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THE SCARS OF THE ERASURE

**A CONTRIBUTION TO THE CRITICAL
UNDERSTANDING OF THE ERASURE
OF PEOPLE FROM THE REGISTER
OF PERMANENT RESIDENTS
OF THE REPUBLIC OF SLOVENIA**

Project **The Erased People of Slovenia – A Challenge for the Young Nation-State**

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Peace Institute (coordinator)

Amnesty International Slovenia

Unione forense per la tutela dei diritti dell'uomo

PIC - Legal Information Center of NGOs

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A Contribution to the Critical Understanding of the Erasure of People from the Register of Permanent Residents of the Republic of Slovenia

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*We dedicate this book to Aleksandar Todorović
for his invaluable contribution to the struggle
for the rights of the erased people.*





THE ERASED PEOPLE YESTERDAY, TODAY AND TOMORROW. EROSION OF STEREOTYPES AND THE IRREVERSIBLE ROAD TO REDRESSING INJUSTICE

If seventeen years after the unlawful administrative erasure¹ of 25,671² people from the register of permanent residents of the Republic of Slovenia we examine their political, legal and social situation today, we can observe positive changes. The public and political attitude towards “immigrants” has indeed remained negative, while the nationalism we witnessed in the National Assembly during the years after Slovenia gained independence (Zorn 2007) is today more concealed. And yet, what gives hope is the fact that one part of the political elite has begun to use the discourse of human rights and refer to the state ruled by law when speaking about the erasure. This differs greatly from the discourses that prevailed in the past, when responsibility for the erasure was imputed to the erased people and when stereotypes and prejudices were spread to reinforce exclusion and to avoid the implementation of the Constitutional Court ruling.³ Among the examples of this change in discourse let us mention three speeches:

¹ The erasure from the register of permanent residents implemented by the administrative bodies of the Republic of Slovenia was not based in law, as was established by the Constitutional Court. It mainly (but not only) affected people born in other republics of the former Yugoslavia who had Yugoslav citizenship and as a rule also the citizenship of another republic of the former Yugoslavia, but lived in the former Socialist Republic of Slovenia where they had permanent addresses. When Slovenia became an independent country, on 25 June 1991, the citizens of the former Socialist Republic of Slovenia automatically became citizens of the new country, the Republic of Slovenia. According to Article 40 of the Citizenship of the Republic of Slovenia Act, all citizens of other republics of the former SFRY with permanent addresses in the Socialist Republic of Slovenia had the right to apply for Slovenian citizenship within six months from the date of independence. Those who did not obtain citizenship (because they failed to apply for whatever reason, or their application was refused or discarded or the procedure was terminated), lost permanent resident status. They were deprived of permanent resident status arbitrarily; local authorities implemented the measure in accordance with instructions from the Ministry of the Interior, at that time headed by Igor Bavčar and the State Secretary of the Interior, Slavko Debelak. With the loss of status, they also lost all economic and social rights tied to permanent resident status. The detailed description of the circumstances surrounding the erasure is beyond the scope of this book. For more on the erasure itself, see Dedić at al. 2003 and Lipovec Čebren and Zorn 2007.

² This figure is the result of the internal examination of databases conducted in January 2009 by the Ministry of the Interior.

³ Constitutional Court Ruling No. U-I-284/94 dated 4 February 1999 and Ruling No. U-I-246/02 dated 3 April 2003.

the first by the Minister of the Interior, Katarina Kresal, on 18 November 2008 in the National Assembly before the vote on her appointment, in which she highlighted the settling of the status of erased people as one of the priorities during her term in office; second, her speech on 1 April 2009 in response to the interpellation concerning supplementary decisions issued to the erased people in accordance with the Constitutional Court ruling; and, finally, the speech by Prime Minister Borut Pahor on the same occasion.

Public opinion surveys, too, indicate changes in the public attitude towards the erased people. In 2003, fifty percent of respondents gave an affirmative answer to the question: "Is the government obliged to observe the Constitutional Court ruling on the erased people?" In 2004, this percentage dropped to 46 percent; in 2006 it rose to 49 percent, further increasing to 55 percent in 2007 and reaching 71 percent in 2009.⁴ The public opinion survey conducted in December 2008 by Ninamedia⁵ agency as part of the Peace Institute project showed that nearly 86 percent of respondents thought that the Constitutional Court rulings should be unconditionally respected, while 71 percent thought that they should be respected in the case of the erased people, as well. Given that the opponents of the settling of this issue have repeatedly demanded a referendum concerning the rights of the erased people, one important finding of the Ninamedia survey is that almost 70 percent of respondents thought that it was not possible to decide on human rights by a referendum, and 72 percent of them held that the rights of the erased people could not be decided by a referendum either. Repeated calls for a referendum should therefore be understood solely as a political tool exploited to create an impression that society is opposed to settling this issue. During recent years, it was also possible to encounter the viewpoint, both among the public and in politics, that the erasure did not happen, but the findings of the survey show that this opinion is held by an insignificant minority – less than 3 percent of respondents. Stereotypes about and prejudices against the erased people have been gradually dying away. This conclusion is based, among other things, on the fact that only slightly more than one-third of respondents thought that the erased people were opponents of sovereign Slovenia, while slightly less than 16 percent believed them to be national traitors. However, the more positive attitude on the part of both the political elites and society is not enough to rectify the injustices and elucidate the circumstances surrounding the erasure, including the responsibility of those who endorsed this measure. The crucial step that should be taken by society is the establishment of an impartial investigation commission to officially examine the implementation and consequences of the erasure and the possibility of bringing to justice those responsible. Almost 76 percent of respondents in the Ninamedia survey support the establishment of such a commission and

⁴ The findings of the Politbarometer surveys conducted as part of the Slovenian Public Opinion surveys at the Faculty of Social Science are available at http://www.cjm.si/PB_rezultati (26 November 2009).

⁵ The Public Attitude Towards the Erasure Issue, report on the telephone survey, Ninamedia, January 2009.

the settlement of this issue. Almost 79 percent of respondents agreed with the issuing of the remaining decisions to the erased people. This indicates that Minister Kresal, who vowed that “this sad chapter in Slovenian history will be concluded once and for all, even if my ratings drop to zero,” should not be worried about her image. The minister and the state secretary at the Ministry of the Interior, Goran Klemenčič, immediately got down to fulfilling this promise. During the first year of their term in office (2009), the Ministry issued all remaining supplementary decisions recognizing permanent residence retroactively to all the erased people who had obtained permanent residence permits in the meantime.⁶ Their second move was a bill proposing that, under certain conditions, those erased people who for various reasons cannot prove that they have lived continuously in Slovenia since the erasure, which is a condition required by the currently valid legislation, can also obtain permanent residence permits.⁷ The government has already endorsed this proposal, and it is currently waiting for approval in the National Assembly. These two steps are a prerequisite for the settlement of the erased people’s status and for the preparation of further measures aimed at redressing injustice.

This suggests that we are at the point of no return, since it is no longer possible to say that it remains unclear what the erasure was, what happened during the time after Slovenia became a sovereign country, or what happened on the day of the erasure, 26 February 1992, and during the years that followed. Pretense is no longer possible. It is now generally known and recognized that violations did occur; after all, this book is further proof thereof.

The data from the Ministry of the Interior on the status of the erased people as per 24 January 2009 show that, of 25,671 erased persons altogether, 1302 died in the meantime; 10,943 settled their status; of these, 7,313 persons obtained citizenship, while 13,426 persons have not settled their status in the Republic of Slovenia.⁸ It is not known how many of these live in Slovenia and how many in other countries, but it is indisputable that quite a number of them still live in Slovenia without legal status. The members of our project team have met many such persons and held conversations with them.

Many people deserve credit for bringing the erasure to the public eye and alerting the public to its consequences and to the need to rectify injustice. Among them, let us mention the journalists Borut Mekina and Igor Mekina, the erased people themselves, the Association of the Erased People of Slovenia (DIPS) and its legal representative, the former judge of the Constitutional Court, Matevž

⁶ The decisions were not issued for people who obtained Slovenian citizenship without obtaining a permanent residence permit prior to citizenship. The viewpoint that prevailed at the Ministry of the Interior was that a legal basis for this was first needed. The opposite viewpoint was that the Constitutional Court Ruling could be interpreted in accordance with the *a fortiori* principle and that if those who had acquired permanent residence permits were entitled to receive supplementary decisions, those who had acquired citizenship were even more entitled to it.

⁷ Primarily the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia.

⁸ This figure is the result of the internal examination of databases conducted in January 2009 by the Ministry of the Interior.

Krivic, the Civil Initiative of the Erased Activists (CIIA) and its chairman, Aleksandar Todorović, their many supporters from academia and civil society, and last but not least, the NGOs working in the field of human rights, such as Amnesty International Slovenia, the Helsinki Monitor, the Peace Institute, and PIC – Legal Information Center of NGOs.

The erased people, activist groups and NGOs carried out a number of actions and events in an attempt to prevent the erasure from sinking into oblivion; many legal routes were also employed to enable the erased individuals to exercise their rights. Matevž Krivic initiated many legal proceedings aimed at reinstating erased people's legal status and enabling them to regain the rights of which they were deprived. Multiple actions were initiated by individual erased persons on their own or with the help of legal advisers. Many erased persons regained their status in this way, but not all were successful in struggling with the restrictive legal requirements. Among the state institutions, the most important role was played by the Constitutional Court, which through its consistent rulings in favor of the erased people, made possible the legal recognition of the violation of their rights. The delay in resolving this issue was also pointed out by the Human Rights Ombudsman, and in 2004 the Ombudsman's annual report included a special report entitled, "The Issue of the 'Erased' in Ombudsman's Annual Reports."

When in 2003 the erased people won another victory in the Constitutional Court, it seemed that they were only one step from obtaining justice. Unfortunately, this was not to be. Legal experts had opposing views⁹ and proposed first a technical and then a systemic law (both were deficient), which they considered a prerequisite to implementing the ruling of the Constitutional Court. The Constitutional Court requirement that supplementary decisions should be issued to the erased people was only partly met in 2004, since only 4093 of 8000 people altogether received supplementary decisions. During the years that followed the Constitutional Court ruling and the failure on the part of the government to implement it, the erased people's movement lost some of its impetus, since it became obvious that even a victory in the Constitutional Court could be a Pyrrhic victory in the absence of sufficient political will to implement the ruling. Although many activities were carried out, their protagonists appeared to be insufficiently interconnected, and as a result the impact was weak compared to what could have been achieved had the actions been better orchestrated.

When in 2006 the Open Society Institute expressed its readiness to financially support organized activities concerning the erasure, the Peace Institute proposed a joint approach to this issue through the project entitled, "The Erased People of Slovenia – A Challenge for the Young Nation-State." Our wish was to connect NGOs working in this field and use project resources to enable a well-deliberated approach to the settlement of this issue. The obtaining of financial resources

⁹ The Minister of the Interior at the time, Rado Bohinc, obtained a list of ten legal experts with the intention of vindicating the thesis that the Constitutional Court ruling could be implemented only if a "technical law" was first adopted.

was not an insignificant detail, since this enabled the collaborators in the project to dedicate themselves to the erasure-related activities rather than dealing with these issues in their spare time. At the same time, the project resources enabled the implementation of certain activities that would not otherwise have been possible, such as field work outside Slovenia, in the countries to which some of the erased people were expelled or where they remained, unable to return to Slovenia. Four NGOs became partners in this project: Peace Institute, Amnesty International Slovenia, PIC-Legal and Information Center of NGOs, and the Forensic Association for the Protection of Human Rights – Unione forense per la tutela dei diritti dell'uomo, an Italian NGO whose lawyers represent eleven erased residents in the European Court for Human Rights (in the case known as Makuc and others vs. Slovenia)*. External collaborators also joined the project, among them Uršula Lipovec Čebon, Jelka Zorn, Sara Pistotnik and Aleksandar Todorović.

Four simultaneous activities were carried out within this project:

- **Research** on the erasure, comprising interviews with the erased people in Slovenia, Bosnia-Herzegovina, Serbia and Montenegro, as well as the recording and archiving of their stories;
- **Legal advice**, comprising assistance in arranging status and other issues of a legal nature, and representation before state bodies and in the court;
- **Advocacy**, involving the alerting of state bodies to the violation of erased people's rights, the monitoring of actions taken by the government in connection with the erasure, alerting the state to its obligations vis-à-vis the erased people, including the implementation of the Constitutional Court ruling, and to the irregularities in procedures involving the erased people, and giving comments on legislative proposals.
- **Public awareness building**, comprising reports to the media on the development and organization of public events during the Week of the Erased and on other occasions, such as Human Rights Day, commemorated on December 10.

The aim of this project was not the ultimate settlement of the problem, since the project team did not have the powers needed to implement crucial measures, nor were these within its competence. Our intention was to bring the issue closer to a final settlement and prevent it from slipping the memory of the public and the government. In pursuing this goal, we endeavored not only to harmonize the activities mentioned above, but also to bring into the project a number of other partners and coordinate activities with them. Our partners included students, domestic and foreign media and foreign researchers concerned with the issues of citizenship and human rights; however, most of the time our closest collaborator was the DIPS legal representative, Matevž Krivic. Among our partners was the Studio Poper agency, which designed a communi-

* Now Kurić and others vs. Slovenia.

cation intervention on the subject of the erasure.¹⁰ Its most conspicuous public manifestation was the mounting of the large yellow banner with extracts from our interviews with the erased people, which was displayed on the Hribar House in the center of Ljubljana.¹¹

Although a large number of individuals and institutions are concerned with both erased individuals and erased people as a group in the political, legal, social, sociological and anthropological senses, the Peace Institute project provided an added value enhancing knowledge about the erasure.¹² The sources of this new knowledge were primarily the life stories of erased people collected and documented as part of our research. It lasted three years, from 2007 to 2009. Many interviews with erased persons were conducted during this time; 80 stories were documented and detailed transcription of 59 audio tapes of interviews made. The questionnaire for the interviews was prepared in early 2007 and asked about respondents' lives before the erasure, how they learnt about the erasure, the consequences of the erasure and changes it introduced into their lives, primarily with regard to personal safety, freedom of movement, the right to education, housing, employment, health and social insurance. The aim of the interviews was to document the life stories of erased people, and life stories were collected in order to document the erasure and its consequences; we wanted to highlight the violation of human rights and prevent it from ever happening again. Although we were not intent on dispelling stereotypes about the erased people – our aim was to delve beyond stereotypes into the unknown spheres of their lives – the stories we collected did undermine these stereotypes (e.g., that people who were erased had participated in the attack on the Republic of Slovenia, that they were scheming, that they were against independence and so on). The stories revealed that quite the opposite was the case: that many erased individuals voted for the independence of Slovenia in the referendum; that most of them wanted to apply for citizenship but their applications were rejected; that some thought that they would become Slovenian citizens automatically, and still others wanted to retain permanent resident status but were not interested in Slovenian citizenship. Above all, their stories have shown that the erased people are not a homogeneous group, that each erased person has his/her own complex story, so reality cannot be reduced to a cluster of stereotypes.

¹⁰ Information on the communication intervention is available from the web page of the campaign at www.izbrisan16let.si and www.izbrisana16let.si. In addition to mounting the banner showing the stories of the erased people, the intervention included other communication materials, such as cards designed as punched personal documents, silhouettes on windows and at bus stations, stickers on traffic lights, posters, an on-line petition, and the publications of people's standpoints on the erasure on the above-mentioned web pages.

¹¹ The display of the banner for a period of several weeks was made possible by the City of Ljubljana, which gave up its revenues from commercial advertising during this time. The stories printed on the banner were taken from the research on the erased people conducted within the framework of the Peace Institute project. Smaller scale versions of the banner were published free of charge by certain media and outdoor advertising companies.

¹² During the preparation of this publication, the Peace Institute applied for additional funding from the Open Society Institute for further research on the erasure. In November 2009 we received a positive response, so the work will continue during the period 2010-2012.

The conversations with erased people were held in Slovenia, Bosnia-Herzegovina, Serbia and Montenegro, at their homes or, if more convenient, in a public place, a bar or a restaurant. Of the 80 interlocutors whose stories we recorded, 57 were men (71 percent) and 18 were women (23 percent), while 5 persons (6 percent) spoke on behalf of a family in which some or all members were erased. The seven chapters of this book therefore proceed from the analysis of these 80 stories and a detailed analysis of 59 transcribed interviews. Uršula Lipovec Čebrown's analysis of the health condition of erased people included 59 persons. The names of persons given beneath the quoted passages are their pseudonyms.

The erasure was a specific measure that had very specific consequence for specific people, but it can nevertheless be connected with wider social phenomena. This volume is the second book on the erasure published by the Peace Institute.¹³ It tries to place the erasure into various socio-political contexts. Our wish in writing this book was to contribute to the broader understanding of the erasure and to bring this issue closer to all those who have until now been diverted by public debates extensively reported by the media from trying to understand the erasure or from pondering the circumstances surrounding it.

The first chapter by Jelka Zorn places the erasure in the context of the transition from a socialist economy to a neo-liberal market system. In this chapter, the situation of the erased people is analyzed from the perspective of workers whose status today differs greatly from the one they had during the socialist era, which is a change that also influenced the situation of the erased people. Put differently, in addition to the loss of legal status, it was the erosion of the real and symbolic status of the working class that caused the deterioration of their situation, with workers now facing more difficult access to fundamental social and economic rights than in the past. The next chapter draws attention to the fact that, at the time when Slovenia was moving towards independence and European integration, simultaneous with the change of the system was the adoption of the European system of classifying foreigners, known as European migration policy. The erased people were among the first to be classified under this new policy. Sara Pistotnik writes about the new, undocumented situation of the erased people, which is comparable to that of any person without status, about the formal and informal obstacles they encountered when trying to arrange their status, and the survival strategies they used. The creation of the undocumented situation caused a massive violation of human rights, which is the main subject of the chapter by Neža Kogovšek. She has attempted to present the logic behind the move that deprived people of their legal status, some of the arguments that have been used to justify this violation, and the opposing arguments that can be used to refute justification for the erasure. Rights belonging in all spheres of life are presented, and the violations are illustrated with extracts from

¹³ The authors of the first book about the erased people entitled, "The Erased: Organized Innocence and the Politics of Exclusion," published in 2003, are Jasminka Dedić, Vlasta Jalušić and Jelka Zorn, with the post scriptum written by Matevž Krivic.

the interviews. When the erased people were left without legal status they were equated with other undocumented migrants. One of the spheres of life that was seriously affected by the erasure on many levels and where the rights of the erased people were massively violated is health, which is the subject of the chapter by Uršula Lipovec Čebren. She analyzes the prevalence of individual illnesses among the erased people and the causes of these illnesses, their access to health insurance and the experiences of uninsured individuals when seeking health care treatment. She also compares the erased people's health risks with those of homeless people and migrant workers in Slovenia, while placing the erasure in a wider social context. Another social context within which it is possible to consider the erasure is the establishment and consolidation of a nation state. This aspect is analyzed in depth by Veronika Bajt, who explains the process of constructing national identity and places the erasure and its justification within the framework of nationalism. Brankica Petković writes about the erasure from the perspective of the unregulated status of "new" unrecognized national minorities, particularly their linguistic rights, since the languages of nations to which the erased people belong – regardless of whether they used these languages or not – were among the reasons why they were defined as Others. The concluding chapter by Lana Zdravković offers an optimistic perspective. She writes about the emancipation of the erased people, whose activism contributed to the elimination of the unease accompanying political and social activities that are necessary elements in the rights advocacy of marginalized groups. The portrayal of the erasure within various contexts and the extracts from interviews with the erased people enable the reader to obtain a clear picture of the consequences of this measure for the erased people and society as a whole. The erasure inflicted wounds that the erased people struggled to heal using various legal, political and other instruments. The healing process is not yet completed, although some of the erased people have succeeded in regaining their status and ordering their lives. Those more active among them refused to play the role of scapegoat and have demanded redress for the injustice. It has been established that the erasure was an unlawful measure and that the Aliens Act, to which the government referred when implementing the erasure, was unconstitutional. Those erased people who fulfilled the legal requirements were accorded permanent resident status retroactively, from the day of the erasure. However, the wounds left scars, reminders of the erasure that prevent it from sinking into oblivion and that provide the title to this book.

Many individuals in addition to the authors should be credited for the existence of this book. Special thanks go to Sara Pistotnik, Aleksandar Todorović, Vesna Lovrec, Jelka Zorn and Uršula Lipovec Čebren for conducting the interviews with the erased people that were used as the basis for the research on which this book is based. The stories of erased persons interleaved between the chapters in this book and illustrating the theoretical findings of the research are based on conversations with the erased people held by Sara Pistotnik, Aleksan-

dar Todorović, Jelka Zorn and the students of the Department of Ethnology and Cultural Anthropology at the Faculty of Arts in Ljubljana: Anja Špes, Marina Vrhovac, Petra Ovčar, Petra Špehar, Petra Žišt, Tina Lajkovič, Tanja Toto and Vesna Bočko. The transcription of audio records of the interviews with the erased people – extracts from these illustrate our theoretical findings – were made by Danijela Gutić, Eva Batista, Janja Škrjanec, Julija Djaković, Maja Ladić, Neja Žele, Nevenka Lajkovič, Olga Novak, Snežana Todorović, Tea Golob, Tina Lajkovič, Tomaž Kogovšek and Živa Gabaj.

We are indebted to all members of the project group who over the three years monitored the situation, provided advocacy and legal help to the erased persons, and highlighted in public the need to remedy injustice. Thanks to their effort among other things, the erasure and the need to redress injustice have remained on the political and legal agenda to this day. Among them, let us mention Katarina Vučko, who was persevering in giving legal advice and whose expert knowledge was immensely helpful in many legal procedures involving the erased people; Nataša Posel and Blaž Kovač of Amnesty International Slovenia, who provided support for the erased people before the governmental bodies; Vlasta Jalušič and Lev Kreft, who furnished valuable theoretical contributions to the consideration of the erasure; Robert Pignoni and Imma Tuccillo Castaldo who were of great help in giving international publicity to the erasure; Benjamin Flander and Andraž Teršek, who contributed to the placement of the erasure in the context of the state ruled by law and constitutional democracy; Daniel Levski, who provided valuable advice on the project group's public relations; Jernej Zupančič, who provided legal advice to and representation for the erased persons, and Maja Ladić, who cooperated in the research and project realization.

Special thanks go to the law office Lana Lagostena Bassi, Rome, and especially Andrea Saccucci, a lawyer, and Alice Sironi, a legal expert, for their representation of eleven erased people before the European Court for Human Rights in the case Makuc and others vs. Slovenia, and to Matevž Krivic for his invaluable contribution to the exposure and understanding of the erasure and his indefatigable defense of the rights of the erased people.

Neža Kogovšek

The head of the project "The Erased People of Slovenia – A Challenge for the Young Nation-State" conducted by the Peace Institute

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Jelka Zorn

REGISTERED AS WORKERS, ERASED AS NON-SLOVENES: THE TRANSITION PERIOD FROM THE PERSPECTIVE OF THE ERASED PEOPLE

Go away from here and suchlike [is what they were saying]... It gets to you. You know how it feels when someone chases you away from your home. (Edin, 45)

I was seven when we moved to [she gives the name of a small town in Slovenia] – and at 45 I was nothing, zero. (Monika, 63)

1. Introduction

The erasure coincided with the radical changes in the socio-political system at the time of transition from a consensual socialist economy to a neo-liberal market system, and from a multi-national state to a nation-state. This affected the very concept and achievements of the welfare state and also entailed a re-definition of the country's population. Our interviews with erased people revealed how they were left outside the welfare system when it underwent changes (most importantly, the shrinking of the welfare state), even though they were physically present in the territory of the Republic of Slovenia. The question that arises here is how this could have happened, given that they contributed equally to the social wealth along with other workers and that formally they had enjoyed the same rights as others until the erasure. At the time these people moved to Slovenia from other parts of the former Yugoslavia, immigrants were referred to as "workers." Later, when ethno-nationalism¹ and the independence euphoria took center stage, they began to be viewed only in terms of their ethnic origin, meaning as non-Slovenes. It is therefore possible to say that they moved to Slovenia as workers, but were erased as non-Slovenes. This shift in perception can be

¹ For the definition of (ethno) nationalism and similar concepts, see Bajt in this volume.

gleaned from their narratives and, indirectly, from the new definition of the bearer of sovereignty.

These changes in the system and their many aspects are the thread that runs throughout this text. It is common for the erased people to compare the socialist era in the former Yugoslavia, i.e. the time when they moved to Slovenia and found jobs there, with the period following the erasure, when they were deprived of their rights in sovereign Slovenia. Some among them were born in Slovenia; for them, their growing-up and transition to adolescence were marked by the loss of rights, which is a leitmotif that usually comes at the beginning and end of each narrative.²

The period of immigration was characterized by the formal equality of immigrants and their simultaneous ostracization by local people. As Veronika Bajt emphasizes (see Bajt in this volume), “differentiation based on ethnicity is not a product of the last twenty years, thus not something that emerged in 1991 with Slovenia’s independence.” In addition, in the new country, neoliberal capitalism displaced state socialism. The former Yugoslavia had put into law many social rights won in the past by worker movements and trade unions, while neo-liberalism brought what can be described as a reverse process – the curbing of these rights. Paradoxically, the very worker movements that had succeeded in winning many social rights were not always capable of reflection on ethnic or “racial” divisions within the working class itself. At the time when the socio-political system was undergoing changes, the Slovenian worker movement was no different in this respect. While trade unions succeeded in preserving crucial employment rights, they failed to address changes in the employment concepts themselves that increasingly led to precariousness related to ethnic hierarchization of workers. Many erased people told us that as Bosnians they were among the first to be put on the lists of workers made redundant by technological progress.

The case of the erased people reflects the breakdown of the welfare state. Its most conspicuous implication was the exclusion of people without legal status (erased people) from welfare services. The revocation of their permanent resident status was an illegal act motivated by their ethnic origin, or rather, their personal migration history.

The personal stories of erased people reveal their critical perspective on the period of transition and Slovenia’s gaining of independence. While these stories are indeed crucial for our understanding of the erasure and circumstances surrounding it, we should not forget that their narration was a result of a specific process rather than a spontaneous reaction. Similarly, the naming “erasure” was a result of thoughtful deliberation necessitated by the nature of the act itself. It was neither a unique nor a simple act, and accordingly, public reflection on it was a difficult and complex process, as suggested by the fact

² According to the Ministry of the Interior, 5,360 children and 5,008 adults aged between 18 and 29 years were erased on 26 February 1992. Source http://www.mnz.gov.si/fileadmin/mnz.gov.si/pageuploads/2009/izbrisani-koncni_posodatki.pdf (8 August 2009).

that the campaign for the restitution of erased people's rights (only) began one decade after the erasure. Public events and discussions in the media³ showed that, in addition to legal arguments based on the Constitutional Court rulings, the key strategies that made the erasure visible and turned it into an important public issue involved erased people's collective action founded on arguments arising from these very narratives of personal experience. As Hannah Arendt argues ([1958] 1998), the most original product of political action is not the realization of planned goals and intentions, but the stories that emerge from this process: »It is because of this already existing web of human relationships, with its innumerable, conflicting wills and intentions, that action almost never achieves its purpose; but it is also because of this medium, in which action alone is real, that it 'produces' stories with or without intention as naturally as fabrication produces tangible things. These stories may then be recorded in documents and monuments, they may be visible in use objects or art works, they may be told and retold and worked into all kinds of material« (ibid., 184). The erased people's stories related in public are one of the basic elements of their movement. These have contributed to the emergence of new knowledge and critical collective memory – both of which contradict the dominant heroic story about Slovenia's road to independence.

2. The method: personal stories of the erased people

It lasted a long time, when you couldn't tell anything to anyone. Even today, sometimes ... Even today, when you tell somebody how it was, they wonder that something like that was possible at all. (Aleksandar, 47)

During the years following the erasure, many erased people sought justice through various institutions such as the Council for the Protection of Human Rights and Basic Freedoms (later reorganized and renamed the Human Rights Ombudsman), Helsinki Watch,⁴ the Ministry of the Interior, the President of Slovenia and in the courts. The erasure kept its victims isolated and unaware that this measure affected many people. For example, one interviewee said that employees at the municipal office she visited created the impression that her case was unique: "But in fact it was not true. In fact many people were in the same situation, and I later met them."⁵ Consequently, early attempts at regaining rights

³ For a more detailed overview of events related to the erasure, see Pistotnik 2007.

⁴ The predecessor of the Helsinki Watch, whose chairperson in Slovenia since 1994 has been Neva Miklavčič Predan, was the Helsinki Committee chaired by Stane Stanič, which was excluded by the International Helsinki Federation for Human Rights for its inadequate operation (Mekina 2007, 159). It operated as a mailbox of the police sector and never took a stance publicly on any issue. Moreover, during the early 1990s, the national sections of Amnesty International did not comment on developments in the field of human rights in individual member states (ibid.). It is possible to say that, apart from the Council for the Protection of Human Rights and Basic Freedoms chaired by Ljubo Bavcon, there was no critical or vociferous organization in Slovenia that could have drawn attention to the oppression of and discrimination against immigrants or members of newly formed minorities (so-called non-Slovenes). This definitely contributed to the invisibility of the erasure during this period. For more on this, see Mekina (2007).

⁵ Monika, 63.

were individual endeavors. Erased people were initially not interconnected, so they found themselves entangled in legal labyrinths as individuals.

Many people who were erased are today willing to speak about their experience, and some of them in public, for the media. The question that arises here is what has brought about this change that has turned them from isolated victims of state repression into a political subject constituted through personal narratives and public efforts to regain their rights (cf. Zdravković in this volume). How did the erased people become a subject of and protagonists in public debate? The opposite question also seems to be in order: why did it take a relatively long time (ten years) for them to initiate public debate?

“The power to tell a story, or indeed to not tell a story, under the conditions of one’s own choosing, is part of the political process,” writes Kenneth Plummer (Plummer 1995, 26). On the other hand, Mojca Urek (2005), meditating on the stories that empower narrators and change victims into actors, asks what strategies are needed for a narrative to be not only told but also heard, and how the spaces of narration are created. She argues that the narration of personal stories has an important role in social movements and resistance. Narration creates a feeling of power, since it gives sense to the events one has experienced. The erased people’s narratives are brimming with memories of negative emotions. The following extract illustrates this:

There was no thing I was not willing to try to obtain citizenship. Many people were not aware of the situation. I was ashamed although it was not my fault.
(Tatjana, 34)

Erased people often felt shame at having no valid documents and no rights. Moreover, shame was compounded by the feeling that they could not speak to others about this difficulty (because the situation appeared absurd and inexplicable). “In much the same way as shame hinders and prevents narration of stories, pride may take us so far as to literally scream out our story.” (ibid., 224) The erased people’s narratives are invariably suffused with strong feelings, not only of anger and disappointment but also of pride and passion for resistance. Intertwined with emotions are their deliberations about the state, the nation, the legal system and administrative procedures, sovereignty, affiliation and loyalty. These stories from the margins challenge the automatic assumptions and provide a reflection on events and processes that are hidden to the eyes of those in central positions of power. For example, one interviewee who related the story of his aged father today sees the invitation to take part in the plebiscite (also received by erased people before they were erased) in a different light, and his perspective differs from the dominant one:

We received the invitation to take part in the plebiscite at our home address, the decision was left to us, but we were informed that we could cast our vote. Then, when it came to citizenship, we were not informed. This is to say that a person

with a specific name and surname, an address, existed for the purpose of the plebiscite, to put it like that, it was acceptable to inform such a person, that person enjoyed some kind of respect. But when the rights of these same people were in question, they ignored them. Therefore, we could as well say that the plebiscite was an abuse. (Begeš, 89)

2.1 Empowerment

The erased people's stories that emerged in 2002 at the general assemblies of the Association of the Erased Residents and were reported in the media encouraged other erased persons to step out of their isolation, establish contact with others and recognize that the responsibility for the erasure rested with state institutions.

One day I heard on TV about the Association of the Erased Residents and some guy called Aleksandar Todorović. I saw him speaking on television and there was a telephone number. I quickly jotted it down. I was mulling over what to say, how to introduce myself and register with that association. I had no idea that there were so many erased people. [...] Oh dear, when we started to talk, and Aca is such a candid person. I felt like I got wings. As if the stone fell from my heart. Pains literally began to peel off my body, I could feel life, health, the future, I could see the light at the end of the tunnel. Here, it came out. Now it's common knowledge what actually happened and who was responsible for it. And it was not only me that was erased, it was not I who messed up things. I thanked God, I don't know how many times. (Ismeta, 49)

This passage shows how negative public opinion or social nonchalance about the erasure affected erased people's self-perception and their dignity. As Charles Taylor (2007, 291) emphasized, and as these stories testify, distorted interpretation of the situation may cause genuine harm to both individuals and groups if "the people or society around them mirror back a confining or demeaning or contemptible picture of themselves." The following is how one of the interviewees put it:

For me, the most important right is the right to dignity, so that one cannot take it away from you in such a banal, total way. Everyone was deprived of this right and it is what's the most important. (Ivan, 56)⁶

The reason is that "our identity is partly shaped by recognition or its absence, often by the misrecognition of others" (Taylor 2007). Uršula Lipovec Čebren (2007a) showed how an enforced degrading self-image, in combination with the inaccessibility of health care and other social rights, can be the source

⁶ The interview was conducted by Vesna Pušič, a student of the Faculty of Social Work in the academic year 2007/08.

of suffering and deterioration of health. And vice versa, the power of collective memory lies in the fact that it galvanizes individual memory and encourages a person to become an authentic self-witness (Halbwachs 2001, see also Zaviršek 2000 and Urek 2005). Maurice Halbwachs, a theorist of collective memory, has shown (2001) that individual memory is not a mental operation beyond social ties – individual memory decisively pertains to the area of the social. Individual memory, says the author, consists of fragments and images that are not sufficient signifiers of meaning in themselves, so individuals need social institutions, social interaction, testimonies and signification on the part of other people to be able to give sense to their own experiences and deliberations (adapted from Kramberger 2001, 213). The process of event recollection is connected with the working of consciousness; it seeks adequate social frameworks, and these then determine what people will remember and what they will forget, as well as which interpretation will become dominant (*ibid.*). Collective memory can be described as a selective filter that reconstructs memories based on what is needed at the present moment, which either enables or inhibits individual memory (*ibid.*). Accordingly, public talk about erased people that is based on and takes into account individual experience can help us redefine and understand the oppression experienced by these people.

The narration of personal experiences at public events organized by the erased people brought to an end public silence about the erasure and thus influenced the social order: it created a collective memory in which the erasure figures as an illegitimate event, while challenging ethno-nationalism rooted in the bureaucratization of rights. Darja Zaviršek (2000) attributes positive value to the recollection of trauma, since this can lead to the formation of a community; such a community or collective identity may in turn be a source of political change. It is even possible to argue that the very naming “erasure/erased person” was a political act, as it made visible these experiences and strengthened the emerging political subjectivity. Indeed, the term “erased” does not literally reflect the actual legal status of these people, since many of them have succeeded in regaining permanent resident status or have acquired citizenship in the meantime; nevertheless, they still identify with the erased people. In this sense, talk about the erasure can be understood as a foundation on which people build their shared value system, because they feel that this peculiarity – the experience of erasure – is a feature that connects them. “A traumatic experience can join people within a community in which there is no need to explain ‘who one is’ or how the value system of that person emerged (there is no need to explain, be ashamed or apologize)” (*ibid.*, 138). This value system finds outward expression in the demands for the reinstatement of their rights and the principle of equity. The erased people demand not only the reinstatement of permanent resident status (the majority of them have already regained it) but also justice for all that would have a retroactive effect. Accordingly, it is not surprising that they supported protests against deportation camps for foreigners in Italy and in

Slovenia. Some among them have direct experience of detention and deportation, so in contrast to the majority of the general population, they know exactly what these institutions of exclusion are.

As we have shown, narrations of their experiences can contribute to their empowerment. At the same time, these narratives offer insight into the impact of neo-liberalism, particularly on employment and social rights and on the processes of ethnic homogenization within a new nation-state (for more on ethnic homogenization, see Bajt in this volume).

3. Worker migration to Slovenia

I was dismissed when the war started [in Bosnia]. They said they didn't need me any more, actually that I was a "južnjak" [a derogatory term literally meaning southerner] and that they don't need južnjaki any more. (Activist, 45)

The year 1970 can be described as a watershed year, since it marked the beginning of the three-decade long, positive migration balance in Slovenia, which was increasingly becoming the key factor in the development of the industrial and construction sectors (Mežnarić 1980, Dolenc 2007, Josipovič 2006). The decade of the 1960s was primarily characterized by emigration from Slovenia. More than 40,000 workers, mainly highly skilled ones, left Slovenia for temporary work abroad between 1961 and 1971 (Dolenc 2007, 79).⁷ According to Silva Mežnarić's assessment of the situation at the time (1980, 230), this outflow of the labor force produced upward mobility among the employed local population and the population that at that time had completed schooling or additional training and began to fill vacant job positions. Mežnarić writes that at that time the number of rapid training courses, for example, on-the-job training, expanded rapidly. Unskilled and semi-skilled jobs within various industries were filled by workers from other republics of the former Yugoslavia. Writing about this situation, Danilo Dolenc says that the educational structure of the immigrant population from other parts of the former Yugoslavia was not much lower than that of the local population, which was generally low at the time. Moreover, the share of people with secondary school education among the immigrant population was proportionally even higher, primarily owing to the quality education received by Yugoslav People's Army staff and the employees of federal bodies.

Immigration to Slovenia peaked between 1978 and 1980. From the early 1970s, most immigrants came from Bosnia-Herzegovina (40 percent of all immigrants), unlike during the 1960s, when most immigrants came from neighboring Croatia (Dolenc 2007, 81). More than 80 percent of all immigrants settled in urban

⁷ The economic and social reform in 1965 introduced the model of market socialism, in which centralized planned mechanisms were replaced by market mechanisms. One consequence was shrinking employment and the emergence of surplus labor force. This was also the period when the first post-war Baby Boom generation entered the job market. Under pressure of the rising unemployment rate and social tensions, the state authorities tried to solve the problem of unemployment by relaxing the border regime and enabling people to seek temporary jobs abroad (Dolenc 2007, 78).

areas. According to the Inter-Municipal Community for Employment, the majority of immigrants found jobs in industry and construction work (Gulič 1983, 40). For example, the construction sector was directly dependent on immigrants, given that they accounted for 70 percent of the total number of construction workers (ibid., 46). Most of them lived in dormitory-type facilities, so they could not register as permanent residents in Slovenia. Dolenc (2007) estimates that around 30,000 immigrants without permanent resident status lived in Slovenia at the time when it became a sovereign country. In fact, people living in facilities intended for temporary residence, i.e. those that had the characteristics of shared accommodation (dormitory-type buildings), and in illegal facilities (shanty houses) could not register as permanent residents in Slovenia (ibid.). To register as a permanent resident, they needed a document proving that they had the right to live at a specific address (a tenancy agreement, a private apartment, or close family relation with a person having permanent residence at a specific address or similar). People who found themselves in the erased group were relatively well integrated into the local community,²¹ since most lived in apartments rather than, for example, dormitory blocks (there were 62 such blocks in Ljubljana in 1980), or shanty neighborhoods (there were 18 of these in 1980) (Vovk et al. 1983). We use the term “integrated” to denote that they could settle in Slovenia and find employment under terms equal to those for the rest of the population. Legal and socio-economic integration meant that they could exercise their rights in the field of employment and housing (obtain a favorable bank loan to buy property and the right to live in a socially-owned apartment provided by their work organization), and that they were obliged to pay a contribution to the housing fund, which was deducted from their salary (in Slovenia, these contributions were higher than in other republics, which was reflected in the net income) (Dolenc 2007, interviews with the erased people). The erasure introduced a reverse process, de-integration, first and foremost legal de-integration, which affected the lives of individuals and their families.

The same as any other employed person in Slovenia, the workers who were erased had contributed to the creation of common property. However, at the time the socially-owned property was being transformed into private property, the erased people were not given the opportunity to participate in property distribution: they did not receive ownership certificates and could not buy socially owned apartments at reduced, non-commercial prices. Some tried to make an estimation of the damage they suffered through this:

If my wife and I had got a certificate as everybody else did, we would have invested it in Cinkarna Celje, where we had been employed for 20 years. Today we'd have shares that have some value. If we could have bought the apartment under

²¹ Romana Bešter (2007, 108) defines integration as a multi-directional process that exacts mutual adjustment on the part of both immigrants and the host society. “In this process, immigrants accept certain norms and rules observed in a new society, while a majority society should open its institutions, adapt these to a new situation and ensure for immigrants equal opportunities for participation in these institutions.” She further explains that integration also denotes the features of a social system characterized by social cohesion. It denotes the capability of a society to ensure welfare for all its members, to minimize inequalities and avoid polarization (ibid.).

Jazbinšek's law, we wouldn't have been paying rent throughout these years, and we'd be the owners of a property whose value has increased over time. You can now do the calculation for yourself and see how much I lost compared to others who obtained citizenship even though their salary contributions were lower than mine. Given the composition of my "EMŠO" [unique personal number], I was convinced that I was a Slovenian citizen – there was no other reason for my not applying for citizenship. (Vladimir, 49)⁹

3.1 Attitudes towards immigrants in the former Socialist Republic of Slovenia

Miran Komac writes (2007, 47) that negative attitudes towards immigrants dominated throughout the period when the Slovenes lived in the former Yugoslavia. Members of other nations within the former Yugoslavia were viewed not only as workers, but also as incomers and foreigners who were expected to adapt to the Slovenian way of life as soon as possible, and to learn Slovene and use it in public. During certain periods it was also believed that immigrants posed a threat to the Slovenian nation (ibid.). The Slovenian Public Opinion (SPO) survey (1970/71) conducted just before the big wave of immigration into Slovenia revealed that the majority of respondents thought that immigration from other Yugoslav republics into Slovenia was "mainly bad" (42.5 percent of respondents; see the table below). A similar trend can be observed in later public opinion surveys, except in 1980, before the outbreak of the economic crisis, when immigration reached its peak. In 1980, "only" 35.4 percent of respondents went along with the statement that "immigration of workers from other republics posed a threat to the Slovenes." After that, the percentage of those who saw immigration as a predominantly negative phenomenon steadily rose, and in 1990 it amounted to 53 percent (ibid., 49).¹⁰

	SPO 1970/71	SPO 1980	SPO 1983	SPO 1990
Immigration as a negative phenomenon/immigrants are a threat to Slovenes	42,5 %	35,4 %	38,2 %	53 %
Immigration as a positive phenomenon/immigrants are not a threat to Slovenes	28,6 %	49,2 %	39,8 %	28,5 %

⁹ The interview was conducted by the author.

¹⁰ The findings of the SPO survey presented in this book are based on Komac (2007).

During the early 1980s it was also possible to observe, apart from the short-lived change in the perception of immigration, an increase in supra-national identification. The number of “ethnically undetermined” people rose, particularly the number of those who declared themselves to be Yugoslavs: 25,615 of them in the 1981 census (1.4 percent of the total population of Slovenia); of these, 14,942 persons were born in Slovenia (Dolenc 2007, 83).¹¹

Undoubtedly, both ethno-nationalist and anti-nationalist (Yugoslav) tendencies were present in Slovenia. However, it is possible to argue that the ethno-nationalist conception of sovereign Slovenia would not have succeeded had not a good “basis” for it existed beforehand (see also Bajt in this volume).

To illustrate the period towards the end of the 1980s, when exclusion was unequivocal but by no means state-endorsed, we give below a passage from a note about a skilled welder from Bosnia-Herzegovina (married, with two children), who at the time of the study, in 1988, had been employed in the Velenje coal mine for eleven years. The following is how the researcher (Dadič) recapitulated this worker’s narrative:

The main motive for moving was work, which he could not find in his local environment. [...] He lived in a dormitory block for seven years and later moved to some “hole” that used to be an abandoned workshop. He now [in 1988] lives with his family in an apartment provided by his employer. [...] He has a feeling that he is not accepted in his neighborhood, that people look at him “askance.” He has also experienced derision on ethnic grounds from his neighbors. Among other things they said, “We gave you everything, what else do you want?” and “If you don’t like it here, go back to Bosnia”... In the opinion of the interviewee, living here is worthwhile only because of money. As to other aspects, there is more suffering than peaceful life here. The economic situation has also been deteriorating [...] As to the relations between Slovenes and immigrants, he says that an immigrant here must be much better in all respects to win recognition from the wider society. He can understand that Slovenes have misgivings about their language and culture, but in his opinion they are most anxious about their children running out of jobs. He also said that for immigrants it is more difficult to obtain sick leave than for the locals. When in the 1970s he wanted to build a house for himself, he could not obtain a loan, while the locals could [...] There have also been conflicts at his workplace, and he noticed several times that other workers did not “side with him” but with the locals [...] He said that his most difficult experience was when his father died, and his workmates did not send a wreath or express their condolences as they did to other workers (Dadič 1988, 20–1).

¹¹ In the early 1980s, 1.3 million people in the former Yugoslavia considered themselves Yugoslavs. Danilo Dolenc (2207) attributed this growing trend to the fact that Tito’s death inspired people to reassert their enduring commitment to brotherhood and unity.

And yet, despite widespread prejudice and ostracization of immigrants, as Yugoslav citizens and permanent residents in Slovenia, they enjoyed formal equality. In other words, at that time, ostracization of and discrimination against immigrants were neither systematic nor unquestioned behaviors, although it should be noted that specific instances of segregation and exclusion were not sanctioned either. Discrimination against immigrants and their descendants became institutionalized only in the new, sovereign Slovenia, first through the imposition of different terms for citizenship acquisition (ethnic Slovenes acquired citizenship automatically while immigrants had to apply for it), and later through the erasure in particular, when immigrants were deprived of rights already acquired (many public services were involved by official duty in the execution of this measure).

4. From working people to the Slovenian nation

After twenty-five years of work here, I had to arrange for a work permit and visa, and I was a foreigner here – a foreigner. (Monika, 63)

The end of the socialist era¹² and the foundation of sovereign Slovenia were marked by a transformation of the bearer of sovereignty. According to the 1974 SFRY Constitution, the historical bearer of sovereignty was the working people led by their avant-garde (i.e., the Communist League). According to the 1991 Constitution of Slovenia, the bearer of sovereignty is the people as such (Centrih 2008, 72). “Slovenia is a state of all its citizens and is founded on the permanent and inalienable right of the Slovene nation to self-determination” arising from the “centuries-long struggle for national liberation.” Therefore, the historical bearer is the Slovenian nation, while Slovenian citizens, the people and other national communities here appear as heirs to the struggle of this entity, i.e., the Slovenian nation (ibid.). Lev Centrih argues that this is the main difference between this Constitution and the Constitution of the Socialist Republic of Slovenia dating from 1974. In the latter, the statehood of the Slovenian nation proceeded from the national-liberation war and the socialist revolution during and after the Second World War. The 1974 constitution explicitly mentioned workers, farmers, working intelligentsia and all progressive individuals in Slovenia (ibid.). Indeed, many erased people perceived themselves primarily as workers, and many emphasized in their interviews that they were “good workers.” Under the new circumstances, with the socialist economy in shambles, factories closing down and the unemployment rate on the rise, when belonging to the working class no longer carried with it any symbolic power, many erased people began

¹² One of the milestones in the process of introducing the market economy was the law on basic rights arising from employment adopted on 6 October 1989. It introduced collective agreements that regulated salaries. The system got off the ground when the first collective agreement for the field of the economy was signed on 1 September 1990. Seventeen more sector-specific agreements had been signed by 1992 (Kresal 1998, 332).

to feel redundant, as individuals and as workers. The locus of their identification, “hardworking workers” (employment was the most frequent reason for moving to Slovenia among the first generation immigrants), was vacated, while the substitution of the Slovenian nation for the workers as the bearer of sovereignty only further marginalized them. For example, one interviewee reported the following:

Only we [citizens of other republics] were erased. We came here to get a job. We earned our bread honestly. Perhaps we are truly good or too good; we were ready to do any work, and this came back to us in the end. They tried to get rid of us in such a degrading way. (Slavenka, 47)¹³

The following passage relates a similar feeling:

I had to find my way around the new environment [during the late 1970s] all by myself. So I found me a job as an assembly line worker and I worked, and I was not interested in anything else but work, just work. If I hadn't worked I'd not have found my way around. I wanted to be independent, autonomous, to have my own job, my income, to be able to earn a living. I worked from 6 in the morning to 6 in the afternoon, my hands were calloused, I worked honestly to earn my wage. Nobody can blame me that I came to Slovenia at the expense of the Slovenes. I worked hard for every bite I ate. (Ismeta, 49)

4.1 Neo-liberalization and social movements

Workers' symbolic and real status was particularly affected by the introduction of neo-liberal market mechanisms. This change was marked by the closure of factories, lay-offs, irregular payment for work and, for the first time in many years, worker strikes (Stanojević 2008). At the same time, during this period of crisis in the Slovenian economy, which was rooted in the global reorganization of labor (from Fordism to post-Fordism), the symbolic value of work also changed. The change came at the expense of industrial work and production, and in favor of intellectual work, particularly work performed by the educated elite. Unlike in the former, industrial society, productivity and profit were increasing while employment was shrinking, leaving entire segments of the population redundant (Bauman 2001). During the socialist era, which coincided with Fordist production methods, every type of work was deemed valuable and important, and this was both professed¹⁴ and reflected at the level of income.¹⁵ Our interviewees described this changeover as a period marked by the loss of regular jobs,¹⁶ the ex-

¹³ The interview was conducted by Jasmina Pavčnik, a student of the Faculty for Social Work in 2007/08.

¹⁴ One well known slogan from this period was, “Honor and power to labor.”

¹⁵ Until 1962 the ratio between the personal income of unskilled workers and that of workers with higher education was 1 : 2.8; this ratio was later reduced reaching its lowest point in 1974. The greatest rise was seen in the personal income of additionally trained, unskilled and skilled workers, and the smallest in the income of workers with higher education. (Kresal 1998, 330)

¹⁶ For more on how job loss affected four specific erased persons and how it was reflected in their physical and mental health, see Lipovec Čebren 2007a.

plicitly temporary nature of jobs, illegal work, low wages, exploitation and an absence of workers' rights. The three extracts below illustrate the typical employment situation of erased people at the time:

For one year I worked at the waterworks, illegally ... Then I worked in a shop selling minerals, 60 kilometers from here, for one year. I worked in Koper in the carpentry shop, one year ... I did many things – all of that illegally. So instead of 14 qualifying years [for a pension] I have now, I should have 25 years. But I don't. And I'll never be able to make up for it. (Aleksandar, 47)

I regret this interval, these were the best years when I was most capable of work. If you are without work for seven years, you lose your bearings. You simply find yourself in agony when all roads are closed. It's hard to put it into words. (Božo, 45)

The interviewee with the pseudonym Indira had a regular job from her arrival in Slovenia in 1981 to the closing down of her employer, Tekstilindus. After she divorced her husband, and after her rights arising from unemployment status expired and she was erased, she found herself without anything, although she had to support not only herself but also her two children:

Then I was without status, I had nothing, I was left without anything ... I had to ... 23 to 30 hours ... 34, I worked like that! Without a break! One job after another. [...] I did cleaning. I also did master cleaning, I did cleaning – all of that illegally, in apartments, companies, everywhere. [...] That time doesn't count as qualifying years for a pension. And they said [at the Employment Service] that I had to obtain a work permit. They didn't want ... So it went on like that and I worked illegally. [...] It was hard on the children. I worked all day long; their father left, so I'd come home and [her older son] was nervous. I'd come in tired, wanting only to lie down, and he was nervous. He'd say that he was not like other children, that he had nothing and couldn't do anything with his friends, so it really hurt me. (Indira, 48)

Certain employers arranged temporary work visas for their workers, so some of the erased people were able to work legally, that is, as long as they were needed. The interviewee with the pseudonym Aleksandar told us that initially he was not even aware that his job was based on a temporary work visa:

I worked for ten years [in the Luka Koper port], from 1982 to 1992, and then they put an end to it all. They told me that my work permit had expired. Until then I hadn't even been aware that I had a work permit. ... They arranged it for me and for others when they found out that we didn't have citizenship. They arranged work permits without us knowing it. (Aleksandar, 47)

The trade unions only recently began to address this flexibilization of work without security, but many workers experienced it as early as the late 1980s, and particularly the erased people during the early 1990s. Rastko Močnik drew

attention to the fact that the crisis caused by the intrusion of neoliberal capitalism could have been mitigated or prevented by a coalition of the industrial worker movements, intellectual workers and youth alternative cultures that were the protagonists of progress in the 1980s, but this did not happen. The pivotal period (1987-1992) and the dissatisfaction caused by fallout from the economic crisis were indeed accompanied by an energetic strike movement, and the role of the trade unions as workers' representatives was most explicit in negotiating the new system of collective agreements. Miroslav Stanojević (2008, 72) writes that the strike movement was oriented towards egalitarianism:

Its core was composed of workers from large, classic Fordist factories, which during this period began to lose their markets and were confronted with critical, extraordinary circumstances. Trade unions articulated mass social dissatisfaction through demands for justice, preservation/security of jobs and "honest" (primarily regular) payment for work (ibid.).

With hindsight and viewed from the perspective of the erasure, it is possible to say that, although the core of the strike movement was made up of workers employed in classic Fordist factories and although trade unions demanded social justice, this was not an emancipatory movement: rather than being progressive protagonists, workers protested simply because their situation was deteriorating, but without addressing the issue of the discrimination against workers (Bosnians vs. Slovenes). Trade unions obviously evaded the issue of ethnic/national affiliation and consequently of citizenship and erasure, although these were precisely the reasons why some workers lost their jobs and were excluded from (institutional) solidarity networks. It is not surprising, then, that the erased people began their struggle in connection with and at the time of the theoretical and practical culmination of the movement for global justice (Kurnik 2007, 123, Zadnikar 2004) rather than in connection with local trade unions, although the latter included many traditional industrial workers. One feature of the movements for global justice is that they do not operate through representatives (as is often the case with trade unions), but the oppressed people are at the same time the main protagonists who publicly articulate their demands; in addition, they have been developing a distinct theory of the capitalist system and the possible aspects of liberation (e.g. Antonio Negri and Michael Hardt, Immanuel Wallerstein, Sergio Bologna, Étienne Balibar and others). In theory and in practice these movements uncover and fight the mechanisms of administrative barriers erected by governments in an attempt to divide people's labor and residence into "legal" and "illegal," a practice which was also a characteristic of the erasure. At that time, workers did not succeed in transforming themselves into a political force, or, as Močnik put it (2008), into a collective intellectual capable of reflection on its historical position and new exclusions.

