

Slovenia

Amnesty International's Briefing to the United Nations Human Rights Council 9th Session September 2008

Amnesty International is concerned at an ongoing violation of human rights of the residents of the former Yugoslav republics who had been living in Slovenia and whose permanent residency status was revoked by the Slovenian authorities in 1992 (so called "erased").

The organization points out to the violations of the principle of non-discrimination; right to work and social security; right to the highest attainable standard of physical and mental health and the right to education of the erased which occurred as a result of the revocation of their permanent residency status.

Amnesty International observes that the authorities have failed to provide the erased with full reparation, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition for the aforementioned human rights violations.

A number of international human rights bodies urged the authorities of Slovenia to restore retroactively the permanent residency status of the erased and to provide them with full reparation.

In two separate decisions the Slovenian Constitutional Court found measures taken by the authorities to regulate the status of the erased unconstitutional.

Overview of the problem

The Socialist Federal Republic of Yugoslavia (SFRY) was a federation composed of six republics and, before its dissolution, SFRY citizens had also a second, republican citizenship. SFRY citizens of other republics living in Slovenia enjoyed the same rights as citizens having Slovenian republican citizenship. After Slovenia declared independence in June 1991, citizens of other republics having permanent residence in Slovenia could apply for Slovenian citizenship by the deadline of 26 December 1991.

On 26 February 1992, at least 18,305 individuals were removed from the Slovenian registry of permanent residents and their records were transferred to the registry of foreigners. Those affected were not informed of this measure and its consequences. As a result of the "erasure", they became *de facto* foreigners or stateless persons

illegally residing in Slovenia. In some cases the "erasure" was subsequently 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 6,000 remain without Slovenian citizenship or a permanent residence permit. Many of them live "illegally" as foreigners or stateless persons in Slovenia. The remaining 12,000 people who managed to obtain Slovenian citizenship or permanent residency, are often still suffering from the ongoing consequences of their past unregulated status and have no access to full reparation, including compensation.

Violation of human rights 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 as all other foreigners originating from other than former Yugoslav countries were automatically granted the right to reside permanently in Slovenia.

The "erasure" and the subsequent and ongoing failure to regulate the status of the "erased" have disproportionately affected Roma. "Erased" members of Romani communities, by virtue of their condition of minority without a "kin-state", were placed in an even more disadvantaged position than "erased" belonging to other ethnic groups, as they have faced greater difficulties in regulating their status elsewhere in the former Yugoslavia.

Right to work and social security

Many of the "erased" lost their job and could no longer be legally employed as a consequence of the revocation of their permanent residency status. In this respect, the removal of the individuals concerned from the registry of permanent residents led to a violation of the right to work.

Many of the "erased" are still unable to find a job because they have no documents, or are otherwise considered foreigners with no right to work. They face the choice between being unemployed and therefore with no source of income and being employed in the "informal sector", with low salaries and no social protection. In those cases where the "erasure" and the loss of employment led to extreme poverty, the

removal of the individuals concerned from the registry of permanent residents may amount to a violation of the right of everyone 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 a result, many “erased” lost their entitlement to a pension, or saw their (expected) pension significantly reduced even if eventually they managed to regulate their legal status. Therefore the removal from the registry of permanent residents has had serious negative effects on the right to social security of the persons in question.

Right to the highest attainable standard of physical and mental health

As foreigners with no permanent residence permit in Slovenia, the “erased” have had no, or limited, access to comprehensive healthcare after 1992, in some cases with serious consequences for their health. The *ex officio* removal from the registry of permanent residents 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 Amnesty International notes that no recent cases have been reported of children being excluded from school as a result of the “erasure”, concerns remain 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.

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 for 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.¹ 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 Slovenian Constitutional Court also recognized that the “erasure”, in those cases where it led to the expulsion of the individuals concerned, resulted 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

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

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. 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 Slovenian 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 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.

On 30 October 2007 the government presented to the parliament a draft Constitutional Law which was intended to resolve the status of the "erased" and the parliamentary discussion on the law is ongoing in the Constitutional Committee of the parliament.

Amnesty International is concerned that in its present form the draft law continues to violate the human rights of the "erased" and further aggravates their disadvantaged position. It maintains discriminatory treatment of the "erased", provides new legal grounds for more discriminatory actions by the authorities, including the possibility to revise decisions on individual cases where permanent residency has been restored, and fails to retroactively restore the status of permanent residents of all the "erased". The draft also disclaims responsibility by state bodies for the "erasure" and explicitly excludes the possibility of compensation for the human rights violations suffered by the "erased".

Amnesty International's recommendations to the Slovenian authorities

As a matter of urgency Amnesty International calls on the Slovenian authorities to:

- Withdraw the draft Constitutional Law from the parliamentary procedure

- Undertake immediate steps to implement the decisions of the Constitutional Court
- Ensure that legislative and other measures are adopted, granting full reparation, including restitution, satisfaction, compensation, rehabilitation and guarantees of non- repetition, to all individuals affected by the “erasure”.