

SLOVENIA

**LONG-STANDING
CONCERNS: RIGHTS OF THE
ERASED AND
DISCRIMINATION AGAINST
ROMA**

*Amnesty International
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INTRODUCTION

This submission was prepared for the Universal Periodic Review (UPR) of Slovenia in October-November 2014. In this submission, Amnesty International evaluates the implementation of recommendations made in the previous cycle of the UPR, assesses the human rights situation on the ground, and makes recommendations calling on the government of Slovenia to act on key institutional and human rights concerns.

Despite accepting recommendations on the rights of the erased and systematic discrimination against Roma in the previous review, the government has failed to ensure their implementation.

Amnesty International notes with concern that the legal and institutional human rights framework is not effective in upholding the right to non-discrimination, or providing effective remedies for its violation. With respect to the human rights situation on the ground, the government has failed to implement legislation to recognize the rights of the erased and restore their status. Roma communities continue to be discriminated against, in particular as regards access to adequate housing, and safe drinking water and sanitation. The Slovenian authorities have failed to guarantee the security of tenure of people living in informal settlements and effectively protect them from the risk of forced evictions.

FOLLOW UP TO THE PREVIOUS REVIEW

THE ERASED

The issue of the erased was raised by over 10 states and Slovenia accepted nine of their recommendations. However, Slovenia has failed to enact legislation to recognize the rights of the erased.¹ The 2013 Act on Compensations for Persons Erased from the Register of Permanent Residents, incorrectly defines the erased as persons for whom the 1991 Foreigners Act became relevant and made their registration as permanent residents redundant.² This definition is ignoring the fact that erasure was an intentional political decision of the Slovenian authorities in 1992, a fact supported by several official documents, including one dated 4 June 1992 in which the then Minister of Interior Mr Bavčar recommended to the government “to think away acquired rights”.

Slovenia has also failed to restore permanent residency to the erased.³ The 2010 legislation⁴, aimed at regulating the restoration of legal status of the erased, expired in July 2013, and the erased now have no legal options to regulate their status. According to information from the Ministry of Interior, when the law expired there were 987 applications for a permanent residence permit under the 2010 legislation – 841 by the erased, 51 by children of the erased and 95 by other applicants; of these only 138 applicants were granted, 175 were denied, and 674 applications are still pending.

An outreach campaign was organized;⁵ however, it was very limited in scope (the authorities prepared a special website and booklets were available at Slovenian embassies in the region).

On 12 March 2014, the European Court of Human Rights issued a ruling on the pecuniary damages of the six erased complainants, following the 26 June 2012 ruling on non-pecuniary damages (*Kurić vs Slovenia*).

Remedies for the erased under domestic law consist only of financial compensation, which – according to the erased – is set too low. No other forms of reparation, including restitution, rehabilitation, satisfaction and guarantees of non-repetition have been offered to them.⁶

DISCRIMINATION AGAINST ROMA

This issue was raised by six states and Slovenia accepted all these recommendations. Lack of prevention of discrimination against Roma remains a systemic problem due to the ineffective national human rights framework (see under section 2).⁷

Measures to improve the living conditions of Roma remained largely unimplemented in informal Roma settlements (see under section 3).⁸

Slovenia has failed to act on recommendations by the Treaty Bodies and Special Procedures related to Roma.⁹ The recommendations by the UN Special Rapporteur on the right to water and sanitation regarding access to water for Roma remain unimplemented (see under section 3 below).

THE NATIONAL HUMAN RIGHTS FRAMEWORK

Slovenian authorities have yet to establish an effective legal and institutional framework to give victims of human rights violations, including discrimination, access to an accessible, affordable and timely remedy. This is especially relevant for the most disadvantaged groups in Slovenia, such as the Roma, to effectively challenge discriminatory practices.

The Ombudsman is the main human rights body established by the Constitution. It is only mandated to monitor actions by state agents and has no oversight function of actions by private or non-state actors. It is only mandated to take action when it receives an individual complaint. The mandate of the Ombudsman is broad; however, its recommendations are not legally binding. If the recommendations are not acted on, the Ombudsman cannot impose sanctions, but only forward such cases to a prosecutor or inspectorate requesting them to take action.