Historical experience shows that worker movements have not generally been immune to racism and distinctions on the ground of ethnic/national/racial

attributes (Wieviorka 1995). For example, the American labor movement was initially organized (1881) as a white workers' movement exclusively. As late as 1935, black workers were excluded from trade unions, while at the same time accused of betraying the working class because they did not observe the rules of strikes and undertook low paid jobs thus lowering the price of wage labor.¹⁷ While in the US racism was inherent in the beginnings of organized worker movements, in the case of the Polish Solidarity movement, the chronology of events was the opposite: anti-Semitism acquired a new lease on life (once again) only when in the late 1980s the movement began to dissolve, the economic crisis flared (bringing food shortages and closures of factories), and nationalists strengthened their ranks and began to resort increasingly to populism, recurring to community, "Polishness," homogeneity, occasionally even emphasizing the need for a "firm hand" by the government and a return to order.

Michel Wieviorka (1995) also mentions the French worker movement, which until the late 1970s had importantly co-shaped political and cultural aspects of life in France. French society was structured around the main conflict: workers stood firmly in opposition to employers. Both classes were politically and culturally active. Immigrants were not the central issue at the time; they were mentioned in the context of employment but not in terms of the population (which usually carries racist undertones). The crisis of industrial society accompanied by the dissolution of the worker movement organization left a vacuum in its wake, which was quickly filled by individualism. This marked a transition from a class society to a society of ethnic/religious differentiations and exclusions. With the decline in social movements typical of the 1970s, the middle and the lower classes, including their poorest members, attempted to distinguish themselves from immigrants, even to separate physically from them, as they began to perceive immigrants as an ethnic and/or religious threat.

Wieviorka's argument suggests that the decline in social movements, which as a rule generate social conflicts, and vice versa, the differentiating logic (new-comers vs. locals, dominant vs. racitized groups) which suppresses and conceals conflict, is connected with populism and the expression of racism. This is because the lower the level of social or class conflict, and the less these conflicts co-shape the political system and the state, the greater the space left for racism to proliferate (ibid., 81). Wieviorka even speaks about social anti-movements whose reference points are a nation, a race or a religious group, and where the Other is no longer understood as a potential protagonist but as a threat. The promoters of

¹⁷ An opposite example would be the Russian worker movement during the 1890s. Since anti-Semitic pogroms in the coal mining region of southern Russia represented a serious political and organizational obstacle for strikes and demonstrations, the main task of social-democratic activists was to prevent demonstrations from spontaneously turning into anti-Semitic pogroms. Charters Wynn (1992) writes about the specific nature of the situation in Russia, where during the time of the first revolution (in 1905), the early departments of armed revolutionary workers were formed as self-defense units of Jewish workers in southern Russia. The workers armed themselves to protect their communities against frequent pogroms, which, however, were not solely a spontaneous reaction of the masses, but were instigated by the Czar's police apparatus. Therefore, it is possible to establish an analogy between Black Americans and Russian Jews. Both were the targets of racism in their countries, the main difference being that Black Americans were excluded from the labor movement, while the Russian Jews were active and important in the field of worker organization.

anti-movements defend their own concepts and mental images about history, refusing to recognize any historical perspective beyond their own.

In the case of Slovenia, the class struggle was institutionalized by the socialist order, which etatized and numbed trade union movements, so they did not play a significant role in the drive for democratization and freedoms during the second half of the 1980s. In the early 1990s, when social movements, also called civil society, caved in to political party life or lost steam in some other way, differentiation-based and nationalist arguments pervaded the social sphere more than ever before. It was precisely during this time, the first half of the nineties, that one of the main political topics became Slovenian citizenship in connection with "Slovenization:" who among the immigrants deserved it and who did not (Zorn 2007). The far-right initiatives managed to place this issue on the agenda of the parliament and even proposed a referendum on the revision of citizenship acquired under Article 40 of the Citizenship of the Republic of Slovenia Act. Immigrants were no longer thought of as workers but as non-Slovenes.

5. The defeat of the welfare state: the prevalence of administrative procedures over political processes

Growing inequality and poverty were characteristic of all post-socialist countries, while the share of the gray economy was high everywhere (Močnik 2003). Unemployment rose substantially during the early 1990s.¹⁸ Rastko Močnik identified three processes that caused it: 1) the change in the economy: the ruling class no longer needed to ensure full employment in order to perpetuate itself; 2) the policy of neo-liberal globalization and related competition of national economies on the global market; 3) the third "industrial revolution," which rendered entire segments of the population redundant (*ibid.*, 77). All of this was accompanied by changes in the value system that affected solidarity – individualism was on the rise (*ibid.*, 85).

These were the circumstances surrounding the erasure in Slovenia. The measure deepened inequality and extreme forms of poverty, but the recognition that it was a systematic and deliberate move was a complex and delayed collective process. Viewed from the perspective of the erasure, the discarding of the benefits of the welfare state was manifested in two simultaneous developments: shrinking social security that affected the entire society (the full employment principle was discarded, the availability of apartments at non-commercial prices was reduced, access to medical services was changed and so on) and increasing inequality in access to public services, which affected erased people in particular, for whom all doors were closed, as one of our interviewees put it.

¹⁸ For example, in 1980 around 10,000 people were unemployed in Slovenia. By 1989, this number rose to 29,000, which translated into an unemployment rate of 3 percent. One year later, in 1990, this number was already 44,000, while in 1992, the unemployment rate was triple that of the previous year: 164,000 unemployed people or a 12.6 percent unemployment rate (Bregar 1989, Volfand 1990, Sovdat and Tušek 1991, Popit 1992; 1993).

5.1 “Then recognize him at least as an animal!”

Inequality was so rampant that some felt they were not recognized even at the level of bare life, or physical existence:

I asked a vet to give me antibiotics because my father was really seriously sick. His heart muscle was weakened. The vet replied that he was not an animal. So I told him to recognize him at least as an animal! (Begeš, 89)

The activities undertaken by state authorities contributing to the survival, preservation of life, improvement of living conditions and health are today taken for granted as sources of the state's legitimacy: they are aimed at the population as a whole and concern common life processes such as birth, death, reproduction, aging, and disease. Foucault's term ([1976] 2003) for such life-enabling authority is biopower. The technology of biopower that began to gain ground towards the end of the 18th century presupposes the existence of a series of sub-state institutions, such as health centers, insurance companies, solidarity funds, social services, hospitals and the like. Ever since the state began to function in the manner of biopower, says Foucault, the killing function of the state (killing here means leaving someone to cope with unbearable circumstances, not necessarily directly murdering one) could be performed only by racism. It acts precisely on mechanisms that enable survival, in accordance with the principle that another's death biologically strengthens oneself, insofar as we belong to a specific “race,” ethnic group or population. Racism in state mechanisms, i.e. institutionalized racism, means that the authorities decide what should live and what should die (ibid., 163). As mentioned earlier, what is meant is not direct killing but indirect killing by exposing someone's life to increased danger, ostracization, expulsion and legal or political death. The erased people resisted this racism of biopower through hunger strikes, meaning using what was in many cases the one thing left to them: bare life and their bodies. In so doing, they exposed the criminal potential of state authorities – their power to leave someone to die. The passage below illustrates how it is to feel being reduced to the level of bare life:

I had nothing [no insurance, no legal status and no assistance] At that time I existed only physically. My appearance. (Tatjana, 34 let)

The narratives of the erased people reveal that the authorities first degraded them to the level of bare life by depriving them of legal identity and leaving them at the mercy of various repressive bodies (police persecution, deportation). On the other hand, various public institutions endangered their bare life through ethically blind administrative approaches. Medical and social security services blindly executed decisions taken by the repressive arm of the authorities (the Ministry of the Interior).

In the next section we will look into certain major changes in the areas of housing, health services and social security in connection with the erasure. Fi-

nally, we will touch upon other issues involved in the erased people's attempts to regain their rights and their position within the legal system.

5.2 Housing

A comparison of the availability of apartments for rent at non-commercial prices in socialist Yugoslavia with that in sovereign Slovenia is illustrative of the shrinkage in public welfare in general as well as of the exclusion that affected the erased people in particular. For example, between 1991 and 1996, around 700 public housing apartments and around 1000 non-profit apartments were rented out, which translates into 240 apartments a year (Mandič 1999, 25). This annual average amounts to only 5 percent of the total number of socially-owned apartments and solidarity housing distributed yearly during the mid 1980s (around 5,500) (ibid.). A similar decline can be observed in the area of favorable housing loans. Between 1991 and 1995, the Housing Fund of the RS provided around 16,000 loans, i.e. 3200 per year, which amounted to 11 percent of the number of loans provided annually by socialist companies during the second half of the 1980s (30,000 of these in 1983 and 34,000 in 1986) (ibid., 27). It should be noted, however, that under the previous system the acquisition of a socially-owned apartment or a loan on non-commercial terms were tied to employment and the economic success of a specific work organization (Mandič 1996, 138). Socialist companies formed their housing funds relatively autonomously. These were managed by elected housing committees that determined the amounts set aside for the acquisition of socially-owned apartments and for housing loans (ibid.). By contrast, the management and maintenance of these apartments and the setting of rental rates was quite a different thing; these decisions were made on the local level and were applicable to the entire social fund in a specific locality. The rental rates, in the words of Srna Mandič (ibid.) "were unreasonably low if viewed in the context of the structure of private consumption;" for many years they amounted to only around 4 percent of private consumption spending. Srna Mandič further claims that socially-owned apartments were the "pride" of the worker self-management model of housing policy and a way to realize social justice. In the mid 1970s, the solidarity housing program was added, targeted at the part of the population that was beyond the reach of "employment benefits:" the unemployed, the disabled, young families and so on. Although socially-owned apartments provided by socialist companies were accessible to a wide range of the population, and housing was considered a right rather than a market commodity, this type of rental agreement was nevertheless considered a privilege (ibid., 139). The reasons were the shortage of apartments and the criteria observed when distributing these, with not only need but also merit being taken into account. This placed higher social classes in a privileged position (which was at odds with the socialist ideals of justice and equal access).

The fact that many of our interviewees were users of socially-owned apartments suggests that they were embedded in the local environment and enjoyed

social security, perhaps even a relatively high social status although they were immigrants and many among them industrial workers. Or, as they themselves said, “we lived normally,” “without special problems.”

The second process – the growing inequality of access – particularly manifested itself in the fact that the right to purchase a socially-owned apartment at a non-commercial price was tied to citizenship. Although for many years the erased people paid contributions to the housing fund, they were deprived of the opportunity to buy their apartments. The passage below illustrates this situation:

We got the apartment from the company. They were saying that they would move us. [My husband] went to his former employer and then they signed that we could stay in the apartment. [...] We received an offer to buy it ... However, because we didn't have permanent residence we couldn't do it. So we still pay rent. It's bigger than would be a monthly loan installment. We pay 140 euros plus expenses. But it's only one room, 39 square meters. (Jasna, 61)

5.3 Health protection¹⁹

The present health care system is different from the one in the past in that access to health services is now strictly tied to the type and scope of health insurance. In the previous system the conviction was that, with the help of solidarity, health care services could be provided to everyone. Tone Košir writes (1992) that this right was extended without material coverage (which allegedly was the reason for the reform of the health care system) and that, at least theoretically, all health services were accessible to everyone without restrictions, i.e. regardless of a person's financial ability. By contrast, in the new system where access to health services is tied to insurance, the door to medical institutions was closed for the erased people. One interviewee related that he was even denied medical services for payment:

I had an accident and I hit my head. I went to the Koper health care center and the nurse asked about my insurance. I told her I didn't have any. “I don't have any insurance, I'll pay the costs.” The answer was that I couldn't be examined because I didn't have insurance. [...] They didn't want to take me in even for money. I didn't plead with them, I just left. I went to a bar with a wound on my head. The barmaid asked me what happened, what it was on my head. She took alcohol and disinfected my wound instead of a doctor or a nurse. I'll never forget it. It burnt, the wound was quite deep. [...] After that I never attempted to go to the doctor again. Perhaps it contributed a little to my falling ill with cancer later. (Edin, 45)

¹⁹ For a detailed overview of the exclusion from the health care system, see Lipovec Čebon 2007a, 2007b and Lipovec Čebon in this volume.

The erased people were excluded from the health care system not because they were unable to pay insurance fees but because health insurance policy was tied to the status of citizen or foreigner with permanent residence permit. Some among them reported that they were even denied insurance through their spouses:

My wife had a regular job, but she couldn't obtain insurance for me. I was without health insurance for four years. Had I been sick – God forbid ... I could only obtain traveler's insurance at 40,000 tolar a month. But for me this was a whole fortune, so of course I didn't take it. (Aleksandar, 47)

5.4 Social security

The differentiation that was introduced with the changes in the welfare state can be illustrated by the new provisions in the Social Assistance Act adopted after the erasure, in November 1992 (Ur. l. RS 54/92). According to Article 5 of this law, only Slovenian citizens and foreigners with permanent residence permits in Slovenia are eligible for social assistance,²⁰ meaning that erased people, refugees without status and people with temporary residence in Slovenia are left out. The previous, "socialist" Social Assistance Act (Ur. l. SRS 35/79) did not tie social assistance to personal legal status.²¹ Accordingly, Article 5 of the 1992 law can be interpreted as one of the indicators pointing to the defeat of the welfare state, since it proves that other sub-systems (the administrative-legal sector that implemented the erasure) took precedence over the sub-system of social assistance, which thus lost part of its autonomy, much like the health care system described above.

In contrast to the socialist era, social workers in the new system were deprived of their discretionary power to determine who should receive social assistance. While this, on the one hand, reduced potential patronage and abuse of power on the part of social service providers, on the other, they were no longer able to act on their own judgment in new circumstances characterized by grave social inequality. Our conversations with social workers²² showed that

²⁰ Article 128 of the Social Assistance Act (Ur. l. RS 54/92): "Centers for social work are obliged to establish, within three months of this law coming into effect, whether the persons eligible for financial social assistance under the provisions valid so far fulfill the criteria specified herein."

²¹ The 1979 Social Assistance Act mentioned individuals, families, workers, citizens and users of services and programs.

²² The following is the list of social workers interviewed: D.R. employed at the Izola Center for Social Work at the time of the erasure and later (the interview was conducted by the author and Uršula Lipovec Čebren on 21 May 2007); P. V. employed at the Šiška Center for Social Work at the time of the erasure and later (interview conducted in October 2007); M. C. employed at the Ponikve Delovnovarstveni zavod at the time of the erasure and later (interview conducted on 26 February 2009); S. Š. employed at the Moste Polje Center for Social Work at the time of the erasure and later (interview conducted on 26 March 2009); B. R. employed at the Ravne na Koroškem Center for Social Work at the time of the erasure and later (interview conducted on 17 April 2009). The thesis entitled "The Erased People – Caught in the Trap of the Assistance Syndrome," written by A.M. who works at the Psychiatric Hospital in Ormož was also consulted (the thesis was defended in August 2007). The audio recordings or written transcripts of these interviews are kept by the author.

employees within the social security system provided assistance with applications for citizenship under Article 40 of the Citizenship of the Republic of Slovenia Act (to people who lived in social welfare institutions), and later, after the erasure, with applications for foreigner status or for citizenship by naturalization, particularly to people who had already been users of social services. They frequently acted as communication facilitators between the erased people and the office for foreigners or office for naturalization at the Ministry of the Interior. Yet, despite strained circumstances, they did not engage in political deliberations, nor did they initiate public action. Indeed, some social workers resorted to semi-legal or even illegal acts in an effort to secure for their clients the needed documents or material assistance. Despite this, the institutional framework of social assistance was characterized by the precedence of bureaucracy over political decision-making. In providing assistance, they did not step outside the framework set by the erasure.²³

With the benefit of hindsight, the welfare state of the 20th century appears as a realized utopia, writes Rastko Močnik (2008, 48), although it stifled the struggle for emancipation in many ways. The depoliticization of the social process, which prevailed in the area of social security even in the previous system, prevented resistance against neo-liberal dominance: “neoliberalism substituted market mechanisms for etatized forms of social solidarity by means of administrative measures and without many difficulties” (ibid.). One characteristic of neo-liberal public institutions is that they have established control over immigration, not only at the external state borders, but also internally. The passage below illustrates how this was manifested in the case of erased people:

I really had a lot of problems. I owed money to the school for my child, they called me, sent reminders and then the court. They instructed me to go to the social service but I couldn't go there [because I didn't have a residence permit or citizenship]; you cry, but what can you do. I told them: “Give him food. If everybody gets one plate of food, there must be some for him too. You throw it away anyway.” I couldn't give anything to my child, anything at all. Only food. Or if somebody gave something to me. (Emina, 47)

²³ Social workers could not act based on their own judgments when deciding about financial social benefits, but were obliged to observe the provision contained in the Social Assistance Act that excluded people without permanent residence permits. The contemporary ethical code observed in the field of social work requires a political response from social workers in such circumstances. It states that social workers are obliged to work towards improving access to existing or new sources of assistance, and should try to influence social policy and the legislation regulating social rights (Article 1). Social workers' conduct should invariably be anti-discriminatory; they are obliged to report discriminatory conduct to their fellow workers and the managers of the institution where such conduct has occurred, as well as the wider public when needed (Article 6). Article 29 states: “The professional conduct of a social worker also implies his/her active engagement concerning those social issues and fields which are only indirectly but importantly related to social work. A social worker acts towards socio-political, legislative or civil society initiatives that are in favor of the users of social work. In so doing, he/she refers exclusively to professional arguments.” (Association of Social Workers of Slovenia, 2009)

The welfare services, which are presumably intended for all and especially for those who cannot afford the basic living expenses, became a source of inequality and exclusion. The erasure revealed that public institutions operated contrary to their own principles of equality and solidarity. Article 25 of the Family Income Act (Ur. l. RS 65/93, adopted in November 1993) states that every mother with permanent residence in Slovenia has the right to assistance given for a newborn baby. This meant that women who were erased from the register of permanent residents and who gave birth after 1993 could not receive this assistance, even though they were employed and had health insurance (such was the case of Ismeta, quoted earlier in the text).

Viewed from the perspective of the erasure, Article 36 of the Social Assistance Act is also intriguing. It stated that a center for social work could grant a one-off sum to a citizen of the Republic of Slovenia without a permanent address in Slovenia or a foreigner without a permanent residence permit in Slovenia (persons erased from the register of permanent residents belonged in this group). It was intended for their return to the place of permanent residence and could not exceed 20 percent of the financial assistance given to those without other sources of income paid out in a functional form. Not one erased person we interviewed reported that he/she received this kind of "assistance." We presume that this was so because centers for social work would have found themselves in a predicament when trying to establish the place of permanent residence of erased citizens; in addition, a "return" to the place of permanent residence would have been impossible, given that most erased people did not have valid passports.²⁴

5.5 The costs of re-registering: "At the end of the day, you had to pay for everything"

The borders of the welfare state were firmly protected by permanent resident and citizen statuses; the procedures required to acquire one or the other status were time-consuming, expensive and full of 'illogical' requirements. For example, one such requirement was to pass an exam in Slovene, required even from erased individuals who were educated in Slovenia from the elementary level on. Or, they had to provide a document proving that they did not have a criminal record in the country of their or their parent's birth, meaning a country in which some of them had never lived. The acquisition of the required documents involved many expenses, as the following list shows:

²⁴ Since their still valid documents were invalidated and they could not obtain new documents in Slovenia unless they became foreign citizens, many erased people were prevented from fulfilling morally binding obligations involving urgent trips to the newly formed countries in the territory of the former Yugoslavia, for example, to attend a parent's funeral, visit aging parents, be present at births in the family and the like.

- travel expenses (to be able to become foreigners officially, applicants had to obtain documents issued in their place of birth in the territory of the former Yugoslavia)
- expenses for official translation of documents and certificates issued in other parts of the former Yugoslavia, which were obligatory attachments to the application for residence permit or naturalization (the fees for these translations are higher than those for ordinary translations)
- expenses paid for the exam in Slovene if a person applied for citizenship (35,000 tolar according to our interviewees)
- administrative fees for residence or naturalization applications (up to 30,000 tolar), administrative fees for complaints, and administrative fees in Slovenia and the countries of the former Yugoslavia for the issuing of various certificates and documents,
- some also had to pay legal consultants when applying for citizenship or residence permit.

In addition, erased people had to pay fines issued by courts for minor offences, because as erased residents without valid documents they were constantly violating the law:

Suddenly, you couldn't go to any institution any more, all doors were closed ... And all those fines ... In the end you had to pay for everything. (Aleksandar, 47)

Consequently, families with an erased person had greater expenses than the rest of the population but received lower social benefits or none at all, which only exacerbated their exclusion and poverty. Moreover, obtaining documents that had to be attached to applications for residence or citizenship by naturalization consumed their time in addition to money:

I kindly asked my boss to let me go on vacation. But he told me: "I'm fed up with you and your papers." I'd be away for two days. And I had to pay for everything. [...] I got a visa [work permit in Slovenia] for three months, then for six, then nine and twelve. And if you changed company, you had to do it all over again. I worked all day long, and I had to fix those papers again and again. Non-stop. Three months, and then again. Six months, and all the papers again. (Igor, 44)

Apart from expenses, our interviewees also mentioned other obstacles. Some documents - for example, a certificate proving that they had no criminal record - had a short validity period (six months) that sometimes expired even before the applicant was able to obtain other required documents. Some felt that they were trapped in a vicious circle, as it was unclear how, if at all, they could obtain all the required documents. Aleksandar Todorović experienced it himself: "For example, I sent a request to obtain document A, but it was rejected because

I didn't have document B. Then I sent a request for document B, but it was rejected because I didn't have document A" (Beznec 2007, 37).

Their endless running from one office to another was further aggravated by the negative attitude of administrative clerks. A special feature of this was the incorrect information they received (see Kogovšek in this volume).

6. Conclusion

In this essay we have often touched upon the previous, socialist system, but primarily inasmuch as the erased people themselves pointed it out and within those segments they found important. Although the previous socio-political system and multi-national state were not ideal, many erased people viewed it in a positive light, given the sudden and express deterioration of their living conditions in sovereign Slovenia.

The erased people described how the previous informal ethno-nationalism and exclusion became institutionalized and how they were transformed from immigrant but integrated workers into de-integrated foreigners and non-Slovenes. The non-Slovenes were expected to demonstrate loyalty to the new state. Those who did not "take" Slovenian citizenship were considered disloyal, as could be heard in discussions about the erasure after 2002, when alleged disloyalty was used as an argument to justify the erasure. Apparently, the interpretation of loyalty was based on the premise that a person could not have two homes at the same time or belong to two communities, countries and the like. Rather than understanding citizenship as an unquestionable ("sacred") value, for certain erased people it was a "secular," instrumental status – a right rather than a duty:

I didn't apply for citizenship. I simply didn't want to. I had permanent residence status here and I was certain that I could retain my job. I didn't have an apartment here, but I had one in Bosnia. I couldn't decide if I really wanted to live here to the end of my life. If I took citizenship, that's how I thought at the time, what would happen to my property in Bosnia? [...] On top of that, our people worked all over the world and only rarely did anyone take citizenship. Perhaps only 5 percent of our people, those we know, took citizenship of other countries – and still all of them lived to see a pension. That's how I was thinking. My wife took citizenship. It never occurred to me that something could happen. (Aleksandar, 47)

The stories of erased people, their experiences and deliberations provide critical reflection and enable discussion beyond the popular success story about Slovenia's independence. They enable us to acquire a finely honed view on the period of transition from a socialist to a neoliberal system and from a multi-national to a one nation-state. The ideology of individualization tallies with neoliberal precepts supporting precarious work and exclusion from the welfare state.

One of its adverse effects is the shifting of systemic difficulties to the shoulders of individuals. Demands for self-reliance lead people to blame themselves for difficulties caused by external factors and to perceive systemic difficulties as their personal failures (Beck 2001). This was frequently the source of erased people's psychological difficulties such as stress, anxiety and consequently deterioration of their health, experienced in addition to objective distress caused by the erasure. Misinterpretation of the situation led children to blame their parents for the deprivations they experienced in the wake of erasure and sometimes had destructive effects on family life. The extract below illustrates this:

As a child, I was in need of many things. For example, I wanted to play football but I couldn't, because I didn't have that paper. They couldn't register me. [...] In fact I didn't understand why my mum could not enroll me to play football. I didn't understand what it was all about. You criticize your mother all your life, and in the end you see that it was the fault of the state. (Jasmin, 19)

One decade of silence about the erasure and isolation of its victims clearly demonstrates that strained social circumstances in themselves will not make oppressed people organize themselves unless they develop critical awareness and recognize power relations (see Kovačič 2008). Their individual efforts to find solutions to systemic problems, for example, their attempts to obtain residence permits under the terms applicable to actual foreigners, indicate the political impotence of various rights ombudsmen and welfare services, on the one hand, and trade unions and non-governmental organizations, on the other. The erased people took political action only after the "worst" period of legal non-existence was already over for many of them (many managed to obtain residence permits).²⁵ It connected with the movements for global justice, which at that time had been sounding the warning for several years about the problems of refugees, and also joined the campaign of Bosnian refugees for residence rights and legal integration (Zadnikar 2004).

The very willingness of the erased people to relate their experiences, feelings and beliefs points to the externalization of responsibility and in many cases to their empowerment as well. What seems to be most important here is that the definition of responsibility for the erasure become an unambiguous fact. This would de-stigmatize the erased people and contribute to the rehabilitation of their dignity. And the story that would go down in history would not be solely the one about erasure, but also one about successful struggle by the oppressed.

²⁵ The majority of those who remained in Slovenia throughout the years following the erasure obtained a residence permit based on the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (Ur. l. RS 61/1999).

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An erased person's story

"YOU CANNOT FIGHT THE SYSTEM ALONE"¹

Before independence I had all my documents issued in Ljubljana. I was brought to Slovenia in 1969 when I was one year old. I went to school here, I worked here and formed a family.

On 30 December 1990 I had a very bad car accident. I stayed in hospitals, so I didn't apply for citizenship in time. When I came out, I was on crutches for several months. The boss I worked for was to give me a permanent job after the new year. That's what was agreed. Because of the accident, and the long period of recovery, this job fell through. I had barely recovered from the accident when I was erased in 1992. Obviously, "southerners" were welcome only as a workforce and only during the era of Yugoslavia – after independence we became redundant.

The last of my documents issued in Ljubljana before independence was my ID card. It was issued one year before the erasure, on 29 April 1991. It should have been valid until 2001, but in 1992 they destroyed it. I didn't have a driver's license. I had a Yugoslavian passport which had also been issued in Slovenia before independence, and it became invalid with the erasure.

It was in 1992, if I remember correctly, when I got an invitation to come to the administrative unit concerning my citizenship. I was glad to be able to finally settle this. When I arrived there, a lady asked me if I wanted to take Slovenian citizenship and I said that I did. As a matter of fact, before that I had already tried to submit the application for citizenship, but a clerk at the applications counter rejected mine, saying that I didn't have all the required documents. This lady asked me if I had my ID card with me. I gave it to her. She took it, punched it and returned it to me saying: "From now on you're erased."

¹ The erased person's story is based on the interview with Irfan Beširević, held by Tina Lajković and Tanja Toto.

Of course I didn't know what it meant, what the consequences were. She instructed me to go to the office for foreigners and ask there what to do. I went there and asked them what I had to do to be able to stay in Slovenia. There were two young women sitting there; they looked at me and asked on whose behalf I was asking. "On my own," I said. They simply couldn't believe it; they too thought it was strange. They explained to me what I had to do – that I first had to go to the Bosnian embassy and get a Bosnian passport. At that time there was no Bosnian embassy in Ljubljana; the nearest one was in Italy. So I got down to obtaining Bosnian documents, foreign documents. I phoned the embassy because I couldn't go to Italy without valid documents. They asked me if I had a permanent address in Ljubljana, and I said I didn't because they invalidated it. "If that is the case, then you cannot get Bosnian documents from the embassy," was what they said. So I was at zero point – nowhere. I didn't have Slovenian citizenship or any valid document. One of my brothers was erased too, but other siblings – we were eight children in my family – didn't have problems; they all became Slovenian citizens.

The loss of legal status caused many complications. I split from my partner during that time, when my life disintegrated, because I couldn't get citizen status. The apartment was owned by the company for which she worked at the time. When we split, I moved out of the apartment, and she later purchased it from the company. We were not married, but we had the same address – that address was my registered permanent address. One reason why we quarreled was the complications regarding citizenship. I preferred to move out of the apartment, so that she could stay there with our son (born in 1991). I was left literally without anything, like a hobo, left to my own devices, without documents, without a job, without a family and without an apartment. I slept in basements, old cars and parks.

I was seriously ill but I didn't have health insurance. I also didn't have money to pay for examinations, so I could not see a doctor. There had been no free medical help until 2002 when doctor Doplihar opened the outpatient clinic in Mislejeva Street for people without health insurance. Then for some time I went there until I got citizenship and arranged health insurance. In the meantime I went without health care for 10 years.

Since I know how it is when you're ill and you don't have access to doctors, I think that the right to medical help is one of the essential rights. Without health, you're destroyed. You cannot even work illegally if you are ill. I wonder what happened to the Hippocratic oath. Has it been replaced by the insurance policy? My health condition chronically deteriorated during the period of erasure, when I couldn't access health care anywhere. Now I have the certificate that I have level three disability, but I think it should be at least level two disability. My legs have been swelling and the wounds opening up, so I have to wear bandages all the time. I cannot see in my right eye – this is also one of the consequences of not having treatment. It went to my lungs; I should stop smoking. Well, I try, slowly. The erasure really affected my health.

From that time on, after I became a foreigner without documents and without status, no one wanted to give me a job. They were afraid of the police. I lived on what I could earn working illegally and on what I could cadge from others. I was like a homeless person: without a home, without a family, which didn't want me because I didn't

have papers, without anything. Naturally, I didn't steal, I didn't want to. But I humbled myself so much that I asked a man for a piece of bread. Since I was considered a foreigner, I didn't have the right to social assistance. I didn't receive help from the Red Cross or Karitas either – if I had been a refugee, I'd have been entitled according to their criteria, but since I was not, I didn't belong there.

Of course there were people, several individuals, who helped me. I don't know how it would have turned out without their help. For example, in 1998 I met Mr. M.N. who has a restaurant in Tomačevo and rents out rooms. I told him how it was with me, that I didn't have anywhere to sleep, and asked if he had a room. He said that he had a vacant room. I asked him if he was renting it out and what was the price. And he replied by asking me if I had the money. I told him I didn't have money. "Why do you ask then? Go upstairs and take it." And that's what I did; I went "upstairs" and stayed there for several years. In return, I worked in his restaurant. I helped him roast pigs and I served guests.

During the time I worked for him I was almost deported to Bosnia. This was in 2001. Until then I was successful in hiding, I didn't cause any trouble, I didn't steal, I walked around the town as little as I could. And then it was like this. It was seven in the morning, we were drinking coffee when five policemen entered the restaurant. One came to me and wanted to check my identification. I told him I didn't have documents. Then he said it didn't matter: "Tell me your surname." I told him and it was enough. They had almost finished, they were practically leaving, when the other police officer looked in my direction and told the first police officer: "And this one has no documents!" As if he knew that I didn't have them. The first one told him I didn't have documents but said that he already wrote down my name. The other one insisted on processing me. One of them followed me to my room, and I presented my invalidated ID card issued in Slovenia. For them it was an invalid document, so I had to go with them. They took me to the Ljubljana Bežigrad police station. "Now you go before the judge for minor offenses," they ordered. The judge issued the ruling that there was no reason for expulsion. But, despite this, the police officers put me back into the police car and took me to the Detention Center, which was in Šiška at that time. It was Monday. They told me that on Wednesday I'd be on the plane to Sarajevo. They didn't respect the ruling. In the center I had the right to make one phone call. I called Matevž Krivic and he called Mr. M.N. They both came to fetch me, and they got me out. If those two had not reacted so fast, I'd have been on the plane flying to Sarajevo on that Wednesday in 2001.

My friends and acquaintances didn't know that I was erased, except for one policeman and M.N., of course, who rescued me from the Center for Aliens. Later, after 2003, when I obtained citizenship and began to appear on television and in the newspapers, they were very surprised: "We didn't know, why didn't you tell us?" I indeed didn't talk about it with anyone, except with one policeman who protected me. If we went somewhere, he said: "Come with me, when they see that I'm a policeman they won't check your identification." I went out with him; otherwise I didn't. I didn't ask my friends for help.

I found my way around on my own. Because I was ashamed. I had a good life before that, as a waiter I had quite a good salary, and then I found myself practically at

the bottom. The policeman, my friend, offered to give me something from time to time, but I didn't want to take it. From time to time he paid for a drink, but that's different. I didn't want to take money. I'm like that, stubborn. You're afraid to ask your colleague, because you're afraid that you'll lose him. I was lucky to have this friend.

I maintained contact with my son and daughter to a greater or lesser degree despite all the losses I suffered. But I was ashamed because I couldn't offer them anything. For some time I visited my son in secret. But I had contact with my daughter from my first marriage all the time; she is older and she could understand it. Now she helps us build a relationship.

We learnt that the erasure was an unlawful measure only in 2002, no sooner than that. I knew that I didn't have a permanent address, that I didn't have the right to health care, to employment, social aid, in short, no right to anything. But we didn't know that it was a mistake by Slovenia, until Todorović and Krivic appeared in public with the data and explanations. Before that, we were only "southerners." Then when we learnt that there were many of us and that it was a mistake by Slovenian politicians, we began to fight, but you cannot fight the system alone. Right up to 2002, when the erased people went public, I didn't know any erased person. It seems that all of us were hiding, nobody talked about it. When I heard about the association and got Aleksandar Todorović's number, I called him straight away and told him about my situation. We began to meet each other at that time and we still fight together. I'm a member of the Civil Initiative of the Erased People, and the Vice-Chairman for the Ljubljana district. This association does not receive donations; we have no resources. The only thing we have is moral support, and we too offer moral support to everybody.

We demand that all the people who were stripped of permanent residence permits in 1992 be given back their status, retroactively as well, and that all injustices be remedied. For example, I lost 11 years of qualifying years for pension, because I was not "employable," although I had to work. I lost my health, I lost my sight, I lost my family. No financial compensation, no matter how high it is, can give me back my health and my family; these cannot be evaluated in terms of money. But those who were responsible for the erasure, meaning those who ordered this measure and allowed it, must be held responsible for what they did, morally and in court. Bavčar was the Minister of the Interior in 1992 and he signed the document that made the erasure legitimate.

In 2003, on 13 October, I obtained Slovenian citizenship based on Article 19 of the Citizenship Act. After that I immediately went out to find a job. I "bamboozled" my employer, to be honest, because I didn't tell him that I was ill. It was really urgent for me to get a job and health insurance. I spent a lot of time on sick leave and that's why I was dismissed. Now I receive a disability pension, but it is very low because of the insufficient number of working years.

Now that I have citizenship, certain things have changed for the better. I don't have to hide from the police any more, and I have the right to legal employment. But I have the same health problems as in the past; the only difference is that now I can go to a doctor. But I cannot work as I did in the past – not because I don't have the right to

work, but because of all those health problems that piled up over time. I applied for a non-profit apartment, but you know how it is, there are too few available apartments and too many people applying. I can travel now and I travelled a lot with the erased people and our supporters – to Italy, Brussels, Bosnia, Serbia etc. Before that, I hadn't left Slovenia for 12 years; my aunt almost didn't recognize me when I appeared in my place of birth one day. What I find most important is that now I can take part in the struggle of various groups, asylum seekers, immigrant workers, against the detention centers in Italy and Slovenia and so on, and nobody persecutes me because of that. I can appear on the "frontline," give statements to the media and the like. Thanks to activism, my life had taken the right direction.



Sara Pistotnik

THE ERASURE AS A TESTING GROUND FOR EUROPEAN MIGRATION POLICIES, OR PARDON ME, BUT YOUR REGULATIONS HAVE ERASED MY STATUS

During the period following Slovenia's gaining of independence, there was not a moment of doubt as to which road the country would choose. It immediately began to work towards joining European integration. One of the main areas within this system is immigration management. The European Union carefully channels immigration to satisfy its economic needs. Along with other norms, Slovenia therefore began to take over and upgrade the immigration managing system, in which legal status became the main classification criterion drawing a difficult-to-cross boundary between first- and second-class citizens. This dividing line delimited the segment of the population called the erased people with particular clarity. Having suddenly lost their legal status, they represented a testing ground for the structural violence anticipated for second-class citizens within this new regime. This essay looks into the ways this arrangement was incorporated into the Slovenian environment and how it affected individual people. We also take a closer look at the obstacles encountered by these people when attempting to regain legal status and the particular tactics they employed to this end.

1. How a small country became part of the global migration management system

For people living in the territory of Slovenia, the events and processes of the early 1990s that led to the country's independence represented not solely a reappraisal of borders and an adjustment of legal and other standards to the demands of sovereignty, but also, and above all, a change in the social system. After the collapse of the Iron Curtain, the EU, which until then had incorporated less than half of the nations living in Europe, emerged as the key organizing and

civilizing power on the regional level and engaged in various integrative, merging or other interactive processes with the former East (Balibar 2007, 66). Slovenia is also part of this East. Along with the planning and implementation of processes leading to independence, the newly formed state began to embrace uncritically the standards of the “developed first world” dictated and demanded by various supranational and international institutions. The transformation of practically all areas of life ended when the transition period was declared over and Slovenia joined the EU. The country caught up with its indisputable models to a satisfactory extent, and since then has been co-shaping with them the parameters determining the quality of social life.

Slovenia thus joined the historical trend of the past centuries, abounding in turns, transformations and redefinitions. The construction of the content of citizenship was a concomitant part of the process of establishing the European space (regardless of its extent at a specific point in time), particularly from the 18th century onwards, meaning from the time the nation form became a paradigm of global organization. It concerns the nature of the relationship between a social formation based on a specific combination of economic and ideological structures, and the conglomerate of individuals who can exercise their rights within such a formation but also have certain obligations towards it. This implies that the concept of citizenship necessarily incorporates demarcations, since a community of citizens can become established only in opposition to a community of non-citizens. The construction of citizenship that gained ground as the basic form in the European environment “closely associates the democratic universality of human rights [...] with particular national belonging. This is why the democratic composition of the people in the form of the nation led inevitably to systems of exclusion: the divide between ‘majorities’ and ‘minorities, and more profoundly still, between populations considered native and those considered foreign, heterogeneous, who are racially or culturally stigmatized” (Balibar 2007, 14).

Each establishment and reproduction of a national community rests on the exclusion of non-members, which is a practice that was and still is characteristic of Slovenia as well. However, after Slovenia became a sovereign country and adopted the system whose coordinates were determined by the concepts of democracy and the market economy, meaning at the time when it strived to join European integration, qualitatively different systems of excluding non-members began to gain ground as well. These are most frequently referred to as European migration policies. These include a comprehensive and complex apparatus of co-ordinated migration management, which has been reinforced and developed not only within the EU but also within candidate countries and other countries significant for this context. The methods involved represent one of the strategically most important elements of the modern social order, and consequently a mandatory condition for inclusion in the EU. In the introductory part of the Resolution on the Immigration Policy of the Republic of Slovenia (Ur. l. RS No. 40/99) adopted in 1999, expressing “the country’s determination to join the European Union,”

the Slovenian government stated: “In Europe, which is one of the global immigration regions in the absolute and relative sense, the issue of migration policy is one of the main political issues. On the one hand, the globalization of the economies and regional integration efforts, such as the European Union, by establishing a common market and encouraging economic growth and competitiveness, exact the removal of internal frontiers between member states. On the other hand, there has emerged the need to control inflow and immigration of aliens from other parts of the world, the so-called ‘third countries.’”

Migration policy is therefore a Janus-faced policy, with both faces serving the purpose of perpetuating the dominant social order. Much like the elimination of internal frontiers, “control over the inflow of aliens from other parts of the world” is also aimed at “encouraging economic growth and competitiveness.” The economic system of which the EU is part needs the workforce “from other parts of the world, i.e., third countries,” but in order to ensure its successful reproduction, it must systematically keep away these workers from its own social resources. “This specific mixture of policies that at the same time meet the circulation needs of the global liberal economy and the security needs of the statist national economies has been termed ‘domopolitics’ by William Walters. [...] The purpose of domopolitics as the main lever of European migration policy – in contrast to the popularized but entirely mistaken concept of ‘Fortress Europe’ – is not to stop mobility but to tame it.” (Beznec 2009, 16). European migration policy and its various aspects are not therefore a mechanism for diverting migrants coming from “third countries,” but a refined mechanism for channeling these “aliens” in accordance with economic needs. This was also confirmed by Slovenia’s former Minister of the Interior, Dragutin Mate, when he said, in his speech for the XXXIX session of COSAC: “In the area of migration, we are in the phase of building a common European immigration policy. We are working in two directions: stemming irregular immigration and facilitating legal migration. In practice, we find ourselves in a paradoxical situation. Our economy needs a labour force, and according to demographic calculations, in 20 years the European Union will require more workers than it will have available; therefore, immigrants will be urgently needed. This need is already evident today, as illegal migrants who come to Europe get work easily. Those that we see in the streets are a minority compared to the numbers of migrants working behind factory walls.”¹ During the period of cyclical upswing, the EU states open their doors to immigrant workers, while at the same time introducing rigorous measures to prevent their lasting settlement and equal inclusion in society, including access to the institutions of the welfare state. The instruments used to achieve this primarily involve the concept of circular migration and various formal and informal obstacles. These prevent migrants from certain countries from accumulating the years of “legal” residence in a host country which would over time enable them to obtain per-

¹ See http://www.eu2008.si/si/News_and_Documents/Speeches_Interviews/May/0507MNZ-COSAC.html (27 November 2009).

manent status. On the other hand, people entering these countries via other channels, e.g. people who seek asylum or family reunion, have also been subjected to a stricter regime.

Contemporary migration management is therefore not concerned with immigration in general, but implies a very distinct hierarchization of foreigners based on their citizenship, their legal status and access to it. Within EU territory, the new European order facilitates residence and particularly movement (for example, tourist trips, cross-border shopping, trade and provision of services and their use, studying abroad, employment etc.) for the citizens of EU member states and other selected countries, primarily those considered an integral part of the EU or allies through one or another kind of agreement, while for the citizens of other countries, i.e. the third countries, it creates many and wondrously diverse obstacles preventing the “legalization” of their residence in the EU.

The dynamics of this area is ever changing, with its framework being determined by inclusion in European and other integration processes, while inside individual countries it is continually adjusted to specific trends and needs. However, this is not a unilateral decision-making process involving only the political and economic elites; it also involves various segments of the population that co-shape the process through their activities. By observing attempts at categorization of one or the other type of aliens, it is possible to detect population layering and channeling depending on the goals and needs of a country and its embeddedness in the wider international context and changing circumstances. These categorizations, however, invariably take into account manifold practices pursued by active subjects, which at a certain point in time become a fact for the state in question. The regulation of the situation of aliens is therefore, much like other aspects of social life, a result of the interaction of many forces, although individual actors definitely differ in their access to power.

1.1 From a vacuum to estrangement to erasure

During the first two decades following the dissolution of the former Yugoslavia, the issue of aliens in Slovenia was a dynamic area constantly developed and upgraded. At the time when Slovenia declared its independence in 1991, the two basic laws that regulated the legal status of aliens were the Citizenship of the Republic of Slovenia Act and the Aliens Act (both Ur. I. RS 1/91-I). The latter also regulated the issue of refugees (Articles 34 to 40) and stipulated the establishment of the Transient Home for Aliens (then already within the responsibility of the interior department of the republic); it was designated to accommodate, without differentiation, aliens who applied for refugee status, aliens undergoing the identification establishment procedure, and aliens who could not immediately be removed from the country (Article 41 and 42). In addition to these acts, in 1992 Slovenia adopted the Employment of Aliens Act. It regulated

in detail the terms under which aliens could obtain a work permit, which was the prerequisite for obtaining a residence permit based on a work visa (Article 4 of the Employment of Aliens Act, 1992). The three acts were subsequently amended several times, so today they constitute a much more complex piece of legislation. In 1997, the Temporary Asylum Act was adopted (Ur. l. RS No. 20/97), but the regulation of refugee status was ultimately removed from the Aliens Act only when the Asylum Act was adopted in 1999 (Article 67, Ur. l. RS No. 61/99). The provisions of this act were later many times amended but its basic layout and terminology remained unchanged. Nevertheless, it represented a qualitative step forward with respect to the previous regulation of refugee issues. It is therefore possible to say that the migration issue, in the sense described above, became “topical in Slovenia in 1999/2000, when European migration policy was absolutely implemented and Slovenian migration policy fully harmonized with it, as part of Slovenia’s accession to the EU. In practice this meant that asylum, retention, detention and deportation procedures were brought in line with European legislation, while at the same time the regulation of economic migration was approached seriously for the first time” (Bez nec 2009, 7).

Along with the hierarchization of citizenship based on geopolitical goals, a completely new hierarchization of legal status began to gain ground in Slovenia from the independence onwards. During this period we can observe the development of a wide spectrum of status options (an undocumented alien, an alien applying for refugee status, an alien granted temporary refugee protection, an asylum seeker, an alien granted subsidiary protection, a refugee, an alien with temporary residence permit, an alien with permanent residence permit and a citizen). The scope of rights and duties of individuals within this hierarchy is determined, to a larger or smaller degree, by the closeness of the relationship between such an individual and the state. The smallest number of rights – or rather no rights at all – is accorded to undocumented aliens, and the greatest number to citizens. This hierarchization also anticipates different points of departure and consequently different approaches to aliens on a status by status basis, as well as different options or the extent of influence on public affairs.

In 1999 still another law was adopted – the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (Ur. l. RS No. 61/99, ZUSDDD). It pertained to the area until then entirely unregulated, i.e., to persons who found themselves in a specific situation half a year after Slovenia gained independence (persons erased from the register of permanent residents) and who had not made up, legally or otherwise, a special population category before the passing of this law, although many of them had lived in Slovenia throughout this time. They are today commonly known as the erased people and this law, among other things, enabled them to acquire permanent residence permits.

At this point we shall propose the hypothesis that an analysis of the erasure and particularly of the lengthy and varying complex procedures for regaining legal status through which the erased people went, can also provide a good in-

sight into the social changes mentioned above and their impact. It is even possible to assert that Slovenia “normalized the criminal nature [...] of the erasure by adopting the European migration and asylum policies. On the other hand, the EU normalized the criminal nature of its migration policy [...] in Slovenia by integrating the autochthonous forms of exclusion, denial of basic rights to certain segments of the population and normalization cleansing” (Kurnik 2007, 124- 125).² In categorizing anew the population of independent Slovenia, the Slovenian authorities first proclaimed all the citizens of other republics of the former Yugoslavia to be foreigners. In the next step, they drew a line separating those permanent residents³ in this group who expressed active interest in obtaining Slovenian citizenship from those who did not. The latter were erased from the register of permanent residents when the deadline for submitting applications expired. Needless to say, the register of permanent residents contains data that is qualitatively different from that contained in the register of citizens. As a result, these people were transformed overnight from Slovenian residents into foreigners without residence permits, obliged by law to apply for legal status in Slovenia.

Since this newly created situation was at odds with reality, the erased people inevitably hit many obstacles when they became involved in various administrative procedures. As “illegal” aliens, they became the responsibility of the administrative department in charge of aliens and the law-enforcement bodies responsible for the legality of residence in Slovenia. Having no legal status, they either faced the threat of deportation from the country, or were actually deported. However, their situation differed from that of other undocumented aliens in at least three respects:

- Most of them had lived in Slovenia long before the erasure (some were even born in Slovenia), so their lives were centered in Slovenia, and they were actively included in various social networks there.
- They were not notified in writing that their status had changed, so they could not complain; moreover, they had not been aware at all of the deterioration of their situation until they learnt about the erasure, mainly through contacts with various administrative bodies.
- At the time when they were erased from the register of permanent residents, their ID cards and passports were automatically rendered invalid, regardless of the actual expiration date and despite the fact that these documents were issued in Slovenia (because they had permanent addresses there before the country gained independence).

² One curious fact is that certain administrative officials who directly implemented the erasure today work as international experts in the area of migration.

³ Persons with registered temporary residence who wished to obtain long-term legal status in Slovenia had to meet the criteria stipulated by the Aliens Act that pertained to all aliens in Slovenia. As a result, many could not continue to live in Slovenia, unless they were employed or married to a person with alien status living in Slovenia. If they nevertheless decided to remain in Slovenia, the specific character of their situation that emerged when the former Yugoslavia disintegrated was taken into account only in 1999, when the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia was adopted.

As a consequence, these people formally no longer existed, but in reality (at least during the early stages following the erasure) they lived on as before. However, they soon, to a larger or smaller extent, confronted difficulties until then unimaginable to them, the ones experienced by all undocumented migrants within the European regime of migration management, which Slovenia gradually embraced.

2. Illegal residence: more than a linguistic paradox

When describing the situation of people living in Slovenia without a residence permit, it is necessary to emphasize several of its aspects. The key among them is that foreigners are dealt with within the context of security (rather than, for example, the context of social issues), so they are a priori considered suspicious persons who must prove that they are eligible to legalize their residence in accordance with certain rules, indeed constantly changing ones, depending on the general situation. In Slovenia, as in other contemporary systems within the EU, people without legal status, or with various forms of temporary and therefore uncertain alien status,⁴ are the responsibility of several specific national institutions or services, which act as a sieve sifting through foreigners and picking out those who are advantageous for the state (or “national interests”). It is a special administrative structure composed of a number of administrators who persistently check whether individual foreigners meet the legal criteria for inclusion in society. Depending on their ability to prove that their situation corresponds to that stipulated by law, these “aliens” gradually move up the legal staircase until they reach the point where they can become citizens of the country (bar some exceptions, for example, citizenship gained through extraordinary naturalization).⁵ However, since they are considered within the context of security, by virtue of its nature they are also the responsibility of law-enforcement agencies.

These two aspects stand in inverse proportion to each other: the more uncertain a person’s legal status, the more he/she is exposed to the law enforcement bodies, i.e. the police regime. “This may represent the first step towards the total domination, i.e. a situation forestalling any action (in the sense of efforts to achieve rights and the chance of such actions attracting public attention). It is possible to speak about total domination when the state establishes direct power over people (their lives and bodies) with the help of the bureaucratic apparatus and the police” (Zorn 2003, 109). Since people without legal status are considered illegal residents, it is the duty of the police to remove them from the country as soon as possible according to a procedure laid down by law.

⁴ Persons with permanent residence permits are also formally regarded as aliens and are accordingly subject to the provisions in the legislation pertaining to aliens, but since they have permanent residence in Slovenia they are not required to justify repeatedly the purpose of their residence in the country.

⁵ Even when they reach the point at which they are admitted to citizenship, they remain aliens in a way, because they can be deprived of this status subsequently if they do not comply with the legal order of the country. This means that they remain aliens for ever.

Over the past two decades Slovenia has thus created, in collaboration with other countries, particularly EU member states, a vast and complex apparatus for dealing with aliens. However, experience shows that human mobility can never be fully controlled and even less managed, be it migration within a legal framework or outside it. People will always move around Slovenian territory regardless of whether or not they have permission to do so. Moreover, ever stricter and more rigorous measures only create more people who do not fit into any of the legally stipulated categories but still reside in Slovenia permanently or temporarily. These people are by no means passive subjects. They actively co-shape their environment and primarily social welfare, but in so doing they are incomparably more at risk than the rest of the population. Since alien status has assumed the function of a mechanism regulating access to practically all rights, the 'illegal' label attached to them is reproduced and multiplied within virtually all walks of life, becoming a constant feature of whatever they do. Persons without a residence permit in Slovenia cannot obtain a work permit and cannot access education (apart from elementary education), health services and the like. Yet they continue to live in the country. They did not disappear with the government's abstract decision which turned them into illegal residents.

Having no legal status, these people as a rule engage in formal relationships circumventing the legal norms, meaning that in addition to facing the threat of deportation, they are also exposed to sanctions and enormous expenses in other areas of life.⁶ Moreover, they are also vulnerable to exploitation and extortion in other relationships, both within the private sphere and in contacts that would otherwise be subject to various formalized rules,⁷ or they are compelled to opt for survival strategies that are criminalized.⁸ Whatever the case, for such people "illegality" has become an internalized drive of their existence.

Another implication of this situation is that the absence of legal status indirectly affects close family members as well. Although social contacts are not governed by arbitrary decisions of the state authorities concerning people's legal status, the loss of the latter nevertheless has significant impact on the dynamics of family and other relations, since a person plunged into illegality or threatened by it faces difficulties in all aspects of life and therefore cannot fulfill satisfactorily the assumed social roles. Even worse, "illegality" is also part of inheritance, so it frequently blights the family tree like an incomprehensible inherited disease until a cure is provided by a fortunate combination of circumstances that bring reality in line with the legal provisions, enabling such persons and their descendants to "legalize" their existence.

⁶ For example, sanctions included penalties for illegal work, while expenses included the payment of medical treatment as a result of not having medical insurance.

⁷ For example, in the area of employment or accommodation, where legal status would have enabled them to exercise their rights.

⁸ In such a case, everyone is subject to sanctions regardless of status.

