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# **amnesty international**

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## **Slovenia**

### **Submission to the UN Universal Periodic Review**

**Seventh session of the UPR Working Group of the  
Human Rights Council  
February 2010**



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### **Executive summary**

In this submission, Amnesty International focuses on ongoing human rights violations suffered by a number of residents of the former Yugoslav republics who had been living in Slovenia and whose permanent residency status was revoked by the Slovenian authorities in 1992 (hereinafter referred to as “the erased”). However, the organization’s concerns in Slovenia extend beyond those related to “the erased”.

As a result of their permanent residency status being revoked, “the erased” have been subject to violations of the principle of non-discrimination, the right to work and social security, the right to the highest attainable standard of physical and mental health, and the right to education.

Regrettably, despite two separate decisions by the Slovenian Constitutional Court that measures taken by the authorities to regulate the status of “the erased” were unconstitutional, the government has failed to provide “the erased” with access to reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition for the aforementioned human rights violations.

Amnesty International has raised the issue of “the erased” with both the Slovenian authorities and with international human rights bodies, including the UN Committee on Economic, Social and Cultural Rights, the UN Human Rights Council and the Council of Europe. Several of these bodies have urged the Slovenian authorities to restore retroactively the permanent residency status of “the erased” and to provide them with full reparation.

# Slovenia

## Amnesty International submission to the UN Universal Periodic Review

Seventh session of the UPR Working Group, February 2010

### Introduction

Amnesty International is concerned that the Slovenian authorities have consistently failed to protect the human rights of a group of permanent residents in Slovenia, known as “the erased”, by removing them from the registry of permanent residence in a discriminatory way and by not providing them with access to reparation for this unlawful act.

The Socialist Federal Republic of Yugoslavia (SFRY) was a federation composed of six republics and the population had both SFRY citizenship and a second, republican citizenship. SFRY citizens from other republics living in Slovenia enjoyed the same rights as those with Slovenian republican citizenship. When Slovenia declared independence in June 1991, citizens of other republics with permanent residence in Slovenia could apply for Slovenian citizenship by the deadline of 26 December 1991. Those who did not apply were removed from the registry. According to the latest estimates, 25,671 individuals were removed from the Slovenian registry of permanent residents on 26 February 1992.

However, those affected were not informed of this measure or of its consequences. As a result of the “erasure”, they became *de facto* foreigners or stateless persons residing illegally in Slovenia. In some cases, the “erasure” was followed by the physical destruction of the identity and other documents of the individuals concerned. Some of “the erased” were forcibly removed from the country. To date approximately 13,426 of “the erased” are still left without Slovenian citizenship or a permanent residence permit. The majority of them live abroad and cannot re-enter Slovenia, while some of them have lived “illegally” in Slovenia as foreigners or stateless persons since 1992..In 2008 deportation procedures were initiated against some of “the erased”, although deportations were not actually carried out. Many of the approximately 10,000 persons, who managed to obtain Slovenian citizenship or permanent residency, still suffer from the ongoing consequences of their previous unregulated status and do not have access to reparation, including compensation.

### Human rights violations caused by “the erasure”

#### *Principle of non-discrimination*

The revocation of the permanent residency status of citizens of other former Yugoslav republics who had been permanent residents in Slovenia was conducted in a discriminatory manner against those from the other republics of the former Yugoslavia living in Slovenia, whereas foreigners from all other countries were granted the right to reside permanently in Slovenia.

#### *Right to work and social security*

Many of “the erased” lost their jobs and could no longer be legally employed when their permanent residency status was revoked. In this respect, the removal of the individuals concerned from the registry of permanent residents led to a violation of their right to work.

Many of “the erased” are still unable to find jobs because they have no documents or because they are considered foreigners with no right to work. They face the choice of being unemployed with no source of

income, or of being employed in the “informal sector” with low salaries and no social protection. In cases where the “erasure” and the loss of employment have led to extreme poverty, the removal of those individuals from the registry of permanent residents may amount to a violation of the right to an adequate standard of living.

In cases where the “erasure” resulted in the loss of employment, this often meant the loss of many years of pension contributions as well. Many of “the erased” have lost their entitlement to a pension or seen their expected pension significantly reduced even when they eventually managed to restore their legal status. In this way, the removal from the registry of permanent residents has had serious negative effects on the right to social security of some of these individuals.

#### *Right to the highest attainable standard of physical and mental health*

As foreigners without a permanent residence permit in Slovenia, “the erased” have had no, or only limited, access to comprehensive healthcare after 1992; in some cases this has had serious consequences for their health. The *ex officio* removal from the registry of permanent residents has thus resulted in inequality in the ability to access healthcare.

#### *Right to education*

Children removed from the registry of permanent residents in 1992, or whose parents were removed from the registry, in some cases lost access to secondary education. While no recent cases have been reported of children being excluded from school as a result of the “erasure”, Amnesty International remains concerned about the ongoing effects for some of “the erased” of the loss of years of education, and of the delays in the completion of their studies.