In order to implement EU anti-discrimination provisions, the authorities have established the office of the Advocate of the Principle of Equality, mandated to receive and examine alleged cases of discrimination in the private and public sectors; however, its opinions are not legally binding. The Advocate is not mandated to collect specific data, to monitor the situation of vulnerable groups, or to coordinate state policy to combat discrimination. The Advocate has one employee, namely the Advocate himself. The government has not provided the Advocate with sufficient powers and resources to provide assistance.

State inspectorates have powers to provide an effective remedy to victims of

discrimination. However, when the Market Inspectorate and the Housing Inspectorate were asked whether they could deal with cases of alleged discrimination by a public or private actor on housing issues in 2010, the Housing Inspectorate answered that such cases would not fall under its mandate.¹⁰ The Market Inspectorate explained that its task was to supervise the implementation of the Consumer Protection Act.

Despite the fact that several institutions are tasked with ensuring non-discrimination, including the Ombudsman, the Advocate of the Principle of Equality, various inspectorates and the courts, the mandates of these institutions lack clarity. Despite constitutional guarantees of equality before the law,¹¹ none of these institutions are responsible for the overall coordination of anti-discrimination policy, for gathering statistics, for monitoring the situation and for proposing systemic solutions.

Victims of discrimination can seek judicial remedies before the lower courts as well as before the Constitutional Court. However, proceedings are slow and legal aid is not commonly available.¹²

PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

THE ERASED

On 26 February 1992, some 25,671 people – more than one per cent of the population – were unlawfully removed from the Slovenian registry of permanent residents. They were mainly people from other republics of the former Yugoslavia, who had been living in Slovenia but who had not acquired Slovenian citizenship following independence of the country. Without a legal status¹³ they were deprived of their economic, social and political rights, and were left on the edge of society. Many lost their jobs or pension. Thousands were forcibly removed from the country or denied re-entry, often resulting in separation of family members.

On 26 June 2012, the European Court of Human Rights Grand Chamber ruled in the case *Kurić vs Slovenia* that the state had violated the right for private and family life and the right to an effective remedy of the erased complainants. It also found that the state had discriminated against the complainants and set non-pecuniary compensation for the human rights violations. By December 2013, the authorities had prepared legislation on a compensation scheme for the erased. However, compensation measures include only those erased, who have already regulated their status, and thus exclude approximately half of the erased. The legislation focuses only on financial compensation and does not include other measures of re-integration and remedies, including housing, social services, employment and other forms of restitution. On 12 March 2014, the European Court of Human Rights issued a ruling on pecuniary damages, following the 26 June 2012 ruling. The compensation awarded by the court is significantly higher as that available to the erased in administrative proceedings under the December 2013 compensation scheme.¹⁴

The 2010 legislation on regulation of status expired in July 2013, preventing the erased from restoring their legal status. It was challenged by the erased at the Slovenian Constitutional Court for severe flaws, but the court has not pronounced itself on it.

Ali Berisha, one of the applicants before the Grand Chamber of the European Court of Human Rights had his permanent resident status restored, and was granted compensation by the court. Four of his five children were not born in Slovenia and, as only children born in Slovenia are eligible for status restoration, they have been excluded from the 2010 legislation. As a consequence, his wife and four children are not able to live in Slovenia. His family can only be reunited with him in Slovenia under the strict provisions of the Foreigners' Act¹⁵, but the application is still pending after being denied twice, amid complaints about the proceedings.

DISCRIMINATION AGAINST ROMA

Many of the Roma in the South East of the country live in isolated and segregated settlements in rural areas. Dwellings are often poorly constructed, sometimes comprising of small wooden huts. Many of the settlements are informal and the residents lack security of tenure. They have limited access to services such as water, electricity, sanitation and transport facilities. Widespread discrimination often prevents Romani families from buying or renting housing in other areas.