The sudden loss of legal status plunged erased persons abruptly and without warning into an “illegal” situation. Since they had previously enjoyed access to virtually all rights, their example conspicuously demonstrates the role of legal status in contemporary social systems.⁹ Nevertheless, the impact of the erasure cannot be considered solely through the prism of lost rights. The loss of rights created room for additional exploitation of these people on the part of both government-related and independent actors (e.g. employers). As a result, this covert move by the Slovenian government had different impacts on different persons. Just as individual life stories are diverse, the effects of the erasure are also manifold. In accordance with the unique and random rules of whimsical life mathematics, the effects were added one to another, were subtracted, multiplied and divided, gradually permeating and modeling the erased people's lives.

Writing about four persons followed for a period of several years, Uršula Lipovec Čebren, who analyzed the impact of the erasure on the health condition of erased people, said, “The erasure, or rather its consequences, crucially marked their identity, becoming the element that fully transformed their existence, their emotional and mental structure [...] as well as their bodies. [...] However, not one of them can view the erasure from a distance, as a thing of the past, because for all four of them the consequences of the erasure are still present, or moreover, they become increasingly conspicuous with the passing of time. For them, the erasure has not been a one-off act, but a series of events or a state in which they have been for more than 15 years now” (Lipovec Čebren 2007, 59).

The erasure should therefore be viewed as an incision in the life of individuals, but we should also keep in mind that each cut is healed in its own way, involving unique complications and a particular combination of medicines. And even when the wound is healed, meaning once legal status is regained, the scars left behind are of various sizes and shapes, and some of them still cause difficulties. The erasure itself was an unconstitutional act of the government that deprived people of the basis for legal residence, but since it created a situation that is replicated in all areas of life and across their living environment, the notion of erasure also comprises all the ramifications of this measure over time, including those that extend beyond the difficulties related to the acquisition of legal status. Accordingly, its effects are not eliminated once the person regains legal status, but rather, many erased persons and their families will be marked by it to the end of their lives. We should also emphasize that erased people did not

⁹ The consequences of the loss of legal status include: the loss of health insurance, prohibition of legal employment or loss of employment, denial of the pension rights, no possibility of purchasing an apartment at a non-commercial price, no possibility of further schooling, family dispersion (actual separation, caused by expulsion, or formal separation, caused by the removal of a family member from householder records), detention in the Center for Aliens and deportation from the Republic of Slovenia, violation of the right to free movement (within Slovenia they were vulnerable to law enforcement bodies, which could process them because of illegal residence; if they left Slovenia, they could not return because they had no valid documents), the violation of the right to formal recognition of paternity, no possibility of entering contractual relations, no possibility of legally driving a car or registering a car, exclusion from political participation, daily exposure to arbitrary conduct of police officers and administrative employees, no possibility of applying for social aid, and loss of access to other social transfers (cf. Zorn 2003, 134–135).

remain passive subjects when they found themselves in this situation, but they took various steps that in one or another way affected their life trajectories, which also became integral parts of the erasure. To use Marcel Mauss's conceptual apparatus, the erasure was a total social fact.

The new type of population categorization depending on legal status therefore became an important factor in Slovenia, which cannot be avoided whatever wider social process is under consideration. This is so because, among other things, various exclusion practices frequently herald and justify broader forthcoming changes in the social fabric. Those marginalized social groups with little socio-political and economic power generally serve as a reconnaissance mission testing the ground for curtailing rights for all members of society.¹⁰ The erased people fulfilled a similar mission, since "the radical turn of their individual destinies, which happened during the early 1990s and marked a rapid shift from social security to total precariousness [...] corresponded to the situation of the wider Slovenian society which at that time, through the 'transition' process, gradually discarded a number of features of the welfare state and conceded to the logic of structural uncertainty characteristic of neo-liberalism. In this sense, the erased people are a kind of heralds of a new order, since the consequences of the erasure that deprived them of their basic rights are indicative of the gradual curtailing of the rights of all Slovenian residents" (Lipovec Čebren 2007, 67).

This aspect of the erasure provides direct insight into the social structure and its dynamics. Étienne Balibar argues that the legal issues raised by the manner in which governments see the status of foreigners, the social issues raised by immigration policies and their repercussions in public opinion lead to a fundamental interrogation concerning republican citizenship: "What is at stake here is the very possibility of preserving a meaning for the principles of collective emancipation, popular sovereignty and universality of the public sphere, principles that our tradition calls 'democratic,' through this profound displacement of the borders of the political" (Balibar 2007, 50–51). These issues therefore pertain to the organization of the world and address the key causes of contemporary social injustice, but above all they invite us to think over whether our future will be inclusive for everybody or if it will continue to reinforce the new form of social order termed European apartheid by Balibar.

3. The fragments that make up a mosaic

We have delineated the framework within which the erasure took place and given a rough description of the situation in which the erased people found

¹⁰ In Slovenia, this trend can be clearly traced, for example, within the area of health care, where the number of individuals with unhindered access to medical services is steadily decreasing. This area, which was once considered an unconditionally integral part of the public good and solidarity, intended for the sick, who comprise a fundamental anthropological category where no distinctions should be made, first excluded those with inappropriate legal status (except sufficiently affluent individuals), while recently even the population with acceptable status has been rapidly hierarchized (for more on this, see Lipovec Čebren 2009).

themselves. In this section we will try to describe in more detail the obstacles, formal and informal, encountered by erased individuals. We will assume that the obstacles they encountered when attempting to regain legal status were the most basic ones, although we are aware that the erasure contaminated many other, intertwined areas of their lives. Our decision to apply this restriction arises from the fact that legal status occupies the central position within the system of rights, so the loss of it represents the basic difficulty from which all other difficulties stem.

Regardless of obstacles, all persons who find themselves outside the system of administratively envisaged solutions persistently seek alternative options for functioning within such a system. In so doing, they not only draw attention to the absurdities of a system, but by using creative approaches and specific practices they also make a significant contribution, both individually and collectively, to the dynamics of a social order, sometimes even to its opening up. Unfortunately, contemporary governments too often react by promoting an even more closed system and greater control. At any rate, by intensifying their activities, such individuals provoke a government to react thus co-creating the social environment.

The systematization of obstacles given below and the list of maneuvering tactics used by the erased people within the new framework are the result of various contacts with erased people over several years, as well as with other individuals active in this field. We will therefore try to compile and systematize the fragments provided on various occasions and in varied circumstances, each of which individually and in combination with other fragments makes a portion of the mosaic depicting the erasure.

At this point we should stress that, in contrast to the obstacles which can be verified using official documents, the tactics these individuals¹¹ employed in an attempt to normalize their living situations are very difficult to research and even more difficult to analyze or synthesize. Their attempts at formal inclusion in society comprise not only administrative procedures related to legal status (which are documented). The erased people also resorted to many other strategies within various segments of everyday life, and the only source of information about these undocumented activities remains the testimony of the erased people themselves. In so saying, we by no means want to suggest that the erased individuals are unimportant interlocutors, but to draw attention to the specific nature of the information obtained through interviews with them.

Moreover, the chosen methodology has a catch. Its conception is such that our interlocutors are required to adhere to the cause-and-effect principle when narrating a story. Every why must have its wherefore, and the success of an interview is determined on the basis of the correspondence between questions and answers, or even on the basis of the logic of the dynamics between

¹¹ This text deals with individual tactics. However, within the mosaic of the erasure, the organized activities of erased people definitely account for an invaluable share. These are examined by Lana Zdravković in this volume.

the two. But if we stop to think for a moment, we will sooner or later establish that life is not a linear experience. It is full of turns, breaks, by-paths and coincidences that are not brought about only by our actions and even less so by our rational behavior. When conducting an interview, we provoke memories of a given subject, and these produce a series of events linearly connected and shaped depending on the context and associations. Therefore, personal “stories are never empty or elusive words, are never words uttered in a vacuum. The world is not directly, mechanically mediated to us as something existing independently from us that we are able to comprehend objectively. This world is present only if it matches our awareness, if we give sense and meaning to it, and interpret it. And then convey it to others, that is to say, put it into a story” (Mlekuž 2009, 123). In other words, whenever one narrates a story and someone notes it down, only certain fragments are uttered, while others remain buried, either for ever or to emerge on some other occasion. For this reason, the text below only points out the tactics most frequently mentioned in interviews and other conversations.

In addition, with the passage of time and the growing number of interviews, and primarily armed with the insights gained through the tracing of and collaboration with erased individuals, we came to believe that the basic rule of the erasure was the absence of any rule. The exceptions that proverbially prove the rule begin to multiply uncontrollably and eventually prevail, confirming that every categorization of people, activities and ideas is in fact an aggressive act that draws artificial borders across a whole that observes different networking principles than the ones assumed. Despite this, it would not be sensible to simply abandon attempts to describe and classify the activities of people who found themselves in uncertain legal situations. As has been established, they represent an important aspect of social dynamics.

The erased people were equated with undocumented aliens in Slovenia, obliged by law to apply for a residence permit. This means that the procedures for both groups were based on the same legal provisions and were administered by people in charge of aliens in general. However, the initial position of the erased people was quite different from that of other aliens, which caused various complications. While some of the obstacles they encountered when attempting to obtain residence permits were the same as those encountered by other aliens without residence permits, other obstacles were unique to their situation. At any rate, the difficulties varied from one case to another, as did the solutions. Readers should also be aware that the obstacles listed below are the ones reported by erased people, but these did not affect all of them to the same degree. There were even some who had no problems in obtaining legal residence, while others found themselves in much more disagreeable situations.

3.1 Documents?

The first difficulty encountered only by the erased people, and all of them at that, was the obtaining of personal documents. Their personal ID cards and passports, most of these issued in Slovenia, became invalid on February 27, 1992 when they were deprived of legal status (in contrast, the same personal documents of Slovenian citizens were valid until June 25, 1993). However, since erased persons were not notified about this, they learnt that their documents were invalid only when they came in contact with various administrative employees.¹² The loss of their formal identity therefore came to light, or began to have an impact, only when they realized it. Its consequence was that the erased people were required to obtain alien status in Slovenia. More importantly, before they could do this, they had to obtain a passport, which was a precondition for initiating any administrative procedure: i.e., a passport of a country whose citizens they were supposed to be (see the chapter by Veronika Bajt in this volume). We use the form “were supposed to be” because the erasure was a unilateral move on the part of the state, meaning that the Slovenian authorities did not know but only supposed that an erased individual was a citizen of one or the other of the republics of the former Yugoslavia that had become sovereign countries after the disintegration. The state of Slovenia therefore placed the erased people in a situation in which the former basis for their residence in Slovenia was eliminated without giving them a chance to arrange for a new basis beforehand or at least at the time of erasure, while at the same time leaving them without personal documents that would define them as aliens, i.e. citizens of another country.

The acquisition of new personal documents proved to be a much bigger problem than might have appeared at first glance, and for several reasons which combined made a web of formal and informal obstacles. In most cases the anticipation of the state proved true, since most erased persons indeed remained registered as citizens of the countries of their, or their parents’ birth, even after the disintegration of Yugoslavia. However, when Slovenia implemented the erasure and created the situation that forced the erased people, who were already without any legal status and personal documents, to undergo the administrative procedures applying to “ordinary aliens,” it did not take into account the reality on the ground. In addition to ignoring the fact that most of these people had lived in Slovenia for quite a long time, they also neglected the fact that Slovenia was not the only country that emerged after Yugoslavia dissolved, but several new countries were formed within the territory of the former common country, and some of them in much more aggressive circumstances. Because of the pro-

¹² We have learnt of cases where people found out about their changed status at the time of initiating an administrative procedure (e.g., when they wanted to extend their driver’s license) and the personal document they submitted was invalidated by the administrative employee. Others reported that they were invited to come to the administrative office to arrange for their citizenship, where their documents were then invalidated. There were even reports that people who left the country for a trip abroad had no difficulties at the border when they left, but when they returned, they learnt at the border crossing that their documents were no longer valid.

longed forming of these new entities and various accompanying structural complications,¹³ and above all because of the wartime conditions in their home districts or fear of potential difficulties during the journey there, many erased people did not succeed in obtaining a new passport (or did not even try to do so) from a country whose citizens they were supposed to be.

This option was viable only for those who still had a personal document allowing them to cross the newly established borders within the territory of the former Yugoslavia. However, we should not overlook the fact that Slovenia also introduced visa requirements for the citizens of Bosnia-Herzegovina and Serbia and Montenegro. These two countries became (and remained after many transformations) so-called third countries, meaning that a stricter visa regime was in place for their citizens. As a result, even those erased persons who retained their old documents or acquired a temporary Slovenian (!) passport enabling them to make a one-way journey, and who then decided to travel and eventually reached their destination (passing all the border controls and making it through the war zones) could not return to their homes in Slovenia without an invitation letter as a basis for obtaining a tourist or business visa. This was an important factor that reduced their chances of obtaining documents.

The same can be said about those individuals who turned to diplomatic offices and embassies of their “home” countries. It should be noted that, apart from Yugoslavia, later renamed Serbia and Montenegro, other newly formed countries did not have diplomatic offices or embassies during the early 1990s, or their establishment was still underway, including in Slovenia, where even the Yugoslav embassy did not exist immediately after it became independent. As a result, many erased people had no other option but to travel for documents to their “home” countries. According to their testimonies, when these embassies were eventually established, they initially issued passports to erased citizens even though they did not have residence permits in Slovenia, but this practice was later abolished, so persons who applied for passports were required to submit proof that they resided “legally” in Slovenia. This was an additional obstacle for them that created a Catch-22 situation: they could not obtain a passport unless they had legal status, and could not obtain legal status unless they had a passport (it lasted until the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia was adopted in 1999).

As a result, legal residents in Slovenia who were overnight transformed into illegal aliens became trapped inside the Slovenian borders, condemned to uncertainty and left to cope with countless difficulties even before they could initiate any procedure to re-join society. Those who could not obtain documents from an embassy in Slovenia or abroad employed different tactics to resolve their predicament. Some reported various forms of help provided by their families and friends,

¹³ One such complication relates to the passports of Bosnia-Herzegovina that were made uniform only in 1997. Before that, the three sides in conflict each issued its own passports. For Bosnian citizens therefore the fixing of documents took several years and involved institutions of several countries.

and sometimes even the clergy in their home districts or in Slovenia. Others turned to various individuals or legal entities, most of them to various commercial companies offering to arrange for their documents, but at prices that were by no means low. Still others paid administrative officials or other individuals to provide fake documents, or crossed borders outside border crossings. However, many among them simply waited for a change that would introduce a stable basis for obtaining a residence permit, while in the meantime they avoided contact with law enforcement bodies. A small change occurred only when the erased people consolidated their activities; some even said that a membership card in the association of erased people was accepted as an identification document.

One myth present in debates about the erased people and “aliens” in general is that, regardless of their place of residence, they actually have their real home in the place where they were born or grew up, or, as it is popularly but ambiguously called, “the place where they came from.” Allusions to this “fact” are frequent in nationalist arguments against granting “aliens” the right to participate equally in public affairs, or against the scope of rights tied to a specific alien status. The same was believed about the erased people – that they were aliens and had the option of returning to “where they came from” if they did not want to adapt to the structural changes (as if this was simply a matter of discussion). This argument entirely overlooks the fact that some erased persons were born in Slovenia and lived there all their lives, meaning that they had not come from elsewhere; that others had come to Slovenia “from elsewhere” so long ago that they considered Slovenia their new home, and that many among them had nothing left in the places of their origin or simply did not want to return there any more.

Another aspect that crystallized through the testimonies was that a return to “where they came from” was not always a matter of free choice or wishes. Some erased individuals were deported, others were denied entrance into Slovenia at border crossings on returning or were “trapped” inside one or the other republic of the former Yugoslavia when the war broke out and borders were closed, while still others felt threatened in Slovenia and decided to leave. All of them had many difficulties when they applied for papers in their countries, and these also stemmed from the erasure. Their official registration of residence in Slovenia was an issue important not only for Slovenia but also for the country where they had previously unregistered their residence in order to be able to register in Slovenia. In the country whose residents they had been before moving, they were considered expatriates, which caused an administrative difficulty when they returned, and one that was not immediately resolvable because the circumstances had changed in the meantime. However, if they wanted to be re-included in local society in their home countries, the erased persons had to register once they returned, and sometimes the only option they had was the one created by the war circumstances: i.e., they registered as refugees. More precisely, they registered as refugees from Slovenia. This produced an absurd situation in which

the former Yugoslavia,¹⁴ mired in fierce armed conflict, hosted refugees from Slovenia, which at that time was consolidating its image as a success story heading towards European integration.

These persons later adopted various ways to secure a more stable legal status in these countries. The information we gathered indicates that persons who were entitled to citizenship in one of the newly formed countries by virtue of being born there¹⁵ had fewest difficulties, since they could simply collect new documents. On the other hand, persons born in other countries, including in Slovenia, had many more difficulties, and some of them have refugee status even today. Apart from the fact that refugee status does not secure access to all rights, it is also becoming more uncertain with the passage of time and distance from the war, because it is being gradually abolished in the countries that were formerly part of Yugoslavia.

A similar experience was reported by persons who attempted to secure legal status in third countries, meaning a country other than Slovenia and other than a country whose citizenship they were supposed to have. These are mainly individuals who decided (or were forced, formally or informally) to leave Slovenia for other countries of the EU. Since they did not have formal links with these destination countries before they moved, they could not initiate a procedure for legalizing their residence upon arrival, so many were categorized as refugees or asylum seekers. This indeed gave them access to the networks available to refugees, but this form of residence permit is also very uncertain, because it ends with the cessation of conflict in the country of origin. The conflict in the former Yugoslavia formally ended with the signing of the Dayton Agreement, after which many EU countries began to send back refugees from the former Yugoslavia. For those erased persons who by then had not managed to obtain lasting status in the host countries, this meant the beginning of new difficulties, because their residence was no longer tolerated in the countries that had given them protection. They could therefore choose between remaining in the country “illegally” or returning to Slovenia or to a country whose citizens they supposedly were, where they again confronted the difficulties described above. Some of them still live the uncertain life of refugees because the countries that offered them shelter have nowhere to deport them, either because they have difficulty obtaining citizenship or because they are stateless.

In conclusion to this section, let us mention still another impact of the legislation adopted at the time when Slovenia gained independence. It relates to children born in Slovenia. An increasing number of indicators suggest that during this period Slovenia created an as yet unknown number of stateless persons, and the erasure was not the only reason for their statelessness. Jasminka Dedić

¹⁴ The information obtained so far proves that refugees from Slovenia were registered in Bosnia-Herzegovina, Serbia and Montenegro.

¹⁵ Despite this, it has turned out that some persons who did not have proof that they had unregistered their permanent residence in Slovenia were denied the registration of residence in a new location.

has established that the “erasure from the register of permanent residents and refusal or invalidation of Slovenian citizenship [...] in some cases led to *de facto* statelessness, although formally and legally this should not have happened because every citizen of the SFRY had also citizenship of one of the former Yugoslav republics. However, in practice this legal fiction did not work, particularly not if a person was born in the Republic of Slovenia and was therefore not entered into the register of births in another republic of the former Yugoslavia” (Dedić 2003, 55–56). That this is true is corroborated by erased people’s testimonies, regardless of their present place of residence. What happened was that they were entered in the Slovenian register of births as citizens of one or another former Yugoslav republic, but the republics whose citizens they were supposed to be were not officially notified of their birth or existence. Consequently, when Yugoslavia dissolved, they were not automatically included in the lists of citizens of the newly formed countries. “The problem of statelessness especially comes to light at the time when a country’s borders are changed and new countries are formed; stateless persons are the most vulnerable population group, because without citizenship they are left without legal identity, they do not have citizen rights and freedoms and no diplomatic protection. Statelessness is a phenomenon that is most frequent in those new countries where the *ius sanguinis* principle is the main criterion observed when granting citizenship, as in the successor states to the former SFRY” (Dedić 2003, 38). Many post-socialist countries that were formed during the early 1990s granted citizenship on grounds of ethnic affiliation, in accordance with the *ius sanguinis* principle, which necessarily produced exclusion of population segments that did not fit into this newly adopted approach to country formation.

Some of the children who were made stateless, now already adults, later had (or still have!) unimaginable difficulties when they applied for citizenship, particularly when they came of age. As underage children, they could obtain citizenship only through their parents or other ancestors, but this was not always possible. It is also necessary to emphasize that statelessness was a problem encountered not only by the erased children, but also by children whose parents had temporary residence in Slovenia before it became an independent country, or had no registered residence at all, and children born in Slovenia to erased parents (see the chapter by Neža Kogovšek in this volume). As in all other areas, there were certain deviations within this one as well, indicating a certain degree of arbitrariness in population categorization. Here we have in mind primarily those families in which one child was granted Slovenian citizenship automatically, while the other child was made stateless.

Securing citizenship, and particularly personal documents, therefore appears to have been the primary problem encountered by the erased people. As we have indicated several times earlier, the situations of erased people were extremely heterogeneous, because they were co-shaped by their individual circumstances, by decisions they took or had to take, and various external factors. We

would also like to emphasize that our systematization presented above is likely to change as new data become available. This field has been only partly researched to date, with the life of erased individuals who left Slovenia after the erasure being particularly under-researched. The reason is that they are more difficult to access and that the steps they took to obtain legal status were determined by regulations and events in the other countries in which they lived or still live. At any rate, at the moment it is possible to draw the bizarre conclusion that, in terms of legal status and only in this sense, the war that engulfed certain republics of the former Yugoslavia came to the rescue of Slovenia's erased people, because it enabled them to obtain refugee status, meaning a legal status no matter how uncertain and absurd. Rather than expounding on the absurdity of their situation as refugees, let us only say that refugee status ensured them access to minimal rights (e.g., health insurance, education etc.), and above all, enabled them to obtain papers. The obstacles confronted by underage stateless persons would have been much bigger had they not been able to obtain refugee status, because they would have become stateless immediately after the erasure rather than later, when they came of age, or when refugee status began to be abolished, so they would have had problems accessing education and health services.

3.2 The frameworks that decide destinies

Acquisition of citizenship of another country and of personal documents did not spell the end of difficulties for erased individuals who remained in Slovenia. It was just the first stage completed successfully, which, however, did not ensure legal status in Slovenia. In the next stage, they had to obtain a temporary or permanent residence permit or Slovenian citizenship, and above all, they had to meet all the conditions required to obtain one of these. Until the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (ZUSDDD) and the Act Amending the Citizenship of the Republic of Slovenia Act (ZDRS-Č) were adopted (these laws will be considered in more detail later in the text), these requirements had been identical for all foreigners in Slovenia except those who had refugee status or temporary refugee protection. The erased people therefore shared many problems with citizens of "third countries," while some obstacles were specific to the erased group because of the specific nature of the erasure.

The basic conditions that an alien must meet to be able to legalize his/her residence in Slovenia are as follows:¹⁶ the purpose of residence, i.e. proof that his/her residence in the country corresponds to one of the purposes recognized by Slovenia as a well-grounded reason for approving a long-term stay within its territory (e.g., education, employment, family reunion etc.); secure source of income, i.e., proof that their material situation corresponds to that which Slovenian authorities

¹⁶ These are by no means all the conditions that had to be met, given that each legal status, and particularly Slovenian citizenship, implied additional proofs. The list includes only the basic conditions required for any form of status.

recognize as sufficient for living in Slovenia without threatening its social institutions; no previous criminal record in a home country or in Slovenia, or, in case a person has been prosecuted in the past, a sentence not exceeding the set limit, which is taken as proof that a person will not pose a threat to the country; and health insurance,¹⁷ to prevent access to free medical services in case of illness or injury.

For erased persons, the most problematic were the first and the second requirement, i.e. the purpose of residence and a secure source of income. Since with the loss of status many of these persons also lost their jobs, they were not entitled to temporary residence permits based on a work permit. Those who retained their jobs after the erasure were in a different situation, because their employers arranged work permits, so they were able to obtain residence permits. However, such a work permit was tied to a specific employer, which created room for the kind of extortion and exploitation still widespread within this area. People who had permanent jobs in Slovenia and had been employed for less than 10 years in the Republic of Slovenia were in a slightly better position, because they could obtain personal work permits valid for one year (Article 23 of the Employment of Aliens Act adopted in 1992). Those who had permanent jobs in Slovenia and had worked there for more than 10 years were in the most advantageous situation of all, because they could obtain a personal work visa with unlimited validity (Article 23 of the Employment of Aliens Act adopted in 1992) and had access to any job in Slovenia. However, persons who were entitled to apply for a temporary or permanent personal work visa could do so only once, in 1992, and within 90 days of this law coming into force. The last two provisions, intended only for citizens of the republics of the former Yugoslavia¹⁸ who had jobs in Slovenia before Yugoslavia disintegrated, clearly point to the principle to which the Slovenian authorities adhered at that time: only those “aliens” who retained their jobs could remain in Slovenia “legally” (note that this was a period of high unemployment), while others were to have much greater difficulties in obtaining legal status.

Many persons without formal jobs nevertheless continued to work illegally, meaning that they could not exercise employment rights and were exposed to potential sanctions on the part of the state as well as a potential failure on the part of their employers to fulfill their obligations. Some erased persons worked only for food and accommodation and were completely dependent on the person who provided such an arrangement. Some among them whose financial situation was better opened or preserved their own companies and obtained residence permits on this basis, while still others became involved in illegal activities.

Family reunion was a reason for application that could be stated only by spouses,¹⁹ or more precisely, a spouse married to a person who had legal status

¹⁷ This condition was added later but did not apply to persons who obtained citizenship. Such persons are no longer considered aliens and are entitled to health insurance based on the provisions pertaining to Slovenian citizens.

¹⁸ All of them, not only those with a permanent residence permit in Slovenia.

¹⁹ In this respect, people living in common-law marriage are in a much worse situation, although a common-law marriage and marriage are supposedly equated in Slovenia with respect to rights and duties.

in Slovenia, or the child of such a person. If both partners or the entire family were erased, this condition could not be met. And additionally it could be met only after an erased partner succeeded in obtaining a personal document. A personal document is required even to register a marriage, and for some erased persons this was not possible. Some erased persons who met other conditions married their partners in order to fully meet legal requirements.

The second requirement, proof of sufficient income for living, proved to be impossible to meet for those persons who were not formally employed or whose spouses had insufficient income. This brings to light the absurd fact that the system required these people to present proofs available only to those living within the legal framework, while not taking into account actual circumstances – i.e., the fact that these people had no legal basis; only in one case (which is an exception that confirms the rule), was a person considered to meet the income requirement based on his statement that he worked illegally. Some erased individuals attempted to resolve this predicament by stating third persons, for example other family members or acquaintances, as their sponsors.²⁰

According to the testimonies, two indirect difficulties were present when trying to gather the required certificates and proofs. Erased persons had to obtain certain documents (e.g., a birth certificate and a certificate of clean criminal record) from the countries whose citizens they supposedly were, but they could not travel there because they would not have been allowed to return to Slovenia owing to their unregulated status. This was another situation in which social networks proved to be of great importance, with their relatives or friends coming to their assistance and gathering documents on their behalf.

The second problem stemmed from the fact that, at least during the early 1990s, the processing of applications took a long time, while certain documents had a short validity period (6 months). Our interviewees reported that they had to obtain the same document more than once during one and the same procedure, which presented a special problem. They also mentioned that because of delays they sometimes received temporary residence permits only a short time before these expired, so they had to restart the whole procedure straight away in order to be able to extend their status. Obtaining a residence permit was therefore not only a painstaking and time-consuming procedure, and frequently a very rigid one given all the verifications involved, but it also incurred considerable expense, which frequently exceeded the financial ability of the individual who initiated the procedure. Moreover, an application for legal status is a multi-stage process, so in some cases it extended over several years, either because some document was missing, or the application was rejected and the applicant filed a complaint or similar. These years of prolonged procedures were years of great uncertainty for them.

²⁰ The case was similar for people detained in the Center for Aliens. They were usually released when another person (a family member or someone else) provided a guarantee for such a person, meaning primarily guaranteed accommodation and food.

The laws mentioned earlier, i.e. the Aliens Act and the Employment of Aliens Act, were the only two laws to which the erased persons could refer until 1999 when Slovenia adopted the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (ZUSDDD). It enabled the erased persons and other citizens of other republics of the former Yugoslavia who had lived in Slovenia at the time when it became independent based on other types of status to acquire permanent residence permits under easier terms. The passing of this act was expedited by the Constitutional Court Ruling No. U-I-284/94, by which the erasure was proclaimed unlawful and inconsistent with the Constitution and which instructed the legislator to eliminate the unconstitutionality in the Aliens Act. However, this important shift was also a result of other developments. In 1997, the European Commission, in giving its opinion on candidate countries, drew attention to the fact that “the Slovenian authorities have not yet settled nationality issues arising from the break-up of the former Yugoslavia”, or put differently, the issue of stateless persons, which was “an issue necessary to resolve” (Agenda 2000, 17). The following year, this subject was again addressed in the Regular Report From The Commission on Slovenia’s Progress Towards Accession, in which it was said that, “Slovenia has not yet solved the problem of persons without a regulated status” and that “[t]here has been an increasing commitment to solve the issue by a special law aiming at regulating the position of the persons concerned” (Regular Report From The Commission on Slovenia’s Progress Towards Accession 1998, 12). In 1999, the Commission noted that, “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 Report From The Commission on Slovenia’s Progress Towards Accession 1999, 16). This leads to the conclusion that the regulation of erased people’s status was an important point at the time of Slovenia’s approaching accession to the EU, and it was eliminated from the report of European institutions only after the relevant law was adopted.²¹

How did the above mentioned law contribute to the regulation of erased people’s status? First of all, to initiate the procedure, they no longer needed to submit a passport from another country. Presumed citizenship without proof sufficed. Second, they were no longer required to state the reason for applying for residence in Slovenia, formerly the basis for the legalization of their existence, since this was replaced by the argument that these people had had their permanent residence registered in Slovenia on the date of the referendum on independence (23 December 1990) and that they continued to live in Slovenia uninterrupted after that date, or that these people resided in Slovenia with registered temporary residence or without any registered residence on the date of

²¹ But again included after the association of erased people launched organized activities.

the independence (25.6.1991) and that they continued to live in Slovenia uninterruptedly after that date. Finally, erased people no longer had to prove that they had a sufficient source of income.

Put differently, the conditions contained in the legislation pertaining to aliens (the Aliens Act), which had prevented many erased persons from obtaining lasting status, were dropped. Proof that these conditions were a great obstacle for many is the fact that, by the end of the three-month deadline for submitting applications stipulated by this law,²² administrative units received 12,931 applications (Tujski in državljanski statusi 2002/Alien and Citizen Status 2002, 13). However, since this law pertained to a broader category of people (including those who only resided in Slovenia at the time, meaning people with registered temporary residence and people without any special status), it is not possible to establish based on the number of approved applications how many erased people resolved their status in this way. Nevertheless, it is possible to conclude that at that time many people in Slovenia were without legal status or had various uncertain residence permits.

Although this law indeed enabled many erased persons to obtain lasting legal status, i.e. permanent residence permits in Slovenia, it did not fully eliminate the consequences of the erasure. For one thing, it created a new paradox: a group of people with permanent residence permits and a Slovenian ID card for aliens, but without documents issued by the state whose citizens they were supposed to be. Furthermore, by allowing only those individuals who had lived continuously in Slovenia after the erasure to obtain legal status, it drew a new dividing line splitting the group of erased people itself: persons who lived in Slovenia “illegally,” without legal status, either for some time or throughout this period, were placed in a privileged position compared to those who, in a way, observed the legal requirements and left Slovenia or were forced to leave.

In reality, even those who “have lived in Slovenia uninterruptedly” from the time it gained independence have difficulty proving it because they have mainly lived outside formal networks (they frequently resort to witnesses, in some cases chosen by administrative officials themselves, e.g. a neighbor). Those unable to produce proof are in an incomparably worse situation, since these applications are generally rejected. On the other hand, the same Constitutional Court Ruling mentioned above (No. U-I-284/94) prohibited deportation of erased people, which created still another absurd situation, preventing people who cannot obtain permanent residence permits under this law (or other laws) from being expelled from the country. This means that they live in Slovenia without legal status, which is tolerated, but at the same time they have no option of joining formal networks. The situation of persons who were sentenced to more years in prison

²² In April 2003, the three-month deadline was proclaimed invalid by the Constitutional Court Ruling No. U-I-246/02 on the ground that it was (too) short. Certain other provisions of this law were also invalidated. The Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia again became valid from then onwards and has represented the main law under which the erased people can apply for legal status.

than is the upper limit stipulated by law as a condition for acquiring citizenship, is similar. After 1999, the situation of both mentioned categories improved in the sense that they cannot be removed from the country, but they are still submitted to regular police supervision and are (still!) detained in the Center for Aliens as long as their former status is checked or until they initiate the procedure for obtaining legal status. In the meantime, their lives are the same as those of all undocumented aliens in Slovenia.

At this point we should mention several more indirect difficulties encountered by all people with permanent residence permits, not only the erased people. This legal status in many respects (but by no means all) formally enables an individual to participate in a community, but practice has shown that the exercise of these rights is not always possible. Some holders of permanent residence permits have, for example, the right to basic medical insurance upon payment or to a personal work permit. The holders of personal work permits can register with the Employment Service and are consequently entitled to social aid. However, this chain procedure is connected with substantial expenses which many cannot afford because of the overall financial crisis caused by the erasure or other uncertain circumstances. Consequently, these rights are frequently not exercised in practice.

The Act Amending the Citizenship of Slovenia Act (ZDRS-Č) draws on the same logic as regards the conditions for obtaining legal status, with an additional condition being an examination in Slovene. Accordingly, the obstacles for erased people arising from the provisions therein were similar to the ones described above. They also reported that expenses incurred if the person failed to pass the examination at the first attempt sometimes caused an additional problem. On the other hand, certain erased individuals who completed schooling in Slovenia were not exempted from this provision, including those born in Slovenia.

Finally, it is necessary to draw attention to still another implication of the erasure. We have already mentioned that many erased persons attempted to obtain legal status under laws other than the Aliens Act, simply because no provision therein pertained specifically to them or corresponded to their actual situation. Accordingly, many were forced to apply for refugee status in their "home" country or other countries (primarily EU member states), where they were considered refugees from the former Yugoslavia or Slovenia. However, some erased individuals obtained refugee status or temporary protection in Slovenia intended for refugees from Bosnia-Herzegovina and Kosovo. Although this enabled them to obtain a personal document (temporarily protecting them against expulsion) and gave them access to certain rights (e.g., basic health insurance), these individuals generally lived in their own homes, so they were not actively included in the humanitarian networks intended for refugees from the former Yugoslavia.

We have also established that certain persons who found themselves outside Slovenia at the time of the erasure returned to Slovenia as migrant workers (e.g., invited workers, seasonal workers and workers with temporary residence

permits based on a work permit) or entered the country on a business visa, meaning that they used the channel intended for the regulation of “economic migration.” Still others returned as tourists, obtaining a visa for a personal visit based on an invitation letter.

4. A tissue of threads

The facts presented above broaden our horizons about the implications of the erasure and at the same time provide a clear insight into the depth, complexity and endurance of the problem that was created, ludicrously but in truth, practically overnight. These facts undoubtedly prove the hypothesis we put forward at the beginning of this essay, that the measure of the erasure and its implementation was an integral part of the introduction and adjustment of the European migration regime in Slovenia. Slovenia further developed and reinforced the European migration legislation on the backs of erased people, temporary residents and people without registered residence, or to put it differently, the former compatriots who had lived in the Socialist Republic of Slovenia for shorter or longer periods of time. These people accounted for an incomparably larger share of the population without regulated legal status than other foreigners in Slovenia. A whole spectrum of status types was designed for the foreigners and within these status types we can also find people who were deprived of permanent residence status after Slovenia became independent. Moreover, there were even people who shifted from one legal category to another over time. At any rate, during the early stages after the country gained independence, they all learnt the hard way what it meant to be “without papers” in the new system, i.e., what the results of the new classification of the population were, among other things because they were practically equated with other undocumented migrants regardless of their specific situation.

Even the basic obstacles we described here testify to the number and unpredictability of the implications of the unconstitutional measure of erasure and the legal vacuum it created. The lack of legal status began to infect people's lives, spreading uncontrollably like a virus. It penetrated their immediate environment and affected their families, spread beyond the borders of Slovenia, had delayed effects and was transmitted from generation to generation, invading people's bodies and altering their physical and psychological structure. The “illegality” label has been reproduced across many areas, while the all-pervasive implications of erasure became a generator of many social processes. Accordingly, the erasure should definitely be viewed through this prism.

And yet, the specific situation of the erased people, particularly their equation with undocumented aliens regardless of the real circumstances and subsequent attempts at resolving the resulting inconsistencies, necessitate consideration from an additional perspective, from which the erasure appears

as a unique problem. However, as we have shown, the two points of departure are so closely intertwined that any distinction is indeed artificial. The case of the erased people is both an extraordinary and a non-extraordinary episode in the history of Slovenia. It is extraordinary because the erasure was a unique “winning combination” in the lottery of legal provisions determining the legality or “illegality” of people’s presence in a country. At the same time, the situation created by the erasure is not extraordinary. It is much like that of many individuals who do not fit into any legal mold that secures inclusion in a society.

Our experience confirms that, in analyzing this topic, not only the moves taken by the authorities, but also those taken by the erased people should be taken into account, i.e., their maneuvering through the legal system and beyond the enforced framework. Happy coincidences are equally important and should be noted down along with the violations of their rights and impossible situations in which they found themselves. Setting aside the legality or illegality labels, life, like water, seeks passage, carving unimaginably creative and unpredictable reliefs into the social tissue. Rather than being only for display, these carvings trigger further, elusive changes. Erased people’s actions produced greater or smaller pressures inside the system, and their convergence from time to time resulted in larger shifts, at both the level of practices and the level of legislation. In addition, their experience teaches us something else as well. The erased people frequently mentioned their struggles with the authorities, within both the law-enforcement and administrative branches. Although most ended in failure, those few whose outcome was favorable for them confirm that where there is a will there is a way, even within the rigid framework of legal norms. This truth is further confirmed by assistance from and understanding on the part of administrative employees also reported in the interviews.

The testimonies we heard therefore definitely prove that the events could have taken a different course had there been a little more will or benevolence. Above all, they convey a crystal-clear message that seemingly rigid systems afford incomparably more vitality than one would presume at first glance. The main question is in which direction these will develop or, even better, in which direction we will push them.

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An erased person's story

"AS IF I WERE CLIMBING MOUNT EVEREST"¹

In 1992, I was barely 11 then, we impatiently waited for the postman, who first brought an invitation for my sister to come to the administrative unit. She fixed her personal documents there. Two months later they invited her again to come to the administrative unit and bring her new documents. This time they took away her documents – the ones they had issued two months earlier – punched them and said they weren't valid any more. I remember the day when she came home, she was very sad, she cried, my sister; she was 15 at the time and she was arranging documents on her own. I didn't understand anything. I still waited for the postman, but I soon could see that I wouldn't get Slovenian citizenship. I didn't have problems at school, but I didn't tell anyone that the postman hadn't come. Towards the end of elementary school my schoolmates were making decisions about where to continue their schooling, but I knew that I needed personal documents to enroll in secondary school. I didn't feel like learning any more, so in the seventh grade I replaced the classroom with the basketball ground in front of our apartment block.

I grew up in one of the rougher neighborhoods in Slovenia, in Fužine, where there was a lot of police supervision. I had to hide all the time out of fear that they would find me. The manager of the building where our non-profit apartment was located asked me if we had citizenship. I naturally told him that we did. Had I told him that we didn't have it, God knows what would have happened. I had this feeling all the time that people were suspicious. It's true that I never had any unpleasant encounter with the police; I only talked to them when they, for example, surprised me with some similar question, such as, "Who scribbled over the wall in our building?" Even then I was stiff and frightened. I mainly stayed at home and, in order to avoid bad company, on the playground,

¹ The erased person's story is based on the interview held by Marina Vrhovec and Petra Žišt.

where I played basketball with friends. After basketball, I went straight home; I was home by nine o'clock in the evening at the latest. Basketball became my life, my escape from a situation that felt like prison. Basketball, home, basketball, home, that's how my daily life looked for several years. And today I regret one thing that I couldn't realize. I'd certainly train to become a basketball player, but I couldn't do it without documents.

My friends would invite me to come with them to the seaside and I'd reply to the effect that I didn't know yet, maybe, possibly, if possible, probably another time, but in fact I knew that I wouldn't be able to go, because I didn't have any document needed to cross the border. They would go but I stayed in Slovenia, ten or eleven years. Like every child, I missed the seaside, my grandma. My grandma in Bosnia, where we used to go for holidays before that, was very old, and I only wanted her to live, not to die, so that I could see her once again. My grandpa died in 1994, but I couldn't go to the funeral – it was very hard for me. We were locked in this country. I felt literally like a prisoner. I couldn't go anywhere – it was such a strange feeling.

My mum didn't speak about it a lot, because it hurt her so badly. Most of all, she worried how she'd manage to provide a livelihood for her two children as a single mother. Before the disintegration of Yugoslavia, she worked in a bar in Ljubljana, but she slipped while cleaning the floor, fell on her back and seriously injured it. Her treatment and recovery lasted a long time. Next time it was she who was cleansed from the register, and nobody slipped while doing it. She lost her job. It was only some time later that she came across another job in a restaurant, at her friend's, where she worked illegally in the kitchen or helped with serving. She too had to hide. When work inspectors came in, she'd hide anywhere. She often told us how she ran away to escape them. She had to find her way around to earn money. She worked all day long to be able to buy bread for us. I spent all my New Years alone at home with my sister. I can remember how I called her on the phone and cried because I missed her, as any child would. But she worked for two days on end. To earn money. And when she came home she wished us a happy New Year and went to sleep straight away because she was so tired. It was hard on us at that time.

For more than half a year we ate only bread and milk. From time to time my mum got aid packs from the Red Cross. Child benefits and other benefits didn't exist. But the bills came in regularly, for the apartment and utility costs, but it was impossible to pay them. During the period when my mum didn't have any income, my ingenious sister, still a child at that time, would bring food from the shop now and then. I mean, she took it without paying for it. She stole it. So that we could eat. She would bring paté, ragout, spaghetti. And we were so happy then.

We didn't have health insurance in the meantime. If I was ill, I waited for it to go away. If I sprained my ankle playing basketball, or tore something, if my leg swelled, I put some ice and waited for it to go away. My mum, soon after she obtained the permanent work visa for foreigners, got seriously ill. She had a tumor; they removed her kidney, then other illnesses followed, she got thrombosis and St. Anthony's fire, and nothing went away. She has open wounds on her leg; she is fifty-four and she cannot walk without crutches, and she has a level one disability pension. Nobody can give her back her health.

My sister was the first to begin arranging her status according to the instructions from the Helsinki Monitor; then I followed in her footsteps. When I began to arrange things to obtain alien status, I used my birth certificate, which says that I was born in Ljubljana, my boy scout card, the elementary school certificate and the monthly pass for the city bus. In 2003 I obtained an ID card for foreigners, with the "country" box left empty. So I officially became a citizen of No country. I didn't belong to any state, but I had to have an ID card for aliens. I still have it at home. When I look at it now, I only laugh. In order to be able to apply for Slovenian citizenship, I had to pay for a course in Slovene, because it did not suffice that Slovene was my subject at school and that it was stated on my school certificate. It was as if I were climbing Mount Everest.

At that time the debts for the apartment in which we lived were already high, and in 2004 we had to move out. I found work in a production unit after I obtained a permanent residence permit, and I worked on another student's card. When I obtained citizenship I got a regular job. I immediately went to Bosnia to visit my grandma, and after some time I went on a short trip to England. I completed elementary school at 25, the seventh and the eighth grade that were missing. I enrolled in secondary school, in the pre-elementary school course. Now I attend lectures and work. I now find the peace and freedom that I once sought in basketball, in libraries and books. I live with my partner and our daughter, who is a few months old, and I take care of my sick mother.

My sister, who could not complete secondary school for a long time because of the erasure, later completed a commercial school. Now she wants to get a driver's license for all types of vehicles. She has her dreams and she's right to have them. She's passed the exam for a lorry driver, and she's been preparing for the bus driver exam. She'd like to drive a city bus.

My story is now only a history that can be put on paper, nothing else. But I cannot turn time back to start again and change things.



Neža Kogovšek

THE ERASURE AS A VIOLATION OF LEGALLY PROTECTED HUMAN RIGHTS

1. Introduction

Although legal arrangements in Slovenia ensure high-level protection of human rights, judging by public debates, human rights do not rank high in the hierarchy of social values, and they are frequently undervalued. Vulnerable social groups, which are most susceptible to the violation of their rights, are too often alleged to enjoy an excess of rights, but in reality the situation is usually exactly the opposite, with these groups being unable to exercise even the rights that are accessible to the general population. The accounts of the erased people in Slovenia and our study show that both the erasure and its consequences should be characterized as human rights violation. This is the conclusion that proceeds from the present chapter, which presents the stories of the erased people and discusses them from the perspective of the international law regulating human rights. The latter are protected by various conventions to which Slovenia is a signatory. The erased people's stories testify that the erasure affected all areas of their lives, and brutally intruded into their rights – civil, political, social and economic.

Human rights – or the absence of respect for human rights – are seldom the topic of discussion related to the erasure. This is because the testimonies of people affected by erasure and the concrete situations in which they found themselves were not accorded close attention. Instead, they were subject to generalizations and treated as a homogeneous group, so although in reality they make a very heterogeneous group, their individual situations were not obvious within the broader context of the problem. Only a detailed look into concrete individual situations and their assessment against the legal standards set forth in binding international documents can reveal the extent to which their human

rights were violated. Moreover, the sheer number of people (25,671)¹ who suffered as a consequence of the violation of their rights calls for recognition that the erasure was not simply a violation of human rights but a mass violation of human rights. A look into the past shows that since 1991, the year in which Slovenia gained independence, it would be difficult to find any other violation comparable to this one in number, scope, or gravity. Accordingly, the erasure can be described as the largest mass violation of human rights in the history of independent Slovenia.

2. Legal foundations for the protection of human rights

The analysis of the erasure and its consequences shows that it intruded into both the first and the second generation of human rights. Human rights of the first generation are by their nature civil and political rights, while human rights of the second generation comprise economic, social and cultural rights. Both groups of rights are protected by the three key international documents adopted within the framework of the UN: the Universal Declaration of Human Rights (UDHR),² which comprises both groups of rights, the International Covenant on Civil and Political Rights (ICCPR),³ which comprises the first generation of human rights, and the International Covenant on Economic, Social and Cultural Rights (ICESCR),⁴ which is concerned with the rights of the second generation. The three documents constitute the Bill of Rights. In addition to the UN documents, an important reference in determining the violation of rights in the Council of Europe member states, including Slovenia, is the European Convention on the Protection of Human Rights and Fundamental Freedoms,⁵ which protects primarily civil and political rights as well as certain specific economic, social and cultural rights. The third generation of human rights is not yet protected by binding international documents, but is contained in non-binding declarations or collections of principles. These encompass collective rights, the right to self-determination, to economic and social development, to a healthy living environment, natural resources and cultural heritage, as well as the right to communicate and communication rights, and the right to intergenerational equity and sustainable development. Since Slovenia is not formally bound to respect the third generation of human rights (apart from those mentioned in its Constitution, for example the right to a healthy living environment, or in other specific international documents), these rights will not be examined in detail in this text. The three generations of human rights follow on from the slogan of the

¹ This number is taken from an internal survey of databases conducted in January 2009 by the Ministry of the Interior.

² G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

³ GA res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 52, UN Doc. A/6316 (1966); 999 UNTS 171; 6 ILM 368 (1967).

⁴ G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3 (1976).

⁵ The ECHR entered into force on 3 September 1953; it was amended and supplemented by Protocol 11, the additional Protocol and Protocols 4, 6, 7, 12 in 13.

French Revolution: “liberty – equality – fraternity” (Vasak 1997), with the civil and political rights involving primarily freedom of individuals, the economic, social and cultural rights based on the principle of equality of all people without discrimination, and the rights of the third generation being founded on the guiding principle of fraternity.

We will now proceed to analyze to what extent individual human rights, which should be enjoyed by all residents, are respected in Slovenia, which is a signatory to the international documents mentioned above. Each subsection begins with the presentation of the international provisions protecting a specific right, followed by the explanation of the meaning or content of that right, and the description of concrete situations in which the erased people found themselves, as a group, or a specific section of that group or as individuals. These situations will be amply illustrated with extracts from interviews conducted in 2007, 2008 and 2009 as part of the Peace Institute’s research project entitled “The Erased People of Slovenia – A Challenge for the Young Nation-State.” Each subsection ends with a conclusion in the form of a legal judgment (a subsumption of the situation under the legal norm), indicating whether the treatment of erased residents in a concrete situation involved a violation of the human rights discussed in that section.

When examining legal regulations in order to establish whether these were violated, the main question to be considered is the date of their coming into effect in Slovenia. Both international covenants mentioned above were ratified and signed by the Socialist Federal Republic of Yugoslavia (SFRY). Slovenia, as an independent state, accepted these documents through the succession declarations, i.e. ICCPR on 25 June 1991 and the ICESCR on 6 June 1992. SFRY also signed and ratified the ECHR, and Slovenia joined it on 13 June 1994. The erasure took place on 26 February 1992, but it is important to note that its consequences have endured for years and that resulting damage may similarly occur years after the erasure. It is obvious from the dates above that at the time of the erasure only the ICCPR was binding on Slovenia, while the ICESCR and ECHR came into effect after the date of erasure. Accordingly, these two documents can be used as references only when judging the long-term consequences of the erasure and various measures taken by successive governments in office following the erasure, but not as a legal reference when discussing the act of erasure itself.⁶

⁶ It is also a key thesis in the case brought before the European Court of Human Rights by the law firm Studio Lana Lagostena Bassi on 4 July 2006 on behalf of eleven erased residents of Slovenia. The case is known as *Kurić and Others vs. Slovenia*.

3. Civil and political rights

3.1 The right to life

The right to life, protected by Article 3 of the UDHR, Article 2 of the ECHR and Article 6 of the ICCPR, means that no one is allowed to deliberately take life and that the state must refrain from any acts that would jeopardize the life of a person present within its territory. In the case of a person's death, the state is obliged to investigate the circumstances that led to death and ensure effective legal mechanisms to protect the victims of the violation or their heirs. Article 2 (2) of the ECHR defines the situations when the deprivation of life is not considered to be in contravention of the provisions set forth in this document; these include defense against unlawful violence, a lawful arrest or prevention of the escape of a person lawfully detained, or an action lawfully taken for the purpose of quelling a riot or insurrection.⁷

The expulsion from Slovenia left some erased people exposed to the violation of their right to life. Some were expelled because their documents were invalidated after they were deprived of resident status in Slovenia through the erasure, owing to the legal vacuum in the Aliens Act. Others, who were outside Slovenia at the time of erasure, were denied entry into Slovenia because their documents expired as a consequence of the erasure. Many of those who were expelled or were not allowed to come back to Slovenia were forced to go to regions plagued at the time by armed conflict, and accordingly, it was the citizens of Bosnia and Herzegovina, or alleged citizens of Bosnia-Herzegovina,⁸ whose situation was the most precarious. Moreover, it was not rare for people exiled from Slovenia to be sent to the frontline, as was confirmed by an interviewee with the pseudonym Dragan.⁹ Naturally, it is not possible to say that Bosniaks who died in the war were killed by the state of Slovenia or officials in its state administration, but the direct and unlawful reason why they found themselves in a territory where their life was in danger was the erasure and the resulting expulsion from, or prohibition on returning to Slovenia. Erased persons with Croatian citizenship were in a somewhat better position than Bosnian citizens, because the former never needed a visa to enter Slovenia, so they could cross the Slovenian-Croatian border with a valid passport and were consequently also less supervised once within Slovenia.

In recognizing the erasure as an act leading to the violation of human rights, some caution is in order to avoid the trap of argument *non sequitur*. This

⁷ In the Council of Europe member states, the death penalty no longer represents an exemption from the absolute protection of the right to life, since the death penalty is prohibited by Protocol 6 of the ECHR.

⁸ The term "alleged citizens" is used because in reality many erased persons were not citizens of Bosnia-Herzegovina; nevertheless, the Slovenian authorities asked them to first acquire Bosnian citizenship and then apply for permanent residence in Slovenia.

⁹ That the interviewee was aware of the gravity of his testimony is suggested by his request not to record this part of the interview.

means that cause and effect must be sufficiently connected that it is possible to establish a direct cause-effect connection between the two. To put it differently, concluding that a person was killed because he or she was erased and that this was an example of violation of his/her right to life would be an example of argument non sequitur. And yet, certain indisputable concrete examples would justify the conclusion that the erasure indirectly led to the violation of a person's right to life. For example, there were persons who had not intention of leaving Slovenia but were expelled because of the erasure, invalid documents or the absence of residence permit, and the only shelter they could find was in the place of their former residence in Bosnia-Herzegovina, where they were mobilized, sent to the battlefields and killed in the war. Or, even more to the point, some were expelled directly to war-torn regions where they lost their lives. Indeed, many of those expelled, for example Samir, told us that they were taken to the Slovenian-Hungarian border. Given that these people had no connection with Hungary, this fact seems illogical at first glance, but the logic emerges when we remember that there was a war raging in their countries of origin at the time. Obviously, the representatives of repressive state bodies were aware that mass expulsion to the war-torn regions would have been in contravention of Slovenia's international obligations. Despite this, some erased persons were sent to Croatia, for example, M.B., a Serb by nationality, who was expelled in 1997. Croatian police officials told him that 10 to 12 people from Slovenia were expelled to Croatia every day. Ethnic Croats were allowed to stay, because they were needed as fighters, while Serbs were refused (Dedić et al. 2003). This statement indicates that the Slovenian government expelled people directly to Croatia as well.

