of the erased and their potential descendants or heirs, regardless of the fact whether they were erased themselves or not, their current legal status, time or place of birth, should be taken into special consideration in all measures affecting them, in line with the principle of that the 'best interests of the child' must be the primary concern regarding any decisions concerning them as guaranteed under Article 3 of the Convention on the Rights the Child ratified by Slovenia.

## 6. Health care measures

- Appropriate physical and mental health care measures, particularly psycho-social assistance, including but not limited to counselling, should be made available to the victims. The service should be provided free of charge under the mandatory health care system (or the social support system as appropriate, based on the clinical decision maker). Other measures should be devised to counter past consequences of the denial to provide appropriate health services to the erased.

## 7. Addressing housing challenges

- The state should resolve housing issues regarding the erased as fast as possible, taking into account all of the different situations faced by victims – both the erased already living in Slovenia and those returning and reintegrating again after 20 years.
- Special attention should be given to those most vulnerable, including those erased forcibly evicted and removed from their homes or the country in the past and who currently do not have access to adequate accommodation as defined under international human rights law and standards.
- The state should take the appropriate positive measures to ensure that the right to adequate housing is fulfilled for all erased individuals and families (e.g. non-profit rent of empty state-owned housing could be one solution).
- Given their longstanding situation all erased in housing proceedings should be a priori considered as members of a vulnerable group and prioritized accordingly unless there is clear

evidence to the contrary in individual circumstances.

#### **8. Social support measures**

- Similar to health care measures, psychosocial help and counselling should be made available and provided for free of charge to the erased within the social support network.
- Sufficient resources should be made available to ensure effective reintegration support to all erased individuals and families returning to the country.
- Any unclaimed or denied past benefits (e.g. child support) should be taken into account when determining the amount of just compensation.

#### **9. Education measures**

- The phenomenon of 'Erasure' should be included in all Primary and Secondary education curricula as part of human rights / discrimination education.
- All erased children should receive equal access to the educational system. In order that all erased pupils and students receive an adequate education commensurate to their needs they should be the subject of positive assistance measures where this is required to compensate for any violations of their right to education they have suffered due to their situation.

#### **10. Work and pension measures**

- All erased individuals have the right to work and to receive positive assistance in helping them to secure it.
- In designing employment programmes the erased should be considered as vulnerable group given their particular situation.
- A similar approach should be taken with respect to access to the state pension system by the erased.

# ENDNOTE

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- 1 Kurić v Slovenia, European Court of Human rights Grand Chamber judgment (application nr. 26826/06)
- 2 Chorzow Factory Case (*Germany v. Poland*), Permanent Court of International Justice, 13 September 1928, para 125.

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