Cases from all over the country show majority communities blocking attempts to relocate Romani families in their area. In most municipalities, Romani families face particular barriers, including lack of information and biased attitudes towards them, in accessing non-profit housing.

LACK OF SECURITY OF TENURE

Roma settlements are often established in an irregular manner and on land that is not classified for residential use and does not have the required building permits. This leads to insecurity of tenure for the residents. A legal title and a building permit are pre-conditions for access to public services, such as water, sanitation and electricity.

Žabjak (Novo mesto), Goriča vas (Ribnica) and Dobruška vas are just some of the many Roma settlements that are still not legalized and whose residents have not been provided with even a minimum degree of security of tenure. Romani communities have lived there for decades, often following decisions by local authorities to let them settle in those locations. Roma living in this situation cannot foresee what will happen to their homes and cannot improve their housing conditions.

According to data collected in 2010 by an expert group on Roma settlements appointed by the government¹⁶, one third of Slovenia's Roma settlements are still irregular. Out of 107 settlements across the country, buildings in 43 are not legalized; they are not in line with regulations in another 20. At the same time, this further affects the quality of their housing, due to their reluctance to enlarge or upgrade their homes, knowing that their investment could well be in vain. Residents of Žabjak and Dobruška vas claim inspectors monitor whether anything new is built or upgraded in the settlement and then give orders to demolish it.

RISK OF FORCED EVICTION

The Housing Act regulates eviction from rented apartments and state provided housing. The General Property Code stipulates that eviction from land which is not owned by the residents can only be carried out on the basis of a court decision.

Slovenian legislation does not prohibit forced evictions and does not include the

minimum procedural requirements to protect residents from eviction, stipulated in international law. In several Roma settlements, including settlements Trata pri betonarni, Mestni log, Loke and Dobruška vas, the residents are at risk of imminent eviction.

In 1963, the Novo mesto municipality settled the first Romani family on the land that is now the informal Roma settlement Dobruška vas; by 1984, 23 families were living there. In 1986, the Institute for Social Planning of Novo mesto prepared a plan to legalize the settlement. However, the Agricultural Association Krka and the local community of Škocjan objected to this step, arguing that the land in question was designated for agricultural purposes.²⁷ In January 2011, the mayor of Škocjan stated that a government decision in 2001 had designated the land for business purposes. In May 2013, the municipality received state and EU funds to build a business zone and a waste-water cleaning facility on the site of the Roma settlement. The Roma community were not informed or consulted on these developments. At the same time, Agricultural Association Krka initiated criminal proceedings, resulting in first instance convictions of Roma for illegally occupying the land. In an official visit to the Roma settlement in mid-2013, representatives of the Office for National Minorities promised that there would be no forced evictions, that individual plans for each object in the settlement would be developed and that outreach programmes for pre-school education and social support would start immediately. By March 2014, none of these promises have been fulfilled by the local government.

ACCESS TO SAFE DRINKING WATER

Under Slovenian law, citizens can only obtain access to communal services if they own or hold other legal claims to the land on which they live, along with a building permit. Many Roma are therefore denied even minimum essential levels of access to water and sanitation.

The denial of their rights to adequate housing, water and sanitation negatively impacts their rights to education, work and health, and feeds into a cycle of poverty and marginalization. The lack of access to water and sanitation particularly affects Romani women who bear the responsibilities for washing clothes and keeping the children clean and struggle to find privacy for their own hygiene and sanitation needs. Following a mission to Slovenia, on 28 May 2010, the UN Special Rapporteur on the human right to safe drinking water and sanitation described the lack of access to water and sanitation as "devastating for the communities."¹⁸

Some Roma communities are forced to collect water from petrol stations, cemeteries or polluted streams, often far away from where they live. Some of them are only able to collect 10–20 litres a day which is below the recommended minimum in humanitarian emergencies. Ponova vas and Goriča vas are two Roma settlements entirely deprived of access to water and in many others such as Dobruška vas the majority of Roma have no access to water.²⁹

Contaminated water is a cause of serious illnesses, including diarrhoea.²⁰ Roma from Dobruška vas in Škocjan told Amnesty International that they are often forced to use water from a polluted local stream for drinking, cooking and washing. Roma have reported that sewage flows into the stream as well as waste from a slaughterhouse.