3.2 Prohibition of slavery

The prohibition of slavery is defined in Article 4 of the UDHR, Article 8 of the ICCPR, and Article 4 of the ECHR. The UDHR and ICCPR state that no one can be held in slavery or servitude and that it is prohibited to require that anyone perform forced or compulsory labor.¹⁰ Slavery is a form of forced labor in which people are considered or treated as one's property; they may be deprived of their freedom against their will at the time of capture or at birth, and consequently deprived of their rights to leave, to refuse to work and to receive payment for their labor.¹¹

This prohibition is relevant to our analysis, since some erased persons gave accounts of the extreme poverty that befell them as a result of the erasure; they were compelled to work in exchange for a roof over their heads, or sometimes

¹⁰ This notion does not include labor required during serving a prison sentence or during a conditional release from prison, any service of a military nature, service required instead of compulsory military service in countries where conscientious objection is recognized, services imposed at a time of emergency or calamity, when the life or the well-being of the community is threatened, or labor and services that are an integral part of civil obligations. See Article 4 of the ECHR.

¹¹ Historical survey: Slave-owning societies, Encyclopedia Britannica.

for food or clothes, and only rarely did they receive additional payment for their work. The compulsion was psychological, or in other words, they were forced into such labor by the circumstances which prevented them from obtaining another source of income for living or dwelling. The following is Miroslav's story:

I got this place through an acquaintance. The owner had this house empty and needed help on the farm, so he took me in. Then in 2004, 2005, the injuries began, on my leg, on my hand, so I couldn't help him any more. We made a deal to work 25 hours a month to be able to live here. Before my injuries began everything was okay, but then I couldn't pay the expenses for a few years and the owner switched off the electricity. I've heard that he will pull down this house, because he intends to build a house for his daughter, so I don't know where to go now. I also worked for him and for others to earn for food. The owner also gave me [money] for clothes and the like, when I did more than 25 hours for him.¹² (Miroslav, 69)

The question that arises is whether it is possible to talk about slavery in this example. The answer is: not in the traditional sense of the word. Miroslav's labor was not physically enforced, neither does his account suggest that he was treated as the property of the home owner. Similarly, he was not deprived of freedom against his own will; he was not captured or born into slavery, nor was he deprived of his right to leave the house. What he was deprived of was his right to refuse to work and still remain in the house, since in such a case the owner would have probably thrown him out, and he would have been entitled to do that, despite the immorality of the act. Miroslav was not deprived of his right to receive payment for the work he did, and he received it in kind or in food, and even in cash if he worked more hours than agreed. But it is still possible to say that he was in a different, modern type of slavery to which other groups of people are also subjected, that is, those living in poverty – they cannot afford to refuse work, and although they receive payment, it is so low that they can barely live on it. And yet, an erased person without legal status is in an even worse position than people with citizenship or people with residence permits. Slovenian citizens and lawful residents in Slovenia at least have, according to the Social Assistance Act, the right to receive social assistance in money, while citizens also have the right to apply for not-for-profit housing and so resolve their housing problem. Both groups are therefore much less likely to find themselves in the slavery-like situation into which some erased people were forced.

3.3 Prohibition of torture

The prohibition of torture is enshrined in Article 5 of the UDHR, Article 7 of the ICCPR, and Article 3 of the ECHR. In addition to torture, the three documents

¹² Taken from the story of the erased person with the pseudonym Miroslav. See also the action brought before the ECHR, dated 4 June 2006, the case known as Kurić and Others vs. Slovenia.

prohibit other inhuman or degrading treatment or punishment, while the UDHR also prohibits cruel conduct and punishment. Torture, inhuman or degrading treatment or punishment all involve a deliberate causing of pain or suffering, physical or psychological, with the purpose of punishing, extorting a confession, or forcing a victim or a third person into a specific act; such acts are usually performed by, or with the consent, of an official person.

The psychological pain caused by erasure is certainly an issue that would require a separate study. As to the concrete examples of physical or psychological pain, relevant to our purpose are the accounts of erased persons who experienced police harassment or even violence at the time of deportation or other police procedures that were usually undertaken because they lacked legal status. Siniša, for example, talked about the frequent police harassment that instilled fear and uncertainty in him.

I was often stopped by policemen on the street, provoked and ill-treated; they take you to the police station, lock you in a room and then you wait like an idiot for one or two hours. [...] When I was in court, the judge said: "This gentleman has applied for citizenship. As long as the procedure is underway, and he doesn't do stupid things, no one can do anything to him." So I asked the judge why the policemen didn't know this. They should know it. Some are kind and normal, they leave you alone if you show it to them [the document proving that he applied for citizenship]. But others say: "It's not normal, you live here illegally and must leave the country!" That's also what I experienced many times. I asked the judge what to do; when I go out they will stop me again. He told me to wait and be patient, that he couldn't do anything about it. (Siniša, 38)

In this case it is certainly possible to speak about harassment, but what is disputable is whether this could be defined as torture or inhuman or degrading treatment. To establish the precise nature of a specific type of conduct, it would be necessary to make a case-by-case analysis and determine other contributing factors, too: how frequent identity checking was, whether it was done randomly or was planned, and what psychological and physical impact it had on the people in question (for more on the health consequences as a result of erasure, see the chapter by Uršula Lipovec Čebren). However, the cases of overt police violence leave less doubt. Rifet spoke of frequent identity checking and the beatings that followed, and of the beatings he suffered in other encounters with the police.* His case is undoubtedly one involving violation of the prohibition of torture, inhuman or degrading treatment, as the police officials had obviously themselves established, given that they began proceedings against the policeman in question.

If I went out, I had on me only that document, as an alien. Then they checked my identity and pestered me. Sometimes they beat me, kicked me. [...] They kicked me in Velenje. [...] Several times they put me in a bunker and kicked me.

* This erased person died before the book was published.

[...] The bunker is inside the police station, in the basement. [...] Once we went outside and saw a man lying on the street and we wanted to help and see what was wrong. Then the police came. One already had something against me and he simply tied me up. First he took me away from the others and I told him to help the man on the ground. Then he told me to show my documents. I gave him all that I had in my pockets. [...] Then he pressed me against the wall. He took me by the hands, handcuffed me, pushed me into the police car and took me to the police station. He harassed me psychologically for two or three hours, then hit me while I was still tied up. Then he took me, I think it was by the Sava [river], somewhere down, I could feel the branches. He drove me tied up in the police car for half an hour. [...] My rib got broken. [...] Then they took me to the Povšetova [police headquarters], dumped me there and left. I was in pain. I rang the bell, the warden came and I explained to him what happened. He let me go and told me to go to the doctor if it was the policeman [who hit me]. Then I went to the doctor, had an X-ray and it turned out that my rib was broken. I then went to the police headquarters with the Human Rights Ombudsman, filed a complaint, and after that they called me twice. The second time they called me to look at photos for recognition. I picked him out and then the headquarters sent him to court.¹³ (Rifet, 45)

3.4 The right to leave the country

Article 13 (2) of the UDHR specifies that everyone has the right to leave any country including their own, and to return to their country; the same provision is contained in Article 12 (2) of the ICCPR, and this right can be limited only by legal restrictions necessary to protect national security, public order, public health or morals, or the rights and freedoms of others, and if these restrictions are consistent with other rights.

The testimonies of erased persons reveal that their right to leave the country was respected, but while they could leave the country, many were not allowed to return. Since many of them were not alerted to this fact, they had problems when they tried to return and were denied entry into Slovenia at the border crossing. Others were alerted by either the Slovenian border police or other state bodies, so they were afraid to leave the country, anticipating that they would not be able to come back. Permission to leave the country was given to those who had valid documents. In accordance with the Passports of the Citizens of the Republic of Slovenia Act,¹⁴ the passports of citizens of the Republic of Slovenia were valid until 1993, while the passports of erased people were valid until invalida-

¹³ This person's testimony can also be found in Dedić et al. 2003, 115–117.

¹⁴ Article 39 (1) of the Passports of Citizens of the Republic of Slovenia Act read: "Passports and visas issued in accordance with the law regulating the passports of SFRY citizens (Uradni list SFRJ, t. 30/79 and 53/85) will be in use for two years after this law comes into force." The law came into force on 25 June 1991, meaning that passports were valid until 26 June 1993.

tion or until they were submitted for border control. The passports were invalidated by punching, and this was performed by officials in municipal offices in accordance with a circular letter from the Ministry of the Interior, No. 0016/9-S-26/3-92, dated February 5, 1992, which stated:

When attending to the status issues of aliens it is necessary to establish in the procedure if the person possesses administrative documents (ID card, passport, permit to carry fire arms) issued by the bodies of the Ministry of the Interior in the Republic of Slovenia. If a person is in possession of such a document, it must be seized - of course, only if such a person has applied for alien status. As a rule, a passport is seized and invalidated, and its owner is instructed to obtain a passport from his/her country, and only exceptionally may a passport be issued for an alien.¹⁵

Those erased persons whose documents were invalidated had to obtain passports from one of the successor state to the former Yugoslavia. For many citizens of Croatia and Bosnia-Herzegovina, this was impossible because of the war. And even if they left Slovenia and obtained a passport in Bosnia-Herzegovina, they could not come back to Slovenia because they didn't have a visa (Croatian citizens, on the other hand, did not need visas to enter Slovenia). Tihi described his situation as follows:

I never travelled. All these years I couldn't leave the country. And the same for my wife, who could not leave it from 1991 onwards. Neither could my children. (Tihi, 53)

The distress caused by the inability to leave the country was particularly serious when a person's parent or other family member who lived in another country died, as happened to Željko.

The Serbian documents I had were not valid any more. I had Yugoslav documents but they suddenly stopped being valid. And I could not travel anywhere abroad. For example, when my father and mother died, I could not travel there to bury them. (Željko, 49)

Viewed from a legal perspective, the erased people were able to exercise their right to leave the country, but given the circumstances, either it was difficult for them to do it, or departure from the country had such serious consequences that anyone who wanted to avoid them could not possibly realize this right. The exercising of human rights cannot be predicated on unbearable consequences resulting from the exercising of a specific right. Accordingly, in this case it is not possible to say that the right to leave the country was realizable in practice.

¹⁵ Circular letter from the Ministry of the Interior No. 0016/9-S-26/3-92, dated 5 February 1992, sent to all municipal bodies in the Republic of Slovenia responsible for internal affairs and the Ljubljana Municipal Secretariat for Internal Affairs.

3.5 The right to freedom and security and the right to free movement

The rights discussed in this subsection, i.e. the right to freedom and security and the right to free movement, are closely related, as their violation arises directly from the same problem: the removal of a person's legal status. Article 9 of the UDHR prohibits arbitrary arrest, detention or exile, and Article 13 stipulates that everyone has the right to freedom of movement and residence within the borders of each state. These rights are covered in even greater detail in Article 9 of the ICCPR, which says that everyone has the right to liberty and security of person. No one may be arbitrarily arrested or detained. No one may be deprived of their liberty except for reason and in accordance with the procedures laid down by law. Article 12 of the same Covenant stipulates that everyone who stays lawfully within the territory of a specific state has, within the territory of that state, the right of liberty of movement and freedom to choose his residence. These rights may be restricted only by restrictions laid down by law, if these are necessary to protect national security, public order, public health or morals, or the rights and liberties of others, and if the restrictions are consistent with other rights recognized by the Covenant. No one may be arbitrarily deprived of the right to enter his own country. Very similar is the provision contained in Article 2 (4) of Protocol 4 to the ECHR, which adds that restrictions on these rights can only be such as are justified in a democratic society for the sake of the public interest. Article 5 of the ECHR similarly specifies that everyone has the right to freedom and personal security. Among the exceptions to the obligation to respect the right of freedom listed there, the one that is particularly important in establishing whether the rights of erased persons were violated is "the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition."

The erased persons we interviewed gave extensive accounts of circumstances that are relevant to the exercising of these rights. In addition to being unable to leave the country, another obstacle they encountered was detention. As a matter of fact, identity checking by the police and the resulting conclusion that the person did not have legal status were frequently followed by their placement in the Center for Aliens (at that time called The Transitory Home for Aliens and later renamed the Center for the Removal of Aliens).

I went to the eye doctor to treat my eye, and they gave me eye drops. When I went to collect these eye drops, I was stopped by the police and had to show my ID card. I had on me also that piece of paper, for aliens. And the Bosnian passport that already expired. Anyway I was already officially a Slovenian citizen. I explained it to them and told them to call and check, because it was a working day, afternoon, around half past one. They didn't bother but took me directly to the minor offense judge. The judge did not call me in at all, but I stayed in the corridor all the time and a policeman guarded me. Only the second policeman went inside,

then came out and brought the papers, and then they took me downstairs. When I heard that I was sentenced to expulsion from the Republic of Slovenia, I went mad and I hit my head with the glass there, on Mala ulica 3. [...] They tied me up and beat me. Then they took me to the Medical Center to have my wound stitched. From the Medical Center they took me to that freaky place in Šiška [The Transitory Home for Aliens on Celovška Street]. I was detained all night; there were many people there; people were sleeping on the floor. I don't know when they took me there - I was in shock, I only know that it was in the night. They let me go when my friends called the social workers who presumably - I didn't know it - repeatedly called the police all night. They faxed them my certificate of Slovenian citizenship. (Rifet, 45)

This erased person spent only one night in the Center for Aliens, and it was not only his right to freedom of movement that was violated, but also the prohibition of torture, inhuman or humiliating treatment was breached. The story of Almir below testifies to a much longer detention in this institution:

In 1995 two policemen stopped me in the street to check my identification. They asked for my documents, and I told them that I didn't have them. They took me to the police station in Polje where they kept me for four hours. Then they took me to court and I was sentenced to pay 8000 tolar for illegally residing in Slovenia. From there they took me to the Center for Aliens. They didn't explain anything and I didn't get any paper saying what it was all about. I was not given a chance to go to the apartment where I lived to collect some necessary things like clothes. I was locked in the room overnight, and in the morning a social worker and an inspector arrived. They gave me a document confirming that I was detained in the Center for Aliens. One month later I got a one-way passport; that document was valid for 48 hours, to leave Slovenia. They took me to the Dolga vas border crossing along with another person, gave me a bus ticket to Belgrade and 50 German marks. I didn't make it to Serbia because I didn't have an entry visa, so I got off the bus. The road took me to Budapest to the Yugoslav Embassy, where they required 500 forints for a Serbian visa and told me that the waiting time to get a visa was 6 months. I couldn't take that option. I spent two days at the railway station in Budapest, where the police again checked my identification and I was detained for 8 hours. The Hungarian police then took me to the Dolga vas border crossing, where the Slovenian police waited for me and took me to Prosenjakovci to the Center for Aliens. I spent three months in Prosenjakovci and was then moved, because of my poor health (asthmatic), to Ljubljana, to the Transitory Home for Aliens on Celovška 166. I stayed in the Transitory home for Aliens, open department, from 15th of May 1995 until the end of 2001. I had permission to go out, to stay at home for a week now and then, but even on these days I had to report to the Home every day at 22h. In the beginning of 2002 I was released after my friend guaranteed that he would take care of me. I remember that at the time when I lived in the Center, 40 percent of people there, I reckon,

*were people from former Yugoslav republics, I suppose that many of them were erased too. I also remember a mother with a child who told me that at that time she had been living in the Home with her child for 8 years.*¹⁶ (Almir, 55 let)

The provision in Article 5 of the ECHR that is relevant to Almir's testimony stipulates that it is lawful to deprive a person of freedom if this is done to prevent a person from unlawfully entering the country, or if an action is being taken against that person with a view to deportation or extradition. The question is whether the right to freedom of movement of the erased persons who were placed in the Center for Aliens and therefore deprived of freedom (the Center for Aliens is a closed-type institution) was violated. Could an erased person be considered a person against whom action is being taken with a view to deportation or extradition?

In Slovenia, the extradition procedure is taken on the basis of the secondary penalty of expulsion from the country¹⁷ imposed in criminal proceedings, or on the basis of the sanction of extradition from the country imposed in proceedings for a minor offense. In both cases, the ruling must be issued by a court. However, as described in more detail in the next subsection (prohibition of expulsion), many erased persons' expulsions were carried out by police officers based on internal instruction (dispatch) from the Ministry of the Interior. Accordingly, every deprivation of freedom and related placement in the Center for Aliens not based on a court ruling, represented a violation of human rights.

But what can be said about the deprivation of freedom proceeding from a court ruling? On the one hand, there is no doubt that legally these people were aliens who were present in the territory of the Republic of Slovenia without residence permits, so in the understanding of the authorities, their presence in Slovenia was unlawful. And yet, what was the reason that led to their presence being unlawful? While doubts as to whether the erased persons themselves were responsible for this unlawful situation (because they had failed to regulate their alien status within the legal deadline) may have existed until 1999, on 2 February 1999 any such doubts were dispelled by the ruling issued by the Constitutional Court of Slovenia (Ruling U-I-284/94). The Constitutional Court established that the erased persons were unlawfully deprived of permanent resident status, so it is possible to conclude that the resulting measures taken by the state were also unlawful, including the deprivation of freedom and the placement of erased people in the Center for Aliens. The placement of erased persons in the Center for Aliens therefore invariably represented a violation of human rights, regardless of whether or not it was preceded by a court proceeding initiated because a person had no residence permit in Slovenia. Such a conclusion is at any rate justi-

¹⁶ The story of the erased person with the pseudonym Amir, summary of a longer account. This person died before the publication of this book.

¹⁷ A secondary penalty in the criminal law is a type of penalty that can be imposed only in connection with the main penalty. The secondary penalty of an alien's expulsion from the country was abolished under the new Penal Code (Ur. l. RS, No. 55/2008).

fied in the case of Almir, who spent as much as 6 years in the Center for Aliens, although he did have permission to leave it occasionally. It is clear that he was not deprived of freedom with a view to deportation from the country, or this measure would have been taken early on, but that he was the victim of protracted, arbitrary harassment and unfounded intrusion into his human rights. Another reason for his protracted detention in the Center for Aliens was his homelessness, as the interviewee himself said (he did not have anywhere to go), and it is possible to assume that the mother and child he mentioned in the interview were also homeless.

Even today aliens are still being placed in the Center for Aliens. The Center staff is instructed to release such a person if he/she has submitted an application for a permanent residence permit, or to release him/her as soon as the application is submitted. These instructions are contained in the dispatch No. M0001755 dated 19 March 2002:

In procedures involving the citizens of countries that are successors to the former SFRY who do not have a valid residence permit in Slovenia, police officers are required to first check the central register of permanent residents (the RISK transaction). This check is necessary to establish whether the alien has already submitted a permanent residence application in accordance with the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia (Uradni list RS No. 61/99). If such an application has been submitted but not yet resolved, it is not allowed to take measures against illegal residence, and it is not allowed to place him/her in the Center for Aliens.¹⁸

It is obvious from the dispatch that, while the police authorities may not have been aware that it was unlawful to place these persons in the Center for Aliens, they were at least aware that it was devoid of logic. It should also be taken into account that the ECHR took effect in Slovenia only in 1994, meaning that from the strictly legal point of view, the deprivation of freedom preceding this date was not in contravention of the ECHR. Nevertheless, it is possible to speak about a breach of the international customary law of human rights, i.e. the provision in Article 3 of the UDHR defining the right to freedom. Moreover, deprivations of freedom carried out before the day the ECHR came into effect could also be considered a violation of the provisions therein if their consequences extended beyond the date the ECHR took effect in Slovenia.

This discussion should also address the positivist-legal theory which states that, in relation to the exercise of certain human rights, it is necessary to differentiate between persons who have legal status and those who do not. This holds true in principle, as today human rights are divided into those to which everyone is entitled regardless of status, and those to which only certain categories of

¹⁸ Dispatch of the Uniformed Police Directorate, part of the General Police Directorate (State Border and Foreigners Section) sent to all Police Directorates in the RS, No. M0001755, dated 19 March 2002.

people are entitled, meaning people who have a specific status (e.g. a temporary residence permit, a permanent residence permit, citizenship etc.). However, in the case of erased people, such a distinction should be legally irrelevant, since they were unlawfully deprived of their status as permanent residents in Slovenia. Accordingly, all consequences of this act were unlawful too, including the constraint on leaving the country and their detention in the Center for Aliens.

At any rate, state authorities are generally well aware of the differences in entitlement to human rights depending on legal status, so they frequently first take away or change the legal status of a certain group to be able to deprive them of their rights. As a result, the members of such a group are no longer able to exercise certain rights in accordance with existing legislation, while the authorities continue to refer to it and tie the exercise of rights to a specific status. This method is called chain reasoning, and it is used to justify a presumably lawful exclusion based on the fact that a person has no residence permit, or that he/she had no permit to enter the country.¹⁹

By understanding the method of chain reasoning, it is possible to transcend an argument *non sequitur*. In the case of erased people, an argument *non sequitur* would be one stating that the reason for their inability to leave the country and return to it was not their erasure but the fact that they had not legal status. However, if we understand that the erasure was a *means* of turning them into persons without legal status, a condition which could then be used to justify the violation of their rights, we can also understand that an argument *non sequitur* is untenable in this case.

3.6 Prohibition of expulsion

This study has already broached the subject of expulsions, since these frequently followed identification checks and detention in the Center for Aliens. The expulsions related to the erasure are a serious issue that deserves special attention. Arbitrary expulsion is prohibited by Article 9 of the UDHR. Article 13 of the ICCPR states that an alien lawfully staying in the territory of a signatory state may be expelled “only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”

The expulsions reported by many erased persons were the result of their losing legal status in Slovenia. During the first five years following the erasure, expulsions were carried out by the police based on an internal instruction from the Ministry of the Interior dated 27 February 1992, which was sent to municipal

¹⁹ Chain reasoning is frequently employed particularly in relation to access to economic and social rights. For more on this, see Cholewinski (2005, 31).

bodies across the country and to the Ljubljana Municipal Secretariat of the Interior (these bodies were later renamed administrative units/*upravne enote*). The dispatch signed by the State Secretary instructed the police to “take to the country border”²⁰ all aliens who did not have their legal status regulated. Nevertheless, some police officers first took the erased persons to the Court for Minor Offenses and then expelled them based on a ruling ordering expulsion from the country. Accordingly, some interviewees gave accounts of deportations to the country border without a court ruling, while others described deportation that followed the procedure in the court for minor offenses. Still others talked about situations in which the expulsion procedure was initiated but not completed because of happy coincidences. One such story was related by Božo:

In 1994 I was stopped by a policeman quite by chance. He asked me to show my documents and took me to the police station in Vošnjakova. Huh, huh, I'll never forget it. Never. So he took me there. It was some time after nine in the morning. I was kept there until three in the afternoon. Without any explanation. I didn't know the reason, didn't know why. I asked them but they said nothing. Then two police officers came to the waiting room and said that they had to take me there, next to Metalka [the court for minor offenses in Ljubljana near the former Metal-ka building]. When I came to the judge she started to ask questions, how and what and all that. And in the end she read the document that she wrote and said that I was expelled and that they had to take me to Albania. And at that time I had to pay for the transport. I paid it – I remember it well – it was 34,000 tolar. That was transport from Ljubljana to Tirana at that time. My wife brought me money. I gave them my whole salary. I felt like I wanted to die. Then, incidentally, I knew one gentleman, a police officer, so I described the situation to him and asked if something could be done. “Yeah, man” said he, “do you have proof, any proof, that you live here in Slovenia?” So I said: “Yes, of course I have, I have an apartment here, a wife, I have everything here, man. I've worked in Slovenia for 10 years. I have all these certificates, but I don't have them here.” “Would you be so kind,” I said, “and take me to my apartment?” “Yes,” he said, “I will.” And he took me. He asked the judge and she said: “Okay, take him. But bring him back.” I took all the documents that were needed and showed them everything. [...] Who I am and what I am. Then the judge threw the ruling into the dustbin. But she didn't give the money back to me. Do you understand? I was sorry for that money. And I was released and went home. From that day on I didn't dare go out on the street. (Božo, 45)

The fathers of two Roma families, with the pseudonyms Huskić and Samir, spoke about several deportations of their families. They do not have proof that these deportations happened, other than the testimony of their family members, because they received no official documents:

²⁰ Instruction from the Ministry of the Interior No. 0016/4-1496 8, dated 27 February 1992.

In 1993 the police stopped us, the whole family, in Čopova Street in Ljubljana and we had to show our documents. They took our documents, put us in the back of the Black Maria and took us to the police station where they left us to wait without saying anything. Then they again put us in the Black Maria and took us in an unknown direction. They left us by the road, probably in Croatia. They returned our personal documents and told us to go. When I asked what was going on, they pushed me away and threatened to kill me if I didn't go away. We didn't know where we were, so we roamed along the road, because we were afraid to go back to Slovenia because of their threats. My wife was pregnant then, she miscarried because of fear, she fainted on the street, and my boys were 8 and 12 at that time. Then a man came by and offered to help us. He hid us under the truck cover and took us illegally to Düsseldorf and showed us where to register as refugees, so we did it. The office for aliens immediately provided an apartment for us in Essen and gave us social assistance. We lived normally until 1995, when one night they deported us, even though we had our status extended as required. The police came to the apartment at two o'clock in the morning, woke us and gave us 5 minutes to take everything that we had. They put us in the police car and took us to the airport and into a room where we had to wait for a plane to Macedonia. (Huskić, 43)

In 1993 the police from PP Bežigrad [the police station] came to our house and put all of us, the whole family, in the police van, took us to the border with Hungary and left us there without any explanation. Since we didn't know what to do, we came back illegally to Slovenia across Croatia, and went home. A month or two later the police officers from PP Bežigrad came again and again took the whole family to the Hungarian border. We again returned illegally to our home in Ljubljana. But because of these two deportations we were afraid that they would attempt it again, so in 1993, together with our relatives, we decided to flee across Austria and go to Germany, to Düsseldorf, where we registered as refugees from Slovenia and Macedonia. (Samir, 57)

Since rumors about expulsions spread quickly, people who were afraid that they too could become victims of this measure began to hide from the police and other administrative officials. They stayed in their homes and avoided public places. The son of Mr Begeš, an erased person, described his father's life:²¹

At that time the policemen came often and knocked on the door. Close to us, some 200 meters away, is a dormitory unit, and it often happened that three or four Black Marias with police officers came in the morning and at night to fetch people. We were wondering what was happening, if they were fighting each other again or what. Later, we were told that these Black Marias came to fetch people and take them to the border. I don't know how my father found out about it, but he went into hiding, because the police often came to his door. Actually, for three

²¹ Since the erased person is very old, we interviewed his son.

years he lived without leaving the apartment. Like the Japanese during the Second World War. He hoarded food, cans, and he had stale bread and many other things. (Begeš, 89)

Before the erasure, the erased persons were legal residents in Slovenia. They were unlawfully deprived of their status and were expelled as a consequence. There was no legal basis for changing their status, they were not notified about the change and did not have the right to complain or the right to court action. Moreover, many expulsions did not proceed from a secondary penalty or a sanction stipulating the expulsion of an alien from the country. All these facts lead us to the conclusion that these expulsions represented a violation of these persons' right to protection against arbitrary expulsion from the country. The expulsions were particularly arbitrary in cases where no court ruling declaring expulsion was present. The stories of erased persons about expulsions that were initiated but not carried out, as in Božo's story, prove that even the judges of Slovenian courts were not quite convinced that these expulsions would not qualify as arbitrary acts despite court rulings. Their unlawfulness was established in 1999 by the Constitutional Court. Its ruling US No. U-I-284/94 states that it is prohibited to expel erased people from the country until their status is regulated, because it could lead to the violation of the right to private and family life defined in Article 8 of the ECHR.

3.7 The right to respect for private and family life

The right to privacy and family life is protected by all three main international documents. Article 12 of the UDHR and Article 17 of the ICCPR state that no one shall be subjected to arbitrary interference with privacy, family, home or correspondence nor to attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attacks. Article 8 of the ECHR mentioned above contains the provision that everyone has the right to respect for his private and family life, his home and correspondence, and that public authorities are not allowed to interfere with the exercise of this right except in exceptional cases.²² The right to family life enables individuals to live together and in the way they themselves choose (while not violating mandatory legal norms), and this applies in relation to their family members and regarding respect for their privacy. The right to respect for privacy also means that acts taken by the state must not cause fear and uncertainty among people, must not disturb or upset them without good grounds, violate their dignity (which may occur during an arbitrary interference with one's private life), or bring about any other negative

²² "There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others." See Article 8 of the ECHR.

impact on their private sphere. However, the erasure seriously affected both the private and family lives of the victims, and police harassment instilled fear and insecurity in them. Some among them told us that the police came to their homes in the middle of the night and took them to the police station, where they were interrogated and detained for several hours without reason and then released without explanation.

The erasure pushed some people to the margins of existence and the margins of the law, humiliated them and took away their dignity, meaning that it interfered with their right to private life. Some were compelled to resort to various humiliating means: circumventing the law, giving bribes or obtaining fake documents to ensure social and physical survival. Edin thus described his situation:

I also thought about suicide. It hurt me when I was forced to buy fake, that is to say, stolen documents in order to be able to move around freely. For example, I paid 500 German marks for a driver's license. One thing from the time of erasure which I particularly remember is the contract I made with my wife in which she declared that she took care of me. I always carried that proof with me, that is, the contract, and it helped me several times in situations when the police stopped me and took me to the police station because I didn't have valid documents. (Edin, 45)

The consequences of the erasure affected all family members regardless of whether only one of the parents was erased, one or more children or some other combination of erased parents and children was in question. Jana S. says:

In 1992 I was still underage, and my father did not apply for my citizenship because he had to work and he missed the deadline by one day. My parents were erased, as was I and one of my brothers, the other brother, who was born in Slovenia, got Slovenian citizenship automatically, and the third brother went to school in Bosnia so he couldn't get any status until this year when his son was born. (Jana S., 30)

The milder forms of these consequences on family life involved strained family relations, while the severe forms included divorce caused by changed family roles (e.g. when a husband lost his status and job and could no longer support the family). The erasure hence aggravated relations among family members and therefore interfered with their right to respect for family life. Andrija attributed his divorce to the difficulties he and his wife encountered after the erasure.

I didn't know that I was erased. Of course I didn't know. That's it. In this regard I'm the most difficult problem in Slovenia. My wife is a Slovenian and they destroyed her children and me, her husband. They destroyed her family too, not only mine. [...] My wife was born in Ptuj, and it is the oldest town in Slovenia. I was married before it and I divorced in 1996. It was after the erasure, after all the difficulties. Because with this erasure the authorities destroyed their woman, not only me. They destroyed me with it and my whole family along with me. (Andrija, 54)

There were even more tragic consequences. For example, some families lived in enforced separation, unable to see or visit each other. Such break-ups occurred after certain family members were expelled, or went to another ex-Yugoslav republic on a visit, or left Slovenia for a while (for various reasons) and were not allowed to return because Slovenia no longer recognized Yugoslav passports, although these were still valid. Those who stayed in Slovenia could not see their close family members or other relatives living outside Slovenia for years, either because their documents were invalidated or because the visa regime for visitors to Slovenia from other republics was excessively strict. This means that the erasure had adverse effects on erased people's right to family life. One such situation was that of Miroslav, who at the time of the interview had not seen his family members for years because he had been without documents for 16 years and could not leave Slovenia to visit his mother and brother who live in Croatia and Bosnia-Herzegovina, respectively.

3.8 The right to a fair trial

Since the erased people resorted first to administrative methods and then to judicial means to assert their rights, their dossiers are a treasure of information on the operation of the state administration and administrative procedures relating to alien status and citizenship. The accounts of our interviewees testify to the variety of problems they encountered: applications for citizenship that were never resolved; applications for citizenship submitted in time but registered as arriving after the deadline;²³ procedures that lasted for decades; incorrect information given by administrative officials; incessant trips from one office to another, and the like. Some administrative procedures they had to endure were unusual to say the least, if not unlawful. No doubt most of the erased people lacked legal knowledge, but most of them nevertheless remember accurately which applications they submitted and when, which status they applied for, which procedures are still underway and which have been completed. Moreover, thanks to the years of legal battles, many erased people became true layman experts on legal matters related to status regulation. They know by heart which requirements are tied to a specific status, as they know the history of changes in the regulations governing this area – much better than many lawyers and much better than other ordinary citizens.

We heard accounts of incorrect information obtained in 1991 when they wanted to apply for citizenship in accordance with Article 40 of the Citizenship Act. Some administrators refused to accept their applications, arguing that they were incomplete and instructing them to include their birth certificates, which many could not obtain because of the wars in Bosnia-Herzegovina and Croatia. This was unlawful because an administrative official is obliged to accept an in-

²³ Cf. the ruling of the Supreme Court No. U 680/95-8, dated 6 February 1997.

complete application and set the deadline for the applicant to submit the missing items. In addition, those erased persons who wanted to apply for citizenship were often told that they did not need to wait in long queues because they could submit the application after the new year 1991/1992. This, however, was not true, as the deadline for applications for citizenship was 26 December 1991. Adin related the following story:

I inquired at the municipal office. It was before Christmas, when I came back from Germany. The queue extended to the church on Tito Square. People were waiting to submit applications for citizenship. I jumped the queue and asked an older clerk what I had to do, told her that I had permanent residence here and a Slovenian ID card. She told me that I needn't wait in the queue. When I told her that I worked abroad, she said that I could fix it after the New Year. That's precisely what she said. I came back soon after the holidays, in the beginning of February. I went to the same lady to fix it. And she said: "It's not possible." "How come it's not possible if you said that I could, because..." "It's for those who don't have their status regulated but have lived here for a long time." And then she said: "The law has changed." (Adin, 45)

Undoubtedly, the law did not change between Christmas 1991 and February 1992. The same law, The Citizenship of the Republic of Slovenia Act, was valid in February 1992 and in December 1991 when Adin wanted to apply for citizenship. What is true, though, is that Adin missed the deadline for application because the administrator gave him incorrect information.

Some interviewees told us that they submitted applications for citizenship but never received a reply. It later turned out that employees in municipal offices divided applications into two groups: one batch was intended for the Ministry of the Interior, which was processing application for citizenship, while the other was never sent to the Ministry. Begeš's son told us:

I went to the clerk, she was my neighbor, and I gave her the application for myself and my father, who came with me. I have witnesses. I filled out the form and I also wrote that all the information was known to them because I'd been in Slovenia ever since I was born. I gave the form to her and she put it in the drawer. But she put my father's form, which I also gave to her, at the far end of the desk, on the right side. There were around two inches of applications there, that is, around one hundred of them. So I said: "Is everything okay? Take care not to lose the application, you put mine in the drawer." She said there was no problem. Well, we then all got citizenship and my father got nothing. (Begeš, 89)

The testimony of the six-member Dabetić family (their real name) from Koper was the same. They submitted applications for citizenship on time, but did not get any response. In 1992 the officials in the municipal office told them that their applications were never sent to the Ministry (Čebon Lipovec 2007,

66). By contrast, some interviewees talked about quite a different experience, when they did not apply for status but were given it anyway. Such is Jasna's story:

In 1999 my son applied for permanent residence and the application was approved. What is interesting is that at the same time when his permanent residence permit arrived at our address, a permit for my daughter also arrived, although she didn't apply for permanent residence in 1999. It was much the same with citizenship. My son got it after he submitted the application, and my daughter became a Slovenian citizen as part of the same "package," although she did not apply for citizenship. She was simply invited to accept Slovenian citizenship. (Jasna, 61)

It is evident that the majority of interviewees remember quite accurately which applications they submitted and for which status they applied, as their visits to administrative offices were often traumatic; most erased persons submitted applications in person, only few among them sent it by post.

Within the system of legal regulations and administrative procedures relating to erased people, proving that a person was erased is an issue of special importance. One of the methods most commonly used to check this fact is obtaining a copy of the archival document confirming permanent residence in Slovenia. This can be obtained from the administrative office in the place where the erased person had permanent residence before the erasure. The certificate proving that an erased person had been a permanent resident contains the date when permanent residence was first registered in Slovenia. This is usually the date of a person's arrival in Slovenia from another republic of ex-Yugoslavia, when his/her permanent residence in another republic was revoked and registered in Slovenia, as was required for persons seeking full-time employment. Most erased residents' permanent residence registration expired on 26 February 1992, when the erasure took place. If a person applied for citizenship and his/her application was turned down, the permanent residence registration was erased from the register two months after the delivery of the final legal decision, or, if the procedure was terminated, the erasure took place on the date when the decision on the termination came into effect.²⁴ What draws attention, though, are entries on the archival documents stating the address following the erasure. Rather than being left empty, as one would expect given the erasure, this box contains the name of one of the successor states to the former Yugoslavia (for example, Serbia), or a municipal district in a successor state (e.g. Bijeljina, BiH). This might suggest that the authorities had official information that on 26 February 1992 a specific person left Slovenia and moved to or registered in the country or municipality stated therein. However, this was not the case. The officials simply entered an erased person's, or his/her parents' country of origin as the address of his/her permanent residence after the erasure, regardless of whether this was based in reality. Accordingly, information in these

²⁴ Internal instruction from the Ministry of the Interior No. 0012/8-252-206, dated 15 September 1995.

archival documents is often false. For example, the record of an erased woman whose mother was a Croatian and father a Slovenian states that from 26 February 1992 her permanent address was “Croatia,” although she never lived anywhere outside Slovenia. Begeš’s example is also illustrative:

I also asked [the administrative office] to issue a certificate stating since when my father had lived in Slovenia. They rejected me three times and then finally issued the paper. It says that my father lived in Slovenia from 1958 to 1992, when he was “moved” to [the name of a municipality in Bosnia-Herzegovina] where he supposedly lived until 2004, when he was again registered at the same address [...] where he stayed all this time. The UE [administrative office] therefore issued a document with false information relating to the period of erasure, from 1992 to 2004. (Begeš, 89)

Taking into account the administrative and judicial procedures to which erased people resorted to regulate their status, the question that arises is whether the kind of conduct described above represented a violation of their human rights, for example, the right to a fair trial defined in Article 6 of the ECHR. A thorough analysis of this right shows that Article 6 refers only to civil proceedings and criminal procedures but not also to administrative procedures or a court action following an administrative procedure. Article 6 (1) states that “[i]n the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.” Therefore, since the issues related to alien status are not covered by this article, the rights of erased people in these procedures are not protected by the ECHR, and consequently, no breach of international law occurred. However, this does not mean that there was no breach of their rights viewed from the perspective of constitutional law. The right to a fair trial could therefore be considered for analysis only in connection with other court procedures in criminal or civil law involving erased people.

3.9 The right to an effective remedy

Contrary to the right to a fair trial, which is not directly relevant to our analysis, the right to an effective legal remedy is of particular importance. It covers all procedures, including administrative procedures relating to the regulation of alien or citizen status. Article 8 of the UDHR states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.” Similarly, Article 13 of the ECHR states that “[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.” While many victims of the erasure indeed did not seek legal remedies and, consequently, can no longer pursue them because of time limita-

tions or other deadlines, many others made use of every legal remedy available to them at the time of their legal battle. These included lawsuits with administrative courts in the cases of rejected applications for permanent residence or citizenship, complaints when the administrative bodies failed to respond to their applications (e.g., the Ministry of the Interior), appeals to the Supreme Court, or extraordinary judicial remedies such as revision; in disputes related to pensions or other social transfers, they resorted to lawsuits with the Labor and Social Court, the Higher Labor and Social Court and the Supreme Court. Those few who took actions for compensation and lost the case (and not one final judgment on compensation so far has been in favor of an erased person) carried on their struggle, and some procedures are still ongoing. However, the most important judicial remedy the erased people had at their disposal was the constitutional appeal (as the last instance within the national legal system), i.e. the initiative to assess the constitutionality and lawfulness of regulations related to the erasure. Most disputes brought to the Constitutional Court were resolved in favor of erased persons. The Constitutional Court created *jurisprudence constante* by which it protected their rights. The most widely known are two decisions: No. U-I-284/94, dated 4 February 1999 and No. U-I-246/02, dated 3 April 2003, issued following the initiative for the assessment of constitutionality and lawfulness. What is less known, though, is that many other constitutional appeals were decided in erased persons' favor.²⁵ A detailed analysis of all decisions would be beyond the scope of this chapter, so the question we would like to raise in connection with the right to an effective remedy is whether legal remedies were truly effective for the erased people. Unfortunately, given the large number of legal remedies pursued and resulting court proceedings that are still underway, it would be difficult to establish whether all the legal remedies mentioned above were effective. We will therefore focus on the most important remedy, which helped the erased people collectively and in a systemic manner in exercising their rights: the initiation of the procedure with the Constitutional Court to assess constitutionality.

The well-known decision of the Constitutional Court issued in 2003 was not put into practice for at least 6 years, so naturally, doubts about the effectiveness of this legal remedy increased over that period. The opinion that prevailed was that it was effective only if there was the political will in the country to put into practice such a decision requiring legislative and executive action, because there is no mechanism within Slovenian legislation that could compel the legislative and executive branches of the government to put it into practice. There is "only" the general obligation contained in the Constitution and the Constitutional Court Act, stating that decisions by the Constitutional Court are binding on all bodies in the Republic of Slovenia and that the latter are obliged to respect them. However, in the absence of political will, this obligation became

²⁵ See, for example, the ruling of the Constitutional Court No. Up-211/04-21, dated 2 March 2006; ruling No. U-I-295/99-13, dated 18 May 2000; ruling No. Up-60/97, dated 19 July 1999; ruling No. U-I-89/99, dated 10 June 1999; ruling No. U-I-266/95, dated 20 November 1995.

a dead letter. In this concrete example, the Constitutional Court established that the Act Regulating the Legal Status of Citizens of Former Yugoslavia Living in the Republic of Slovenia was inconsistent with the Constitution and ordered the legislator and the Ministry of the Interior to eliminate unconstitutionality within six months. This did not happen. Until 2009, the constitutional ruling was put into practice only in part, by issuing 4093 complementary decisions in 2004; practically all other decisions were issued in 2009, while at the time of writing this text the above-mentioned Act has not yet been changed in accordance with the Constitutional Court's guidelines. Taking into account all of the above, it is possible to conclude that the initiative to assess constitutionality is effective only if there is sufficient political will in the country on the part of the legislative and executive branches of the government. Consequently, the erased people's right to an effective remedy protected by international law had been violated at least until 2009.

3.10 Prohibition of hate speech

The erased people we interviewed recounted hostile attitudes and hate speech on the part of state officials in various situations when they attempted to fix their legal status. When Siniša learnt that he was erased, he went to the administrative office but found no sympathetic ear there. The officials treated him with contempt, telling him that he did not have the right and that he was free to complain to Slobodan Milošević.

The official at the administrative office did not help me but said, "Mister, you're erased, go to Milošević!" Something like that. And the policeman stopped me and said, "Well, you can complain to Milošević!" (Siniša, 38)

Hate speech against the erased people is frequently present in politics, in Parliament and in the media, including the Internet media. Online forums and comments on journalistic texts have proved to be the most fertile ground for hate speech. The more the erasure is discussed in public, the more frequent are hostile responses to media reports. Hate-speech against erased people often borders on the permissible and often does not meet the criteria to qualify as the criminal offense of inciting hatred, violence or intolerance, as defined in Article 297 of the Penal Code of the Republic of Slovenia (KZ-1) which states: "Whoever publicly provokes or stirs up ethnic, racial, religious or other hatred, strife or intolerance, or incites other inequalities on the ground of physical or psychological deficiencies or sexual orientation, will be punished by imprisonment of up to two years." Therefore, to qualify as punishable, a certain instance of hate speech must fulfill these conditions:

- it must provoke or stir up hatred, strife or intolerance;

- such a provocation or incitement must be committed in public;
- it must be based on personal characteristics such as ethnic, racial, or religious affiliation, disability or sexual orientation, while the term “other” leaves room for the inclusion of other related forms of hatred.

The diction of Article 297 is consistent with Article 20 (2) of the ICCPR, which defines that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” Below is an example of hate speech in a comment on a media text which could qualify as a criminal offense:

*Those erased are Slovenia’s enemy, this damned Serbian scum went to Serbia and Serbian Bosnia soon after independence, from where they hoped to return to Slovenia along with the occupying YPA [Yugoslav People’s Army] and kill and rob Slovenians, but when their plan failed they came back to seek rights and money from Slovenian taxpayers. Go back from where you’ve come, Serbian creeps, Slovenians don’t like you, and we won’t give you our money earned by work, you lazy scum.*²⁶

This is no doubt public incitement, as the comment was published on the Internet and was accessible to everyone. The incitement is based on ethnicity (“Serbian scum”), and on personal circumstance, i.e., the erasure, which the author emphasizes as an identifying characteristic of the group at which the comment is targeted. It is also an instance of incitement to hatred, strife or intolerance, given that the author tells the erased people to go “back from where they’ve come” (and we could ask where those who were born in Slovenia should go) and establishes a distance between us, the Slovenes (“Slovenians don’t like you”) and them – the erased people, or Serbians with whom the author obviously identifies the erased people. Hate clearly manifests itself in abuse (“damned scum,” “lazy scum” etc.). And while this comment “merely” publicly calls on the erased people to go “back from where they’ve come,” the following two comments, very short ones, are quite different.

*The erased and the government should be sent to Dachau ... and gassed.*²⁷

*We require the lynching of those erased!!! Kill them all.*²⁸

These two comments publicly, clearly and unambiguously incite violence against the erased people, so the criminal liability of the authors is indisputable.

²⁶ Delo.si: KI.K./STA. 2009, a comment dated 26. 2. 2009, posted at 17:55:46 and signed by “neznan.”

²⁷ 24ur.com: STA/M.M./U.Z. 2009, a comment dated 1 April 2009, posted at 18:55 and signed by “germany.”

²⁸ Siol.net: STA. 2009, a comment dated 26 February 2009, posted at 17:41:43 and signed by “kkar,” comment number 123.

3.11 The right to seek refuge from persecution

It is interesting that many erased persons were accorded their right to seek refuge from persecution. There are cases of erased people from Bosnia-Herzegovina who “found their way around” after they were erased and registered in Slovenia as war refugees, using the option provided by the Temporary Asylum Act (Uradni list RS, No. 20/1997). In this way they secured refugee status and with it health insurance. On the other hand, some did not want to accept refugee status, although they were advised to do so. Below is what the erased person with the pseudonym Emina told us.

M: Have you ever registered as a refugee?

E: But I couldn't be a refugee if...

M: We ask this because some had to take the refugee status.

E: Yes, they asked it from me, too.

M: Did they offer you to do so?

E: Yes, yes. But I didn't want it. I said no, I won't, why should I fix those papers if I'm not a refugee. Because I'd have to go to Hungary or wherever people went to fix it. But I didn't want it and said that I was not a refugee. I didn't want to do it that way. [...] If I spent so many years here. I mean, it seemed crazy to me, why to do it now, to be a refugee, if I'm not one. (Emina, 47)

Some erased persons left Slovenia because of the erasure and the hostile atmosphere but later returned, fleeing the war in Bosnia-Herzegovina, to gain refugee status in Slovenia. Many who were expelled and could not return to Slovenia, or left the country of their own will driven by unbearable circumstances, obtained refugee status in other successor countries as refugees from Slovenia (e.g., in Bosnia-Herzegovina and Serbia). Such treatment is consistent with Article 14 of the UDHR, which says that everyone has the right to seek refuge from persecution in other countries, and with the Convention Relating to the Status of Refugee (the Geneva Convention). Miloš recounted his experience of refugee status in Bosnia-Herzegovina:

I was born in Bosnia-Herzegovina and I worked in Slovenia from 1976, and the next year my wife and I registered permanent residence in Slovenia. In 1990 I lost my job, so I went to work in Germany. In the meantime, Slovenia began to seek independence, so my wife and Slovenian-born children went to Bosnia-Herzegovina and I returned there from Germany at the end of 1991, across Hungary and Serbia. When I realized that I couldn't return to Slovenia – it was in 1992 or 1993 – we registered as a family at the refugee center. When we registered we received the refugee card on which it was said that we were refugees from Slovenia. We didn't have any other document for a long time, as all our other documents were issued in Slovenia. We didn't have any other

option. My daughter still has refugee status in Bosnia-Herzegovina because so far she has not managed to obtain Bosnian citizenship. She is stateless because in the administrative office they insist that she should have first unregistered in Slovenia. (Miloš B., 54)

Some erased people found refuge in west European countries, primarily Roma families. Owing to their ethnic background and the growing intolerance in all successor states to Yugoslavia, they could not find refuge in these countries. Two Roma families, which were erased and then expelled, participated in the research. They said that they found refuge in Düsseldorf, Germany, but not for long. Samir, the father in one of the families, reported on their experience:

But because of these two deportations we were afraid that they would attempt it again, so in 1993, together with our relatives, we decided to flee across Austria and go to Germany, to Düsseldorf, where we registered as refugees from Slovenia and Macedonia. The temporary refugee status was valid as long as the war raged in the former Yugoslavia. Already in 1996 they first attempted to expel me from Germany. I complained that I had nowhere to go, because I didn't have any country's passport. The Slovenian embassy only issued a certificate that I wasn't a Slovenian citizen and the Macedonian embassy that I wasn't a Macedonian citizen. The German authorities decided to extend my refugee status and since then they've been extending it for one, two or three months at a time, so my wife, the youngest daughter and I live in uncertainty all the time. (Samir, 57 let)

When it comes to the right to refuge and its realization in practice, the erased persons' difficulties begin to overlap with those characteristically experienced by asylum seekers and refugees. Their problems are no less serious, as people with such uncertain status are in an unenviable situation both in Slovenia and Western Europe as well as in newly formed successor states. As regards the erased people in particular, who shifted from one status to another, or rather from one non-status to another non-status, it is possible to say that their uncertain situation was replaced by another equally uncertain situation, with none of the instruments at their disposal enabling them to realize their rights to the full. It became possible only many years later when they obtained citizenship in one or another country.

3.12 The right to citizenship

The right to citizenship for everyone is defined in Article 15 of the UDHR. It also includes the right to change citizenship and prohibits anyone from arbitrarily depriving a person of citizenship. Recent opinion surveys (see the introduction) conducted for the Peace Institute suggest that the broader public in Slovenia increasingly understands that, in the legal sense, the erased people are not striving to regain Slovenian citizenship but only to regain permanent resident status.

As a matter of fact, the erased people were not deprived of Slovenian citizenship because they had never had it.²⁹ Accordingly, the issue of citizenship is relevant only in specific situations:

- Many erased persons applied for citizenship but were rejected, and one among the reasons was that they allegedly constituted a threat to the public order and peace; this reason was later declared invalid by the Constitutional Court.³⁰
- Many erased persons wanted to apply for citizenship but missed the six-month deadline for the application, which was 26 December 1991, or they were prevented from applying for citizenship by state officials who refused to accept their presumably incomplete applications.
- Many erased people who were born in Slovenia expected that they would automatically qualify for Slovenian citizenship, as did some of their brothers or sisters born in Slovenia to the same parents (see the example of Jana S. above).
- With the erasure, some persons who were rejected for Slovenian citizenship and who at the time of the erasure had long been absent from their country of origin, lost the effective link with the only country (Slovenia) in which they could, at some point in the future, apply for citizenship through naturalization. Persons who have not obtained citizenship from any country and whom no country treats as its citizens at a specific point in time, regardless of whether or not they would obtain its citizenship if they applied for it, are *de facto* stateless persons. In this sense, in certain cases the erasure led to *de facto* statelessness.

The right of children to obtain citizenship is specifically protected, as in Article 24 (3) of the ICCPR. Some erased persons who lived in Slovenia without legal status and had children during that period were refused the entry of their children's birth into the register. Such is the case of Ismeta and her daughter, whose father also had no legal status:

Our daughter was born in 1999 in Slovenia. When we wanted to enter her birth on the central register of births, they turned us down and instructed us to go to the Bosnian embassy, where they also didn't want to recognize the child because none of us was a Bosnian citizen. My daughter didn't have any documents for two years; she didn't have the unique personal identification number, health insurance or the like. She got status only when I obtained a permanent residence permit . (Ismeta, 49)

²⁹ Certain persons were deprived of citizenship, but according to the definition they do not belong in the group of erased people. The erased people are individuals who on 23 December 1990 were registered as permanent residents in Slovenia but had not obtained Slovenian citizenship and were consequently erased from the register of permanent residents. See Dedić et al. 2003, 55.

³⁰ See the Constitutional Court's ruling No. U-I-89/99, dated 10 June 1999.

Children born before the erasure but still minors at the time when it was possible to apply for citizenship also had difficulties. Since they were minors, only their parents could apply for citizenship in their name, but many failed to do so; others applied for citizenship for themselves and their children and citizenship was granted to them but not to their children as well. In such examples, not only the right to citizenship was violated, but also children's rights and the principle of equality. Such a situation and the subsequent struggle for citizenship was described by an erased person with the pseudonym Tatjana:

As soon as they mentioned that we could apply for citizenship, my mum went there. She applied for herself and for me. At that time I was still underage. My mum got it, but I didn't. They rejected me in February 1992, and in March I came of age. I've been living in Slovenia since the age of four, and I didn't get citizenship, and my cousin who had been here for two months or so got it. We couldn't figure out why this was, so I went there to ask. They couldn't tell. She only told me, "Miss, next month you'll be 18, come then, it won't be a problem." When I came, I remember it, there was a gentleman there with a plastic hand and he asked me to bring proof that I had not been convicted. I remember that after that we quarreled because every time I came, there was something new I had to bring. So I was fed up with him and told him, "Listen now, will you look into that law, a child of ten cannot be under criminal procedure." I was four years old when I came here, meaning that theoretically I could not be sentenced there. So then he somehow fixed it. He added something, scribbled something, God knows what they were doing. (Tatjana, 34)

3.13 The right to take part in public affairs

The right to take part in the conduct of public affairs, as defined in Article 25 of the ICCPR is recognized only to the citizens of signatory states, so it pertains to erased people only if they were prevented from submitting the application for citizenship or if, because they were deprived of permanent resident status, their effective link with the state where they could later obtain citizenship, for example through naturalization, was broken. Even in such a case, this right would not be violated directly, but indirectly by virtue of the chain reasoning principle (had they not been prevented from submitting an application for citizenship, they would have acquired it because they met all the requirements for the acquisition and would therefore have had the right to take part in the conduct of public affairs). The text below is therefore only applicable to those erased people who have found themselves in either of the two situations mentioned above.