### **Ongoing government failure to resolve the problem**

In 1999 the Slovenian Constitutional Court recognized the unlawfulness of the “erasure” and ruled that provisions in the Foreign Citizens Act violated the Constitution by failing to determine the conditions for the acquisition of permanent residence permits by citizens of other former Yugoslav republics living in Slovenia who did not apply for Slovenian citizenship, or were refused it.<sup>1</sup> In this respect, the Constitutional Court ruled that the Foreign Citizens Act violated the constitutional principle of the rule of law and the principle of equality. The Constitutional Court recognized that the “erasure”, in those cases where it led to the expulsion of the individuals concerned, could result in the violation of other human rights and freedoms protected in the Constitution and under international law. The Constitutional Court therefore ordered that adequate legislative measures be adopted to regulate the status of “the erased”, taking into account the ongoing consequences of their removal from the registry of permanent residents.

In 1999 the *Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia* was adopted and in 2002 amendments to the *Act on Citizenship* entered into force. However, in both cases the legislative efforts failed to restore permanent residence retroactively, thus excluding from its reach those who were expelled from Slovenia, and/or prevented from entry (and/or re-entry) into Slovenia, as a result of the “erasure”. For this reason in 2003 a new decision of the Constitutional Court found the *Act on the Regulation of the Status of Citizens of Other Successor States to the Former SFRY in the Republic of Slovenia* unconstitutional. The Constitutional Court once again ruled that permanent residence permits be issued with retroactive effect from the date of the “erasure”.

Following the ruling of the Constitutional Court, a “technicalities bill”, the first of two acts aimed at reinstating the status of individuals removed from the population registry, was adopted by the Slovenian Parliament in October 2003. Debates on a second bill continued, prompting the then opposition parties to call for a

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<sup>1</sup> Constitutional Court of the Republic of Slovenia, Decision in case no. U-I-284/94, 4 February 1999.

referendum on the "technicalities bill". The referendum was held in April 2004. With the turnout around 31 per cent approximately 95 per cent of those who voted rejected the bill.

In 2007 the government again attempted to resolve the status of "the erased" by drafting a Constitutional Law on the Erased. Eventually the draft law, which Amnesty International believed maintained discriminatory treatment of "the erased" and further aggravated their disadvantaged position, was withdrawn from the parliamentary procedure.

In 2009 another attempt was made to pass a new law on "the erased". Amnesty international is concerned, however, that the draft law is very restrictive and focuses only on the implementation of the Constitutional Court decisions without guaranteeing full access to reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition for the human rights violations resulting from the "erasure".

According to the draft law, living in Slovenia is one of the conditions for restoration of residency status in the country. Amnesty International is concerned, however, that many "erased" were forcibly expelled from Slovenia by the authorities and therefore are not able to meet the criterion of living in Slovenia for a continuous period of time. Inclusion of such a condition in the law would discriminate against "the erased" who were not able to stay in Slovenia after the "erasure". In this way this particular group could be considered victims of multiple discrimination; first of all as victims of the "erasure" and secondly as excluded in a discriminatory way from claiming restitution of their rights.

In addition to this the procedure envisaged by the draft law for claiming restoration of residency status places the burden of proof on the applicants. In some cases "the erased" may not be able to provide adequate documentation related to the loss of their residency status as in many cases the "erasure" was followed by the physical destruction of their identity cards or other documents proving their status. As a consequence, in many cases only the authorities are able to provide proof of the legal status of certain individuals.

Amnesty International is also concerned that the draft law does not envisage any outreach campaign directed towards "the erased" who currently live abroad and therefore decreases their chances of benefiting from the law as many of them might not be aware of its existence.

The draft remains silent on the possibility of compensation for the human rights violations suffered by "the erased".

## **Recommendations for action by the state under review**

### **Amnesty International calls on the Slovenian authorities:**

- To adopt legislative and other measures to grant full reparation, including restitution, satisfaction, compensation, rehabilitation and guarantees of non- repetition, to all individuals affected by the "erasure";
- To ensure that such measures include all "erased" persons irrespective of where they currently reside;
- To organize an outreach campaign to inform "the erased" currently living outside Slovenia of the existence of the new legislative measures and the possibility to benefit from them.

### **Appendix: Amnesty International documents for further reference<sup>2</sup>**

- *Slovenia: Violence surrounds the Ljubljana Pride.* 26 June 2009. EUR 68/002/2009
- *Slovenia: Amnesty International's Briefing to the United Nations Human Rights Council 9th Session September 2008.* 17 September 2008. EUR 68/001/2008
- *Slovenia: Draft Constitutional Law perpetuates discriminatory treatment suffered by the 'erased'.* 2 November 2007. EUR 68/003/2007.
- *Slovenia: Amnesty International condemns forcible return of "erased" person to Germany.* 1 February 2007. EUR 68/002/2007.
- *False starts: The exclusion of Romani children from primary education in Bosnia and Herzegovina, Croatia and Slovenia.* 16 November 2006. EUR 05/002/2006.
- *Slovenia: Roma and the right to education. Factsheet.* 16 November 2006. EUR 68/002/2006.
- *Slovenia: The 'erased' - Briefing to the UN Committee on Economic, Social and Cultural Rights.* 28 November 2005. EUR 68/002/2005.
- *Slovenia: Restore the rights of the "erased".* 4 March 2005. EUR 68/001/2005.

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<sup>2</sup> These documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/slovenia>