In 2011, the government decided not to intervene in the competence of Škocjan municipality regarding Dobruška vas Roma settlement with the appalling argument "to

not give a bad example to municipalities who resolved the issues by themselves". The local authorities later built a public water access point to which they connected three of the 19 families in Dobruška vas without water. No further action was taken despite repeated requests by the Roma for further access.²¹

RECOMMENDATIONS FOR ACTION BY THE STATE UNDER REVIEW

Amnesty International calls on the government of Slovenia to:

On the national human rights framework

- Address discrimination by public and private actors as a matter of priority;
- Broaden the mandate and powers of the institutions tasked with guaranteeing the principle of equality and non-discrimination, to include the capacities to monitor actions by both state and private actors, to impose legally binding measures to address discrimination, as well as to provide effective remedies to victims of discrimination;
- Implement the recommendations made by the Council of Europe's European Commission against Racism and Intolerance (ECRI) and the UN Committee on the Elimination of Racial Discrimination (CERD) on collecting data disaggregated by the prohibited grounds of discrimination – including 'race and colour'.²²

On the erased

- Immediately enforce the automatic return of appropriate legal status (currently a permit for permanent residence) to all erased without any additional conditions or administrative fees;
- Officially recognize erasure as a human rights violation and offer a state apology to the victims;
- Ensure that there is a prompt, effective, impartial and independent investigation by a special investigative body or commission of truth with appropriately high competence and adequate resources into human rights violations connected to the erasure;
- Ensure individuals or institutions found responsible of committing these violations are held to account;
- Regulate and enable reunification of families affected by erasure;²³
- Revise the compensation scheme for damages to the erased following amounts and criteria set out by the European Court of Human Rights Grand Chamber judgment in the case of *Kurić vs Slovenia*, with the option to fully claim additional compensation in cases where aggravating circumstances are present;²⁴
- Ensure reintegration measures for the erased, including housing, social support, and personal reintegration assistance.

On Roma

- Ensure access to water, sanitation and electricity for all communities;
- Confer security of tenure for people living in informal settlements;
- Provide all individuals with legal protection against forced evictions;
- Legalize settlements where possible or to offer other solutions in genuine consultation with affected communities;
- Stop the potential forced evictions in Dobruška vas Roma settlement;
- Prioritise participation of Romani communities living in informal settlements, as well as other disadvantaged groups, in all public housing policies and programmes, including schemes for non-profit housing and for housing subsidies.