The right to take part in the conduct of public affairs covers the right to take part in public affairs "without discrimination and without unreasonable limitations, either directly or through freely chosen representatives;" the right to be elected at genuine periodic elections "which shall be by universal and equal suf-

frage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;" and the "right of access, on general terms of equality, to public service in one's country." (ICCPR , Article 25)

According to the Slovenian legislation, i.e., Article 5 of the Local Elections Act, persons with permanent residence in Slovenia have the right to vote in local elections to district and municipal councils. The erased persons could therefore have exercised this right if they had not been erased. This is still another case of chain reasoning, since erased persons were not prevented from exercising their voting right through a direct, either active or passive action of the state, but they did not have an opportunity to exercise this right because they were deprived of legal status. It is clear that, once erased, a person could not exercise this right because he/she didn't have status (a direct reason) and not because he/she was erased (indirect reason). This again brings us to the practice to which authorities resort when they do not want to directly prevent someone from exercising a specific right, but do it indirectly instead, in an apparently lawful manner, by depriving a person of his/her status. And last but not least, it is also important to remember that all those who were erased had previously had the right to vote at the referendum on the independence of Slovenia. At that time, their participation in the conduct of public affairs was still desirable, but not also later, after the erasure.

3.14 The right to marry and to found a family

The right to marry and the right to found a family are protected by Article 12 of the ECHR, which states that men and women of "marriageable age" have the right to marry and found a family in accordance with national laws that govern the exercising of this right. The rights are also protected by Article 16 of the UDHR, which states that "men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution." This provision also defines that the family, as the natural and fundamental unit of society, is entitled to protection by society and the state.

The part of this provision significant for the erased people is the one protecting the right to marry, because during the period when they had no status or valid documents, they were generally not able to marry in Slovenia. As a matter of fact, during the wars in former Yugoslavia, the erased people did not have problem only with status as such, but they could not obtain their birth certificates, passports or certificates confirming citizenship. They had to apply for these in their supposed countries of origin, although in some cases these were not their real countries of origin (e.g., Bosnia-Herzegovina). However, it was not always possible because of the armed conflict.

Some resolved this problem in such a way that they married their partner, a Slovenian citizen, in another country, for example, their country of origin, as did Siniša.

I went to Serbia to marry, as I couldn't marry in Slovenia. I didn't have any papers and my wife didn't have them, because she too was erased. My wife was born in Slovenia; her sister has citizenship but she doesn't. At that time she was underage and her parents did not apply for her citizenship. I had to marry because our child was on the way, my wife was pregnant. Surname and all that, you know. You know how it is. We went there to marry so that the child could bear my surname. (Siniša, 38)

Since according to the Marriage and Family Relations Act, Slovenian citizenship is not required if one wants to marry in Slovenia, Siniša's right to marry was violated. Furthermore, the said Act does not state that only persons who have permanent or temporary residence in the country are allowed to marry in Slovenia. It only states that future spouses are required to present a citizenship certificate and an extract from the birth register, which are documents not directly related to the erasure: i.e. the erasure did not affect these documents. Therefore, in Siniša's case, there should not have been any well-grounded reason preventing the marriage.

The right to found a family is apposite to our analysis in the part referring to the responsibilities of the State, i.e., the entry of parents' names on the birth register and the child's birth certificate. While we did not identify many problems involving the registration of the child (barring a few examples such as the one concerning Ismeta, above), there were many problems if the parents were not married and the procedure of acknowledging paternity was required to enter the father's name on the child's birth certificate. In some examples the father's name could not be entered, because the paternity acknowledgement procedure could not be carried out if the father had no valid documents. Boris's testimony illustrates the situation:

My daughter was born and my wife and I left the maternity hospital. Since we are not married, I knew that I had to sign that I'm the father. They gave it to me, I signed it and then they said, "Show your ID card" and I gave it. Then they saw that I was a foreigner, that is, not a citizen, and the registrar called the clerk in the department for foreigners. She came, they went somewhere, returned and brought back my ID card, which had been punched, and that was it [...] When they punched my document, ten or fifteen days later my daughter was issued a birth certificate with no father. (Boris, 54)

If an erased person who was not married wanted to be entered as the father on a birth certificate, he had to acknowledge paternity in the country of his citizenship. This, too, created many difficulties, as illustrated by the story of Igor, who lived in Slovenia for many years without any legal status:

My daughter was born in 2000 in Slovenia, and because I had permanent residence in Bosnia-Herzegovina, I had to go to Bosnia and acknowledge paternity there, not in Slovenia. It was very difficult, because they told me that I should have brought my daughter with me, which, of course, was not possible because I could not get any document for her in Slovenia. I eventually managed to fix it. They told me in Slovenia that I had to secure a visa for my daughter, first for three months and then for 9 months. Then I fixed all that was needed to get permanent residence, paid for the visa, and then the clerk told me that my daughter could get only a 9-month visa, actually one-year visa. Fortunately I was told that a child born in Slovenia is entitled to permanent residence through the father. I inquired at the Ministry of the Interior and the clerk there confirmed it. I again went to the administrative unit where they insisted that my daughter would get a one-year visa, but I protested. The clerk at the MNZ [Ministry of the Interior] advised me to go to the administrative unit's boss and tell him that she instructed me so. I argued with the boss and insisted that I was told at the MNZ that I didn't have to pay for my child's permanent residence permit and that it is entitled to it automatically. Three days later I was invited to come, and there was the permanent residence permit waiting there in my daughter's passport. (Igor, 44)

Apart from demonstrating how deeply the erasure intruded into the family relations of erased people or how misled they were by state administration employees regarding their options for regulating their status, this story also offers the answer to the question of whether children's right to be entered into the birth register and children's special right to protection were violated as a consequence of the erasure. By refusing to enter the erased parent's name on the birth certificate of the child, although it was usually the father who was rejected, both the parent's right to found a family (in the sense that such family ties should be officially recognized), and the right of the child to be entered into the birth register with a full set of data about its mother and father, were violated. The condition that either of the parents should have his/her legal status in Slovenia regulated in order to acknowledge paternity and be named on the birth certificate is unreasonable and unjustifiably places a father without legal status in a worse position compared to that of fathers with status and that of mothers. Any document that could prove the identity of the father should have been sufficient, including an invalidated personal document, or a witness could be called in to confirm the father's identity. Any other approach deprives the child of its right to special protection and places the children of erased fathers in a worse position than that of the children of non-erased fathers.

3.15 The right to own property

The right to own property is defined in Article 17 of the UDHR. Everyone may own property alone or together with other people. The same Article specifies that no one shall be arbitrarily deprived of his property. The right to property is

also specified in Article 1 of Protocol 1 to the ECHR, which states that every natural or legal person has the right to respect for his property and that no one shall be deprived of his property except in the public interest and in accordance with the conditions provided by law and the principles of international law. However, this Article also entitles the state to enforce laws which it deems necessary to control the use of property in accordance with the general interest or to ensure the payment of taxes, other contributions or penalties.

These provisions are relevant to this discussion in several ways. First, the erased people could not exercise their right to own property, with the right to ownership through inheritance being particularly important, given that even people who were not citizens of the Republic of Slovenia were entitled to ownership through inheritance (or the principle of reciprocity). During the period when they were without documents, the erased people could not register an inherited property in the land register in their name, meaning that their right to own property was violated. However, when a purchase contract was in question, the answer is not so unequivocal. It is necessary to make a distinction between the two situations. The first one involves those erased people who did not intend to apply for citizenship but wanted to maintain the status of aliens with permanent residence. By taking such a decision, they automatically renounced the right to own property except property gained through inheritance or the principle of reciprocity. The other involves people who applied for citizenship but were refused it; those who expected to acquire citizenship automatically; those who wanted to apply for citizenship but whose applications were refused by the employees at administrative offices as described above or who were diverted from applying by incorrect information. In such cases, it is not possible to say that these people consciously gave up their right to own property, or that they should have known that not having citizenship entailed restrictions on property ownership. An illustrative example is Tomislav's story. He wanted to apply for citizenship but was instructed that it was not necessary to do it immediately as he could apply in 1992. This information was incorrect and also incomplete, because he was not informed that after 26 December 1991 he would not be able to apply for citizenship in accordance with Article 40 of the Citizenship of the Republic of Slovenia Act, which set conditions that were much more favorable than those required when applying for citizenship through naturalization. Nevertheless, thanks to fortunate circumstance Tomislav found his way round, but he is still uncertain regarding the issue of property protection:

A: How did you buy the apartment in accordance with Jazbinšek's law?

T: It was quite simple, my grandfather was still alive, he had Slovenian citizenship, he had the right to reside and he bought it,³¹ but I gave the money and later inherited it. ...

³¹ In the former Yugoslavia, most apartments were owned by the community. People living in these apartments had the "right to reside." After the independence, the residence right holders who were Slovenian citizens had the right to buy off these apartments at a very low price in accordance with the privatization scheme.

A: Later on you sold the apartment and bought a plot of land?

T: I couldn't buy a plot of land, my wife bought it. They've got me there, as a matter of fact, you could sell but you could not buy. It is still not settled. I was appointed a witness of the house purchase transaction, the notary did it for this purpose only, if I come in conflict with my wife, [...] I was named the witness of the transaction, not the buyer. It means that everything is put in her name. (Tomislav, 59)

Those who bought previously socially-owned apartments by providing money and engaging someone with Slovenian citizenship to purchase property for them found themselves in a similar position. Until they regulated their status and were able to register the apartment in their name, they had been taking risk since the third person who formally owned the apartment could sell it without their knowledge. Similarly, they had difficulties with those possessions which by law must be written in the name of a natural or legal person, for example, a car that should be registered in the name of the owner.

Property protection is also relevant with respect to pensions. For years before the erasure, the employers of erased people had paid contributions for pension and disability insurance. According to the case law of the European Court for Human Rights, "property" protected by Article 1 of Protocol 1 to the ECHR includes either existing possessions or assets, including claims, in respect of which the applicant can argue that he has at least a "legitimate expectation" of obtaining effective enjoyment of a property right. A "legitimate expectation" can be based on requirements that need to be met to acquire certain property rights."³² Furthermore, according to the Court, the property includes pension rights, since although the Convention does not include the right to pension as such, the obligatory contributions to the pension fund may imply the ownership right in the scope of contributions paid to the fund.³³ As the Constitutional Court of Slovenia stated in its ruling in 2003, "the citizens of other republics, because they were not recognized as permanent residents from the day their status changed into that of aliens after the Republic of Slovenia became a sovereign country, could not exercise certain rights to which they would be entitled as aliens with permanent residence permit in the Republic of Slovenia."³⁴ Among these rights was the right to contributions paid into the pension fund. This right is particularly important for people who fulfilled at least the minimum criteria to claim disability or old age pension but could not obtain it because they were left without legal status. The law does not require that a person have Slovenian citizenship or legal status in Slovenia to obtain a pension, but everyone who claims a pension should be able to prove his/her identity and provide all required infor-

³² See, e.g., the ruling of the ECHR, dated 24 February 2005, *Veselinški v. The Former Yugoslav Republic of Macedonia*, § 75, and the ECHR ruling, dated 24 February 2005, *Djidrovski v. The Former Yugoslav Republic of Macedonia*, § 80. See also the complaint brought before the ECHR on 4 June 2006 in the case *Kurić and Others v. Slovenia*.

³³ See the ECHR ruling dated 3 October 2000, *Wessels-Bergevoet v. The Netherlands*.

³⁴ Constitutional Court Ruling No. U-I-246/02, dated 3 April 2003, 22. paragraph.

mation when filling out the form. However, persons without legal status or valid documents could not provide this information (e.g., permanent or temporary address, tax number, the number of a personal document etc.). A person must also be physically capable of receiving a pension at his/her official address or bank account. Erased people without valid papers and a legal status in Slovenia were therefore physically incapable of receiving a pension.³⁵ If they were unable to meet the requirements for permanent resident status, they had no choice but to leave Slovenia, obtain legal status in another country and then claim a pension in Slovenia, if there existed such an agreement between Slovenia and the other country. The requirement to leave the country, imposed upon erased people and particularly older people who had lived in Slovenia for decades before the erasure, was disproportional and prevented the erased people, and still prevents them, from exercising their right to the protection of possessions or property. Accordingly, erased persons could exercise their right to pension only after they obtained legal status (e.g., when they acquired citizenship or a permanent residence permit). Ekrem told us:

I worked in Slovenia from 1976 to 1992 when I became redundant because of technological progress. From that time on, I could work only illegally because I was erased. When a short while ago I obtained citizenship, Dr. Doplihar from the Outpatient Clinic for People Without Health Insurance began to arrange papers for my disability pension. The procedure is not yet finished. (Ekrem, 56)

This right is also important if viewed from another perspective: many erased people no longer were able to find a job legally, except those whose employers arranged a work visa for them, which initially could be obtained for only three months at a time. They could work only illegally, or they did not work at all, and in both cases their contributions were not paid. Similarly, they were not entitled to participate in the programs within the framework of active employment policy or public works, nor were they entitled to other arrangements by which the state takes upon itself the payment of a certain part of the contributions (e.g., for families with many children). Consequently, people forced to live “illegally” lost many years of life (for many of them it was the most productive age when they could find employment or at least apply for a job), for which they can never compensate, and similarly they no longer have the possibility of having the contributions paid for this period of time. In this sense it is indeed not possible to speak about the violation of the right to possessions, since this type of possession is only hypothetical, but the information is important for understanding the extent of the impact the erasure had on the lives of these people.

³⁵ It is interesting that many erased persons obtained a tax payer ID, which the Tax Authority was officially obliged to assign, meaning that their records were not harmonized with those of the Ministry of the Interior and administrative units.

3.16 Freedom of thought, expression and belief

Various documents define the rights to freedom of thought, expression and belief somewhat differently, but they are interrelated and therefore should be considered in connection with each other when discussing the issue of erasure.

Article 18 of the UDHR states that “[e]veryone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.” Similar provisions are contained in Article 18 (1) of the ICCPR, and Article 9 (1) of the ECHR. Furthermore, Article 19 of the UDHR states that “[e]veryone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” The ICCPR further defines the right to belief, so in accordance with Article 18 (2) of this Covenant, no one “shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.” This freedom “may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others” (Article 18 (3)). Article 19 defines in detail the right to freedom of opinion, stating that no one shall be persecuted because of his opinion, that everyone has the right to freedom of expression, and that any restriction of these rights must be provided by law and must be necessary to ensure respect for the right and reputation of others, the protection of national security, public order, public health or morals. The same provision is contained in Article 9 (2) of the ECHR, while Article 10 defines in detail freedom of expression by stating that everyone has the right to freedom of expression and that this right “shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.”

These rights are relevant to our discussion when considering primarily the circumstances in which the erasure took place, but also the circumstances by which it is justified and which are used as an argument to oppose resolution of this issue. What we have in mind here are the objections:

- that the erased people did not want to accept Slovenian citizenship when it was offered to them;
- that they did not respond to calls to join the territorial defense units;
- that they opposed the independence of Slovenia or voted against sovereignty and independence of Slovenia at the referendum.³⁶

³⁶ The last two objections are difficult to verify and should be irrelevant. However, in the case law of the Supreme Court, such a conclusion was based on situations when YPA employees left Slovenia along with their employer (the Yugoslav People's Army), which was interpreted as indicating opposition to Slovenia's independence. The Constitutional Court later declared this interpretation unconstitutional. See the Ruling of the Constitutional Court No. Up-77/94, dated 16 September 1997.

It is necessary to emphasize that even if all these objections were well-grounded, viewed from the perspective of the right to freedom of thought, expression and belief, these are not reasons that could justify the unlawful erasure that followed. The first objection can be met by saying that even if the erased people did not want to apply for Slovenian citizenship, this was their legitimate choice, protected by the right to freedom of thought and belief. What is also important in this connection is the standpoint of the authorities, at the time of the erasure as well as later, that Slovenia chose the principle of free choice so everyone could decide to accept or refuse Slovenian citizenship with the state not enforcing acceptance. This stance *does not imply* that it is allowable to punish people who decided not to take Slovenian citizenship by depriving them of their existing status, to which citizenship is not tied: i.e., the status of permanent resident. The second and third objection even more explicitly refer to beliefs and opinions and therefore warrant a similar answer. Even if they refused to join the territorial defense units, even if they opposed the independence of Slovenia, and even if they voted against it at the referendum, their conduct was still consistent with their right to freedom of thought and belief, so it cannot be used as a justification for depriving them unlawfully of permanent residence status. Moreover, even if the law did provide that a person could be deprived of a status on the grounds of such reasons, such a provision could be declared unconstitutional by the Constitutional Court if an assessment of constitutionality was required, and indeed the Constitutional Court has already issued such a ruling.³⁷ Their permanent resident status could have been revoked only if they were found guilty of a criminal offense (e.g., against the security of the state) and sentenced to imprisonment of more than three years, as was defined in Article 24 of the 1991 Aliens Act.

Some interviewees told us that they did not approve of independence because they thought it was in contravention of Yugoslav federal laws. Others, who were members of the Yugoslav People's Army, said that they did not want to cross over to the territorial defense units because by so doing they would have violated the oath they took to respect the laws of the SFRY.

My friend worked for the territorial defense – he came to me twice and asked me to cross over. Of course I said that I'd not dream of doing it, as, firstly, the uniform is a sort of ethical code, I made an oath. Secondly, regardless of the ethical code, I was a post-graduate student and that's what I wanted to do, rather than aim my gun as a TO (territorial defense) at someone in Tolmin. It's completely pointless. (Željko, 49)

In many cases, though, these objections were entirely unfounded. Many erased persons we interviewed assured us that they wanted to apply for citizenship but their applications were not accepted or they were instructed to apply

³⁷ Ruling of the Constitutional Court No. Up-77/94, dated 16. 9. 1997.

after January 1, 1992. Many responded to the calls to cross over to the territorial defense units, and many others voted in favor of Slovenia's sovereignty in the referendum and also personally supported its independence but were nevertheless erased.³⁸ A particularly illustrative example is that of Begeš, who after the plebiscite, at which he voted for independence, donated around 1500 euros for humanitarian purposes to help the young country and even received a letter of thanks from then PM Lojze Peterle. The generalization of any specific attitude, or the attribution of a certain personal viewpoint to all erased people distorts the picture of the problem and leads to the mixing of legal and political issues, although the latter have nothing to do with human rights law, or the right to freedom of thought, expression and belief.

3.17 Freedom of association

Since the community of erased people comprises more than 25,000 individuals who share a specific problem and strive to solve it as a group, the right to free association is of vital importance for them. They began to exercise it actively when they as individuals became aware that they were not random victims of an administrative error, as they thought initially during the first years following the erasure.

To establish whether their right to free association was violated, it is important to know the content of this right. Article 20 of the UDHR defines it as "the right to freedom of peaceful assembly and association" and prohibits any compulsion to join any association. Article 22 of the ICCPR defines this right in even greater detail as "the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests." The exercising of this right may not be restricted except as prescribed by law and as necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.³⁹

In general it is possible to conclude that the erased people's right to association was not violated. In accordance with the Association Act, they established two associations whose purpose is to remedy the wrongs they suffered through the erasure (The Association of the Erased Residents of Slovenia and the Civil Initiative of Erased Activists). It is also possible to say that, given the numerous public gatherings organized by the erased people and their supporters over the past eighteen years, their right to public assembly was not violated either. However, to establish accurately to what extent these rights were respected, it is also necessary to look into individual examples, i.e. the situations when their gather-

³⁸ Cf. statements in the Decision of the Supreme Court No. U 329/95-6, dated 25 September 1996.

³⁹ This article does not preclude legal restrictions on this right applicable to members of the armed forces and the police (paragraph 2). A similar provision is found in Article 11 of the ECHR.

ing was not allowed. Such an example would be the hunger strike by the erased people on 21 February 2005 in the TR3 building in Ljubljana, where the seat of the European Commission in Slovenia was then located. The protesters were thrown out by the guards in the middle of the night (Pistotnik 2007, 227). If we ignore for the moment the ethical issues, it is still not possible to say that this event represented a violation of their right to assembly, since they were thrown out by security staff guarding a building that was not a public space suitable for a gathering of this kind.

3.18 Minority rights

Article 27 of the ICCPR defines minority rights as the obligation of countries inhabited by ethnic, religious or linguistic minorities not to deny the members of these minorities the right to enjoy, together with other members of the same group, their own culture, to profess and practice their religion or use their own language. Minority rights are indeed not relevant to the case of erased people as a group with specific needs, but they bear importance for the broader communities to which the erased people belong by virtue of ethnicity, language or religion. The majority of erased people are members of either the Croatian, Bosnian, Serbian, Montenegrin, Macedonian, Albanian or Kosovar, or Roma minorities in Slovenia. None of these minorities has officially recognized minority status in Slovenia. Only the Roma community has the status of a special ethnic community, defined both in the Constitution and in the Roma Community Act, but this status is not equated legally with that of national communities, as the Slovenian Constitution names national minorities. Other minorities that are usually referred to as new, unrecognized or non-autochthonous minorities comprise the constitutive nations of the former Yugoslavia. A detailed analysis of the minority rights required by unrecognized minorities would be beyond the scope of this chapter. Therefore, let us only state in conclusion that, if the minority rights of erased people were violated, then these are rights that belong to the ethnic/national or linguistic minority with which individual erased persons would identify (for more on minorities and minority languages, see the chapter by Brankica Petković).

4. Economic and social rights

As has been established, economic, social and cultural rights belong to the “second generation” of human rights, and their point of departure is the term “equality” in the slogan of the French Revolution. The theory of human rights law considers that the exercise of second-generation rights is predicated on the exercise of the first-generation rights, meaning that it is not possible to exercise second-generation rights unless first-generation rights are respected. These two generations of human rights also differ in that the rights of the second genera-

tion require extensive funds which, however, are not necessary for upholding the rights of the first generation. However, this criterion is not invariably tenable. For example, to ensure consistent prohibition of torture, education of not only prison guards but also society as a whole is necessary, and education requires a certain amount of financial means.

This essay will only look into economic and social rights, as cultural rights pertain to the erased people to the same extent as minority rights (for more on this, see Petković in this volume).

Economic and social rights belong in the group of rights mainly assured to the citizens of a country, while aliens living in a country but not having its citizenship enjoy a limited number of these rights depending on their legal status (e.g., the type of residence permit). The basis for the different treatment of citizens and aliens in “developing” countries is provided by Article 2 (3) of the ICESCR, which states that, “with due regard to human rights and their national economy,” these countries “may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.” If this provision applies to “developing” countries, we could infer *a contrario* that such a differentiation is not acceptable in “developed” countries. Accordingly, “developed” countries cannot claim that they are too poor to guarantee non-citizens all the economic and social rights specified in the Covenant. The provisions set forth in the ECHR also apply to all people living in the territories of its signatories, regardless of their citizenship or legal status, meaning that these countries are obliged to guarantee the few economic and social rights protected by it to both their citizens and other nationals. Another international legal document that is important within the field of the second generation of human rights is the European Social Charter (ESC). The signatories are obliged to recognize the rights protected by the Charter as applicable to all citizens and aliens with regulated legal status living in their territories who are nationals of another country that is a signatory to the Charter. This excludes all other nationals living in a country but having no legal status and all residents with legal status but having citizenship of a country that is not a signatory to the Charter. Any country can enter a reservation to specific provisions in international documents, meaning that specific articles or provisions are not binding on that country even though it is a signatory. Slovenia entered a reservation to the ESC stating that it would not guarantee social rights to nationals of other signatories to the same extent as they are accorded to Slovenian citizens. In other words, the ESC is not binding on Slovenia with respect to foreigners with permanent residence in Slovenia, so the erased persons would not have been entitled to this right even if they had preserved their status of permanent residents. However, another provision important for erased persons is one contained in the Social Assistance Act (Uradni list RS No. 54/1992 plus amendments), which stipulates that aliens with permanent residence in Slovenia are also entitled to social assistance.

As was clarified above, according to Slovenian legislation pertaining to economic and social rights, the number of rights granted depends on the person's legal status. Only Slovenian citizens are entitled to the full range of economic and social rights (the right to work, the right to social assistance, the right to education, to health care etc.). Aliens with permanent residence in Slovenia are entitled to a large number of these rights; aliens with temporary residence are entitled to some of these rights only, while aliens without legal status in Slovenia are only entitled to the right to elementary education, which applies to school-age children up to 15 years of age. This clearly shows how large was the impact of erasure on the victims: they were transformed from permanent residents who were entitled to all existentially important economic and social rights in the former Yugoslav Republic of Slovenia and, until 26 February 1992 in the new, sovereign Slovenia, to aliens without legal status entitled to one right only. Using the erasure, which at that time was believed to be based in law, the authorities deprived the erased persons of their access to economic and social rights in Slovenia, or rather, they did not deprive them of these rights directly but of their legal status, creating a situation in which they no longer met the main requirement – the status of permanent resident – to be entitled to these rights. This enabled the authorities to continue to refer to the legal provisions throughout the past years, regardless of the fact that the loss of status was the result of a deliberate move. The burden of survival was therefore entirely transferred to the victims of this measure.

Based on Slovenia's periodic report on the implementation of the ICESCR, the UN Committee on Economic, Social and Cultural Rights also established that economic and social rights were violated through the erasure and its consequences, and expressed its concern for the erased citizens of the former Yugoslavia who lost their right to reside in Slovenia and consequently, their economic and social rights, including the right to work, to social assistance, health care and education. The Committee gave a recommendation to Slovenia to adopt adequate legislative and other measures needed to remedy these wrongs, including the reinstatement of permanent resident status for all affected people in accordance with the Ruling of the Constitutional Court. These measures ought to enable these individuals to claim their rights and access to health care, social assistance, education and work.⁴⁰

4.1 The right to education

This right is variously defined in various documents. The UDHR, Article 26, states that everyone has the right to education. "Education shall be free, at least in the elementary and fundamental stages. Technical and professional education shall be made generally available and higher education shall be equally acces-

⁴⁰ CESCR, Concluding observations on Slovenia No. E/C.12/SVN/CO/1, of 25. 11. 2005.

sible to all on the basis of merit.” One of the goals of education, according to the Declaration, is “the full development of the human personality[.]” Article 13 of the ICESCR defines the right to education in further detail, imposing upon the signatories the obligation to guarantee the right to education to all. It states that “primary education shall be compulsory and available free to all.” Different forms of secondary education, including technical and vocational secondary education, “shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education.” As to higher education, it “shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.” Finally, “[f]undamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education[.]” Article 2 of the ECHR states that no one shall be deprived of his right to education.

We have already mentioned that erased school-age children up to 15 years of age were generally able to exercise their right to primary education, since this was not predicated on their legal status in Slovenia. But even so, in some cases they encountered difficulties when they wanted to enroll in primary schools.⁴¹ Such examples do not leave room for doubt that the right of these children to education was violated, and consequently the children’s rights. Children without legal status encountered difficulties when they wanted to enroll in secondary schools, as Jana S. recounted for us:

I then went to enroll in school. They wanted my citizenship and documents, but I couldn’t show them anything, so I couldn’t enroll. It was 1992, I was 15 at that time. [...] I was already accepted as I passed the exams, but when I wanted to register I couldn’t, because I didn’t have the documents. [...] So we were all tense, nervous, I didn’t know who to turn to, we had money problems, who could help us and where, nobody wanted to help, I mean, nobody understood it. I cried, I cried all the time. I pleaded, as I said, I pleaded at the administrative unit, but no. They were indifferent, I told them I couldn’t go to school. “Yeah,” he said, “you need a document,” they said. So I said, “Then give me the document and I’ll go.” How without a document? You go and try to cross the border without a document. I, too, cannot go to school without a document. And in the school, they said, “Unfortunately, we cannot accept you.” I cried so much. I turned to the Center for Social Work, and a lady there told me, “You’re young, you can work.” I said, “Madam, how can I work? What with? I have no documents.” [...] In 2000 I got citizenship and I immediately enrolled. But by then my determination was gone, I didn’t want anything. So many years, you know... When you’re young you are willing to do anything, but when you lose so many nerves, and so many other things, then you know that you feel down. (Jana S., 30)

⁴¹ The erased person who related this information wanted to remain anonymous.

The same difficulties were encountered when they tried to enroll in university, or a higher grade of secondary school or university. Jasna recounted her son's experience:

My son completed secondary education, enrolled in a faculty and completed the first year, and then there came the erasure. When he wanted to enroll further, he couldn't do it, because his status was unregulated. So he terminated his studies. (Jasna, 61)

Children and young people such as Jana S. without legal status were denied their right to education and equal access to secondary and higher education. Had they retained the status of permanent residents, they could have enrolled, at least after paying a fee, in secondary, high or higher programs, but without legal status the only option they had was to stay idle or work illegally.

4.2 The right to work

It is possible to say that the right to work comprises a wide range of rights, from the right to access or equal access to the labor market, freedom to choose employment, fair working conditions, protection against unemployment and vocational training to many other rights under labor legislation and legislation pertaining to aliens' employment and work. The international documents cover various aspects of this right. Article 23 of the UDHR states that "everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment." It further provides that everyone, without any discrimination, "has the right to equal pay for equal work" and that every worker "has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection." Finally, everyone "has the right to form and to join trade unions for the protection of his interests." Article 6 and 7 of the ICESCR define this right in even greater detail. Article 6 states that the signatories "recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right." Among the steps that should be taken by every signatory to ensure the full realization of this right are "technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual." Article 7 contains the provision that signatory states "recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by

men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.”

For the erased persons, all of the above-mentioned was inaccessible during the period of their life without legal status. Some of these rights were not respected even if an erased person obtained a work visa and was able to retain his/her job. The erased persons whose employers did not arrange for work visas had no choice but to resort to random illegal jobs, which placed them in a position similar to that of other undocumented migrants. Such workers are not entitled to any rights; their salary is uncertain, their social contributions are not paid, and they do not have health insurance, which places them in a particularly precarious situation if they perform heavy physical work in the construction sector. A single-mother with the pseudonym Indira talked about her years of working illegally.

All this time I was without status, had nothing. I worked 23, 30, 34 hours in a row. Without a pause! I finished at one job and went to the next, and so on. I was cleaning, including master cleaning, in companies, apartments, all of that illegally. All of that in order to make a living for my small children. (Indira, 48)

Those who were without legal status for several years and worked illegally throughout this time in order to earn a living also lost a corresponding number of qualifying years towards their pension. Tomislav told us the following story:

I was born in Slovenia and I was living in Slovenia. In 1982 or 1983 I started my first business, metal products manufacturing. I had to close the company in 1995, because I was erased by the Chamber of Commerce, because I didn't have Slovenian citizenship. I've had a regular job only since 2006. I lost 12 qualifying years because of the erasure. (Tomislav, 59)

These are just two illustrative examples that we chose in an attempt to show how heavy was the blow dealt by the erasure. A detailed assessment of the violation of the right to work and labor rights would require scrutiny of each individual case, but it is possible to reach the general conclusion that by depriving these people of their legal status, the authorities cunningly circumvented the obligation to recognize their right to work; as regards those who were forced to work illegally, their labor rights were similarly ignored. The violation of the right to work was indirect; they did not have the right to access the labor market because they did not have legal status, but they were without status because they were unlawfully deprived of it. An argument opposing the conclusion that this was a case involving violation of the right to work would be an argument *non sequitur*. For example, one could ask how we can know that it was the erasure that

deprived these people of employment until 1997. While the main reason for the loss of employment lay in the erasure, later on their unemployment could be attributed to the changes in the social system that led many companies to bankruptcy, or the reason could have been inadequate education or insufficient work experience, even perhaps a health condition preventing a person from working. An answer could be that any of the above-mentioned reasons can be used as a valid argument the moment one has access to the labor market enabled by his/her legal status, i.e. permanent resident status in this concrete example. It is this precondition of which erased persons were unlawfully deprived, so they could not meet this requirement. If and when this wrong was remedied, that is to say, if and when an erased person regained his/her status, only then could he/she offer his/her knowledge and work experience to potential employers and only then could an employer establish if a person was suitable for the job in question and decide whether or not to employ him/her.

4.3 The right to social security

Article 22 of the UDHR states that everyone as a member of society has the right to social security and “is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.” Article 9 of the ICE-SCR, whose provision applies to all people in the territory of a signatory state, specifies that signatory states recognize everyone’s right to social security, including social insurance. Social insurance means that every person without income is entitled to social assistance. Ekrem related his story about life without social insurance. Much like other erased persons, he too was not notified about his erasure from the register of permanent residents.

I realized that something was wrong in 1992 when I lost my job and then could not register with the Employment Service because my documents were invalid. I went to the administrative unit to get new ones, but they turned me down everywhere and told me to regulate my alien status. It was impossible to do at that time, I couldn’t bring any document, because the municipality of my birth was in the war zone. (Ekrem, 56)

The son of Begeš, one of the oldest erased persons still alive, told this story:

My father was born in 1920 in what is today Hungary, and he came to Slovenia in 1956 from Croatia. He obtained permanent residence in [the name of a town in Slovenia] in 1958. In 1997, when his toe got crushed, he couldn’t go to hospital. I went to the social service office where they told me that my father didn’t have rights deriving from social insurance. I couldn’t believe it, as my father paid contributions throughout the years of employment. Supposedly, the reason

he lost his rights was that he was a member of the YPA [Yugoslav People's Army]. My father never worked for, and was never in any way related to the YPA. Among the responses to our applications for the restoration of social rights, my father also got a document stating that he was not entitled to social rights "because of then political circumstances." (Begeš, 89)

The erased persons were therefore transformed from permanent residents who enjoyed all the vital economic and social rights in Slovenia to persons without any legal status and consequently without social security. In this case too it would be possible to use an argument non sequitur and claim that the restrictions on exercising the right to social security were a direct consequence not of the erasure but of the legal regulations according to which a person can pay social contributions in Slovenia if he/she has residence in Slovenia. And again, this argument can be refuted by saying that erased people were unlawfully placed in a situation in which they could not meet this basic requirement. The right to social security is also related to the right to own property in the part referring to pensions. Certain erased persons fulfilled the minimum requirements that would have entitled them to claim disability or old age pensions. Accordingly, not only their right to property but also their right to social security was violated if they could not obtain pensions. The right to social security is further related to the right to income support that is defined within Slovenian national legislation in the Pension and Disability Insurance Act. Indeed, this right belongs only to persons who have permanent residence in Slovenia, as the Supreme Court confirmed in its ruling No. VIII Ips 248/99 dated 7 December 1999, establishing that the entitlement to the right to social security is predicated on the resolution of the question of whether a person was entitled to permanent residence in Slovenia during the period for which he/she wants to claim this right. The authorities were aware of the fact that the erasure would deprive erased people of the right to social security, as is obvious from the letter of the Interior Minister at the time, Igor Bavčar, dated 4 June 1992. In this letter the Minister proposed that the Government ignore the rights of erased people arising from their permanent resident status, as this would entitle them to social assistance according to the Social Security Act that was drafted at that time.⁴²

4.4 The right to basic care and protection against poverty

Although all human rights are equally important and defy hierarchical ordering, in the context of everyday life it would be possible to say that the right to basic care and protection against poverty is the most basic of all fundamental economic and social rights. It includes the right to protection against social exclusion and the right to a basic standard of living, which is ensured, in Slovenia

⁴² The Letter by the Minister of the Interior, Igor Bavčar, to the Government of the Republic of Slovenia, No. 0016/1S-010/3-91 dated 4 June 1992.

as well as the majority of other countries, through the right to social financial assistance and child benefit. Social financial assistance and child benefit are the types of income that are not tied to previous insurance or contributions paid. In Slovenia, every person with permanent residence in Slovenia who does not have any income or whose income is below the legally determined minimum, is entitled to social financial assistance. Moreover, according to Article 65 of the Parental Protection and Family Benefits Act,⁴³ one parent who has residence in Slovenia is entitled to the child benefit if the income per family member does not exceed 99 percent of the average salary in the country.

Article 25 of the UDHR, which applies to all residents in the territory of a signatory country regardless of their legal status, states that everyone “has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” Children and mothers are entitled to special care and assistance. Article 11 of the ICESCR defines this right somewhat differently: “The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”

The field study group that researched the consequences of the erasure among individuals and families came across many examples of severe poverty that was the result of erasure, but the affected people, who had no legal status or valid documents, could not turn for help to any state institution dedicated to resolving social distress. They could only turn to Caritas or the Red Cross, the two institutions that do not check one’s legal status. Emina described her experience of social distress following the erasure.

It was very difficult to earn a living. Those were hard times. For example, if my child needed something, I used what my brothers gave me. If I had something, I sold it to be able to buy food. So that the child was not hungry. Or I went to the market, sometimes I bought cloth and then made bags and things like that. Then I went to the market to sell it, for 30 tolar at that time, to make a living. To be able to buy food for the child. (Emina, 47, and Jasmin, 19)

Indira, whom we already met in the section on the right to work, continued her story as follows:

It was hard for children without documents. I worked, their father left and when I’d come home the older one was so ... nervous. I’d come in tired, wanting only to lie down, and he was nervous. He’d say that he was not like other children, that he had nothing and couldn’t do anything with his friends, so it really hurt me. [...] If

⁴³ The law was adopted in 2001 and later amended. Before its adoption, the child benefit was regulated by the Family Benefits Act, Uradni list RS No. 65/1993.

it had lasted longer, I'd not have been able to stick it out. Because I had one job in the afternoon, then a nightshift, the whole night until morning. And in the morning another job, going to work elsewhere. Until four, and at four I went to work again, the same afternoon. And so on, without stopping. (Indira, 48)

Some even experienced hunger, as Begeš's son testified:

My father didn't have money, could not get his pension, so he – I was surprised at some things – he searched in garbage bins for food. And in the stores they saved for him the food that was past the expiration date, so they'd discard it otherwise, for example, doughnuts, yogurt, so he could take it home. (Begeš, 89)

These situations show that the erased people were not protected against poverty but endured painful social exclusion. They could not secure on their own a standard of living for themselves and their families that would enable them to live healthy and dignified lives, while on the other hand, owing to the absence of legal status, they could not turn to any state body that would have been accessible to them had they not been deprived of permanent resident status.

4.5 The right to health care

Since the area of health is dealt with in detail in the chapter by Uršula Lipovec Čebren, we will not discuss in detail the health condition of the erased people in this section. As with other rights, we will restrict ourselves to an examination of how this right was respected. According to Article 12 of the ICESCR, the right to health means “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.” The measures taken by the signatory states to achieve the full realization of this right include those necessary for the reduction of the stillbirth-rate and infant mortality and for a child's healthy development; the improvement of all aspects of environmental and industrial hygiene; the prevention, treatment and control of epidemic, endemic, occupational and other diseases; the creation of conditions that assure medical service and medical attention for all.

Since the erased people were left without legal status, for many of them health care was inaccessible for many years. They had health insurance if they managed to obtain a work visa and a job, or a permanent residence permit, but if they had only a temporary residence permit, they had to pay for it from their own pocket. Only few among them could afford to pay health insurance, because it was provided by commercial insurance companies, meaning that it was expensive and therefore inaccessible to many even today, as Ekrem told us:

I still don't have health insurance regulated, as I cannot fix it without a personal ID card. Before 2000 I didn't have health problems, but then I got a serious form of diabetes. For two years I didn't have any treatment, and then Dr. Doplihar

began to treat me [the retired doctor then working for the Outpatient Clinic For People Without Health Insurance in Ljubljana]. Since then I've been getting two injections a day, and I have to take strong painkillers because of the severe pain in my legs. (Ekrem, 56)

These examples clearly show that erasure from the permanent residents register violated the right of these people to equal access to health care and medical services, since in accordance with the Health Care and Health Insurance Act, they would have been able to enjoy basic health insurance and all services it included had they been able to retain permanent resident status. Access to health care was possible only upon payment, meaning that those erased people with meager finances were in a worse situation than those who could afford to pay for medical services and medicines.

4.6 The right to housing

The ICESCR does not define the right to housing as a separate right but as one of the rights that should be ensured in order to achieve an adequate standard of living. This proceeds from Article 25 of the UDHR and Article 11 of the ICESCR, which state that the signatories recognize everyone's right to an adequate standard of living for himself and his family, including adequate food, clothing, housing and the right to the continuous improvement of living conditions.

For the erased people, the erasure eliminated any possibility of accessing housing legally. Before the erasure, most of them had the right to reside in apartments provided by socially-owned companies for which they worked, or apartments for the military staff whose owner, after Slovenia gained independence, became the Ministry of Defense of the Republic of Slovenia.⁴⁴ Those who as community members had the right to reside in socially-owned apartments in accordance with the 1982 Housing Relations Act lost their right to buy these apartments when the 1991 Housing Act (known in Slovenia as Jazbinšek's Law) came into effect. Moreover, during the period preceding the erasure they could not buy these apartments either, because they did not have the right to own property (Article 81 (2) of the Aliens Act), although they had all other rights and obligations the same as Slovenian citizens. Accordingly, from 19 October 1991 (the date the Housing Act went into effect) to 26 February 1992 (the date of erasure), they could sign tenancy agreements. To put it differently, the nationals of other republics of the former Yugoslavia could buy apartments only if they became Slovenian citizens. The testimony of erased Jasna illustrates this:

We were not left without our apartment, we stayed in it, as it was owned by my husband's former employer. We got the offer to buy the apartment, but since we

⁴⁴ The transfer of property right was based on Article 11 of the Housing Act (SZ), Ur. l. RS No. 181/1991-1.

did not have a permanent residence permit, we couldn't do it. Now we pay rent, 140 euros plus expenses. And we only have one room, 39 square meters in size. (Jasna, 61)

It is obvious from Jasna's account that she was not aware that even had she retained permanent resident status, she would not have been entitled to buy the apartment, because the condition was Slovenian citizenship. She could only sign a tenancy agreement, and after the erasure even that became impossible. Such situations led to forceful evictions, or the apartments were seized or taken away in another manner during the absence of the tenants (e.g., while they were exiled from the country or were absent for other reasons). If a person did not buy the apartment and did not sign a tenancy agreement and, as a result, moved out, in accordance with Article 126 of the Housing Act he/she was entitled to remuneration for the investment in the apartment (a kind of compensation for damage), regardless of why he/she failed to buy the apartment. The Supreme Court confirmed that citizenship or legal status did not affect the right to remuneration.⁴⁵

As a consequence, the erased people became dependent on their friends and relatives for housing, or they had to resort to unregistered rental at commercial prices. Those who were left without any source of income (e.g., because they were ill and couldn't work, not even illegally) were in the most precarious situation. Stanka told us about her situation:

In 1992 I applied to buy the apartment according to the Jazbinšek law, but I was not entitled to it, because I didn't have citizenship. In 2001, the owner ... sold the apartment block to a third person, without taking into account my right of pre-emption and without notifying me. I learnt about it only when the new owner tried to evict me. I filed a suit but the court ordered eviction, although the ruling is not yet final. In the meantime, I have often been the victim of verbal and physical violence on the part of the new owner. (Stanka, 63)

The erasure rendered many of them homeless, and that in all senses of this word – they moved from one temporary residence to another, lived in shacks or out in the open (see Miroslav's story above). With the loss of housing and sources of income, their health deteriorated too, so most erased people who became homeless are now in a worse health condition than those who were spared this experience (Lipovec Čebren 2007, 228).

Even if they had retained permanent resident status, as non-nationals they would not have been entitled to not-for-profit housing. Given the provisions in the UDHR and ICESCR, the requirement of Slovenian citizenship unjustifiably places foreigners with permanent resident status in a situation that is worse than that enjoyed by Slovenian citizens.

⁴⁵ The Decision of the Supreme Court No. II Ips 397/94, dated 7 February 1996.

5. Children's rights

As a vulnerable social group, children enjoy special protection, so according to international conventions, signatory states have additional obligations towards children. According to the last count of erased people, conducted by the Ministry of the Interior in January 2009, of 25,671 erased persons altogether, as many as 5,360 were younger than 18, i.e. almost 21 percent.

Since children could not apply for citizenship on their own, but the application had to be submitted by their parents or guardians, their loss of legal status was tied to that of their parents or guardians. Only a few parents applied for citizenship for themselves only. Most applied for both themselves and their children, but there were cases in which the parents' application was approved and the children's was not, although they were submitted on the same day (see Tatjana's story above; she was still a minor when she was erased).

In addition to all the rights discussed in this chapter, the Convention on the Rights of the Child protects several additional rights. According to Article 3 of the Convention, in "all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." The signatories "undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures." Furthermore, the signatories undertake to ensure "that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

The rights protected by this Convention that are of particular importance for the erased children are as follows:

- the right to be registered immediately after birth and the right to acquire a nationality, protected by Article 7; the signatory states are obliged to ensure the implementation of these rights in accordance with their national legislations and obligations under international regulations in this field, "in particular where the child would otherwise be stateless." In Slovenian legislation, the main principle observed in awarding citizenship was, and still is, the *ius sanguinis* principle (the nationality of the child is the same as the nationality of the parents). In practice this meant that children born in Slovenia to parents who were citizens of other republics of the former Yugoslavia, were registered in the central register of the home republic of their parents. If the parents were citizens of different republics, the child was registered in the republic chosen by the parents.

However, studies suggest that these rules were not consistently followed, and the right of children to be registered immediately after birth was frequently violated. Such was the case of Ismeta's daughter, who was left without legal status for two years after her birth, because the entry of her birth in the register of births in Slovenia was refused, and she received no help from the Embassy of Bosnia Herzegovina either, because she was born in Slovenia and her parents were not recognized as Bosnian citizens.

- In such cases it is also possible to conclude that the child's right to identity was violated, as in accordance with Article 8 of the Convention, identity includes "nationality, name and family relations as recognized by law without unlawful interference."
- Another right that is important for erased children is the right not to be separated from their parents, as stated in Article 9 of the Convention. This right was violated when one of the parents was expelled because of illegal residence in Slovenia as a result of the erasure. The Convention further states that if the separation is the consequence of an action taken by the state, including exile, the state must provide the child with information on the whereabouts of his/her parents. It should be noted that, given that erased people were "taken to the state border" as instructed by the dispatch mentioned earlier in the text, and given that their last permanent address was in Slovenia, the Slovenian state bodies did not know the whereabouts of the expelled parent. That this is true is corroborated by information found in the archive copies of permanent address records specifying the erased parent's home republic or at best a district in that republic as his/her address after expulsion – regardless of whether this was true. As far as we are aware, no permanent residence record contains the full address of an erased parent in another republic.
- Knowing the facts above and knowing the attitude of the authorities towards the erased people, it is not possible to expect that the right of the child contained in Article 10 of the Convention would be respected, i.e., the right to maintain contact with the parents and the right to enter and leave a country for this purpose.

The statement of a Roma man, today 23 years old, who was still a child at the time of the erasure reveals how severe a blow the erasure was for some children:

I've been here for 23 years. I was born in 1985 in Ljubljana. I'm erased, they erased me. I grew up here without parents. My parents are divorced. I never went to school. Nobody helped me to enroll in school. I didn't have even one document. A short while ago I applied for permanent residence. I'd like to learn the language. I spend all the time here in the neighborhood, we speak Yugoslav or Romany – that is our language. I speak only a little Slovenian. Could you help me to enroll

in school? I've spent my whole life here, I never went to school, not for one day. My parents divorced. My mother left and my father didn't take care of me. I lived with relatives, my aunt, uncle and so on. I lived everywhere for a while. I didn't go to school and I don't have any document. My cousin told me that you cannot live without documents. I didn't know how to apply for documents. He came with me and I applied for permanent residence, two weeks ago. I don't know how I could enroll in school. People here don't help much. I'm illiterate, I cannot read or write. (Damir, 23; Hrženjak et al. 2008, 89–91)

It is possible to assert with certainty that in Damir's case many children's rights were violated (the most obvious is the violation of the right to primary education, which is universal and access to which is not tied to any legal status); as a matter of fact, it is difficult to pinpoint a right that was not violated in this child's case. No social service responsible for such children took interest in him, even though he was without parents. Furthermore, it was not only that erased children's rights were violated, but they suffered in many ways. Jasmin, an erased child, told us about his feelings:

I shed many tears because of it, I couldn't understand why other children could and I could not. I blamed my mum, many times I asked her why she had me at all, if I couldn't even play like other children. Only now do I realize that my mum is not to blame, that the state is responsible, so I call on those people who at that time committed this crime to give back to me all the rights that I'm entitled to and I ask them who will give me back, and how, my lost childhood. (Jasmin, 19)

6. Prohibition of discrimination

We will conclude this chapter with a discussion of the prohibition of discrimination and equality before the law. The prohibition of discrimination is defined in all the main documents on human rights. Article 7 of the UDHR states that everyone is equal before the law, that everyone, without discrimination, has the right to equal protection of the law against any discrimination that would be in contravention of the Declaration and against the incitement to such discrimination. Article 26 of the ICCPR is almost identical in its first part, but it also defines in greater detail that the law must prohibit any discrimination and ensure equal and effective protection for all against any differentiation, particularly on the grounds of race, skin color, gender, language, religion, political or other conviction, national or social background, birth or any other personal characteristic. Article 2 (2) of the ICESCR states that the signatory states undertake to guarantee that the rights protected by this Covenant will be exercised without discrimination on the grounds of the above-mentioned personal characteristics. Article 14 of the ECHR states that the exercising of rights and freedoms therein shall

be secured to all without discrimination on any ground already mentioned above, to which it also adds “association with national minority” and property.

Legal sources specify three ways of implementing the principle of discrimination prohibition. It can be a general legal principle, so court action cannot be taken directly in case of discrimination. Next, it can be defined as an accessory right that can be realized in connection with another concrete right that is violated. Such a principle is applicable under the ECHR, where an action in case of the violation of Article 14 can be taken only if provisions in another article are violated too (e.g., violation of the discrimination prohibition along with violation of the right to private and family life). Finally, the right to non-discrimination can be exercised as an independent right without asserting the violation of other rights. This principle is introduced by Protocol 12 to the ECHR, which states that “the enjoyment of any right set forth by law shall be secured without discrimination on any ground.” (Article 1 (1)). Article 1 (2) states that, “no one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.” Slovenia has ratified this Protocol in 2010, and since prohibition of discrimination is also defined in Article 14 of the Slovenian Constitution, it can be exercised as an independent right on this basis as well.

Prohibition of discrimination is relevant to our discussion in many respects. The discriminatory nature of the erasure was confirmed by the Constitutional Court in its 1999 ruling. The Court established that the erased people were treated unequally compared to other foreigners in Slovenia, because the legislator regulated in detail how the alien status that existed before Slovenia gained independence would be transformed after Slovenia gained independence but failed to regulate the status of citizens of other Yugoslav republics, so they found themselves in an uncertain situation. Discriminatory treatment stemmed from discussion in Parliament during the period when legislation pertaining to the gaining of independence was in the process of adoption and later, when certain MPs exalted Slovenianness and displayed antagonism towards immigrants from other republics of ex-Yugoslavia (Zorn 2007). Discrimination manifested itself as nationalism and racism (see the chapter by Veronika Bajt in this volume). Furthermore, discrimination found expression in laws that were adopted or proposed with the purpose of redressing injustice caused by the erasure. The Act Regulating the Legal Status of Citizens of former Yugoslavia Living in the Republic of Slovenia set more demanding terms relating to prior criminal record than those applicable to other aliens in the Republic of Slovenia seeking permanent residence status. The proposal of the Constitutional Act on the erased people, originally submitted in 2005 and revived in 2007, similarly contained much stricter terms than those generally applying to other aliens in Slovenia. In addition, the erasure discriminated not only in terms of legal rights, but on other grounds as well, as is obvious from its outcome: those who suffered through the erasure were exclusively the nationals of other ex-Yugoslav republics

(Croats, Bosniaks, Serbs, Montenegrins, Macedonians, Albanians and the Roma, including a smaller number of Slovenians born in mixed marriages or in some other republic of the SFRY). The erasure did not affect aliens with other than Yugoslav citizenship.

The erased people were not only unjustifiably differentiated from other population groups, but differentiation occurred within the community of erased people too, or even within individual families, as is evident from cases such as that of erased Jana S. – her mother, father, two brothers and herself were erased, while the third brother automatically acquired citizenship, although all four children were born in Slovenia. Tatjana spoke about unequal treatment, too. At the time of the erasure she was underage, so her mother submitted an application for Tatjana and herself. Her mother's application was approved, while Tatjana's was not, although the terms for a mother and child should be the same.

Furthermore, discrimination also occurred within the erased community itself when attempts were made to resolve the situation. The legal regulations and the Constitutional Court's rulings created various categories of erased people, with certain categories entitled to reinstatement of their status and others not. The first such differentiation was introduced by the 1999 Constitutional Court ruling ordering the legislator to enable those erased people who could prove that they had actually and uninterruptedly lived in Slovenia since the erasure to acquire status. In so doing, the Constitutional Court did not take into account the fact that the erasure was an indiscriminate act, without individual personal circumstances being first assessed. In accordance with this ruling, the Act Regulating the Legal Status of Citizens of former Yugoslavia Living in the Republic of Slovenia was adopted in 1999, enabling only this group to acquire status and omitting other groups. Later on this error was partly corrected when the Constitutional Court declared this Act unconstitutional too, because it left out those expelled people for whom it was impossible to meet the condition of *de facto* residence in Slovenia. Even so, there are several other categories of erased people that were left out: those who were stopped at the Slovenian border because their documents had expired in the meantime; those who decided to leave Slovenia because of the intolerable circumstances into which they were pushed as a result of the erasure; those who were abroad visiting relatives or spending a vacation outside the country but were prevented by war from returning to Slovenia; those adults or children who were abroad for the purpose of education, work or medical treatment and so on. If their status continues to be resolved in this manner by covering only individual groups of erased people defined in one way or another, new categories that are entitled to status will be created, but new ones will be excluded. Therefore, the most suitable method for resolving this situation seems to be a unified approach in which a person would be required to submit only proof that he/she was erased.

7. Conclusion

The violation of the erased people's rights was twofold: their rights were first violated when they were deprived of legal status and then again when they endured numerous resulting measures following the erasure. A look at today's pattern of human rights violations suggests that state authorities are only too aware that they can prevent people from accessing specific rights by depriving them of a particular status, since the scope of rights differs from one country to another depending on the legal status of a person claiming the rights. Using the method of chain reasoning, state authorities justify presumably lawful exclusion on the grounds that a person does not have a residence permit in a country or that he/she did not have permission to enter the country. The Slovenian authorities also resorted to this method to be able to justify the violation of the erased persons' rights.

By analyzing the erased people's stories in terms of protected human rights, it is possible to establish many violations of civil and political rights. Among these, particularly significant is the violation of the prohibition of expulsion; moreover, expulsions were carried out without court ruling. There were violations of the prohibition on torture, inhuman or degrading treatment: for example, in the cases of police violence endured by erased persons during the period when they lived in Slovenia without documents or legal status. Erased people had the right to leave the country, but it was difficult to realize it in practice because of circumstances at the time or because departure entailed grave consequences, so that anyone wanting to avoid them refrained from exercising this right. Their right to freedom of movement was also violated, as the erased people were, and some still are, detained in the Center for Aliens. In some cases the detention was not effected with a view to expulsion from the country, given that the Center staff had instructions to release those who applied for permanent residence, i.e. to release them immediately after they submitted such an application. Given frequent police harassment and resulting fear and uncertainty, it is possible to establish that the right to personal security was also violated. The erased people were, and still are, frequently the victims of hate-speech that clearly meets all the criteria to qualify as the criminal offense of inciting hate or intolerance, but so far not one perpetrator of hate speech has been sentenced.

The erasure led to the violation of the right to private and family life. In some cases it caused the deterioration of family relations, in others it led to the break-up of a family or prevented, actually and legally, family members from living together. The right to effective remedy was violated, since despite the Constitutional Court ruling in favor of erased people, their rights were not remedied because the ruling was not implemented in practice. In other words, the initiative to assess constitutionality was an ineffective remedy, at least until 2009. There were also instances of the violation of the right to found a family, or more concretely, the right of an unmarried father to be named as the father on the child's

birth certificate. The right to marriage was violated when persons without legal status were not allowed to marry in Slovenia, although this is not a condition imposed by law.

The right to life of people who were expelled to Croatia while the war was still raging in the country was violated. In certain respects, the right to citizenship was also violated. Next, the right to take part in the conduct of public affairs was violated by preventing the erased people from submitting an application for citizenship or from maintaining an effective link with the country where they could later obtain citizenship. The right to own property was violated in cases when people were not allowed to submit an application for citizenship; moreover, the right to ownership of all erased persons was violated, as they could not own possessions that under law must be registered in the name of a physical or legal person; similarly, those who had their pension contributions paid lost their right to own a proportional share.

It is also possible to say that the right to freedom of thought or belief was violated, as the argument frequently used in public and official documents to justify the erasure was that these people did not want to accept Slovenian citizenship or that they were against Slovenia's independence. Regardless of whether this was true, it is their right to hold such a belief or opinion, and they should not have been deprived of their legal status on this ground. Given that most of the erased people come from one or another republic of the former Yugoslavia, their minority rights were violated to the same extent as they are violated for unrecognized or new national minorities in Slovenia.

As regards economic and social rights, it is possible to establish the violation of the right to education, since erased people without status could not enroll in secondary schools and universities. Even the right to elementary education was sometimes violated. When they were deprived of legal status, their right to access the labor market was violated, as well as the right to social security/assistance, the right to basic care (including housing), and the right to protection against poverty in the case of persons who were left without income. Being without legal status, the erased people lost the right to health insurance and consequently access to medical care. Additional violations were established in the field of the rights of the child, as frequently the best interests of the child did not form the guiding principle for the institutions that came in contact with erased children and their parents. Prohibition of discrimination was also violated in many areas, as established by the Constitutional Court in its ruling issued in 1999.

No violation of the prohibition of slavery was established, but we identified the existence of modern forms of slavery to which other poor social groups are also subjected. Similarly, the right to a fair trial as a direct result of the erasure was not violated according to international law, since the ECHR covers only civil procedures and criminal proceedings, but not the administrative procedures such as those directly related to the erasure. Nevertheless, we heard accounts of many violations of procedural rules that could imply, and did imply,

the violation of constitutional principles (e.g. the protection of the principle of trust in law). The right to refuge was not violated, since many erased persons who registered as refugees found protection in Slovenia, in other countries of ex-Yugoslavia or in Western Europe, where they were recognized as refugees from the war in the former Yugoslavia. The right to association was not violated either. The erased people established two associations through which they strive to achieve reinstatement of their rights, although the right to association was not respected in full, since certain events they organized or wished to organize were disallowed.

Our study provides a broad picture of the state of respect for human rights, while also attempting to establish, using concrete examples, when these were or were not violated. Naturally, it cannot replace court rulings, which are the only qualified final decisions on the potential violation of human rights, but it can offer insight into the situation through a detailed analysis of typical examples. The findings of our study confirm that the erasure interfered with virtually all the spheres of social life of its victims, since it is possible to comment on every right protected by international conventions in the context of the erasure. Our findings also show that, if we ignore for the moment the most serious crimes under international law, such as genocide, war crimes and crimes against humanity, it is difficult to imagine another measure that could have implications so wide and consequences so severe. For this reason, such measures should be accorded special attention, since countries that refrain from committing genocide or crimes against humanity, may easily resort to a measure such as the erasure was.

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An erased person's story
"I WAS LUCKY"¹

I was born in one of the former Yugoslav republics, in Croatia. I didn't know that this fact would mark my whole life. I lived there until my thirteenth birthday, then I moved to Belgrade. In our place there were many Orthodox Christians and in schools the Catholics discriminated against them. That is why I decided to move to Belgrade and continue my schooling there. I completed secondary school in Belgrade; I'm a chemical laboratory technician. I looked for a job for quite a long time but unsuccessfully. So towards the end of the 1980s I came to Slovenia on the initiative of my brother and sister, who assured me that I could get a job here. In the beginning, I didn't know anyone in Slovenia except my brother and sister, who soon after my arrival moved back to Croatia, so I had to find my way around.

I was lucky because my sister got me a job with a renowned factory which dealt in medicines. I arranged a residence permit. I lived in a rented apartment in Tabor, which I got through my workmate. I lived there for 18 years. These were the best years of my life. I lived an intense life then. I had friends, we went out and socialized. In my free time I sewed and did fortune-telling, but all of it for free at that time. However, things soon got tough for me. It all started when I lost my job. I had been promoted, so I went to Mikroelektronika. I had hardly begun to work there when Mikroelektronika went bankrupt. So in the second half of the 1980s I was on the street. I registered with the Employment Service and since there were no jobs, I had to find some other solution. I began to sew, and I was lucky again that a lady who owned a boutique noticed me in a shop. She offered me a job and, of course, I grabbed the opportunity. I gave her 30 percent of my salary – the rest was mine.

¹ The erased person's story is based on the interview held by Petra Ovčar and Anja Špes.

Two years later my son was born. I worked for that boutique right up till he was born and later. I worked all day to be able to save money for the one year of maternity leave. Since I was registered with the Employment Service, I was insured, so I was entitled to a three-month minimal maternity benefit. I didn't have any problems during pregnancy, but the delivery was very complicated, since because of my age I was in the high risk group. Fortunately, my son didn't have any health problems. Throughout that time I lived in Tabor and my life was normal, right up to the independence. And in 1991, when there was a ten-day war in Slovenia, I didn't flee as many of my friends did, but I stayed in Ljubljana.

When Slovenia set the six-month deadline to apply for citizenship, I respected it. I went to Mačkova Street, where they required my birth certificate with a stamp. I didn't have such a birth certificate. I even went to the factory where I worked before, but unfortunately they didn't have it either. Later on I tried to arrange it through my brother's wife, who is a judge in the town where I was born, but she could only send me a birth certificate stamped by Republika Srpska. At that time I still didn't know what the consequences would be. I knew someone who was in the same situation, but he was granted citizenship. In my opinion, my application was rejected because I was a single mother, and on top of that unemployed. I found out that I and my son had been erased when I went to the social service office to fix some papers for kindergarten. Naturally, I was shocked. In addition to all the other difficulties caused by the erasure, from that time on I had to pay fees for the kindergarten in one lump sum.

Once when I went to the kindergarten to fetch my son I met a lady who worked at the Mačkova Street office. She told me that I mustn't go there because they'd punch my documents. I remember that I had been receiving blue envelopes from them with the invitation to visit the office to arrange my status. This lady warned me against going there, because if I did they'd have invalidated the documents I still had. Needless to say, I was grateful for her warning. I was able to use those papers for some time more to settle various things. That is, until 1993, when the documents had to be replaced. I had some savings in the bank which I later got back when I obtained status. I earned a livelihood by sewing illegally; I worked for network marketing companies – in short, I found my way around it.

After some time things changed; the employment situation got tense, money was in ever shorter supply. Eventually, I and my son lost the apartment. I couldn't pay the rent for that month, or to be accurate, I was one day late and when I came to the apartment there was a new lock, so I and my son were left in front of the closed door. This hurt me, my things were still in the apartment. When they realized that it was inhumane, they gave me one week to collect my things. There was nothing I could do but ask my friends if I and my son could stay with them for some time. They said it was no problem, but I couldn't stay for long because they too had to move out. To make a bad situation worse, the owner was renovating the apartment and they were without water. So during the day we used our neighbor's toilet, and during the night we peed in bags and threw them out the window. I stayed in this apartment for only 20 days, and then found an apartment in Šiška. I couldn't register, of course, since I didn't have status.

I lived there for four years and then had to move out. I moved to Štepanjsko naselje, and the story of Tabor repeated itself. The owner threw me out of the apartment, because I couldn't pay the rent. During the time I lived in Štepanjsko, my life was anything but good. If I didn't pay in time, the owner charged 50 marks more next time. He studied law and threatened me that he'd tip off the office for immigrants about me. This lasted for four years or so. When he increased the rent, I complained and didn't want to pay. And he tipped off the police. The policemen came but didn't do anything. I was lucky that they checked only the rent agreement and bills, but not my documents. Then one day the owner called and asked me to come to a nearby bar. His friend changed the lock in the meantime, and I and my son were again on the street.

A friend who lived in the center took me in. I lived there for about half a year. I paid for the roof over my head by cooking, washing and cleaning – in short, I was a servant. This friend was so mean that she did not even let me dry my hair with a hairdryer because it would use too much electricity. Heating was a rarity in that apartment. During that time I fell so seriously ill that I weighed only 52 kilos; I had a high fever and couldn't get up. That situation lasted one month or so. I treated it myself, using echinacea, aspirin, syrups, tablets, herbs and the like.

During this period I heard from some acquaintances about a Serbian association which could arrange a Serbian passport for me and my son for six hundred German marks. In the late 1990s we indeed got passports, so I could relax a bit. This didn't mean that I got citizenship, but I felt better, because at least I had a document if someone stopped me. Fortunately, I never had any problems with law enforcement bodies. I must admit that I was afraid to walk on the streets while I was without documents. I was always on the lookout, waiting for someone to stop me.

I found a new apartment in Kodeljevo, and the owner said that I'd be able to stay there at least five or six years. But I was unlucky again because his daughter got pregnant and I had to move out after six months. I moved to Fužine, where I still live, although in another apartment. I was not satisfied with the first one, because the owners extorted me, the washing machine was leaking, and the price was exorbitant. In this situation a gentleman from the apartment below came to me one day to complain that the washing machine was leaking and the water dripping into his apartment. I explained the situation and he offered me his apartment. I still live there and I'm very satisfied. This gentleman promised me that I and my son could stay there for 15 years, because the apartment is meant for his son who is only three years old now.

Later, on my friend's initiative, I registered a company. The company soon folded because I never did business through it. I registered it to have at least some basis for residing in Slovenia. But although I owned this company, I couldn't arrange a residence permit, not even a temporary one.

After the registering of this company, my friend, who was a journalist, took me to the Croatian embassy to try to fix these things. I had to take my Serbian passport. And one year later I got the letter that I could come to Croatia to arrange status, that is to say, that I could obtain a Croatian passport. I couldn't do it for my son, because he

was born in Slovenia, not in Croatia. And although I obtained a Croatian passport, I couldn't use it to submit an application for Slovenian citizenship. Despite this, I was very happy, a new world opened up for me.

Around 2000 the situation began to change for the better for me and my son. I went to Croatia and obtained a certificate of nationality and a birth certificate, so all my documents were in order. When this was fixed, I arranged a permanent residence permit. I had to submit quite a lot of documents. The fact that my son went to school in Slovenia throughout this time was not enough. They said that he could as well have lived with a foster family and that it was not sufficient proof that I lived in Slovenia. I had to bring two witnesses to testify that I had lived here for 34 years. I can't remember when exactly I had to submit the application for permanent residence, but I know that I had to wait two years for them to reply. My son didn't have status either, until his father, with whom he resumed contact in 1996 or 1997 after a long time, arranged it for him. As I said before, my son went to school throughout this time. I paid fees for the kindergarten in one lump sum, and since I never unregistered him from the kindergarten, they automatically enrolled him in school. Nobody asked anything, and I didn't mention that we were erased. After completing elementary school, he went to grammar school, and at that time his status was already fixed; he now studies economics; he is a good, hardworking boy. So far I haven't applied for citizenship, and the problem is financial in nature, among other things. In order to apply for Slovenian citizenship, I'd have to pay for unregistering my Croatian citizenship, which would have cost me around 1000 marks at that time. I didn't have that money.

Some time ago I registered a company that deals in weddings, fortune-telling and clairvoyance. The company is officially registered, and everything has been done as it should be done. I'm not yet an employee of this company because my revenues are not so high. I will become employed when the company starts to make bigger profits. At the moment I have too many expenses with the rent, for apartment and the company. The apartment is most important for me, and I don't want to lose it. Both my son and I are registered with the company, but my son works through the student employment agency. My son is officially my partner, but I arranged it in such a way that he is not liable in any way for the company.

I have only 15 qualifying years for pension officially, since I worked a little bit before I came to Slovenia, although I work every day. I'm still several years away from retirement, although I could already be approaching it, since I am almost 60. But I will work as long as I can, because I like to work. I am aware that I will fall short of pension, since I saved nothing during this time, because I used all the money for the rent, which was not low.

My son was very upset because of our constant moving, and he was very ashamed. He developed an allergy and I think that the cause was psychological, that it was stress. He was upset because of the shortage of money. My relatives are well-off and could have helped us if there hadn't been a war there. During the 1990s, the war was raging in the place where I was born, and everything that my parents, brother and sisters had was destroyed. My relatives fled to Serbia and now they are scattered around. One of my

sisters lives in Norway, the other is in Austria, and the brother stayed in Serbia where he opened a factory.

I never had difficulties when signing rent agreements because the agreement didn't have to be authenticated by a notary. Later on, when I obtained a residence permit, I wanted to sign these agreements officially and not only formally as until then. The first address I officially registered was in Kodeljevo.

Slovenia is a beautiful small country and I like it very much. It's a pity that this black spot will remain part of its history. I don't know how those people who made this mistake can sleep peacefully. Are they aware of how many people they pushed into an abyss from which they'll never recover? Many lost their health, property and dignity. Many died or ended up in the street. Others were forced to do all sorts of things, some even descended into crime. I know some of them. Therefore, my only wish is that nobody in this world should suffer such injustices, regardless of his skin color or religion. I truly wish peace and dignity for every man.

Even while I was erased I helped other people and will continue to do so in the future, too. When I and my son lived in a bedsit, we took in a fourteen-year old boy and he lived with us for 4 months. It was while I was erased. When a man is in distress, he needs direct help and he needs it immediately. I was greatly impressed by Oprah, whom I respect very much. And in Slovenia, I have respect for Mario Galunič, who collects money for families in distress. I like to help and I'll continue to do so. If I ever have enough money, I'll not forget poor people. This story describes only the tip of the iceberg. How much uncertainty there was, how many nights without sleep, tears, and suffering because of the lack of money, when I and my son ate only spaghetti, alone in this world, without a roof over our heads, without money, without insurance and without dignity. For 12 years.



Uršula Lipovec Čebren

ERASED RIGHTS, INVISIBLE DISEASES: AN ANALYSIS OF THE HEALTH CONSEQUENCES OF THE ERASURE

Although the erasure and the erased people were among the main issues in Slovenia after it gained independence, the actual consequences of the erasure are little known, including its impact on the health of erased people. So far, no research study has looked into the health of erased people, although the question of how several years of life without legal status affected their bodies would seem to be an important one. Similarly, it is important to establish what the experiences of erased people without health insurance were when accessing the health care system and what alternative therapies were sought by those who were denied access to it.

The Peace Institute research study conducted as part of the project, “The Erased People of Slovenia – A Challenge for the Young Nation-State,” was the first to gather extensive data revealing the erasure’s impact on health, among other things. However, it is necessary to emphasize that the area of health and treatment of health problems was just one segment of this study and that the health aspect was researched primarily through the prism of the violation of the right to health insurance. Although this targeted approach prevented the interviewers from dwelling on erased people’s health problems or the solutions they employed, quite surprisingly it was the interviewees themselves who repeatedly brought up this subject. It is therefore owing to their insistence on discussing health issues that we are now able to present, although partially and fragmentarily, the many dimensions of illness, health and treatment experienced by this population group, dimensions which have until now remained unknown or insufficiently known.

The health-related questions asked in the interviews can be divided into three categories:

1. A description of health problems (these were the typical questions: “Have you had any health problems since the time of the erasure?” or “Have you fallen ill at any point in time since the erasure?” or similar). The interviewers mainly sought to establish the potential presence of an illness. However, it was the erased people themselves who often initiated health-related talk by describing the type and progress of their illness, although they usually emphasized only more serious and chronic health problems, while neglecting lesser ones.
2. Health insurance since the time of erasure until the present date (the typical questions were as follows: “What about health insurance after the erasure?” or “How were you insured?” and the like). The interviewers sought to obtain detailed information about health insurance and to establish for how long they lived without it, what consequences they suffered and what methods they employed to resolve the situation.
3. The method of treating health problems (the typical questions were the following: “Have you ever needed health care assistance?” “What treatment did you have?” “How did you resolve this situation?” and the like). The interviewers mainly concentrated on the issue of access to health care institutions, while they rarely inquired about the type, progress or success of the treatment. Similarly, they did not devote attention to the self-treatment practices and experiences with traditional or complementary medicines, but some erased people nevertheless expounded on these issues.¹

In this essay we will analyze all three categories of topics. One chapter is dedicated to each category. In the first chapter, “Illness and the Erasure – A Biographical Disruption ‘Squared,’” we use qualitative and quantitative approaches to analyze the erased people’s health problems, while presenting the rate of occurrence of individual illnesses and frequent health risks among the erased people. In the second chapter, “Between the Construct of the Uninsured Person and Inaccessibility of Health Insurance,” we analyze the erased people’s access to health insurance against the backdrop of the changes in the Slovenian health system after 1991. In the third and last chapter, “Hurdle Race: the Erased People in Health Care Institutions,” we will analyze the experiences of erased people when seeking professional help and alternative routes to health care treatments.

¹ In the Peace Institute research study, the sequence of questions was not the same as presented above, because the interviewers primarily sought to reconstruct the process of obtaining legal status. They usually first asked if the respondent had lost health insurance and how long he/she lived without it, then if he/she fell ill at any time after the erasure, and finally inquired about their experiences with health care institutions.

1. Illness and the Erasure – A Biographical Disruption “Squared”

An illness, particularly a chronic illness, represents a disruption or violent interruption of the everyday life of an individual. This violent interruption of the usual and unquestioned flow of life could be viewed as an ontological attack after which everything changes. Goals, plans and expectations are subjected to a radical revision, and the individual's identity undergoes a transformation (Becker 1997, Garro and Mattingly 2000, 26–9). As Brody says, the dual nature of an illness manifests itself in the way that we become different, even though we are the same persons (Brody based on Garro and Mattingly 2000, 28–9).

In the case of the erased people who fell ill with a chronic disease, the disruption of their biographies was “squared,” or put differently, their life was disrupted in two ways: the erasure, much like the illness, devastated them and irreversibly changed their lives. At the same time, this occurred abruptly and in an inexplicable and unexplained manner, given that many erased people were able to understand the events that followed the erasure only after 2002.

That the erased people were doubly victimized therefore seems to be a self-evident conclusion. At the same time, they were facing a double challenge: to extract order from existential disorder and sense from nonsense. One approach they employed was narration of their experiences. By narrating their stories to themselves and their intimate circles of relatives and friends, or in public, through the media or during gatherings, lectures and political actions, they attempted to lend sense to what they experienced (see the contribution by Jelka Zorn in this volume). Through their stories about the erasure and its consequences (including health consequences) they tried to return to their doubly disrupted lives a sense of order and continuity (Becker 1997, 166–194).

One opportunity to put these experiences into stories was provided by the interviews conducted as part of the Peace Institute research study. Although guided and often interrupted as necessitated by the methodological approach involved, many stories were allowed to unfold freely. And although the interviewers devoted little attention to the questions about particular illnesses, the erased people spoke about their health problems of their own will, mainly about more serious or chronic diseases.

Many researchers (Becker 1997, Capps and Ochs 1995, Garro and Mattingly 2000) are convinced that the narration of one's story to oneself or others forms part of the healing process, since it is believed that by putting an experience into a story, the narrator smooths out the biographical disruption and places his/her experience into perspective, thereby creating the needed distance that is the basis for self-reflection. However, our interviews with the erased people also revealed another aspect: i.e., that narrating the experience of erasure, particularly when serious or unsolvable consequences are involved, is a very demanding and strenuous process, and not necessarily a cathartic one. The reason

is that some erased people tried to suppress their unpleasant experiences with varying degrees of success, so re-living these can cause trauma. For example, one erased person had to take medicine for chest and stomach pain in order to be able to continue with the interview. Some could not hold back tears or became tense or “nervous,” as Miloš’s reaction below illustrates:

S: That you live somewhere.

I: Calm down, Miloš, don’t be nervous [Miloš sighs deeply, it is obvious that he is upset].

M: Then I had to, something else, I don’t know what. (Miloš, 50)

Just like Miloš, other interviewees often had to interrupt their testimonies when an uncontrollable emotional response disrupted the flow of words, but this enabled them to be diversely expressive on the non-verbal level. Although it is clear that the erasure (like every traumatic event) is only partly translatable into words, our analysis of their descriptions of illnesses and healing processes relies (almost) exclusively on words. Their testimonies enable us to reveal aspects of their narrations that seem crucial, or very important.

The first aspect that forms a thread running through all the narrations is the interdependence of the erasure and illnesses. As already established elsewhere (Lipovec Čebon 2007a, 59-75), the Peace Institute’s research revealed that the erasure was perceived by erased people as a meta-cause of their illnesses. Moreover, they frequently emphasized that the erasure and its consequences affected not only their health but also that of their close family members. The statement of the erased person with the pseudonym AB, who was the only member of his family to be erased, illustrates this:

Yeah, my wife had it worst. She had horrible stomach problems [...] She was under stress and got stomach ulcer. So when she was walking home from her workplace, she often had to sit down, and once she even collapsed and came home escorted by an old woman. She then fell seriously ill and got cervical cancer. This was the strongest reason that made us aware that we had to lead a healthy life, in harmony with ourselves. The erasure was a fact and it heavily affected us all. (AB, 52)

The second aspect relates to the perception of illness, which often changes once the person obtains legal status. Why is this so? Persons without legal status usually have no health insurance, so they have difficulty accessing official health care institutions. As a result, they cannot obtain official medical diagnosis for their health problems but must rely on their own interpretation. Medical anthropologists (Cassell 1976, 47–83, Kleinman 1980, Helman 1997, 126–153) describe this situation using the *illness*² concept. *Illness* stands for a manner in which an individual “reads” his/her body and the symptoms of *disease*. *Illness*

² In this text, the terms “illness” and “disease” are italicized when we want to emphasize the medico-anthropological perspective.

is a subjective response of the person and his/her social environment to their feeling unwell. The term comprises his/her own interpretation of the meaning, cause and type of *illness*, and various types of behaviors adopted in an attempt to resolve the situation (ranging from self-treatment and a visit to an official health care institution to seeking help from traditional or complementary practitioners). A *disease* is a doctor's translation into medical categories of the symptoms of an *illness*. As Cassell (1976) put it, *illness* is "what the patient feels when he goes to the doctor," and *disease* is "what he has on the way home from the doctor's office."

An important conclusion in our context seems to be that *diseases* in the sense described above had been rarely, or not at all present among the erased people before they obtained legal status. When an erased person says that he/she "fell ill" only after obtaining a permanent residence permit or Slovenian citizenship, it usually means that only then was their health problem given an official medical name.³ In other words, if they remained erased for several years (some still are), non-existent in the register of permanent residents of Slovenia, their health problems remained unregistered within the Slovenian health system. Their *illnesses* became recognized *diseases* only when they acquired a permanent residence permit or citizenship, and with it legal status.

These two aspects are illustrated by the experience of Jana S. For seven years she had a severe pain without being able to determine the cause, or rather, she found various explanations for her condition (an unimportant or temporary health problem, anemia etc.). Only when she acquired Slovenian citizenship was she able to obtain official medical diagnosis. However, she still quotes the erasure as a meta-explanation for her disease.

A: What was it on your intestine?

M: I had surgery. Because of a fistula. And for seven years I couldn't go to the doctor, although it was very painful.

A: Seven years – it means that you had the fistula before you obtained status.

M: Yes, I had it before [...] and then when I obtained citizenship I went to my gynaecologist immediately, and he said that I had a fistula here and that I had to have surgery. So I had it.

S: That means that it was only after you obtained status that they established that you had a fistula.

M: Yes, only then.

³ Not all cases were the same. Some erased people began to feel symptoms of illness only after they regained legal status. How can we explain this unusual phenomenon? One possible explanation is provided by the common belief that people experiencing hard times fall ill only when such a period of hardship is over. This is corroborated by the testimonies of partisan fighters who fell ill only after the end of the Second World War (De Marco, Pignoni, Sbuelz, Cappello 2004). One among them stated that "illness was practically non-existent during the war. Or, we didn't feel it, it wasn't important. Only after, after the liberation, people began to need a doctor's assistance" (an unpublished interview with Srečko, 97). This issue would definitely require in-depth analysis, but it is beyond the scope of interest of this essay.

S: *But you had pains before that.*

M: *I had pains before that. In my stomach...*

A: *Was it the stomach or the intestine?*

M: *No, it was between the intestine and the vagina. It was 5 cm thick and they cut it out. I have a five cm deep and wide wound that is still healing. Pus still comes out. This can lead to blood poisoning and you can die. I lost 16 kilos at that time.*

A: *16 kilos?*

M: *I carried more weight before. Well, I've been better lately, since I got status and had that surgery.*

S: *It's ok now.*

M: *Yep.*

A: *And what would have happened if you hadn't had that surgery?*

M: *Well...*

A: *You'd have died.*

M: *I'd have died and nobody would know why [...] At that time I had no appetite, I couldn't stand the smell of food. That affected all my organs. From head to toe. The whole body suffered because of that. [...]*

S: *And anemia as well.*

M: *Yes, but the fistula caused anemia, which I learnt only later. At that time they only said that I was anemic and that I had to take vitamins – but how could I eat if I had no appetite because of the fistula. I could see that I had an ulcer, but I thought it was nothing serious. Then when the doctor said that I needed surgery immediately, I felt terrible. I spent one month in hospital. Now I have to have checks once a fortnight, an examination, because they are afraid of complications. It may return [...]*

S: *You're lucky that you had no problems in pregnancy.*

M: *I had problems. I vomited all the time, fainted, but I thought it was because of pregnancy. Even before I got pregnant I used to faint. I thought it was because of anemia. So I ate and vomited, ate and vomited. And I don't know how they failed to notice anything in the maternity ward. It was terrible. [...] And I have other health problems too. I got asthma and I still have it. All of it is a consequence of nervousness, tension. No person who was not erased can understand that, only we who were erased, know how it is. [...]*

A: *You think that the fistula was a consequence of nervousness ...*

M: *Yeah, I think it is. The cause of this nervousness was the erasure. It had to find a way to get out, didn't it? (Jana S., 30)*

The third aspect, which would also deserve further research, is the perception and expression of pain. Medico-anthropological studies (Lock 2003, Helman 2007, Šimenc 2008) have attempted to transcend the reductionist physiological explanation of pain and argue that a response to pain is determined culturally, among other things. We adopt the majority of “pain-related behaviors” through various behavioral models in our early childhood, with the expression of pain being crucially determined by the degree to which this type of behavior is approved in a specific culture (Autton in Šimenc 2008, 153). In some social contexts where it is (primarily) the male population that is raised to be stoical and courageous, or “thick-skinned,” the endurance of pain without complaint is taken to be a sign of adulthood, maturity and maleness. Some of the interviewed erased persons were raised with similar principles, and accordingly their answers reflect, at least on the verbal level, an underestimation and relativization of pain. Moreover, when they described the intense experience of pain as a consequence of a chronic disease or serious injury, they often established a humorous distance from it:

A: This leg too was injured by a shell and you can see how black it is.

Ž: Uuuu ... see this.

A: It's been drying out slowly, which is good.

Ž: It's been drying out. What does it mean that it's been drying out?

A: It means ... that its functions will stop. Blood veins ... everything has been torn and down there, near my foot, I cannot bend it any more.

M: But if you do it slowly, you can, can't you?

A: Yes, if I do it slowly. I cannot bend it like someone whose condition is normal. I have to walk slowly.

Ž: But it will remain that way. I mean, it will not break apart one day?

A: Yeah, well, it will or it won't ... how do I know? We'll see (laughing). We will wait, whatever happens. You must never give up.

Ž: But this bullet, it can travel around ...

A: No, it's ever more stable, it's stabilized in my leg. It has a window around it, as we call it. The bullet has a house inside. It exists there. When the weather is bad, or it's raining, I feel pain in the leg, you know. It gets on my nerves a little. (Amir, 52)

1.1 The prevalence of specific illnesses among the erased people

Given the multitude of descriptions of illness-related discomfort and the great number of interviewees with serious health problems, it seems sensible to attempt to categorize their illnesses and compare these figures with the indicators of health trends in Slovenia. This requires the translation of data obtained

through qualitative research into a quantitative analysis, which in turn gives rise to certain dilemmas concerning the methodology.

As has been established, when describing their health problems, the erased people emphasized their perception of these in the sense of *illness*; conversely, *diseases* were mentioned less often, since almost all of them had difficulty accessing medical institutions (and some still have even today). Although most erased persons with serious *diseases* obtained official medical diagnosis, the testimonies show that many with milder or less chronic illnesses relied exclusively on self-diagnosis. This is especially conspicuous when they speak about psychological problems.

This represents an obstacle for a comparative analysis of erased people's health problems and those suffered by the general population in Slovenia. Existing Slovenian health statistics⁴ are based on the *disease* approach, meaning that an individual experience has been translated into official medical categories, with the subjective experience being completely absent. On the other hand, the interviews with erased people often contain purely "emic" descriptions of health problems that cannot be translated into official medical categories. For example, when Biljana speaks about damage to the "small liver," we can make a risky guess and translate this as "spleen," but the subjective dimension would be lost, while at the same time the translation could prove to be quite incompatible with what Biljana had in mind when she used the term "small liver." It will be clear from the rest of the text that it is precisely this subjective dimension of *illness* description that constitutes valuable information for medico-anthropological analysis.

The other methodology-related dilemma relates to the fact that most Slovenian health statistics are based on data about "sick" persons who turned to health care institutions because of various health problems. By contrast, the erased people who participated in the interviews did not all have a medical condition. Therefore, it seems sensible to compare the data about the health of erased people with the findings of the survey entitled Health and Health Care in Slovenia (HHCS),⁵ which comprised people both with and without health problems. In addition, the survey partly coincided in time with the interviews with erased people. The first finding of the survey that seems relevant for our comparison is that almost two-thirds of the Slovenian population (61.8 percent) aged 15 or over, described their health as good or very good, and 27.1 percent as rather good (HHCS, 2009, 31). However, the interviewed erased people were not asked to assess their health, so the comparison in this particular segment can be only partial.⁶

⁴ Deaths Database, Health Statistics Yearbook of Slovenia, which publishes data on the most frequent reasons for seeking health care assistance from out-patient primary health care centers, and the WHO Health Indicators for Slovenia, which, in addition to mortality-based indicators, also includes morbidity after hospital discharges.

⁵ The survey conducted in 2007 by the Institute of Public Health was based on a representative sample consisting of 3,387 people aged 15 or over from across Slovenia (2009, 31).

⁶ The majority of interviews were conducted in 2007 and 2008.

Nevertheless, the fact that appears intriguing is that, of the 59 persons interviewed,⁷ only 12, or 20 percent, said that they had not experienced any serious or enduring health problems since 1992. It should also be emphasized that four of them had never visited a doctor since the erasure.

The table below shows the health problems of erased people divided into individual categories, which partly⁸ correspond to those used in the Health and Health Care in Slovenia survey mentioned above (HHCS 2009, 34), therefore enabling a comparison of certain aspects.

Table 1: Illnesses among the erased people by categories

Category	Description ⁹	Percentage of erased people suffering from the illness (number)	Percentage of people in Slovenia ¹⁰ suffering from the illness (HHCS)
Lasting injury or damage as a result of an accident	- Serious damage to the backbone and concussion as the result of a car accident – D ¹¹ (Indira)		
	- Serious damage to the backbone (needs hernia surgery) and arm (cannot use her arm as a result of injury at work – D (Mirka)		
	- Damaged nerves in the arm owing to physical assault – D (Stanka)		
	- Serious injuries to the leg caused by a mine and a shell in the war – ND (Amir)	13.55 % (8 persons)	10.50 %
	- Injury to the head in a car accident – ND (Edin)		
	- Wounded in the war four times – D (Drago)		
	- Injury to the head and face as the result of an accident at work – D (Brane)		
	- In critical condition as a result of injury during a brawl – D (AB)		
Spinal and limb problems		13.55 % (8 persons)	No data

⁷ The analysis included 59 erased people who participated in the research study either individually or together with their close or wider family members. There were 18 women and 41 men among them, belonging to various age groups: 10-20 age group (2 persons); 20-30 (6 persons); 30-40 (6 persons); 40-50 (17 persons, the biggest group); 50-60 (16 persons); 60-70 (10 persons); 70-80 (1 person); 80-90 (1 person).

⁸ The survey inquired only about specific diseases (e.g., a stomach or duodenal ulcer), while general categories, like digestive system diseases, were not mentioned. As a result, certain areas (e.g., genital diseases, dental problems) were not present in the survey. Since the goal in compiling this table was to include all chronic diseases among the erased people, it also includes these general categories plus the illnesses not mentioned in the survey. As a result, the last column often contains a "No data" mark.

⁹ Descriptions are based on interviews with individual erased persons: the descriptions in quotation marks are the words used by erased people, descriptions without quotes are the author's recapitulations based on interviews.

¹⁰ Based on the survey published in Health and Health Care in Slovenia (2009).

¹¹ D means that the disease was diagnosed by official medicine, while ND indicates no official diagnosis.

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- Pain in the lower back or other chronic damage to the back	<ul style="list-style-type: none"> - Retired because of chronic damage to the spine – D (Ahmed) ^{*12} - Chronic problems, underwent spinal surgery – D (Zorica) - Chronic back-pain – D (Indira) - Pain in the lower back – D (Mirka) - Underwent spinal surgery, awaiting disability retirement – D (Gale) 	8.47 % (5 persons)	40.70 %
- Pains in the legs and arms	<ul style="list-style-type: none"> - Chronic pains in the legs caused by injections given one-and-a-half year earlier during ovarian surgery – ND (Samira) - Chronic pain in the legs and arms – ND (Nisveta) - Finger surgery – D (Zoran) 	5.08 % (3 persons)	No data
Respiratory diseases		13.55 % (8 persons)	No data
- Chronic bronchitis, chronic obstructive lung disease, emphysema	- Chronic bronchitis – ND (Indira's son)	1.69 % (1 person)	6,10%
- Asthma	<ul style="list-style-type: none"> - Disability retirement because of asthma - D (Almir) - Asthma since childhood, treated in hospital – D (Jasmin) - Asthma-related problems since early childhood – D (Ismeta's daughter) - Asthma attacks to the present day – D (Jana S.) 	10.16 % (6 persons)	6,00%
- Other respiratory diseases	- Pulmonary edema, treated in hospital – D (Begeš)	1.69 % (1 person)	No data
Coronary and vascular diseases		8.47 % (5 persons)	No data
- High blood pressure – hypertension	- Chronic problems with high blood pressure and the vascular system – ND (Emina)	1.69 % (1 person)	26,30 %
- Stroke	- Stroke – D (Samir's wife)	1.69 % (1 person)	1,60 %
- Other cardiovascular diseases	<ul style="list-style-type: none"> - Weakened heart muscle – D (Begeš) - Heart surgery – D (Safet) - Thrombosis – D (Izidor's mother) 	5.08 % (3 persons)	No data
Digestive system diseases	<ul style="list-style-type: none"> - Chronic stomach problems – D (Stanislav) - Pain in the stomach, often vomits blood – ND (Aktivist) - Long-time pain in the stomach – D (Indira's son) - Pain in the gullet – ND (Mara) 	6.77 % (4 persons)	No data

¹² The [*] mark denotes that a person had health problems before the erasure. Only four such persons were identified among the 59 persons interviewed and they are included because their health condition deteriorated after the erasure. While three are mentioned in the table, the fourth is not because it was not possible to establish on the basis of incomplete description what health problems led to this person's disability retirement.

Diabetes	- Undergoing the disability retirement procedure on the ground of diabetes, has chronic pain in the legs caused by diabetes – D (Ekrem) - Undergoing diabetes treatment – D (Safet, Nisveta)	5.08 % (3 persons)	6.90 %
Liver disorders	- Damaged “small liver,” had an examination before the erasure – D (Biljana)* - “bad liver” – ND (Nisveta)	3.38 % (2 persons)	1.40 %
Urogenital diseases	- Kidney surgery: had a kidney removed – D (Izidor’s mother) - Ovarian surgery – D (Samira) - Bleeding from uterus that lasted 3 weeks – ND (Mara) - Fistula surgery – D (Jana S.) - Hernia surgery – D (Željko)	8.47 % (5 persons)	No data
Ear diseases	- Hearing problems, hard of hearing – ND (Samir)	1.69 % (1 person)	No data
Dental problems	- Very serious dental problems – D (Željko) - Serious dental problems – D (Megajver)	3.38 % (2 persons)	No data
Allergies	- “Allergies caused by arm nerves” – ND (Stanka) - Allergy appearing on arms, several years – D (Marija’s son)	3.38 % (2 persons)	15.30 %
Cancer	- Lung cancer – D (Edin) - Tumor – D (Izidor’s mother)	3.38 % (2 persons)	3.8 %
Diseases of Children	- Developmental disorders, malnutrition – D (Ismeta’s daughter)	1.69 % (1 persons)	No data
Psychological problems		38.98 % (23 persons)	No data
- Chronic anxiety	- “I was afraid of everything, even of walking the streets” – ND (Mirka) - “I was shaking all the time” – ND (Mara)	3.38 % (2 persons)	4.80 %
- Chronic depression	- “I was crying all the time” – ND (Monika) - “I was depressive ... I had a long treatment, I still do” – D (Ismeta) - “I wanted to give up” – ND (Biljana) - “I was depressive” – ND (Boris) - “I fell into some depression” – ND (Simon) - “I lost my bearings” – ND (Božo)	9.87 % (6 persons)	4.60 %
- Other psychological problems	- “psychological bankruptcy” – ND (Begeš) - “my film got broken” – ND (Zehrudin) - “you become giddy, messed up” – ND (Tomislav) - “he is so nervous” – ND (Indira’s son) - “it hits your nerves and all hell breaks loose” – ND (Megajver) - “all that was because of nerves” – ND (Stanislav) - “it was nervousness [...] I cried all the time” – ND (Jana S.) - “it was very hard. Psychologically.” – ND (Izidor) - “nerves” – ND (I., Bajro) - “I gave in [...] you were under stress. ‘Natepiran’ all the time.” – ND (Tatjana) - Two suicide attempts, psychosis – ND (Andrija) - Hospitalized mental patient – D (Rifet)* - Paranoid disorders – ND (Stanka) - Frequent aggressive behavior including fights – ND (Edin)	25.42 % (15 persons)	2.70 %
Alcohol addiction	- Treated for alcoholism – D (Aktivist) - Chronic alcoholic – ND (Andrija, Boris)	5.08 % (3 persons)	No data

One of the important methodological differences between the survey Health and Health Care in Slovenia and the semi-structured interviews which hampers the comparison is that survey participants were offered a list of diseases and health conditions to choose from, unlike the erased people, who mentioned these themselves and often neglected those health problems that they deemed less important. For example, asked whether he had suffered from a disease since the erasure, Dario answered, “Yes, a few minor ones,” but without dwelling on it further; many others gave similar answers. Moreover, an overall impression is that the interviewees underestimated illness symptoms.

The next important obstacle arises from the fact that erased people had much greater difficulty accessing the health system than other Slovenian residents (see Table 2 and Table 3 in this essay and Lipovec Čebren 2007a, 70–75), so either their health problems frequently remained undiagnosed by official health care institutions, or only the most stubborn chronic diseases were diagnosed. Accordingly, almost 46.57 percent of illnesses among erased people do not have an official diagnosis (in the table above, these are marked ND). This almost perfect balance between *illnesses* and *diseases* is illustrative, particularly when we know that the majority of psychological difficulties also remain undiagnosed.

If we leave aside for a moment these methodological differences, it is possible to conclude from the data in the table above that the prevalence of three pathological conditions among the erased people corresponds to the average in the general population (stroke, cancer, chronic anxiety). On the other hand, the national average within five categories is either higher (chronic bronchitis, obstructive lung disease, emphysema and diabetes) or much higher (back-pain or other chronic injuries of the back; high blood pressure and allergies) than the average in the erased group.

By contrast, diseases in the categories “lasting injury or damage as a result of an accident,” “asthma,” “liver problems,” “chronic depression” and “other psychological problems” occur more frequently or much more frequently in erased people than in the general population, particularly psychological problems.

Thirteen categories of health problems established in the erased people cannot be compared, because we do not have data on the prevalence of these conditions among the general population in Slovenia. In connection with this, we should draw attention to a significant share of diseases in three categories: i.e., problems with the spine and limbs (13.55 percent), lung diseases (13.55 percent), and coronary and vascular diseases (8.47 percent), as well as digestive diseases (6.77 percent). Add to this the high percentage of psychological problems (38.98 percent) and the picture of the health condition of the erased people largely corresponds to the conclusion of Aleksander Doplihar, the founder of the Pro Bono Out-patient Clinic for People without Health Insurance, who has daily contacts with the erased people:

The erased people I treated primarily suffer from lung diseases, quite a number of them suffering from tuberculosis. Other frequent problems are serious damage to the circulatory system, both the heart and the vascular system, and also legs and

other parts of the body. I treated two erased people who had their legs amputated as a result of narrowed veins. We also saw stomach diseases and serious disruptions of the central nervous system. In addition, many erased people who come to us have psychological problems, ranging from various forms of psychosis to depression, while some of them are serious psychiatric patients. (Lipovec Čebren 2007a, 64–65)

1.1.1 Psychological problems – “nerves,” “pitiespija” and “natempiranost”

Given the high prevalence of psychological problems among the erased people, it seems appropriate to devote more attention to this issue. Although in the table above psychological problems are roughly divided between the categories of chronic anxiety and chronic depression, erased people’s descriptions mainly elude standard nomenclature. In describing serious psychological distress, some resorted to metaphors involving financial terminology, e.g., “it [the erasure] had such an effect on him that he went psychologically ... bankrupt” (Begeš, 89), or the film industry, e.g. “počil mu je film” (Zehrudin, 45), which literally translates as “his film got broken,” meaning “he’s come unglued.”

It therefore seems that their narrations about psychological problems require a different categorization, one that takes into account the *illness* perspective, which only rarely overlaps with the psychiatric diagnosis. The reason for this lies partly in the fact that only 3 of 23 persons altogether who talked about their psychological problems received professional help, and even these predominantly used the illness-type description rather than referring to the official diagnosis. Some resorted to modified medical terms. An erased person, for example, used the coinage “pitiespija” (derived from the abbreviation PTSP, which is the local rendering of the English PTSD or Post Traumatic Stress Disorder).

B: Actually, the man was outright frightened. If he went to a shrink, he would probably diagnose “pitiespija.”

S: Paranoia?

B: Not paranoia, pitiespija. It is a – a post traumatic syndrome. Because he experienced great traumas. (Begeš, 89)

One complaint emphasized by erased people is what they call “nerves” or “nervousness.” This widespread popular notion of distress is present in various cultures, but it also varies greatly from one environment to the next, so it can be explained only within the specific social context in which it appears. Frequently, the notion of (upset) “nerves” comprises physiological, psychological and social experiences, with the term “nervousness” denoting either a personal characteristic or a person’s emotional, physical or social reaction to a specific event (Helman 2007, 301–2). Erased people frequently mentioned “nervousness” when describing their response to the erasure. The extracts below from the interviews with Megajver, Tomislav, I., Indira and Ismeta (all pseudonyms) illustrate this:

And then at any rate it hits your nerves and then all hell breaks loose. Everything influences everything else, you know. Like it or not [...] You know, these are [sighs,] they ... they simply eat you away. They ate me away! Really! (Megajver, 39)

I told myself, really, I'm fed up with them, enough, I won't invest any more, I did everything I could, and now I'm fed up with it. I'm sick of it ... I don't know what I'll do. You simply become giddy, messed up, and you don't know any more ... a lot of money, a lot of nerves, a lot of everything. (Tomislav, 59)

S: The fact that you were erased and that you had all these problems, do you think that it affected your health somehow?

I: More than that. Nerves. (I, 54)

S: But ... say, was it sometimes a problem for your children, because they were without papers?

I: The older one ... I worked, their father left and when I'd come home the older one was so ... nervous. I'd come in tired, wanting only to lie down, and he was nervous. He'd say that he was not like other children, that he had nothing and couldn't do anything with his friends, so it really hurt me.

S: It means there were these psychological ...

I: Yes, yes, for children there were. (Indira, 48)

It was hard to endure. I don't know why my youngest child had to be born into this ... I couldn't control my life any more. [...] My nerves were really ... I still have many problems with my nerves. I underwent a long treatment because of the nerves, actually I still do. (Ismeta, 49)

The erasure “hit” Megajver’s nerves, Tomislav and I. experienced “nerves,” Indira’s son was “nervous” and Ismeta has “problems with nerves.” The specific physiological dimension (the nervous system) serves as a metaphor for what is happening on the psychological level. This disturbance involves a change in the psychological state, which is presumed to coincide with increased activity in the “nerves” or a state in which the nerves begin to control a person, as is confirmed by the use of the adjective “nervous.” It is a situation in which a person can no longer control his/her behavior, as Megajver’s statement illustrates (“And then at any rate it hits your nerves and all hell breaks loose”). At the same time, this changed psychological state is connected with the feeling of general disorientation in life, which can be gleaned from Tomislav’s words that “you simply become giddy, messed up, and you don’t know any more ... a lot of money, a lot of nerves.”

The ambiguity and diversity of symptoms frequently confuse doctors, leading them to an incorrect interpretation of the meaning of “nerves.” As Finkler (Finkler in Helman 2007, 302) has established, they often make an attempt at objectivization and try to separate symptoms from individual experience, while explaining “nerves” as a physiological malfunction. By focusing on the *disease* perspective and overlooking the *illness* dimension of the “nerves,” they miss its true significance and consequently fail to prescribe appropriate treatment (Hel-

man 2007, 302). Stanislav's story, on the other hand, reveals that this is not always the case. His doctor did not recognize the *illness* dimension of Stanislav's experience, but being aware of the limitations of his own *disease* perspective, he instructed Stanislav to try self-healing.

I was, all that was because of nerves. You cannot go anywhere, you cannot do anything. You are restricted whatever you do, I had problems and I went to the doctor. I vomited, I couldn't ... nerves, stomach, I couldn't eat, I couldn't do anything. And the doctor said, "Look, here is the cupboard, pick the medicine, tranquilizers, whatever you want." Then he said: "Why don't you try, clear it up within yourself, don't make me poison you with this." And indeed, I took a four-day cottage holiday, had a rest and then I told to myself, "enough." And then I didn't care any more – whether the police stopped me or not. (Stanislav, 44)

Some erased people described their psychological problems as stress. This is not surprising given that in the contemporary world this concept has become one of the most frequently used metaphors for individual and collective distress or suffering, while at the same time denoting all kinds of difficulties confronted in everyday life (Helman 2007, 288). In contrast to the concept of "nerves," which frequently appears to be a kind of somatization, given that it relates to an irregular functioning of the nervous system, the notion of stress is more connected with external factors. Similar to disturbance of the nerves, the concept of stress also comprises a heterogeneous set of psychological and physiological states, combining a number of traditional models. Stress could therefore be viewed as a secularized version of the supernatural concepts employed to explain misfortune and *illness*, such as sorcery, destiny, divine punishment, or possession by malign spirits (Helman 2007, 300, Lipovec Čebren 2008).

If we adhere to the concept of stress as an explanatory model for the health problems of erased people, it would be possible to say that the erasure and its implications were the key stressors in their lives. A person's response to a specific stressor is unpredictable (Seyle in Helman 2007, 300–301), because it is determined by a series of internal and external factors. However, it is a fact that all persons erased from the register of permanent residents were exposed to this stressor, i.e. the erasure. Depending on their physical and psychological structure, they responded differently, but their specific response is not necessarily already visible, since it may become obvious only in the future. This assumption especially applies to the younger population among the erased people. One of these is Tatjana. In addition to "stress," Tatjana used the term "natempiran," which could be explained as the state of uncontrollable, increased psychophysical activity that arises from a feeling of threat.

You are under stress. "Natempiran" all the while. For example, I went out with my friends in the night, to a café, and there was an inspection, a police raid, then they took us up there. (Tatjana, 34)

In contrast to Tatjana, many others reported that the fear of police identification checks, and consequently of deportation, made them alienated; they isolated themselves from their environment, drastically reducing contact with it and turning their homes into “fortresses” to defend themselves against the potentially “malicious” influences from the outside world.

But my dad, I don't know how he realized it, in fact he was hiding because the police often came to his door, so for three years he de facto lived without going out of his apartment, like that. Much like the Japanese during the Second World War. So he stacked up food, canned food, he had stale bread, unbelievable. (Begeš, 89)

In the past I didn't walk around the town. I only stayed at home. When the police came, I was afraid ... The police used to come twice or three times a day. (Mirka, 54)

After I was erased, I stopped mixing with people, I was hiding and the like. In a way I avoided people, I didn't socialize much with anyone, and I also didn't speak about this problem. (Ismeta, 49)

I was shaking. When I walked the streets, when I saw a policeman, I felt sick. I was afraid because I heard all sorts of stories [...] I was shaking all the time. When my friend said that he noticed that I crossed the street differently, that I stood and waited and strictly stuck to the rules, I told him that I was afraid. (Mara, 57)

While the erasure rendered these people “legally dead,” their withdrawal and apathy frequently made them socially dead. As we have already shown elsewhere (Lipovec Čebren 2007a, 65–67), they withdrew into isolation primarily during the years immediately following the erasure (in 1992), when many internalized the feeling of guilt and were convinced that the responsibility for what had happened lay solely with them. Therefore, similar to Ismeta who “in a way avoided people, didn't socialize much with anyone, and also didn't speak about this problem,” others too avoided conversations about their loss of legal status. The interviews clearly show that they usually succeeded in overcoming this state of mind only when they obtained permanent residence permits or Slovenian citizenship, or when after 2002 the erased people began to self-organize and made their problem public knowledge with the help of the media.

1.2 The erased people, homeless people and migrant workers – similar health risk factors

When examining the health problems of erased people, an “exclusivist” reading of their *illnesses* would be short-sighted. The health risks and obstacles preventing their access to official medical institutions have much in common with those encountered by other population groups that are vulnerable, marginalized, deprived in terms of access to health services and/or excluded from

the health system. A comparison between the health of erased people and that of migrants and refugees in Slovenia, or of homeless people,¹³ or other population groups in Slovenia who live without health insurance for longer or shorter periods of time would therefore be relevant for our purposes. However, since only the health of homeless people and partly of migrant workers has been the subject of studies so far, in the next sub-section we will present a brief comparison between the health condition of the homeless and that of the erased people, followed by an outline of certain health risks similar for the erased people and migrant workers. The last part of the analysis of factors that threaten the health of the erased people touches upon the context of the Balkan wars and their consequences for the health of those erased people who left Slovenia after the erasure either willingly or unwillingly and were confronted with a war situation.

1.2.1 Factors threatening the health of erased and homeless people

A questionnaire-based survey looking into the prevalence of diseases suffered by homeless people (Razpotnik and Dekleva 2009, 80), which was conducted in a similar manner as the survey among Slovenian citizens (HHCS 2009), showed a close correspondence in the prevalence of psychological problems among the homeless and erased people. In both groups, psychological problems account for a large share of health problems, unlike in the general population. On the list of possible health problems, 22.7 percent of homeless people selected chronic depression, and 16.2 percent other psychological problems; while a conspicuously smaller percent of erased people reported chronic depression (9.87 percent), the percentage of those who mentioned other psychological problems was much higher (25.42 percent). As to other health problems in the homeless people group, their prevalence is usually higher or much higher than among the erased people. It should be emphasized, however, that the erased people reported many other illnesses not mentioned in the questionnaire completed by the homeless people (Razpotnik and Dekleva 2009, 80).