ENDNOTES

- ¹ Report of the Working Group on the Universal Periodic Review of Slovenia, 15 March 2010. A/HRC/14/15. Recommendations 111.77. (Australia), 111.78. (Norway). <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/120/49/PDF/G1012049.pdf?OpenElement>
- ² Para. 1 of Art. 1 of the 2013 Law.
- ³ Recommendations 111.79. (Canada), 111.80. (Slovakia).
- ⁴ *Zakon o urejanju statusa državljanov drugih držav naslednic nekdanje SFRJ v Republiki Sloveniji* (Official Gazette of RS nr. 76/2010).
- ⁵ Recommendation 111.81. (Poland).
- ⁶ Recommendations 111.83. (Serbia), 111.84. Czech Republic), 111.85. (Russian Federation), 111.86. (Mexico), 111.87. (Philippines).
- ⁷ Recommendation 111.71. (Chile).
- ⁸ Recommendation 111.73. (Australia).
- ⁹ Recommendations 111.94. (Islamic Republic of Iran), 111.95. (Jordan).
- ¹⁰ See Amnesty International: *Parallel lives: Roma denied rights to housing and water in Slovenia*. Index: EUR 68/005/2011, March 2011, p. 56. <http://www.amnesty.org/en/library/info/EUR68/005/2011/en>
- ¹¹ Article 14 of the Constitution.
- ¹² Ibid. p. 53.
- ¹³ As permanent residents of the former Yugoslavia living in Slovenia, a permit for permanent residence should have been issued to the erased. As the legislation at the time of independence of Slovenia did not regulate this transition of legal status, the erased were consequently deprived of their legal status. According to several Constitutional Court decisions, these actions of the authorities were unlawful (decisions nr. U-I-284/94 from 8 February 1999, U-I-246/02 from 3 March 2003 and U-II-1/10 from 10 June 2010).
- ¹⁴ Case of *Kurić and Others v. Slovenia* (Application no. 26828/06) Judgment (Just satisfaction) [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-141899#i="itemid":\["001-141899"\]](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-141899#i=) Strasbourg, 12 March 2014.
- ¹⁵ According to the Foreigners Act, family reunification can only be achieved by granting permits for temporary residence and not permits for permanent residence, effecting in significantly lower set of rights for family members.
- ¹⁶ *Prostorski problemi romskih naselij v Sloveniji*. Republic of Slovenia, Ministry for Infrastructure and Spatial Planning, 2010. http://www.mzip.gov.si/fileadmin/mzip.gov.si/pageuploads/publikacije/prostorski_problemi_romskih_naselij_elaborat.pdf
- ¹⁷ Note that the Agricultural Association Krka owns approximately one half of the land, while the other half of the settlement is in the ownership of the Škocjan municipality and of Roma.
- ¹⁸ Report of the Special Rapporteur on the human right to safe drinking water and sanitation. Addendum: Mission to Slovenia. A/HRC/18/33/Add.2, para. 34. http://www2.ohchr.org/english/bodies/hrcouncil/docs/18session/A-HRC-18-33-Add2_en.pdf

¹⁹ See Amnesty International: *Parallel lives*, pp. 3, 9-10.

²⁰ Reports of the worrying health conditions from local health care centres were presented to the Governmental commission for Roma in November 2011.

²¹ The municipality responded to Ombudsman inquiries that "they fulfilled their duties" and that "Roma renounced access to water willingly".

²² ECRI Third report on Slovenia, 30 June 2006, http://hudoc.fcnm.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/SVN-CbC-III-2007-5-ENG.pdf, para. 107; CERD Concluding observations on Slovenia, 77th Session, 27 August 2010. CERD/C/SVN/CO/6-7, <http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-SVN-CO-7.doc>, paras. 7-8.

²³ Children of the erased, regardless of the time or place of birth, should enjoy the same rights as erased regarding their legal status. The definition of "family" should be understood in this regard widely as possible.

²⁴ Compensation for damages should be made available without subjecting it to conditions related to a restored legal status.

ANNEX

AMNESTY INTERNATIONAL DOCUMENTS FOR FURTHER REFERENCE¹

Europe: Human rights here, Roma rights now: A wake-up call to the European Union. Index: EUR 01/002/2013, April 2014. <http://www.amnesty.org/en/library/info/EUR01/002/2013/en>

Slovenia: Amnesty International's position on resolving the issue of erased. Index: EUR 68/001/2013, February 2013. <http://amnesty.org/en/library/info/EUR68/001/2013/en>

Submission to the European Commission on the implementation of the equality Directives. Index: IOR 61/002/2013, January 2013. <http://amnesty.org/en/library/info/IOR61/002/2013/en>

Slovenia: European Court of Human Rights demands justice be done to the erased. Public Statement, 26 June 2012. Index: EUR 68/001/2012. <http://amnesty.org/en/library/info/EUR68/001/2012/en>

Parallel lives: Roma denied rights to housing and water in Slovenia. Index: EUR 68/005/2011, March 2011. <http://www.amnesty.org/en/library/info/EUR68/005/2011/en>

Slovenia: Submission to the UN Universal Periodic Review: Seventh session of the UPR Working Group of the Human Rights Council, February 2010. Index: EUR 68/004/2009, September 2009. <http://amnesty.org/en/library/info/EUR68/004/2009/en>

¹ All of these documents are available on Amnesty International's website:
<http://www.amnesty.org/en/region/slovenia>