An interesting piece of information concerns the percentages of disabled people or people undergoing the disability determination procedure:¹⁴ in the erased group, this percentage was 13.55 percent compared to 23.8 percent in the homeless people group (a ten percent higher share), with the number of peo-

¹³ Such a comparison seems sensible because, among other things, the expression "erased people" is a unique umbrella-term denoting homeless people, migrant workers, refugees and asylum seekers. The heterogeneous population named the erased people in fact includes people who experienced homelessness for several years (Lipovec Čebren 2007a, 59–75), asylum seekers in Slovenia or elsewhere, refugees with temporary protection, and migrants, given that many erased people moved to Slovenia as internal migrants while it was still part of the former Yugoslavia, then left Slovenia after they were erased and moved to other countries or returned to Slovenia as "new" migrant workers.

¹⁴ It should be noted that these figures do not reflect the actual size of this vulnerable group, since only individuals with access to the Slovenian health care system can apply for disability status. Those erased persons who could not access official medical institutions, could not obtain disability status either, regardless of their medical condition. This problem has been partly alleviated by the efforts of the Pro Bono employees, but mainly for people living in the Ljubljana district.

ple with category one disability¹⁵ among the erased people being greater than among the homeless people (6.77 percent compared to 1.6 percent).¹⁶

Although no homeless people were identified among the interviewees, homelessness (temporary or permanent) among the erased people is not rare (Lipovec Čebren 2007a, 59–77). The erased and homeless people are exposed to much the same health-threatening factors. As the author of the book *Homelessness, Health and Access to Health Services* has established, poverty is an important factor in the interaction between homelessness and health. Poverty is connected with the way of life that carries considerable risk to health including incorrect diet and unsuitable living conditions; moreover, livelihood problems affect psychological health and prevent access to health care services and treatment (because of poverty they cannot afford paid (or additional payment of) health care services or to pay for medicines they have been prescribed) (Razpotnik and Dekleva 2009, 65).

Several studies so far (Dedić, Jalušič and Zorn 2003, Lipovec Čebren 2007a, 2007b, chapters by Jelka Zorn and Neža Kogovšek in this volume) have shown that poverty was a direct consequence of the erasure for many erased people. With the loss of legal status, most of them lost their jobs, pensions and all social and health insurance rights. As non-citizens, they had no right to buy the socially-owned apartments at non-commercial prices, which often worsened their housing and financial crisis. In this connection, an illustrative testimony is that of Izidor, who was erased as a child along with his mother and 15-year old sister:

Then my mother too did not get it [citizenship], then she too lost her job, could not register with the Employment Service, so we immediately bumped into problems, how to survive at all: two small school-aged children, no income, rental payments and other bills to pay. Of course, she could not pay, because she had no money and the bills only piled up, piled up, and we had to find all possible ways around it. For example, one was that for more than half a year, if not longer, we lived on bread and milk which they brought to our house. [...] During the time our mum did not have any income, my ingenious sister, she was still a child at that time, occasionally brought some food from a shop. I mean, she took it without paying. She stole it. So that we could eat. She would bring paté, or ragout, or spaghetti. And we were all so happy. (Izidor, 27)

Apart from poor diet, health problems are also a consequence of inappropriate living conditions, as in the case of homeless people. People who were

¹⁵ The category one disability includes individuals who lost the capacity to engage in organized gainful employment. Category two disability includes people whose capacity for work in the occupation they were trained for is impaired by 50 percent or more, while category three disability includes people who have lost the capacity to work full time, but are capable of working at a certain job on a half-time basis at the 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 they have been assigned to (Slovene Pension and Invalidity Insurance Act – ZIPIZ - (1)).

¹⁶ While category one disability is not present in the erased group, its percentage in the homeless people group is 1.6 percent. The percentage of people with category three disability in the homeless people group is much higher than in the erased group (13.9 compared to 3.38); the percentage of people who had applied for disability status and the procedure was still underway at the time of the interview is a bit higher in the erased group (3.38 compared to 2.3 in the homeless people group).

evicted from their apartments or lost them because they could not pay the rent turned to their social networks or close relatives for help, as did Mara:

I had to leave the apartment and move to Štepanjsko naselje. Then I again ended up on the street, because I could not pay the rent, so the owner put a new door lock. I was again on the street with my child. Then my friend took us in, she lived in the town center and had a large apartment, almost 90 square meters. She gave one room to me and my son, and we lived there for almost six months. I was taken ill there, very very ill. [...] In return for giving us a roof over our heads, I cooked, washed, cleaned, I was a servant in short. This friend was so mean that she even did not let me dry my hair with a hairdryer because it would use too much electricity. Heating was a rarity in that apartment. During that time I fell so seriously ill that I weighed only 52 kilos, I had high fever and couldn't get up. That situation lasted one month or so. I treated it myself, using echinacea, aspirin, syrups, tablets, herbs ... [...]

S: Did it continue?

M: Yes. Whenever I washed my hair she simply hid the hairdryer, she did not allow me to use electricity.

S: So what did you do?

M: Nothing. For six months I lived at her place, I was like a house maid, I did everything ... ironed everything, washed. They were four in that family, it was a big pile of clothes for ironing. They enjoyed themselves and I worked as a housemaid. (Mara, 57)

Mara's testimony highlights the third factor that explicitly influences the health of erased and homeless people: the response of the social networks to their vulnerable situation. The interviews with the erased people clearly show that this response is related to everything – the consequences of the erasure were more serious if the supportive environment was weak, and minimal if their social networks were effective and extensive. These “examples of good practices” are most obvious in harmonious family environments, in which only one family member was erased, and others in the family were ready to help with his/her accommodation and financial problems. This is evident from the experience of the erased person with the pseudonym AB, who was the only family member erased.

After I was erased, my wife was employed at public works. She had 80 percent of the guaranteed minimum wage, because that is how it was paid in the past. She worked like that for five years supporting our six-member family. Four children, myself and herself. She was lucky that she knew old women who gave her vegetables from their gardens for free. (AB, 52)

As will be clear from the text below, in such cases it was family members who also helped the erased person realize strategies for obtaining access to the health system (by lending their own health insurance card, paying for health

services and medicines, engaging friends to help them access health care etc.). Without such assistance, the sudden transformation of their social status (from a citizen enjoying the full set of rights to a person without legal status, from an employed person into an unemployed person, from an economically well-off citizen into a pauper) could lead to their marginalization and isolation on the part of their wider and closer environment. In such situations, an erased person can easily come across people who only increase their physical vulnerability. Such was the experience of Mara above, and a similar situation was reported by Miloš:

He had that shack empty and needed help with farm work, so I worked for him. I met him through my friends, so I began to live in that shack. Then I hurt my leg, then hand, I fell ill and couldn't work any more. [...] Before these injuries happened, he allowed me to live in the shack, but then I couldn't work any more for him or pay bills and the problems started, the electricity was disconnected and other things. And I've also heard that they will start to build a new house for his daughter where I now sleep, so I have to move out. (Miloš, 50)

In the presence of negative factors (unsupportive social networks and poverty, often connected with inadequate diet and poor living conditions), people frequently develop various addictions and habits detrimental to their health. In addition to tobacco and alcohol consumption, many homeless people use illegal drugs (Razpotnik and Dekleva 2009, 82–86). Although in our sample of the erased people the share of those who had an alcohol problem was low compared to that among homeless people, the experience of medical staff working for the Pro Bono outpatient clinic shows that the percentage would probably have proved higher had this issue been researched in its own right (Lipovec Čebren 2007a, 65). Something similar could be said about cigarette and tobacco usage, which seems to be quite widespread among the erased people, but no reliable data are available so far. By contrast, we have not identified any sign indicating that the use of illegal drugs was more widespread among the erased people than among the general population in Slovenia.

1.2.2 Health risks for erased people and for migrant workers

The next set of factors threatening erased people's health is related to poor working conditions. While this factor was not identified in the research that investigated homeless people, it appears to be the key risk factor for the health of migrant workers (Brovč et al. 2008, 26–32, Lipovec Čebren 2009b). For the erased people, who had no possibility of obtaining legal employment, illegal work or “private” employment as they themselves called it, was usually the only option. This exposed them to the self-will of their employers and led to frequent violation of their employment rights. Just as in the case of migrant workers in Slovenia (Brovč et al. 2008, 26–32, Izhodišča in zahteve IWW 2008), inadequate working conditions manifested themselves in many aspects of work, ranging from work overload,

their undertaking of most difficult tasks and working under inadequate conditions (in harsh weather, without adequate equipment or diet), to the acceptance of low wages (excluding social and health insurance contributions or vacation bonus) and psychological pressure exerted by their superiors. Since many erased people lived under such circumstances for many years (some still do), the impact began to affect their bodies; 3.38 percent of the persons interviewed reported injuries at work or other health problems arising from their prolonged coping with work overload under inadequate working conditions. The following is Izidor's explanation of the origin of the combined health problems suffered by his mother:

Until she fixed her status, my mum worked illegally. In a restaurant, as a cook, and she also served food. She often had to hide [...] When labor inspection arrived, she used to hide all around. She has often told us how she fled to escape them. She had to find her way around to support us. She worked all day long to be able to buy bread. I was alone at home with my sister every single New Year's eve. I can remember how I called her on the phone and cried, because I missed my mother, like every child does. But she worked without a break for two days. To earn money. And when she came home, she wished us a happy New Year and fell asleep straight away, she was so tired. We had it hard at that time [...]. Then she fell ill. She stayed home for only one day and she caught it immediately, after so many years of work. Only one day and it stuck. She still suffers from this serious illness. (Izidor, 27)

Brane, a low-skilled worker, gave an even more revealing account of the many dimensions of labor rights violation, e.g. non-payment for overtime work, inadequate diet, denial of the right to annual leave.

B: In 1992 I got a job in Kranj. I made asphalt for this employer, working 260, 270 hours. It's very hard work. We worked from morning to nine in the evening, but our lunch did not come at 10, or 11, but only at one or two o'clock in the afternoon when the asphalt was ready [...] And when we got our wages, there would be only 160 or 162 hours paid instead of 260, 270.

S: As it were an eight-hour shift?

B: Yes, it was 100 or 120 hours unpaid. The boss said, "This will be for the winter." ... I had more than 1,000 hours unpaid in ten months. Then he took away half of our vacation ... I told him, "Well, mister, this won't work." He underestimated us, because we were forced to work, because of the visa.

S: He arranged your new work visa?

B: Yes, yes [...] That's why he exploited me, because he knew that I was forced to work, because he fixed my papers. Then I told myself that I'd not be anybody's slave. I can work if necessary, even twenty hours, but not every day. But I worked 260 hours there, until 9 in the evening every day, including Saturdays and Sundays, and then I got paid for only 160 hours. Is that normal? (Brane, 43)

Brane and people like him could be described as return migrants and their experience as “two-round migration.” Like Brane, many erased people first came to Slovenia in their youth, as internal migrants who moved from one republic of the former common country to another. They were part of a larger group of immigrants who from the late 1960s on fulfilled the manpower needs of Slovenian companies (Komac and Medvešek 2004, Pezdir 2004, 184–194, Lamberger Khatib and Pezdir 2009, 115–134). Most of them obtained permanent jobs immediately, and many were also provided with company-owned apartments or accommodation in dormitory worker facilities. After the erasure, some left Slovenia, either unwillingly or willingly (cf. the contribution by Neža Kogovšek in this volume), because they could not obtain status. Many among them later returned as migrant workers. In contrast to the situation of thirty years ago, after the erasure they returned to Slovenia on temporary work permits, which made them completely dependent on their employers. Instead of living in apartments, as they did in the past, their accommodation was now much less adequate. And on top of it all, these “two-round migrants” were no longer young but over forty. In the meantime, the requirements for entering the country, labor rights (including health-related rights) and living conditions in Slovenia have changed, with only the right to health compensation (or rather the absence thereof) appearing to remain unchanged.

It is again Brane’s account that is most illustrative. He first suffered from an injury at work in 1984, then again in 1997, when he returned to Slovenia as a low-skilled worker.

I was first injured in 1984, but they did not want [to pay out compensation] ... they told me, that it was my fault [...] It hit me here [shows an area slightly above the forehead], but the employees of the personnel department went to the doctor and persuaded her not to send me to the hospital for urgent medical treatment. I could go only to the company doctor. Two or three months later I entered the army service and I didn’t get anything for that injury [...]

S: So you came back to Slovenia in 1997. Someone arranged a job for you and you began working again.

B: Yes. I worked roughly three years for Mr B. We were renovating a hotel, and while we were taking down the radiator, it fell on me and I had cuts all over my face. I presented doctor’s certificates to my boss, for compensation payment, but he didn’t want to pay even for my sick leave. I wanted to sue him but couldn’t, because he arranged the papers I need to be able to work in Slovenia. [...] Then I was dismissed because of the injury.

S: And what did you do then?

B: A few months later I got a document saying that I must leave Slovenia, so I had to go. (Brane, 43)

1.2.3 Erased people among the war disabled

The last aspect that seems deserving of mention when analyzing the health risks for erased people is the wartime situation. Some erased people found themselves in the war-torn regions; many of them, although not all, as a consequence of their expulsion from Slovenia (Vasović 2007, 171–176, cf. also the contributions by Neža Kogovšek and Sara Pistotnik in this volume). Many therefore became soldiers against their will, and according to testimonies, some even fought on the frontline.¹⁷ Two of the 59 erased persons who participated in the Peace Institute research were seriously wounded during the war. Neither of them received adequate health care treatment either during or after the war in Bosnia-Herzegovina. Poor or non-existent health care treatment was mentioned not only by the erased persons who took part in the war, but also by others who after the erasure, as civilians – refugees from Slovenia – lived in the war-afflicted regions. The erased person with the pseudonym Amir described access to medical care in Bosnia-Herzegovina during the war:

A: There was no health insurance. Nobody had health insurance during the war.

Ž: So what happened if you were taken ill?

A: You went to the doctor, he gave you tablets if he had them, if not, you returned home: to die, look for healers...

M: But you paid for the examination, for the tablets.

A: You paid for everything, for the examination too, everything.

M: It was not only your problem, but everybody's.

A: Everybody's, it was everybody's problem. (Amir, 52)

Amir's testimony reveals the key factor that threatens the health of erased people: i.e., the difficulty, or impossibility of accessing official medical institutions. The main part of the rest of this essay is dedicated to this issue.

2. Between the Construct of an Uninsured Person and the Inaccessibility of Health Insurance

The obstacles to accessing official medical institutions were similar to those encountered in other sectors, e.g., when arranging status at administrative units, or when enrolling in elementary, secondary or higher schools. However, while the dispatch issued by the Ministry of the Interior instructed the employees at administrative units to consider erased people aliens without legal status when processing their applications and to "ignore" their rights, health workers were not notified of the erasure or its implications (Lipovec Če-

¹⁷ S: I was told that people who came from Slovenia were sent to the frontline. Is it true? D: Yes, it is. (Drago, 53)

bron 2007b, 76–80). The erased people who sought health care services were mainly categorized as people without health insurance. This category began to appear in health institutions in 1992, that is to say, at the time when the Slovenian health system entered the restructuring process which transformed it from a system geared to social welfare to one less open to socially disadvantaged groups, or as a retired doctor once put it, “Yugoslavia was more socially oriented, including within the health system. Now the majority of services is tied to additional payments, waiting lines are longer and you need ‘connections.’” (Interview¹⁸ with doctor M)

During the socialist era in the former Yugoslavia, health rights were guaranteed without financial coverage and health services were ensured for all citizens without restrictions and regardless of their financial ability (Košir 1992). With the transformation of the health insurance system in sovereign Slovenia, health rights became tied to the scope and type of health insurance (cf. the essay by Jelka Zorn in this volume), as health insurance companies began to exercise an ever more scrupulous supervision over health institutions, and their influence on health policy became more visible. A retired doctor explained this as follows:

“Insurance companies must have control over money invested in the health care system. However, they are not supposed to create health care policy, as they did until a short time ago! That is the responsibility of the Ministry, but it gave too much freedom to insurance companies!” (Interview with doctor D)

Overall, solidarity with persons without insurance and socially deprived classes gave way to the principle of rigorous checking of health insurance. The introduction of a more restrictive health care policy rested on economic arguments and money-saving strategies within the health care system. As a result, says a doctor working for the University Medical Center in Ljubljana, “the current system is more geared to economic principles, while solidarity has declined.” (Interview with doctor C)

While the former Yugoslav health insurance system was integrative with respect to uninsured persons, within the Slovenian health institutions after 1991, these persons became a foreign element, *personae non grata* or Others.

It seems that this trend contributed to the emergence of the construct according to which these persons are completely responsible for their unregulated health insurance and the resulting inaccessibility of health care institutions. This construct enables the health care system to externalize the “burden,” or “care” for the most vulnerable or deprived population groups. Or, as one nurse is convinced, *“Homeless people can have at least this basic health insurance, if they see to it. If they have not exhausted all possible and impossible options.*

¹⁸ All statements by medical workers in this essay originate from an unpublished research study conducted in 2008, as part of the subject Medical Anthropology at the Department of Ethnology and Cultural Anthropology at the Faculty of Arts in Ljubljana. I would like to express my gratitude to Špela Fistrić, Manca Pavli, Klara Debeljak and Jerca Mikli for supplying the interesting findings of this research.

Because it also happens that they are offered, and then they don't make it happen, they don't arrange status." (Interview with nurse L)

This construct portrays people without health insurance as negligent, careless and irresponsible about their health, which is supposedly manifested as disregard for regular updating of their medical card and irregular visits to doctors.

The following response of an employee at the emergency unit of the University Medical Center in Ljubljana is illustrative of this attitude. According to the testimony of the erased person with the pseudonym Mara, he dismissed her with the argument that she had waited too long before she visited a doctor:

M: I was very, very ill and I was bleeding. Almost three weeks, for twenty one days I was bleeding. But they still refused to admit me to the Medical Center.

S: The emergency ward?

M: Yes.

S: What did they say? That you couldn't be admitted because you didn't have a health insurance card?

M: Yes.

S: What did they say?

M: They said that they couldn't admit me, because if I had been bleeding for so long, then I could go to my gynaecologist. ... I told them that I didn't have a gynaecologist, that I didn't have any doctor. I told them that I was already at menopause and that I did not have my periods any longer, so I could bleed to death, I could die. I told them all of this, but they refused to examine me.

S: And what happened after that?

M: Nothing. It stopped by itself and I no longer had problems. (Mara, 57)

Another aspect of the construct about uninsured persons is that they are cunning and crafty, so they evade payments for health insurance and count on the benevolence of and solidarity from health care institutions. Health care workers who succumb to these kinds of representations refuse to accept their explanations because they probably see it as part of the tactics to avoid financial obligations.

M: I paid for everything, but they still asked me all sorts of things, how come I didn't have a medical card, they didn't believe, they puzzled over it, rebuked me.

X: Rebuked?

M: Yes, that's what they did. "Why don't you have a medical card? Why haven't you fixed it?" Then, when I explained to them, they didn't believe me and still said, "Well, why haven't you fixed it?" (Jana S., 30)

The construct of an uninsured person which is connected with implicit mental representations about planned irresponsibility, cunning and craftiness of uninsured persons is very similar to the well-established prejudice about the erased people propounded by the right-wing political parties. In their discourse, erased

people are presented as consciously trying to capitalize on Slovenia's benevolence, first by "speculating" on Slovenian citizenship, and then by claiming compensation, so they are fully responsible for their own situation. Both constructs provoke people who subscribe to such views to "defend" the system (the state or health care system) against these cunning impostors (be it erased persons or uninsured people in general). For them, the victims' arguments are ordinary lies, or they approach them with systematic doubt. It seems that the increasingly widespread construct about uninsured persons was determined by the fact that after 1992 the number of people without health insurance jumped from year to year. The accounts by erased people interviewed for the Peace Institute's research also indicate this. While before the erasure virtually all interviewees had health insurance, after 1992 the majority of them lost it, as the data in the table 2 shows.

Table 2: Health insurance among the erased people

Possession of health insurance	Number of persons	Percentage (%)
Had basic health insurance in Slovenia continuously	9	15.25
Had no health insurance in Slovenia or elsewhere for:	39	66.10
- 2 years	1	1.69
- 3 years	2	3.38
- 4 years	1	1.69
- 5 years	3	5.08
- 8 years	8	13.55
- 10 years	5	8.47
- 12 years	3	5.08
- 13 years	5	8.47
- 15 years	1	1.69
- 16 years and over (to the date of the interview)	10	16.94
Other	11	18.64
- Health insurance in another country (B-H, Serbia), self-payer	6	10.16
- Health insurance in another country (Austria, Germany), through contributions	2	3.38
No data	3	1.69

It is clear from the table above that the percentage of people who had continuous health insurance is low (15.25 percent). These were mainly persons who lost their jobs after the erasure but were able to obtain status based on temporary work permits. The share of non-insured people is much larger (66.10 percent). Many among them have remained without health insurance to the present day, or lived without it for a long time; most obtained it only after they acquired a permanent residence permit or Slovenian citizenship. However, there are persons in the category “16 or over” who have not been able to obtain health insurance for various reasons, even though they obtained legal status (because of financial or administrative obstacles, or because they lacked initiative). People who lived abroad for a longer period of time (or still live there) and made various insurance arrangements there also account for an important share in the table above. The health insurance system that is in place in Bosnia-Herzegovina is organized in such a way that the major part of health care services is not covered by insurance. The testimonies of two people who have health insurance in Germany and Austria show that health insurance systems in these two countries are better organized.

The interviews with the erased people show that, in attempting to obtain health insurance, uninsured persons resorted to various methods (involving commercial insurance companies, family members etc.), but these attempts usually failed because “health insurance policy was tied to the status of citizen or foreigner with permanent residence permit” (see the contribution by Jelka Zorn in this book – p. 37). At the same time, health insurance was frequently a prerequisite for accessing other segments of the system, which created still another endless labyrinth for the erased people. That there were some escape routes from this labyrinth is proved by Simon’s story. Simon (40) who had no health insurance for 11 years, had to provide a certificate of health insurance to be able to enroll in the Faculty of Forestry. He inquired at various insurance companies, but they all required a certificate of citizenship – Slovenian or other – which he could not produce. However, after some time he managed to obtain insurance from the Health Insurance Institute of Slovenia.

3. A hurdle race: erased people in health care institutions

Difficulties in accessing health care institutions contributed significantly to the deterioration of erased people’s health, with the erased persons who lacked even basic health insurance being most affected. The table below shows the approaches they used to access health care institutions. Let us stress again that the data in the table are exclusively those provided by erased people on their own initiative, and that the picture would probably be different had the study probed this issue more deeply. It seems that the interviewees highlighted only the most important events and neglected many minor ones.

Table 3: Access to official health care institutions

Access to official health care institutions for uninsured persons	Number of quoted examples	Quoted examples in percentages (%)
Denied access (to hospital, health care center)	6	10.52
Access on payment	10	17.54
Access free of charge	22	38.59
- Initially had to pay, but expenses later written off	2	3.5
- Using connections (a family member's doctor, an acquaintance working for a health care institution)	4	7.01
- Using another person's medical card (a family member, a friend)	4	7.01
- Based on the status of temporary refugee from Bosnia-Herzegovina	1	1.75
- Treatment provided by Pro Bono Outpatient Clinic	4	7.01
- Treatment provided by prison or the Center for Aliens	2	3.5
- Travelled abroad for treatment	3	5.26
- Other	2	3.5
Did not seek help from health care institutions	14	24.56
- For fear of being refused or paying a high bill	10	17,54
- Because they did not need it	4	7,01
Unknown	5	8,77

At first glance, the small percentage of cases of denied access (10.52 percent) and the high percentage of cases in which health care was provided free of charge (38.59 percent) do not suggest significant obstacles. However, the figure showing the number of people who sought treatment on a cash basis (17.54 percent) changes the picture. This means that they could afford health care assis-

tance only when they had serious health problems. The percentage of people who did not go to a doctor fearing that they would be refused an examination or would have to pay a high bill (17.54 percent) also indicates that obstacles were present.

In addition, a detailed examination of individual categories reveals that many persons found ways to receive health care assistance despite closed doors (21.03 percent in total). An important role in this was played by the Pro Bono outpatient clinic (7.01 percent). It was thanks to this clinic that many persons without health insurance were provided urgent treatment free of charge, as stipulated by Article 7 of the Health Care and Health Insurance Act (2002). Two persons who were treated in hospital testified to having had such an experience.

A surprising bit of information is that two total institutions, i.e. the prison and the Center for Aliens, acted as a kind of social institution, providing better care for two uninsured inmates than they would have been able to obtain outside these institutions.

Since the question of access to health care institutions raises many complex issues, I will concentrate only on those that were most stressed by the erased persons which are not adequately reflected by the quantitative data in the table above.

3.1 Arbitrary access to health care institutions

What criteria were in fact observed given that some erased people without health insurance were given free medical care (38.59 percent), while others with comparable or even worse health problems had to pay for it (17.54 percent) or were denied access (10.52 percent)?

The analysis of erased people's stories offers an unequivocal answer: no criteria existed. There is no pattern or system behind the erased people's experiences; there is only the logic of arbitrariness. Why was this so? In the former Yugoslavia there existed an unwritten rule that uninsured persons should always be provided health care treatment, which would then be masked in official reports and hidden among treatments provided to insured persons (Lipovec Čebren 2007b, 76). But after the restructuring of the health care system in Slovenia, the term uninsured person became a synonym for a self-paying patient. Only urgent medical assistance is exempt from payment, as stipulated by the Health Care and Health Insurance Act.¹⁹ However, as showed elsewhere (Lipovec Čebren 2009a and 2009b), the interpretation of the concept of urgent medical

¹⁹ The Health Care and Health Insurance Act adopted in 1992, and later amended in 2004 (ZZVZZ, 2004) and 2006 (ZZVZZ, 2006), stipulates that "the Republic of Slovenia covers from the budget /.../ urgent medical care for persons of unknown residence, foreigners from countries with which no international agreements were signed, and foreigners and Slovenian citizens with permanent residence abroad who are temporarily living in the Republic of Slovenia or are passing through the Republic of Slovenia, for whom payment of medical assistance could not be ensured." Article 25 of this Act defines urgent treatment: "Urgent treatment comprises medical services of resuscitation, preservation of life and prevention of the deterioration of the health of a patient or injured person." (The Health Care and Health Insurance Act, 1992)

assistance varies greatly (ranging from very restrictive to very liberal readings), leading to potential violation of this right, i.e. refusal to provide urgent medical care or charging a fee for it. Mara (see above) and Miloš experienced such a violation. On several occasions, Miloš had to pay for urgent medical treatment at the University Medical Center in Ljubljana:

M: I cut off my finger, ripped open my knee, once I broke my rib and another time I tripped over logs and had concussion.

S: You said before that you had to pay for these injuries?

M: Yes.

S: How much did you pay?

M: When my finger was stitched, I paid 36 thousand tolar.

S: Yes.

M: And I had to pay 5 or 6 thousand tolar for every examination [...]

S: When you cut off your finger you went to the emergency ward?

M: Yes. I had to pay up front at the emergency ward, it was 10 thousand tolar at that time, and only after that they admitted me. They won't admit you otherwise, they won't...

S: Unless you pay up front?

M: Yes. When they stitched my finger I went home and brought back the rest of the money.

S: But you were admitted without being asked about your documents?

M: No, they first asked me if I was a self-payer, but I said no, what could I say?

S: But when you paid 10 thousand tolar up front, nobody objected to admitting you?

M: No. But they first said that I had to pay 10 thousand tolar or they wouldn't take me in. (Miloš, 50)

Miloš's experience clearly shows that the provision about urgent medical treatment was violated. Furthermore, erased people's stories indicate that such violations occurred more frequently during the early 1990s than later. Nevertheless, in the past as well as today, this area has been characterized by confusion, ambiguity and arbitrary conduct. It is a situation in which the legal logic gives in to the principle of arbitrariness because of vague legal provisions (Ticktin 2006, 37, Lipovec Čebren 2009a, 2009b), and collective decisions become a matter of individual judgment. In the absence of in-depth research among medical workers, it is difficult to reach a general conclusion on how the erased people were treated when they turned to health care institutions seeking assistance. Yet the fragmentary statements by certain doctors and the stories of erased people lead us to believe that (at least) some doctors circumvented legal vagueness by persistently following the code of medical ethics:

These were both urgent and non-urgent cases. I decided to provide medical care because, as a doctor within the public health care system, I was actually not interested in whether or not they had health insurance. I provided medical assistance which I was able to provide in a concrete situation [...] I know of doctors who refuse to treat non-urgent cases if the person has no health insurance, or they consider them self-paying patients. [...] In non-acute situations, one can advise the patient to obtain health insurance or he will be considered a self-paying patient. I myself examine these patients regardless and advise them to complete administrative formalities later. [...] The code of medical ethics obliges every medical worker to offer all available medical assistance to a person whose health is jeopardized, regardless of whether or not he is insured. (Interview with doctor L)

The quotation above clearly shows that this doctor did not give in to the categorization that gradually gained currency within the Slovenian health care system and became “a canon”: the separation of insured persons from the uninsured, and of “urgent” cases from “non-urgent” ones. At the same time, he refuses to recognize the category that arises from the combination of “non-urgent” and medically uninsured persons – that of self-paying individuals. Viewed from the legal perspective, his conduct could be defined as disobedience, but from the social perspective it is definitely an act of solidarity.

And yet, while the quotation above reveals a deviation from established practices in favor of solidarity, Miloš’s case demonstrates that there were also “deviations” in the opposite direction, towards greater restrictiveness.

The decision of a health care worker depends on a personal judgment that is strongly influenced by several factors. One among them is the capacity for compassion or the ability to identify with the person’s situation. As Miriam Ticktin (2006, 43–4) states, compassion is dependent on the ability to imagine the suffering, meaning that it is never unbiased and cannot be generalized. The perception of the suffering of others follows the circulating narratives, images, and histories and often maintains an unequal power relation between nurse and patient and citizen and foreigner – distinctions that are already heavily gendered and racialized” (Ticktin 2006, 43–4).

As a result, a health care worker can best understand the situation of a person whose presence does not challenge his local beliefs, but rather confirms them. Compassion is most frequently aroused by persons who correspond to the widely accepted image of a victim as a suffering, innocent and passive being. It was therefore probably not accidental that, according to testimonies, free medical treatment was provided to children. The experience of Emina and her son Jasmin illustrates this:

J: I fell ill with asthma when I was in the fourth grade and at that time we had no health insurance. We should have paid for everything, but we didn’t.

M: So how did you get to a doctor?

J: They admitted me to the emergency ward.

E: When he had a serious asthma attack, he remained in hospital. I got a notice that I had to pay. Then I went to the hospital, to their office, and I told them that I didn't have any income and that I could not obtain social assistance.

M: That I didn't have a medical insurance card and that she couldn't pay.

E: Then they excused it and I didn't pay [...] I don't remember the sum, but it was quite high. The Center for Social Work refused to cover it, and I don't know how they processed it in the hospital. (Jasmin, 19 and Emina, 47)

In the Slovenian imaginary formed after 1991, the opposite of a victim is an adult male of Serbian origin persistently portrayed by nationalist discourse as an aggressor and enemy. As already showed elsewhere, this construct merged with the image of an erased person. Clearly, what was at work was the culturally determined approach and apparently health care employees are not immune to it. The latter could be one of the (many) possible explanations for the fact that it was precisely adult males with Serbian surnames who frequently had difficulty accessing health care services. Needless to say, these difficulties were not encountered by them only and they didn't encounter them everywhere. Nevertheless, it is possible to consider every example of exclusion or inclusion as an important indicator pointing to the features of the Slovenian health care system. One of the more surprising accounts describing the consequences of the principle of arbitrariness²⁰ in accessing health care is that of Edin, also quoted in the contribution by Jelka Zorn in this volume:

I had an accident and I hit my head. I went to the Koper health care center and the nurse asked about my insurance. I told her I didn't have any. "I don't have any insurance, I'll pay the fee." The answer was that I couldn't be examined because I didn't have insurance. [...] They didn't want to take me in even for money. I didn't plead with them, I just left. I went to a bar with a wound on my head. The barmaid asked me what happened, what it was on my head. She took alcohol and disinfected my wound instead of a doctor or a nurse. I'll never forget it. It burnt, the wound

²⁰ In situations where the principle of arbitrary judgment takes precedence over official medical criteria in deciding about access to health care services, it is nurses and administrative employees who frequently play the crucial role. However, in so doing they violate the rules, since nurses or administrators are not authorized to decide who will be accepted and who rejected. A doctor and a nurse talked about this:

S: On what grounds is it possible to refuse medical treatment to an uninsured person?

Z: I have influence over this, as it is I who decide who I will examine and who I won't. The information that the patient has no health insurance is provided by the nurse. (Interview with doctor L)

S: And who does the selection [who will be admitted and who will not]?

Z: A doctor. Invariably. The nurse only takes details, and, say, sees that the patient is categorized, that he moves on as soon as possible, and the rest is the doctor's job. A decision whether or not it is an urgent case, it has always been and will always be with the doctor, never a nurse. (Interview with nurse N)

Let me add that the interviews with erased people also reveal that, in addition to the doctor's assessment, another important factor in accessing health care is the orientation of the medical institution, either towards the social and liberal principle or towards a more restrictive one. It was not difficult to glean from their testimonies a pattern and classify health care institutions using the criterion of liberal or restrictive attitude towards uninsured persons. It seems worthy of mention that Isola General Hospital frequently appears as an institution unwilling to provide free treatment even to urgent cases (see also Lipovec Čebren 2007a).

was quite deep. [...] After that I never attempted to go to the doctor again. Perhaps it contributed a little to my falling ill with cancer later. (Edin, 45)

3.2 Delivering a baby at home, delivering it into “illegality”

The table about access to official medical institutions shows that an important percentage (24.54 percent) of uninsured erased persons did not seek health care assistance either because they feared rejection or high bills (17.54 percent), or because they did not need it (7.01 percent). The last mentioned segment, if they felt sick, usually relied on their *illness* perspective, or they, consciously or unconsciously, were afraid to face the *disease* dimension of their *illness*. One frequent consequence in both groups who did not seek health care assistance was that the treatment of their illness eventually became overdue, so their health condition deteriorated.

There are also other, less expected, health risks. The interviews showed that at least one woman was left without medical examination during two pregnancies, while one delivery took place without medical supervision, and the baby remained excluded from the Slovenian health care system. Samira and Sabina related the following experience:

A: Were you ever admitted for medical examination?

D: No.

A: Not even when you delivered the baby?

D: No, no, I did it like [makes a gesture showing how she helped herself when delivering the baby].

A: Oh, oh.

D: That's why I'm worried about the next one [she was pregnant at the time of the interview] [...]

A: So you delivered your children...

C: No, two of them, he was born already.

A: But your first child was born in Subotica? [Serbia]

B: Yes.

C: And the second was born in Ljubljana.

A: But also in the situation without health insurance?

B: Yes.

A: And who helped you?

C: Women, old women. (Samira, 42 and Sabina, 25)

Many undocumented female migrants in Europe have similar experiences. Fearing that they will be betrayed and consequently deported from the country, they hesitate to seek medical assistance. This puts them at higher risk than the rest of the population. Epidemiological studies prove that the prevalence of miscarriages and premature births is higher among undocumented migrants than among the rest of the population, as is the infant mortality rate (Bollini 2005, Gross 2005, Scott 2004, Willen 2005 in Castañeda 2008, 12). The absence of preventive medical measures among undocumented migrants therefore affects not only their health, but also that of their newborn babies, who do not undergo the basic developmental tests and general health check-ups (Castaneda 2009, 5).

Similar health risks are faced by uninsured erased persons and their children. However, this situation also has legal-administrative consequences in addition to health consequences. As other authors in this volume have shown (see the contributions by Neža Kogovšek and Sara Pistotnik), the erased people's children frequently share the fate of their parents living in "illegality." Giving birth to a baby outside the institutions of health care in Slovenia only worsens this situation, since the birth remains unregistered.

Furthermore, one of the approaches employed by the erased people to overcome the inaccessibility of free health care during pregnancy, i.e., seeking assistance abroad, has not reduced but rather increased this risk. Such is the experience of Siniša's wife, who travelled to Serbia and Germany to obtain free health care:

S: My wife too was erased.

Ž: Did she have papers when she gave birth?

S: No.

Ž: Oh yes, you already told me that she still doesn't have ...

S: She is a citizen of Bosnia-Herzegovina and now she has a permanent visa for Slovenia.

Ž: Did she have health insurance when she gave birth?

S: She didn't, and we also didn't have money to pay for the delivery in Slovenia.[...] We didn't have jobs, we couldn't pay the rent, so she once went down there, to Serbia, and the next time up there, to Germany.

Ž: What about maternity leave, did she receive ...

S: Nowhere.

Ž: Nowhere?

S: No, only her sister helped a little financially.

Ž: Yeah ...

S: Her sister had children too and helped her.

Ž: [...] It means that she went to Serbia and Germany to give birth to avoid hospital fees here?

S: Yes, because of that. She didn't have papers, so she went elsewhere to give birth.

Ž: Did she have to pay in Serbia and Germany?

S: No. (Siniša, 38)

Although childbirth in Slovenia should be free of charge, erased women without health insurance often encountered difficulties in maternity wards. One was threatened that she would not be allowed to leave with her baby unless she paid the expenses (Lipovec Čebren 2007a, 74). Such experiences contribute to the creation of prejudice and disinformation, as illustrated by Siniša's account. His story also provides an example of the tactics employed by the erased people in an attempt to defy the obstacles, which is the subject of the next section.

3.3 Tactics used in maneuvering around the medical labyrinth

Table 3 shows that some (7.01 percent) used their connections to access doctors, or, particularly when underage erased persons were involved, it was parents who took the sick child to their doctor. Others (7.01 percent) resorted to false identity and entered health care centers or hospitals using the medical card of an insured family member or a friend. But let us think about the consequences of these solidarity practices. Since the medical record of a family member or a friend now contains data that contradict reality, such practices not only diminish the credibility of the medical records system, but also increase health risks for the person who helped, since incorrect data may mislead a doctor when making a diagnosis or prescribing treatment.

S: It means, there was no hospitalization?

T: I once injured my leg and I urgently needed medical intervention. At that time, I had to borrow a medical card from somebody.

S: And it worked?

T: Yes, it did, of course, I used his name – I was another person and it worked. (Tomislav, 59)

When speaking of ingenious tactics, it would be difficult not to mention a person who registered as a temporary refugee from Bosnia and obtained, in addition to temporary status, access to health care services. Foreign countries also played an important role in overcoming the difficulties: in addition to travelling abroad in search of free health care services (as Siniša's wife did), erased persons also often obtained medicines from abroad, because these either could not be bought in Slovenia or were cheaper abroad. An erased person's sons related such an experience:

I managed to obtain certain medicines from Switzerland. And using other ways, for example, from Zagreb, to help my father. Especially antibiotics. (Begeš, 89)

However, the tactics used by erased people to circumvent the obstacles within the Slovenian health system involved not only concrete actions but also verbal tactics. What we have in mind is the stance they adopted when turning to health care institutions for help. The interviews show that, within the context of health care, as within other contexts, the erased people used autobiographical narration as an instrument in the struggle for their rights, transforming themselves repeatedly from passive into active subjects. For medically uninsured erased people, much as for asylum seekers and other marginalized groups, an important element determining the success of their interaction with the environment is the readiness of their interlocutors to believe. In our case, it involves believing not only someone's personal story but also the "story" of the erasure. It could be said that by being present in the health care system (and elsewhere), erased people have been testing the degree to which people were ready to trust not only their bodies, but also their words – words that could not be verified. Being uninsured, they usually didn't have health records, and being erased, they usually didn't have (at least until 2000) legal status. In addition, information about the erasure given by erased persons was little known and difficult to verify before 2002. Although their experience of medical institutions indicates that the degree of trust was low, since on arrival at a health care institution they usually encountered what could be termed the "culture of disbelief" (Zorn 2004, 259–75, 2006, 54–73), or systematic distrust (Lipovec Čebren 2009b), some episodes prove that an autobiographical narrative was one of better ways of defying a restrictive health care system.

3.4 From self-healing to new age treatments

Finally, we should broach another important aspect that is not included in the table. This is the question of what the erased persons did and to whom they turned for help if they were denied access to health care institutions or if access was too difficult.

Their experiences in this respect belong in the popular sector of health care (Kleinman 1980, 51–53), "the lay, non-professional, non-specialist popular culture arena in which illness is first defined and health care activities initiated." This sector comprises all types of therapeutic methods that people use without consulting a healer or a doctor. The popular health care sector therefore comprises, in addition to self-treatments, treatments and advice from immediate circles (relatives, friends, workmates or neighbors), health care activities within a church or a cult, and consultation with a person who has similar health problems. Medical anthropologists have established that 70 to 90 percent of health care takes place within this sector (Helman 2007, 82), since it comprises a series of

beliefs as to how health is maintained (these are connected with the cultural definition of “correct” behaviour: what to eat and drink; how to sleep, dress, behave, pray and “live” and generally conduct one’s life) and how to act in case of illness (Helman 2007, 83).

The erased people’s experiences probably differ from those of most other people in that they did not opt for the popular sector of their own will but under “constraint,” since it was often the only alternative to the inaccessible or difficult-to-access official health care system. On reviewing such experiences of the erased people, it is possible to establish extreme heterogeneity, so this topic would deserve a separate essay. Below I present only some of the most frequent practices, recounted by Izidor:

P: While you were without citizenship you didn’t go to a doctor?

I: I had nothing. When I was ill, I had to stay at home, lie in bed and try to cure it. And similar things.

P: You never broke a bone or needed surgery?

I: Fortunately not. I took great care. If, for example, I had broken my leg, it would have cost a lot. [...]

P: What did you do when you fell ill?

I: Nothing, I lay in bed, made myself a cup of tea for a cold and the like.

P: What about the dentist?

I: I didn’t go.

M: Then you didn’t have any serious disease or injury?

I: No, thank God. Nor did my sister, or mum.

P: But was there an occasion when you needed a doctor urgently?

I: Yes, once I sprained my ankle while playing basketball. Next time it was probably a torn muscle. My leg got very swollen that time. It hurt often, most of all my knees, because we played on concrete and you can easily get injured on concrete. When it hurt, I put ice on my knees. (Izidor, 27)

Izidor (along with other erased persons) mentions certain traditional and widespread curative methods: teas, medicinal herbs, and the “hot-cold” therapy (hot tea for a cold and cold ice for a painful knee). Another of Izidor’s statements that seems important is, “I took great care. If, for example, I had broken my leg, it would have cost a lot.” It suggests the kind of care for one’s health not typical of the younger population. This kind of greater responsibility and care for one’s health has proved to be a consequence of the inaccessibility of (free) health care in other erased persons as well. In one case, it transformed the lifestyle of the erased person (healthy diet, growing one’s own food) and changed his worldview in such a way as to include elements of new-age movements.

When I was left without the option of medical care, I began to live a healthy life. I began to live with my health, not with my illness. For some time we cultivated a plot, we had a garden, I did gardening. With the help of this, my thoughts cleared up, and at the same time, we ate healthy food. [...] Instead of worrying and eating myself away because of the situation [the consequences of the erasure], I began to read books about spiritual self-help. (AB, 52)

4. Conclusion

It is possible to conclude that health consequences of the erasure are plentiful, profound and often insurmountable – not only for the erased people but also for their immediate and wider environment. The question that cannot be neglected in this connection is how this will affect the Slovenian health care system as a whole. In the absence of demographic studies of the erased people, we can only assume that a high number of erased people moved to Slovenia during the 1970s, along with many other workers from other republics of the former Yugoslavia who responded to the growing demand for a workforce in Slovenian companies (Pezdir 2004, Lamberger Khatib and Pezdir 2009). Many among them were around 20 when they arrived, meaning that today they are around 60. This is also corroborated by the structure of the sample used in the Peace Institute research, in which the age group 40 – 60 was the largest one (55 percent of respondents). In addition, the same sample suggests that many erased persons belong in the generation of their children, born during the 1970s and later.

If we stay with the conclusion of this chapter, that the erasure and its consequences contributed significantly to the threat to erased people's health, we could justifiably ask what its future implications for the Slovenian health care system are. It is possible to predict that once the generation of erased "parents" becomes the older generation, and the generation of erased "children" becomes the middle-aged generation, their current poor health conditions will only deteriorate further. Therefore, if by depriving the erased people of the right to health care the Slovenian state made significant "savings" (cf. the contributions by Jelka Zorn and Neža Kogovšek in this volume), the future health care needs of this population will certainly contribute to the "rise in prices" of health care and social services, assuming that the erased persons will obtain health insurance and with it access to the health care system. We can therefore conclude that the erasure was by no means "profitable" for the Slovenian state in ethical, political or economic terms.

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An erased person's story

"I MISSED SLOVENIA, I WAS BORN THERE"¹

I was very successful as a young man. I was born on 25 February 1971 in Dolenja vas pri Ribnici. Since I completed elementary school with excellent grades, I enrolled in the flying school in Mostar. My biggest wish was to become a pilot. I adore everything that flies.

To be admitted to the Mostar school, I had to have an official recommendation from the municipality of Ribnica, and it also arranged the required medical checks. On completing these check ups, I was admitted to the flying school in Mostar in 1985. I was fourteen then and that was the first time I was separated from my parents.

Although it was hard for me to live apart from my parents, I successfully completed school and so I was one step closer to my dreams. The door to the flying academy in Zadar was wide open for me. I enrolled in 1989, completed it in 1993 and obtained a pilot's diploma.

During the 1990s I didn't follow politics much. In early May of 1991 there was a meeting organized in the military grammar school Franc Rozman Stane in Ljubljana for all student pilots of the Zadar academy coming from Slovenia. I learnt about this meeting only after the Labor Day holiday, when I came back from Ribnica to Zadar, and it was my schoolmates who told me about it and asked why I had not attended. I asked them what the meeting was about. They said that their municipalities notified everyone individually and that students in all years came, only I was missing. It was said at the meeting that certain events in Slovenia were bound to happen soon and that we "had to be ready" for it and had to "choose the right way." As future pilots, we were an interesting group for the republic of Slovenia. I was truly hurt because nobody from my municipality notified me about it. I wondered why not. The only answer I could

¹ The erased person's story is based on the interview held by Aleksandar Todorović.

find was that it was because of my surname, which was not a Slovenian one but ended in "ić." At that time I became convinced that I was truly a "ćifur."

After the declaration of independence, I arrived in Slovenia in August 1991 without a passport. I travelled on the bus from Sarajevo to Ljubljana, passing through seven military barricades, and the only document I had was a student card from the Zadar academy. At home, in Ribnica, my closest friends with whom I had grown up branded me an enemy. Almost an occupier! I wanted to explain to them that I was only a student, but unfortunately it was impossible to persuade them.

On completing the 2nd year, I had to continue with my studies in Mostar, where I had practical training to be a helicopter pilot. I travelled there via Hungary, with the SFRY passport, issued in September 1991 in Ribnica within an unbelievable five minutes. My decision to return to the academy was crucially determined by the events I described. I felt left to my own devices. From that moment on, my life path turned in a direction I truly didn't want! Therefore I feel that I was erased not on 26 February 1992, which would have been a greeting card for my birthday, but as early as May 1991.

Since military operations had begun in Bosnia too, the department for helicopter pilots was moved to Niš. I had almost completed the practical training there when the military commanders began to make things difficult for me because I was supposedly a Slovenian citizen. I was forbidden to fly, and the explanation was that the federal army could not educate foreigners. It is interesting that this happened in June 1993, one month before the end of my studies, when I already had 197 hours of flying out of the required 200-hours quota. The diploma was important for me, but I couldn't obtain it without practical training. So I asked for one week to arrange citizenship of the Federal Republic of Yugoslavia. I travelled to Vrulja in the municipality of Pljevlja, the birthplace of my father in Montenegro. The clerk in the register office found my father's citizenship certificate, and based on it he issued a certificate of citizenship of the Federal Republic of Yugoslavia in my name.

I returned to the academy in Niš with the certificate, hoping that this would be the end of bureaucratic hurdles. But there were further obstacles, and this time they were obviously ideological in nature. There was a suspicion that I'd return to Slovenia with the helicopter pilot diploma, which for the army would have meant money wasted on my schooling. My mates at the academy also believed that I'd return to Slovenia with my pilot diploma once I completed the academy. And indeed I didn't do much to conceal my wish to return home.

The education of military pilots is free and very expensive for the state. Therefore, on completing schooling, before receiving a diploma, a graduate must sign a contract stipulating certain years of work for the army. At that time, this period was 16 years (twice the number of years of schooling), and during this period you were not allowed to work in civilian employment, or, if you wished to do so, you had to reimburse the entire cost of the eight years of schooling. Five generals convened to decide on my case, and they voted on whether or not to give me a diploma. The result was "no," 3 to 2. Only after one of the generals intervened in my favor (it was Blagoje Grahovac, at that

time the head of the Flying Academy and now the consultant to the President of the Parliament of Montenegro) and warranted that I'd not return to Slovenia, I managed to obtain the diploma. So I became officially a helicopter pilot in time, I obtained the diploma. Immediately after that I was appointed as lecturer-instructor at the academy in Podgorica, since in 1993, the training for plane and helicopter pilots was moved to Podgorica.

But I secretly hoped that soon after completing the academy I'd return to Slovenia. I missed Slovenia, I was born there. It's also what I wanted to do when I became a lecturer-instructor in Podgorica. I persuaded my retired father,² who after thirty years of life in Slovenia wanted to return to Montenegro, not to sell the apartment in Slovenia, because I intended to return as soon as possible. Only when all the possibilities for my returning to Ribnica evaporated – among other things, I had a lot of problems with documents, since I didn't have an ID card or passport until September 1995 – my father eventually sold the apartment and moved to Montenegro in 1998. If there had existed the slightest possibility of my returning, my father would never have sold that apartment. There was another reason, too, why I wished to return to Slovenia. I had a girlfriend of many years in Ribnica, and I wanted to marry her. She visited me several times in Montenegro, but our relationship died out in 1995 because we couldn't marry and live together. I wanted to return to Slovenia by all means, so I didn't want her to come to Montenegro and live here with me. After the erasure I first went to Slovenia in late December 1995, on a time-limited visa, which I obtained based on an invitation letter from my parents.

Since then, I've visited Slovenia around fifteen times. On five occasions or so I had problems with obtaining an entry visa, and once the Slovenian embassy rejected my visa application; that was when I wanted to attend the twentieth anniversary of graduation, to which I was twice invited in writing by my schoolmates from elementary school. My other trips were facilitated, thanks to the Schengen visa, which I obtained when I switched to civil aviation in 2007. At the moment, I work for the private company Vektra Aviation as an AW-139 helicopter pilot.

I enjoy going to Slovenia, it's my country and I feel at home there, although my parents have moved. In 2002 I obtained a balloon pilot's license in Slovenia from the Administration for Civil Aviation of the RS, and bought my first balloon for four persons from the Association for Free Flying in Kostanjevica na Krki. Balloon flying is my hobby, and I now endeavor to promote this sport in Montenegro. I was the main organizer of the third international balloon festival, with most participants coming from Slovenia.

I got married in 1998, but my marriage didn't last long; it ended in 2004. I have a son, he is nine.

Seven years ago I went to the administrative unit in Ribnica to ask about my status and the possibility of regaining it. But this inquiry was not a pleasant experience, I

² The father is retired for disability, since he suffered from a psychological disorder in June 1991, during the war in Slovenia and spent two months in a psychiatric hospital. He is still under medical treatment preventing his condition from deteriorating. He is psychologically very weak, and the most likely reason for his condition is stress caused by the circumstances at that time and the fact that his son was not there with them when this was happening.

don't like to remember it. The clerk first tried to convince me that it was me who unregistered from there. I know very well that I didn't, so I insisted that she check it. She then pulled out my file where next to my name there was added "foreigner" in pencil. Then this clerk dressed me down and insinuated that I had come back only for the compensation. I couldn't believe what she was saying. I called the chief, Janez Henigman, who was very kind, since he knew my parents. He advised me to check the Aliens Act, and he also gave me the form you need to fill out to obtain status in Slovenia as a foreigner. I don't know why the clerk couldn't have done that. Do you really need to know someone's parents to be kind to him?

Veronika Bajt

**MORE THAN ADMINISTRATIVELY CREATED
“FOREIGNERS”: THE ERASED PEOPLE AND A
REFLECTION OF THE NATIONALIST CONSTRUCTION
OF THE OTHER IN THE SYMBOLIC IDEA ABOUT “US”**

1. Introduction

If we consider the erasure through a prism of legal issues and economic dimensions and attempt to interpret it as a social fact, we will soon find ourselves mired in the omnipresent atavisms of “us” and “them” which are generated by the processes of national identity creation, needed for the smooth operation of nation-states. Namely, the erasure is not something that happened to “them,” it happened to all of “us” (all residents and citizens of Slovenia), mirroring the very definition of “Slovenianness.” Understanding how identification with a nation takes place, how nationalist discourses function, and how the mechanisms of exclusion and of distinguishing between “us” and “them” are reproduced is not only crucial for an understanding of the socio-historical circumstances and the sequence of events that led to the erasure, but also helpful in understanding why and on which grounds this conspicuously unlawful measure can still be exonerated 18 years later and why the erased people are still demonized.

My assumption in writing this chapter, a very optimistic one, although not very plausible, is that legal status for all erased people will eventually be regularized, that soon the principle of legality will no longer be a source of controversy, that injustices will be remedied, rights restituted, the reimbursement accepted as a legitimate and the only possible method of at least symbolically redressing the damages suffered, and that those responsible for the erasure will be held criminally liable.¹ Therefore, in this chapter I will not thematize the act of erasure and its many and serious consequences for people who have been marked by it

¹ This assumption is our standpoint as to how the consequences of the erasure should be resolved.

for good. I seek to answer the broader question: Why did the erasure happen? Why did it affect a specific group of people? And why has it remained a bone of contention for so long, while its consequences are still unresolved, the erased people stigmatized and their efforts still largely misunderstood by the broader public? The context that enabled the erasure of people from the register of permanent residents is here understood more broadly: the erasure is here analyzed as an until now overlooked component of the perception and definition of Slovenian national identity, or put differently, as an integral part of the construction of Slovenian national identity in the frame of establishing Slovenia's national sovereignty. It should come as no surprise, then, that when in 1991 the delegates in the National Assembly rejected the proposed amendment to the Aliens Act, which could have prevented the erasure, they did not put forward any sound argument to back up their decision (cf. Mekina 2007). The reason is that there was no need to justify such a decision. It is this fact that I take as a challenge in writing this chapter: the challenge of explaining the erasure as part of (Slovenian) nationalism, as an expected response of the ruling elites to the processes of wider socio-political restructuring that accompanied the change of the economic system and, more importantly, the establishment of the Slovenian nation-state. My argument is that the nation-state is sustained by suffusing public discourse with a nationalist logic that appropriates all dimensions of social and political activity, without its implicit presence being noticed, let alone problematized. Accordingly, we should not be surprised at the fact that the EU and other international or supra-national institutions for the protection of human rights have consistently avoided "interfering with the internal affairs" and restricted themselves to issuing benign warnings that the erasure represented a violation of human rights.² The EU is not an extraterrestrial organism embodying rights and democracy, but simply a collection of nation-states, each adhering to the logic of the maximization of advantages and speculating when and how the condemnation of "a certain Slovenia" for erasing "certain people" could have an adverse effect on their own "internal affairs."

One pitfall associated with the theoretical attempts to explain the erasure is a failure to reflect on the framework of the nation-state whose establishment and existence are predicated on nationalism. If we understand the erasure as an expression of nationalism *par excellence*, it no longer appears as a one-off transgression of human rights that can be resolved by implementing the rulings of the Constitutional Court or excused in retrospect and "for good" through the confession of the state bodies that they committed an unlawful act. What makes it dangerous and problematic is that in essence the erasure represents a logical and integral component of the nation-state, which is artificially homogenized, i.e. created as a state *of* a specific nation and *for* that specific nation. Accordingly,

² By no means should we overlook the contribution of the various UN bodies and the Council of Europe, which helped expose the erasure and designated it a violation of human rights. And yet, it is important to know that the powers of these actors are limited, restricting them to the issuing of warnings.

the erasure itself and the response to it represent a litmus test for the Republic of Slovenia, its ruling structures and all of its citizens and residents. The fact that the erased people were stigmatized and demonized as "speculators," "aggressors," or national traitors, that they were ethnicized into many variants of "non-Slovenians," that a public apology to the erased people is still nowhere in sight, that the erasure has only recently become the subject of public discussion thanks to the activism of courageous individuals, only reinforces the argument that the erasure represented a deliberate and well-considered tactic on the part of the political elites governed by the spirit of "nationalizing nationalism" (Brubaker 1996).³ What was at work was the ethnic definition of citizenry. Accordingly, in this chapter my interest goes beyond specific policies that are propounded by specific individuals or political elites, since I consider nationalism as a complex phenomenon also comprising the wider internalization of national identity in the society.

2. Nationalism and (neo)racism

We are operating here within a context in which the state and citizenship, no less than politics, equality and functioning in general, are perceived through the categories of blood, land, grandfathers, inheritance and heritage. In the light of these categories there is being produced an infinite chain of differentness, foreignness and the foreign, which enables both "deculturalization" and dehumanization of anything that is non-ours. [...] In the core of racism is embedded the singular argument about the difference between us and them, the latter most frequently being referred to as "those" who are by virtue of this or that not only different but also "worse," so they should be - in the name of some principle - got rid of, in this or other way but preferably "for good." (Kuzmanić 1999, 11; 62)

Although the existing literature on the erasure has employed the concepts of both racism and nationalism to explain the exclusion practices (e.g. Dedić et al. 2003, Zorn 2005, 2007, 2009, Čuček 2006), we should point out that "common sense" often rejects the concept of racism in such explanations as inapplicable to the contemporary practices of exclusion, on the ground that it is too specific because of its historical and geopolitical association with racial segregation in the USA and South Africa, and particularly the Nazi Nürnberg legislation and the Holocaust. As a consequence, all explanation of the erasure, or rather theoretical elucidation of the erasure using the concept of racism, has not been broadly accepted as an explanation that could clarify this phenomenon, because it encounters resistance arising from the deeply rooted, one-sided understanding of racism as the classic, i.e. biological or scientific racism of the 19th century. However, in defining the racism of the past several decades, various theorists

³ A "nationalizing" nationalism implies the operation of the nation-state or its political (and other) elites which promote one, chosen nation, national identity and national culture using state institutions and levers of power.

resorted to prefixes such as cultural or new racism, or neo-racism, emphasizing that biological differences have been replaced by presumably insurmountable cultural differences (Balibar 1991a).⁴ Post-colonialism and the civil movements of the 1960s further introduced the theory of modernization, which replaced the old idea of the hierarchical ordering of the human race into biologically different racial types with one propounding the cultural supremacy of Europeans. As a result, non-Europeans were no longer seen as fatally marked by their biologically determined physical characteristics, but were relegated to an inferior position by virtue of their different history, culture and presumed lower level of "social development." Today, cultural differences conveniently replace the classical biological racisms of the past, producing the schizophrenic situation in which racism is omnipresent but racists are rarely exposed.⁵ Cultural racism is an ingredient of our everyday life easily identified in media and political rhetoric, but also frequently encountered within academic circles (cf. Janko Spreizer 2002).

Although at first glance it may seem, as some theorists argue, that a rigorous distinction between racism and nationalism is in order, the disconnection of the two concepts would be premature.⁶ "Quite often it is not possible to draw a clear-cut demarcation line between racism on the one hand and nationalism, chauvinism and xenophobia on the other. Researchers have concluded that these phenomena are closely interrelated and should be taken as a singular 'ideological group'." (Kuzmanić 1999, 70; see also Balibar 1991b). After all, we should not forget the central role of racial classification and racist discourse in the development of nationalism, particularly in the European context. The link between racism and nationalism is also obvious in the case of Slovenia, where the erased people, as well as migrants, the Roma, Muslims etc. are constructed, discriminated against or even persecuted as the undesired Other, frequently on racist grounds.⁷

To understand how these phenomena function, and particularly how they are "normalized" through the widespread logic that xenophobic excesses are simply an "understandable" reaction of an (allegedly) threatened group (see, for example, Jalušić 2001), the answer to the question of how the erasure was possible could be helpful. In seeking this answer, we should not concentrate solely on the legal and administrative issues; the questions that should necessarily be

⁴ For an overview of contemporary racist practices and a comparison of the notions of racism and neo-racism, see, for example, Baskar (2004).

⁵ Undoubtedly, racism in the classical biological sense of the word is also still present; its most notorious protagonists are white supremacists, e.g., the Ku Klux Klan and Blood & Honour; the latter is widespread across both Europe and Slovenia. However, even these openly racist groups and movements usually adapt to their social environments, primarily to avoid legal sanctions, so they resort to more "politically correct" rhetoric that disguises their expression of racist hatred by wrapping it in discourses about cultural and religious differences; accordingly, their attacks on minority and marginalized groups (primarily migrants) are presented as motivated by "civilizational" discrepancies between "us" and "them."

⁶ For more on the complexity of links between racisms and nationalisms see, for example, Balibar (1991b) and Mosse (1995). While Mosse argues that racism succeeded in transforming theory into practice with the help of nationalism, although nationalism can exist without being linked to racism, Balibar defends the thesis that in order to understand the link between racism and nationalism what is necessary is precisely the dialectics of the unity of opposites, since the articulation of the two cannot be analyzed using classical schemas of causality.

⁷ For a discussion of the construction of national identity based on the concept of the Other, see Triandafyllidou (1998).

asked is what Slovenia is and who the Slovenians are. The explanation of the erasure would therefore be deficient without a profound analysis of the phenomena that I here denote with the term nationalism. In contrast to racism, nationalism first assimilates the Other, or at least makes an attempt at assimilation through the (more or less) forced homogenization of the national community within the boundaries of a nation-state.⁸

3. "Belonging" to a nation and/or nation-state

Nira Yuval-Davis (2007) highlighted the importance of situating citizenship in the wider context of contemporary politics of belonging, which adds to citizenship identities and emotions associated with these identities. The case of Slovenia shows that the issue of distinguishing between citizenship as formal status and belonging in the sense of national (i.e. ethnic) identity is something that has not yet been overcome. To examine this, we should first deconstruct the notion that Slovenian national identity is a civic identity. Proof to the contrary lies in the invisible wall within the Slovenian nation as a civic category (i.e. *Staatsnation*) separating those citizens of Slovenia who are not recognized by "true Slovenians" as members of the Slovenian nation (as an ethno-cultural category, i.e. *Kulturnation*). The erasure also revealed that Slovenian citizenship had been defined in terms of ethnicity rather than by taking into account the territorial principle; had the latter been the case, permanent residents would have automatically become Slovenian citizens rather than erased residents. This logic, underlying the exclusion of the erased people from automatically acquiring Slovenian citizenship, is also manifested in the exclusionary attitude adopted by Slovenia as a nation-state and the Slovenians as its "core nation" towards the Roma, Muslims, immigrants, as well as different marginalized minorities (e.g. members of the LGBT community, the disabled and so on).⁹ The very functioning of the Slovenian state institutions, policies and even "public opinion" confirms the complex interdependence between the "core nation" and deprived minorities, which are excluded through the nationalist and racist logic of "non-belonging." The erasure only upgraded the "usual" discriminatory practices, marginalization and stigmatization of the Other by adding an excommunication *sui generis* that "homogenized" the nation-state practically overnight.¹⁰ By depriving the erased people of their legal resident status and replacing it with "alien" status, the state ad-

⁸ In principle, racism excludes the Other who is classified as "inferior," although Balibar (1991b) also describes "inclusive" types of racism whose intention is not to purge a society of inferior races, but to hierarchize society and make distinctions based on the principle of belonging to specific categories defined in accordance with the racist principle.

⁹ Although the constraints of space prevent me from discussing the entrapment of nation-states in the masculinized heteronorm, let me point out the nationalist practices of exclusion of socially vulnerable and/or marginalized groups, which frequently become the targets of stigmatization. For more on gender studies in connection with nationalism, see, for example, Nagel 1998 and Yuval-Davis 2000.

¹⁰ Another important indicator is the fact that throughout these years members of other nations of the former Yugoslavia who had acquired Slovenian citizenship never expressed their support for the erased people. I cannot discuss this in further detail in this chapter (see Petković in this publication), but it is a symptom of the total exclusion of the erased people – they do not "belong" anywhere or to anyone.

ministration homogenized the population structure, bringing it closer to the nationalist ideal of equating the nation and state.¹¹

That Slovenian citizens and political leaders mainly perceive Slovenia as the country of the Slovenian nation, i.e. as a nation-state, is a fact supported by ample evidence, so it does not need further proof, but it does require a more detailed explanation.¹² My point of departure in this chapter is the argument that the erasure was part of a “nationalizing” nationalism defined by Rogers Brubaker (1996) as characteristic of the new nation-states, particularly the post-communist states of Central and Eastern Europe. I expand upon Brubaker’s thesis, since nationalizing processes were also at work in the “old” nation-states of the “West,” which gradually and systematically homogenized “their” nations, although this is too readily overlooked by theorists.¹³ Namely, to be able to explain the erasure as an intrinsic part of the functioning of the nation-state, it is necessary to go beyond the rigidly defined differences between “old” (western, political) and “new” (eastern, ethnic, cultural) nationalisms and escape the confinement of unproductive theoretical dualisms. The detailed explanation of theoretical discrepancies below serves to show that all modern nations comprise elements of both types; the political and the ethnic dimension. By placing the erasure within the framework of functioning of the nation-state and its nationalizing practices, we can show the intertwining of both elements of nationalism, i.e. civic (political) and ethno-cultural.

Early theoretical attempts to explain the differences between the two types of nationalism resulted in a broad acceptance of the bi-modal approach, emphasizing the distinction between “western” and “eastern” nationalism, or the western and eastern patterns of nation-building. The contrast between them became

¹¹ The problem is even more complex and would require an elaboration of the procedures involved in establishing the institution of Slovenian citizenship (for more on the nationalization of the right to citizenship, see Tuccillo Castaldo 2007). The state of Slovenia first created a dividing line between those citizens of the disintegrating Yugoslavia who acquired Slovenian citizenship automatically (i.e. ethnic Slovenians), and those Yugoslav citizens who were categorized as not Slovenians and thus relegated to the status of temporary foreigners, that is residents who were equated with the former in their duties and rights until the deadline for citizenship application expired. The latter, naturally, had to apply for citizenship. Some among them (those whose applications were rejected) and all others who did not apply for citizenship were categorized by the state apparatus in February of 1992 as foreigners and erased from the register of permanent residents.

¹² That Slovenia is the state of the Slovenian nation is confirmed, among other things, by the Constitution, where the establishment of the state is explained by way of “the fundamental and permanent right of the *Slovene nation*, to self-determination; and from the historical fact that in a centuries-long struggle for national liberation *we Slovenes* have established *our* national identity and asserted *our* statehood” (Constitution 1991, emphasis added). Another proof is the proclamation of Slovenian as the official language, with only Italian and Hungarian being on a par with it as languages of the officially recognized national minorities. At the same time, the special status of Slovenians is also obvious from special rights and privileges granted to the Slovenians without Slovenian citizenship. This proves the priority that is given to a national (ethnic) understanding of “belonging” over a civic, territorial one.

¹³ Ethnocentrism is not only part of public and media discourses, the educational system, public opinion etc., but even the academic circles are not immune to it. It was primarily early theorists, mainly historians and philosophers who, taking their own assumed (ethnic, national, cultural etc.) superiority and central positioning as the point of departure, discussed nationalism from an “external” position and described it as a characteristic of “young” ethno-culturally based nations. Nationalism in “western” nation-states was thus characterized as liberal, political and territorial (e.g. France, Great Britain, Spain etc.), but described as dangerous when recently formed nation-states based on ethno-cultural principle were in question, and defined as “eastern type” nationalism – which, viewed from the classical Eurocentric perspective – implied “everything else.” The distinction between “western” and “eastern” nationalism was introduced by Hans Kohn (1944), who described the difference between progressive (rational) and reactionary (mystical) traits of the two types, also known as the Kohn dichotomy. Ernest Gellner (1983) similarly writes about different types of nationalism: classical, liberal western nationalism or *Landespatriotismus*, then Habsburg, eastern type nationalism, and diaspora nationalism. Eric Hobsbawm (1990) makes a distinction between the civic-democratic political model, on the one hand, and the ethno-linguistic model, on the other. Contemporary studies, however, have transcended this dichotomous understanding (e.g. Özkırımlı 2005 and Hearn 2006).

so common that we easily overlook the fact that it was constructed (Calhoun 2005). Western nationalism supposedly rests on a political or civic model of nation-building, and the eastern on a cultural or ethnic model.¹⁴ The normative implications of this distinction are reflected in the historical examples of both types, since the point of departure is the "old" nations of the West, whose historical development presumably represents an ideal-typical model of the establishment of a nation-state. Western, territorial nation-building is characterized by a top-down approach to national identity formation, stemming from the political power center; here the state apparatus "creates" a nation within the borders of a nation-state. In his monumental study *Peasants into Frenchmen*, the historian Eugen Weber (1976) describes the role of modern bureaucracy, universal education, military service and regional economic integration in the establishment and institutionalization of the French national identity. The ethnic type of nationalism, on the other hand, is exemplified by the formation of Germany or Italy, where it was the national movements that strove for the unification of fragmented, discrete territorial units into single nation-states based on common national identity. In this model, the method is bottom up, and the formation of the nation predates the formation of a nation-state. This principle was also at work in the case of Slovenia, where Slovenian national identity was formed first, followed by the state of Slovenia. And yet, the construction of the Slovenian nation-state also contains elements of classical, territorial-type nationalism, so it is necessary to discuss these processes in all their complexity, and taking into account their interaction.

3.1 Ethny ("etnija") – "narod" – nation ("nacija")

The "problem" encountered by Slovenia was that, because of the late formation of the nation-state, the political elites could not implement the process of civic homogenization using the pattern of the "old" nations (deemed unproblematic only because it is distant in time), but the unification of the "body politic" was undertaken by nationalist-oriented cultural and political elites in the late 20th century, at the time when national identities had already been established based on "ethnic cores." In other words, in accordance with the nationalist pattern of state formation, Slovenia was created as the state of the Slovenians and for the Slovenians, and not as the state of *all* residents living within its geographical borders.¹⁵

¹⁴ The dominant European discourse on nationalism therefore created a Eurocentric dividing line between the two or more types of nationalism. What is problematic is the value-laden understanding of the political type of nationalism as *good*, and the ethnic type, by contrast, as inevitably *bad* and *dangerous* nationalism. This prejudice is clearly manifested in the erroneous interpretation of the war on the territory of the former Yugoslavia, characterized as an outbreak of ancient ethnic conflicts, while the political dimension was overlooked.

¹⁵ This is well illustrated by the incongruence between the fact that all permanent residents of the Socialist Republic of Slovenia voted in the plebiscite on Slovenia's independence in December 1990, and the fact that a part of them were then erased in February 1992. The erasure pointedly shows how the inclusiveness principle was indispensable to achieving the greatest possible community consensus "for independence," since it was precisely the mass support that the political elites of the time needed to be able to legitimate the procedures that in June of 1991 resulted in the declaration of Slovenia's independence. This inclusive civic principle was later dropped and superseded by the ethnic perspective on "Slovenianness," which also found expression in citizenship legislation.

Slovenia is by no means an exception in this respect, given that the nation-state is an ideal type espoused by all nationalist movements arguing that each nation should have its own state. The problem emerges in connection with the understanding and definition of the nation, which determines the question of “belonging”; defining the “us” and “them” and characterizing Others who are excluded from the nation. Thus, the concept of the nation is understood in various ways. The controversial conflation of nation and state is particularly obvious in the Anglo-Saxon world, where the nation is the state and the state is the nation.¹⁶ As regards Slovenia, the predicament is compounded by the distinction in the Slovenian language between two words – *etnija* and *narod* – signifying the nation in the sense of ethny or ethnic group, while the theories of nationalism make a distinction solely between the ethnic group (i.e. either *etnija* or *narod*) and the nation (i.e. *nacija*). Let me therefore recapitulate in brief the basic discrepancy between the terms that are used in the theories of nationalism, as well as in their application to concrete examples, such as the present study of the background of the erasure through the prism of nationalist exclusionary practices.¹⁷

The term “nation” (*nacija*) is connected with the state, the political dimension of nationalism and with modernity, so in English, for example, there is no clear distinction between the nation and the modern nation-state. This reflects the western historical experience of nation formation, which followed the territorial, political principle. The concept that is usually expressed in Slovenian with the term *narod* and less often *etnija* or ethnic group, is in literature most often denoted by the French term *ethnie*, or its Anglicized version *ethny* (see Smith 1986, van den Berghe 1987). Other languages, for example, German, make a distinction between the compounds *Staatsnation* and *Kulturnation* (Meinecke 1970).¹⁸ This precise distinction is of basic importance in Slovenian as well, where at least three terms are used to describe collective belonging: *etnija* (ethny), *narod* and *nacija* (nation). While *etnija* and *nacija* are Slovenicized borrowings from other languages, the term *narod* reflects the origin of naming imagined communities as supposedly sharing certain characteristics and peculiarities that are understood as inherited by birth, as “given” and “natural.” Since the Slovenian term “*rod*” denotes a family origin, a lineage, this specific perception of *narod* prevents “newcomers” from ever truly being accepted as “belonging” to the Slovenian nation.¹⁹ While political nations

¹⁶ The term “nation” in the context of the US, for instance, means both a nation and a state. At the same time, the term “nation-state” emphasizes the fact that states are always also national communities, excluding in this way nations without a political expression within a specific state (cf. Guibernau 1999).

¹⁷ Rudi Rizman (1991), the editor of the first collection of papers on ethno-nationalism in Slovenia and an important contributor to the academic interpretation of nationalism, also drew attention to the significance of the distinction between these terms. For a more detailed analysis, see also Kovačič (2005).

¹⁸ Another related term is *Volksnation*, which expresses the interlinking of the community based on myths of a common origin; *Kulturnation* is an expression where a specific community is imagined as being linked through common culture; *Staatnation* is based on citizenship (Yuval-Davis 2000).

¹⁹ The etymological origin of these expressions is also interesting. The Greek *ethnos* denoted a group of people of the same origin, while *ethnikos* was used to denote “foreigners,” meaning those who did not belong to the group linked through blood ties and religion. The Latin origin of the term nation (derived from *nasci*, to be born), is also related to the idea of blood ties, although the Romans did not use this term to denote themselves but to denote “foreigners,” and the term was pejorative. The English term nation lost negative connotations during the Middle Ages and gained wide currency from the 18th century on.

are formed through the operation of nation-states, their institutions and collective political life within a specific political system – belonging to a nation is therefore elective – cultural nation, *narod* is presumably united by the spirit of community arising from common territory, heritage, language, religion, history, culture and so on; as a consequence, belonging to the *narod* is “given.”²⁰ The chasm between the meaning of the two concepts is reflected in the erasure because this distinction is of a crucial importance particularly in the Slovenian context.

The drawing of distinctions between ethnic and political nations, or between two types of nationalism, the chauvinism of racial exclusion and supposedly civic elective patriotism, all too easily degenerates into normative judgments about good patriots and bad nationalists. In the concrete example of Slovenia, a good illustration of this involves the various “patriotic” movements and organizations that protect only one, selected and promulgated community and identity, while denying rights to all other nations and ethnicities living in Slovenia. More importantly, they see nothing problematic in their extreme logic of exclusion, since in their view they are only “defending Slovenianness.” If nationalism is understood as the opposite pole of patriotism, it is by definition bad and beyond “us,” while what “we” pursue is patriotism, believed to be a positive value.²¹ Such an understanding makes the latter potentially dangerous, because only rarely do people dare challenge patriotic rhetoric. The resulting logic is that “nationalists” attack, while “patriots” only defend, and it is precisely the idea of the necessity to “protect” ourselves from the Other that is an important dimension of all exclusionary ideologies and socio-political practices.

The erasure raises an important theoretical question concerning the question of “belonging” to a specific nation and state because the erased people were not given the choice; instead, the identity of “foreigner” was imposed on them. At the same time, they were deprived of all rights that they could have enjoyed had they remained permanent residents of Slovenia, meaning officially and symbolically acknowledged members of the Slovenian state. The stories of erased people also often illustrate the complexity of national identity, demonstrating that it may appear unproblematic and even “natural” only until we are

²⁰ It is crucial to emphasize that none of these concepts is connected with a single definition, but rather, theorists may take quite contradictory positions. A rough categorization would leave us with subjective and objective definitions of the nation, with contemporary theorists attempting to come up with a productive fusion of the two when explaining this concept. “Objective” definitions were primarily used by early theorists who tried to identify and enumerate all characteristics of the nation; the most often mentioned were language, religion, territory, common history, culture and origin. “Subjective” definitions, by contrast, emphasize the elements of self-awareness, loyalty, collective will and solidarity, highlighting the significance of electivity, i.e. a personal decision concerning national affiliation, by which they upgrade the objective definitions already surpassed in the literature. The most famous is Anderson’s (1991) definition of the nation as an “imagined community,” and even more relevant is Connor’s argument that “what ultimately matters is not *what is* but *what people believe is*,” so “a subconscious belief in the group’s separate origin and evolution is an important ingredient of national psychology” (1994, 93). Connor, in other words, emphasizes that, although the essence of the nation is indeterminable and elusive, it nevertheless represents a strong psychological bond that connects the “members” and distinguishes them from other nations.

²¹ These types of differentiation in theories of nationalism are frequently a consequence of the overlooked fact that most theorists were members of “old” or “western” European nations, i.e. the Anglo-Saxon academic environment. Consequently, all the negative traits of xenophobia, chauvinism, nationalism and so on were attributed to the “latecomer” nationalisms of the “East.”

compelled to reflect on what it means to be a member of a nation. Being designated, against their will, as non-members of the Slovenian nation (understood both as *narod* in the narrow, ethnic sense of the word and as *nacija*, thus citizenship from which they were automatically excluded), the erased people were forced to evaluate anew their feelings of belonging.²² To illustrate this, we give below several excerpts from interviews with the erased people, which reveal the ambivalence of national identity. Fatima, for example, spoke of the difficulty of determining her ethnicity, because at the time when she was born the idea that she was a Yugoslav sufficed for her to develop a sense of belonging, so ethnicity was not inscribed on her birth certificate:

My father was joking when I was born ... My father is a Croat, so he said, "Write down Martian." I mean, when they asked about my ethnicity. So I had there [in her birth certificate] a dash, I didn't have Slovenian, or Croatian, or any ... Like that, we were Yugoslavs, it's how it was then. (Fatima, 35)

Grappling with the long-lasting (for many still uncompleted) procedures associated with legal status regulation, certain erased persons resorted to ingenious solutions which illustrate their instrumental understanding of national identity. Put differently, some tailored their identity to the situation, opting for the one that was the most advantageous and associated with fewest obstacles. For example, the erased person with the pseudonym Željko, who had no status or papers, decided to apply for Bulgarian citizenship because his father had connections with Bulgaria:

And I didn't have any papers. Nothing ... So I wondered what to do. And I came up with a winning formula – and it was, I finally remembered my nation, and it was, in fact, that I began to function in the national way. So I went to the embassy in Bulgaria, which at that time had already started accession negotiations with the EU. The Bulgarian passport was already in the EU. Although they still were not in the EU, but you could travel with the Bulgarian passport everywhere. So I went there and I told them that I was ... a Bulgarian, like that, that my father was a Bulgarian citizen. [...] Some of these papers, not many; it was like two or three papers that we had at home, I saw them. So I wrote to my sister to send me those. She sent it by post. Then I went there with those papers. (Željko, 49)

²² Here I emphasize the right to residence, which may or may not involve the feeling of belonging to the environment of a specific national community. Another issue that is very important is the interpretation of the right to national identity of any kind (or none at all). The erased people were deprived of this right and branded as disloyal because they did not apply for Slovenian citizenship. Along with being denied the Slovenian national identity, they were ascribed membership of an arbitrarily chosen nation of the former Yugoslavia, which did not necessarily match their personal affinities.

4. The construction of national identity and the administrative removal of the Other

That was when I started to, in order to adapt to the situation which I didn't like. To me, this situation, that I was declared a foreigner in my own country, I didn't like it, but I had to swallow it. (Tomislav, 59)

The extended analysis of nationalism in connection with the erasure serves to emphasize that differentiation based on ethnicity is not a product of the last twenty years, thus not something that emerged in 1991 with Slovenia's independence; yet what is important is that after 1991 it became part of state practices. Slovenian national identity had been shaped through the Slovenian national movement of the 19th century, long before Slovenia became a sovereign state. It provided an invaluable groundwork without which Slovenia would probably not exist today, or it would be a completely different country. To think about Slovenia disregarding "Slovenianness" and Slovenian nationalism is therefore impossible, yet owing to the "invisibility" of everyday "nationalizing" practices, nationalism is nonetheless frequently viewed exclusively through the prism of xenophobic and chauvinist excesses. Therefore, for our understanding of the erasure, reflecting on important questions, such as the discussions on Slovenian citizenship that were held in the early 1990s (see Zorn 2007, 2009), is as important as explaining the issue of national identity as an indispensable part of nationalistic practices of banal nationalism (see Billig 1995). In other words, the line dividing the "allies" and the "enemies" of the erased, or our understanding of the erasure and our attitude towards the erased people also defines, after all, the identity of each of us and our perception of "Slovenianness" and Slovenia as a state. The erasure holds up a mirror to the "Slovenian nation" and the state of Slovenia, and the task of each individual is to reflect on his/her own location vis-a-vis both poles of belonging. Only the recognition that the blame lies not with the erased people but with the state (both its political elites and its administrative apparatus), and that it is not important who the erased individuals are, since what is involved is a principle of exclusion that should be invariably and *a priori* opposed, empowers us to deliberate on our own national identity and belonging. And only on this basis is it possible to overcome the entrapment in the nationalist notion of "us" and understand how and why the Other is being constructed. The notion of the Other is inseparable from the concept of national identity, which acquires meaning only when confronted with the Other because the sense of belonging is relative.²³ It

²³ This applies primarily to important Others, who can be either internal or external Others (for more on this, see Triandafyllidou 1998). The erased people furnish an interesting example of the transformation from the internal to the external Other. As permanent residents of Slovenia born in other republics of the former Yugoslavia, they first constituted symbolic internal non-members (although as Yugoslav citizens they were legally equated with Slovenians). The erasure turned them into the external Other, although many continued to live within the borders of the newly formed nation-state of Slovenia, which treated them as external non-members. The dissolution of Yugoslavia and the emergence of new nation-states brought about the transformation of former compatriots into "foreigners." These new relations were further exacerbated when Slovenia joined the EU and the Schengen area, which introduced still another distinction between members (Slovenian citizens) and non-members (citizens of "third countries").

is not that members of a specific nation are similar to each other; what matters is that they feel *closer* to each other than they do to the Other. National identity in itself has no meaning, but it acquires one when a nation is confronted with other nations. The burden of responsibility for the erasure therefore lies with all of us, even though we did not take part in it directly. By not reflecting on our own national “belonging,” we, as citizens of the state that performed the erasure, enabled the erasure and then failed to react to it.

The suffusion of Slovenian national identity with the ethnic dimension and the idea that one is “born into the Slovenian nation” has been normalized for “Slovenians” as something naturally given.²⁴ Despite formal proclamations of Slovenia being a democratic and plural society in which many cultures, languages and identities coexist, it promotes its national identity through the prism of the majority Slovenian nation. That is to say, not the nation as a collective of individuals based on a nexus of civic identity and affiliation to the Republic of Slovenia, but the nation as an imagined community of people connected through invisible ties of alleged ancestry, common history, collective memories, myths and symbols. The schizophrenic nature of Slovenian nationalism lies precisely in the fact that, although all essential elements of Slovenian national identity can be “acquired” (language is the best example), meaning that in their essence they are potentially civic in nature, “foreigners” are nevertheless never truly recognized as “true Slovenians,” because the idea of Slovenianness is still archaically ethnic.²⁵ Therefore, even those erased people who have expressed their attachment to Slovenia are not perceived as members of the Slovenian nation, even though attachment is one of the crucial components of subjective definitions of a nation, in which belonging is based on the principle of electivity and implies solidarity, loyalty, a kind of everyday plebiscite (Renan 1994) or a consensus on belonging to a specific national identity. Attachment to a nation can manifest itself in quite banal ways, such as television watching with a kind of nostalgia, as one of the interviewed erased persons who had to leave Slovenia explained:

Down there I watched [television] Slovenia non-stop [...] We received the signal, Slovenia 1, 2, A kanal and a certain Vaš kanal Novo mesto. I watched it, those four channels. There was a match played between Bosnia and I don't know who, and there was a match in Slovenia too at the same time. I watched Slovenia, I

²⁴ I put the term “Slovenians” in quotation marks to draw attention to the construction of a collective identity for “members” of the Slovenian nation. Our denoting of a specific group of people as Slovenians does not imply that we automatically subscribe to the understanding of the nation as an unchangeable historical community. It rather signifies the “common sense,” realistic understanding that there exists a distinct Slovenian nation that is separate from other nations. Although the term Slovenians could denote or, preferably, should denote, all citizens (if not all residents) of Slovenia, reality is different. Its meaning stems from the ethnic understanding of the nation, or *narod*, so it denotes only those citizens who, in accordance with the ethnic and cultural criteria within the nationalist understanding, whatever these are, fit into the definition of the “members” of a nation. For more on how public opinion surveys reflect the understanding of who “true Slovenians” are, see Bajt (2005).

²⁵ I put the term “foreigners” in quotation marks to emphasize a special usage of this notion often found in public discourse. Tonči Kuzmanič drew attention to this (1999, 34) when he said that the term “foreigners” denoted primarily “undesired citizens from former Yugoslavia. Otherwise, the term foreigner used in connection with e.g. Germans, Austrians, English etc., has only country connotations, and not social, cultural or ethnic.” The latter definitely applies to the erased people.

didn't watch Bosnia. I swear. I was attached. I knew personally many of those football players. (Adin, 45)

Although all national identities are created rather than naturally given, and based on varyingly convincing connections with older forms of community and on local historical connections, the fact is that some are more open to "newcomers" than others. Here I do not have in mind the varyingly intolerant state policies or public attitudes towards the Other, to which no modern society is immune; instead, I am interested in the inclusive practices and notions of "national belonging" determining the definition of a nation. What is involved is the psychology of the perception of belonging, on the one hand, and formal policies determining "members" and "foreigners," on the other. As has been established, literature usually discusses the difference between ethno-cultural and political or civic nations, whereby the former are seen as strictly adhering to ideas of common origin that exclude all Others, while the latter are presumably characterized by openness in the sense of elective belonging to a nation based on a personal choice by every individual. What is overlooked, however, is that the elements of ethnicity and culture pervade all nations (even countries apparently based exclusively on the territorial principle, without a formal common ethno-cultural foundation, for example, the USA or Australia), just as the political and civic elements pervade all traditionally understood ethno-cultural nations. The resulting ambiguities and inconsistencies are the rule rather than the exception, and their consequences were directly experienced by many erased people. One example of arbitrarily ascribed national belonging is illustrated by the case of Begeš below. Since he was born in 1920 and after the Second World War found himself in Zone B of "the Free Territory of Trieste", which later came under Yugoslavia, the Slovenian administration pronounced him a Croat, and erased him in 1992.²⁶

As to the nationality of my father, this is how it is: his mother was a Czech and his father a Hungarian. This makes him a Hungarian, but the Slovenians cannot understand that a Czech and a Hungarian cannot possibly produce a Croat. In such a case, he could as well be a Turk, or I don't know what, some XY [...] He, that is, his parents originally come from Hungary [...] at that time they moved, that is, after the disintegration of Austria-Hungary and the emergence of the first Yugoslavia, that is, [the Kingdom] of Serbs, Croats and Slovenians [...] In fact, so that ... I say it again: he came to Zone B [...] and after the end of Zone B it was Slovenia that came in Zone B, not Zone B that came in Slovenia. This means that my father did not come to Slovenia but he found himself there after Zone B came to an end. So he should have been erased at that time. (Begeš, 89)²⁷

²⁶ The Free Territory of Trieste was the post-war buffer zone between Italy and Yugoslavia, located in the northeastern part of the Adriatic. It was established by the United Nations in 1947 and until 1954 served as an interface between the Eastern and the Western bloc. Zone A, including Trieste, was administered by the joint British-American administration, and Zone B, including Koper, by Yugoslavia. In 1954 the administration of Zone A was left up to the Italian authorities and Zone B became a part of Yugoslavia, namely its republics Slovenia and Croatia.

²⁷ Given the advanced age of this erased person, the interview was conducted with his son.

4.1 The significance of national identity

To be able to understand the erasure and the long absence of noteworthy public indignation at what happened to the erased people, it is important to know that national identities are invariably deftly interwoven with daily routines, and although we are continuously reminded of our nationality, this process is mainly invisible. Reminders of “our” national identity are such a familiar part of our social environment and so normalized that they affect us subconsciously. Michael Billig (1995) picturesquely described this subliminal process by giving examples of everyday habits of language, where the use of pronouns such as “here,” “we,” “us” and the like connote a specific national community, providing daily reminders of nationhood (e.g. in weather forecasts or daily news, where weather or events are discussed in terms of “here” and “elsewhere”). Billig’s analysis indeed pertains to “established nations” (the emphasis is on Great Britain and the US), characterized not only by a long tradition of statehood but also by a multicultural or multi-ethnic notion of national identity (“American” and “British”). However, these processes are in essence the same as those that are at work in Slovenia. In both cases, the national community is constructed by politically delimiting it from neighboring states based on territorial borders, by emphasizing its separate history through public collective memory that is reproduced by the media, the education system, literature and so on, and by defining specific symbols, myths and values as national, “ours” and therefore exclusive and different. A national identity exists not simply because a group of people has been defined as a nation from the outside. People first need to go through the psychological process of identifying with a nation and must internalize the symbols of that nation. For this to be possible, the experience of contact with the nation must be congenial and must produce a feeling of security. The emphasis on security is important because it enables us to contextualize the erasure within the framework of the uncertain period of political and economic transition and the consolidation of the Slovenian nation-state, plagued by growing unemployment and facing a precarious future (for more on the influence of transition, see Zorn in this volume). Thus, during the early 1990s, public discourse followed the rapid shift in displacing the collective identity from the context of the class solidarity and brotherhood and unity of Yugoslavia towards conspicuously exclusionary practices that promoted Slovenianness (see Mihelj et al. 2009 and Bajt 2009).

A national identity is not solely a means of categorizing and determining other people’s place in the world, but invariably, and above all, part of every individual’s self-categorization as well. One important determinant of national identity is differentiation along with the complementary sense of belonging, which involves both conscious cognitive schemata as well as, and even more importantly, the early acquired and therefore unconscious ones which in “a person’s self-image (his ‘self’) connects him with the principal traits of a national group” (Musek 1994, 22). Highly relevant in this connection are certain theories of social psy-

chology, for example, social identity theory and self-categorization theory which have abolished the strictly qualitative differentiation between personal and social identity.²⁸ Every individual needs other people as a reference in the process of self-categorization, and in much the same way, social groups define their identity through inter-group interactions by distinguishing their in-groups from out-groups. Categorization processes are part of us all and help us understand the complex world, events and people surrounding us. The feeling of belonging to a nation is one of the categories that humans use in processes of (self)categorization and represents a part of our social identity. With its help we differentiate ourselves from the members of other nations and create a specific self image. Social psychology has shown that we all strive for the best possible self-image and good self-esteem. It is an integral part of our positive opinion about ourselves. This is crucial for understanding the attitude of the "Slovenians" towards the Other, including the erased people. The mechanism of differentiation enables positive self-evaluation of the "true Slovenians" in comparison with the erased people, who are primarily perceived as "not-us," as the Other, as a part "outside us" which is inferior to "our" group.²⁹ The two episodes below were experienced by the erased person with the pseudonym Monika, who crossed the border that changed from a porous republican boundary to a rigid state border crossing. This illustrates the predicament of the erased people who felt a part of the community of "us," which, however, perceived them as the Other and consequently excluded them.

I came to the Slovenian border, he looked at my ID card, took it, went to the computer and began to type. Ah, I said to myself, I'm there ... He just signed like that to the side and began, he said: "You know, madam, you shouldn't cross the border, you don't have papers and so..." [...] The police officer came out and said, "You know, madam," he said, "Madam, where are you going?" "Going home," I said, because I was returning here. "Home!" He looked at me ... and then it occurred to me. What home? "Here" is not my home, and "there" is not my home either. Where am I going, to which home? ... then all these things come to you, then you ... He said: "You know what? Do you know that I cannot let you return? Do you know what I should do now? Send you to the refugee center." (Monika, 63)

The exclusionary dimension of national belonging extended beyond Slovenia's framework. Certain erased people encountered comparable categorization in other nation-states too, where they were rejected as non-members, as foreigners. Monika was first denied her national membership by a Slovenian customs official and then encountered the same attitude at the Croatian border:

²⁸ See, for example, Turner (1985), Abrams and Hogg (1990), Tajfel (1993) and Vec (2007).

²⁹ The need for positive self-esteem becomes especially prominent during periods of uncertainty, e.g. during the economic crisis when fear of unemployment and of the deterioration of living conditions provides a convenient ground for populist provocation aimed against arbitrarily defined Others. I would like to point out that the erased people are only one portion of a mosaic comprising various marginalized groups. It depends on the socio-political and economic context and the "needs" of populist rhetoric which of these groups will be most targeted.

So I came to the border with that ID card for foreigners. And he looked at it. The Croat. And said: "Madam, where are you going?" I said that I was going to a funeral and all that. Then he said ... no! He looked at the ID card, the Slovenian ID card for a foreigner, and said: "But you are a foreigner." Like that. "But you are a foreigner," he said. We were going to Istria, because I come from Istria. "But you're a foreigner." Of course I'm a foreigner, I have documents, don't I? Actually at that time I didn't have a clue about anything [...] They allowed us to cross [the border to Croatia]. "But you're a foreigner." Yes, I am a foreigner, but I was born there [in Croatia]. Don't you see where I was born, you idiot. It says on my ID card where I was born. (Monika, 63)

One cause of the erasure, which is also one of its painful consequences, was the dubious and arbitrary habit of determining a person's national identity "from the outside," on the part of the state apparatus. By depriving the erased people of their permanent residence permits, the state of Slovenia de facto designated them as non-members of the Slovenian community both in the sense of civic belonging (given that they were not automatically granted citizenship based on the territorial principle), and in the sense of symbolic national belonging (given that they were denied Slovenian national identity). The question of whether the erased people would have identified themselves as Slovenians, Serbs, Yugoslavs, Roma, Croats or something else is completely irrelevant because the decision was taken for them "from the outside."³⁰ An intriguing and ironic detail is that, in expressing their bonds with Slovenia, i.e. the dimension that strongly defines belonging to Slovenian national identity, the erased people referred to language – the key element of Slovenian national identity – as illustrated by extracts from the interviews with Siniša and Fatima:

My colleagues also had their nationality written, say, Bosnia, or whatever; many got it [Slovenian citizenship] automatically. For example, they told my mother that she didn't need to apply for me [for Slovenian citizenship]. I was later erased regardless, but usually it was automatic [...] It was not our fault, the children's fault. I and my sister ... my father took us to the bus station and our mum took us down there [to Bosnia]. We travelled on the bus for 24 hours, and I and my sister escaped from the bus, we didn't want to go to Bosnia ... we didn't want to go at all. [...] It was very difficult for us. We stayed at our mum's parents' place for one year and we went to school there and all that. [...] And it was very difficult for us to start going to school there, because we speak Slovenian and we don't understand Bosnian well

³⁰ This is corroborated by the testimonies of many erased people who reported that administrative clerks instructed them to arrange papers in the countries from which they "originated." As well as having to fetch documents from various Yugoslavian successor states involved in armed conflict, which prevented them from obtaining the required documents, many erased people found themselves in a hopeless situation (because they had never lived in these arbitrarily chosen countries, there were no documents about them). Because of their ascribed national belonging (e.g. to Croatia, Serbia, Macedonia and so on) and hence their non-belonging to Slovenia, Slovenia plunged the erased into a Kafkaesque, nightmarish bureaucratic mesh. Only some resolved it, thanks to their ingenuity or the occasional benevolence of state employees (for more on this, see Pistotnik in this volume).

... because we really didn't understand it well ... We mixed up [languages], like that. It was difficult to start school there, and all that. (Fatima, 35)

But I, I am ... I feel like a Slovenian. I don't have citizenship. And we speak Slovenian at home, so I don't know [...] And even when my folks come and my mom says: "Why don't you speak Serbian?" Well, how can I speak it, if the two little ones go to school [in Slovenia], and ... Ah ... (Siniša, 38)

The fundamental determiner of the Slovenian nation is precisely language, since Slovenian customs and cultural characteristics do not differ so drastically from those of the neighboring nations as to constitute sufficient basis for a distinct Slovenian identity.³¹ For the Slovenians, the language is the unifying core of the nation, and at the same time the dividing line that separates "us" from "them." The significance of language for national identity is demonstrated by the efforts invested by the new states in the formalization of new, meaning their own, languages.³² Accordingly, the Slovenian national movement placed great importance on Slovenian literature, and for a long time literary myths served to attest to the specifically Slovenian national features and separate history, with literature serving as a vehicle for national mythology. Every nation needs myths, because narratives about the past, like archetypes, fatefully influence the community's self-understanding.³³ Therefore, the crucial point that enables us to understand the erasure is that Slovenian national identity, which also lies at the root of selecting the *ius sanguinis* principle of Slovenian citizenship, included no one except ethnic Slovenians. In other words, rather than all people living within the territory of the Republic of Slovenia, it was only ethnic Slovenians that were perceived as members of the Slovenian nation, in the sense defined by the nationalist elites and internalized by people as "their" identity.

5. The erasure as part of the homogenization of the Slovenian nation-state³⁴

History furnishes many examples of denationalizing practices in which administrative state measures were employed to banish the signs of multiethnicity and multiculturalism. Even today, varying aggressive homogenization policies in

³¹ I would like to draw attention to the construction of "Slovenian customs" through the processes of "the invention of tradition" (Hobsbawm and Ranger 1983).

³² One example is artificially created modern Hebrew. Among recent examples, quite illustrative is the breaking of Serbo-Croatian into Serbian, Croatian and Bosnian, recently joined by a separate Montenegrin orthography, suggesting that the process of establishing Montenegrin as an independent language is also underway. For more on linguistic issues, see Petković in this volume.

³³ See Bajt (2009) for a discussion on the reconstruction of Slovenian national identity and collective memory at the time of establishing Slovenian statehood.

³⁴ Although the erasure was important, even crucial, for the homogenization of the Slovenian nation-state, I would like to emphasize that the erased people are by no means the only Other within the perspective of Slovenian national identity. Moreover, the erased people as a separate entity found their place in public discourse only after 2002 and became part of the broader debate only after 2004.

nation-states successfully sustain, even institutionalize myths of one national history, culture and language. For Heather Rae, the establishment of the state and “pathological homogenization” are directly related, since every state inevitably constructs members (insiders) and non-members (outsiders). The construction of non-members is “a political process in which ‘difference’ becomes translated into ‘otherness’,” meaning a threat which must be eliminated in one way or another (Rae 2002, 3). Pierre van den Berghe similarly argues that the process of nation-state formation is in most cases a process that destroys a nation, since states are “killing machines operated by a small group whose purpose is to steal from the majority” (1992, 1068–1069). Much as France banished the “local” identities of Alsatians, Bretons and other ethnicities in a bid to establish the idea of a unified French nation (cf. Weber 1976), contemporary Slovenia – the state of the people who in official historical memory identify themselves as victims of denationalizing practices of Fascism and Nazism, and before that the long-time victims of Germanizing pressures – is a state abounding in attempts to artificially create national unity. The testimony of the erased person below, who refers to the events that took place in the autumn of 1991, proves that in Slovenia the unification processes in the nationalizing sense had begun before the erasure, which occurred in February 1992. The state official attempted to Slovenicize the name of Tomislav’s child:

It stays, it's a document, a birth certificate stays with you your whole life, you cannot correct it later, it's the end of it. Luckily, I was alert so I read it and said, "You know what? This is not my child." And she said: "Hold on, are you kidding?" And I said, "This is not my child. My child is [quotes the surname], with é at the end, and he is Aleksandar, it's important." It's what I said, "For me it's very important. If it's not important for you, for me every letter, every dot, every comma is very important. Please, write the name I chose for my child. Aleksandar is Aleksandar, Aleksander is Aleksander. It's different. These are two [names], one is English, the other is Russian, Serbo-Croatian," and so on, to cut the long story short, "Aleksandar [surname] he must be." Well, she said, "You're just impossible." I said, "No, I'm very cultivated, it must be so. I paid, I acknowledged paternity, so please, correct it." Then she came back after 15 minutes and said, "Is it okay now?" "Now it's okay, now I will sign." (Tomislav, 59)

The historical examples reveal comparable homogenization practices within “old” nations, although theorists have all too often explained those as qualitatively different from the practices used by “new” nation-states, the historical “latecomers” in terms of statehood. At the time of their emergence, with national identities already firmly established, the “new” nation-states had to adopt a different approach to be able to advance one, chosen national identity and collective memory as a hegemonic public state identity. In the concrete example of Slovenia, both the Slovenian national identity and the national identities of other nations of the former Yugoslavia, the Croats, Serbs, Macedonians and

others, had already been firmly in place when Slovenia became independent. For the majority of the latter, "becoming convinced" that they were in fact Slovenians – rather than Croats, Serbs, etc. – was out of the question, but more importantly, the Slovenians also no longer saw them as "compatriots."³⁵

Because of the implicit ties between the state of Slovenia and "its" constitutive nation – the Slovenians – no other civic or supranational identity (i.e. national identity in the strictly political sense of the word) could counterbalance the exclusivist, ethno-cultural monoframe of Slovenianness. People who were not recognized as "true Slovenians" therefore had to be excluded from national belonging and from the state, since in accordance with the nationalist doctrine of subordinating all belongings and identities to the Slovenian nation, they were defined as Others, as foreign bodies in the national organism, which had to be removed. They literally had to be erased, and it was what the state did in February 1992.

6. Conclusion

In the opinion of many theorists, post-modern society has surpassed national limitations and has weakened the feeling of national belonging (as well as other "particular" identities). In line with this, nationalism and national identity are presumably part of the rapidly vanishing world; the old politics of nationality and national consciousness with their emphasis on territorial state borders have presumably been surpassed. However, reality shows that national identity continues to be the basis for self-categorization of individuals and the typifying they use to explain the social environment, while the alleged homogeneity of national communities is used as a withdrawal in the face of uncertainty brought about by globalization processes. The differentiation between "us" and "foreigners" therefore continues to be important, since our notion of who we are is inextricably connected with the construction of the Other, with respect to whom we define ourselves as a community.

This chapter has considered the erasure through the prism of nationalism studies which allow us to contextualize the exclusionary practices of nation-states. In order to assess the sociological aspect of the erasure and its consequences, I was primarily interested in the question of why the erasure occurred at all and why the erased people continue to be the stigmatized Other even today, 18 years after this administrative measure was implemented. By interpreting the erasure

³⁵ At least from 1974 on, when the new Yugoslav Constitution was adopted, the republics were treated as ethno-cultural entities, which is confirmed by the use of Slovenian in the public life and institutions of the former socialist Republic of Slovenia. In simple terms, individual republics, with the exception of Bosnia-Herzegovina, were regarded as national units (despite multi-culturality and a multitude of various minorities, i.e. the actual heterogeneity of the population of the Yugoslav republics). In this constellation, Yugoslavia was a supra-national entity, so both identities, political and ethno-national, could coexist more or less peacefully (for more on this, see Bajt 2009). When Yugoslavia dissolved (or rather, a few years before this happened), the chasm came to light in Slovenia between the supra-national, civic principle of belonging to a Yugoslav state, and the ethno-national principle of belonging to a specific republic that became an independent state in 1991 – yet preserved its ethno-cultural understanding of Slovenian national identity.

as an important component of the establishment of the Slovenian nation-state, I was able to focus on the often overlooked nationalizing practices involving the nationalist construction of “Slovenianness” as the idea and essence that at the same time irreversibly determined Slovenian statehood. The ethnic principle underlies the definition of Slovenian national identity, in which one is presumably “born into Slovenianness.” These implicit ties link the state of Slovenia to the Slovenian national identity, thus determining the notion of belonging to the Slovenian nation and the rights that stem from this membership, reflected in state policies, political discourse and public opinion. While all of this makes Slovenia a good example of a “nationalizing” state, I also wanted to show that it is no exception in this respect. It simply reflects the reality of a world that, despite trans-national connections, globalization processes and the ideal of transcending national identities, remains embedded in the binary logic of belonging for members and Otherness for non-members who are excluded in one way or another.

One problem revealed by the erasure is that the Slovenians, despite being the majority nation within Slovenia, behave as a threatened minority, reflecting in this way the classical nationalist myth of historical victimhood. The history of Slovenian national movements since the 19th century serves as an excuse for the “returning” of all presumed rights and “redressing” of all the presumed injustice and suffering endured by generations of “Slovenian predecessors” in order that today “we” can “finally” live in “our” state. Only when this logic is problematized can the erasure be understood as the responsibility of everyone among us, because we accepted as “natural” exclusion on the grounds of ethnicity. If this assertion appears too bold, let us remember the astonishment of the Slovenians when they learnt that “even Slovenians” could be found among the erased. It is precisely this astonishment that reveals that the erased people are perceived as the Other, who is not qualified for membership in the community of the Slovenians (i.e. ethnic Slovenians), while Slovenia – although defined as a country of all of its citizens – is seen as self-evidently being the country of the Slovenians, who are given priority. After all, this was confirmed by the institutionalization of Slovenian citizenship based on the *ius sanguinis* principle.

The erased people are by no means a homogeneous group, and as with any other group, they are not immune to nationalist and other prejudices. This only confirms how deeply rooted nationalist logic is, one which teaches us from our early childhood through the processes of socialization that we belong to certain communities and that we are different from others. This chapter has attempted to show that the erasure was an expression of nationalism, and that it was not a one-off event that occurred in February 1992, but part of a complex wider problem of nationalizing practices which stigmatize and exclude all groups seen as Other, not only the erased people. It was precisely nationalism and the functioning of the nation-state that enabled the erasure, both in the preparations before 1992 as well as in disparagement of the erased people and the refusal to recognize the consequences of the erasure.

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An erased person's story

“CITIZENSHIP FOR ONE KILO OF POTATOES”¹

I could say that these are the best years of my life. My life story has been enriched by 44 years of life experience. I enjoy the smoky atmosphere and a piece of chocolate in my mouth, and I also like to boast that I've read many books. Today my life is orderly. I have foreigner status, a permanent residence permit, a permanent work permit, and right now I'm registered with the Employment Service. I got a permanent residence permit in 2003, and in March this year I got the supplementary decision. Perhaps I was the first one, but it has no significance for me. The certificate of something that is well known, that the whole world knows ... Nonsense. My wife and children are Slovenian citizens, I'm a citizen of Bosnia-Herzegovina. Since 1996, my wife and I have been sharing a household. I have two children: my son is thirteen and my daughter is eight.

A short while ago a colleague at work asked me to explain to him what the term “erased people” meant. In reply I told him a story: “You and I are brothers coming from Bosnia-Herzegovina. We unregister in Bosnia-Herzegovina, come to Slovenia and register permanent residence here. We work in Slovenia for several years, and then Slovenia becomes independent. You apply for Slovenian citizenship but I don't. Until 26 February 1992, we are equal. On 27 February 1992, you're a Slovenian citizen and I don't exist. I'm erased.”

They say I haven't been erased. Of course I haven't. I haven't if I'm here. That was an act that a normal person cannot understand or imagine. It's on their souls now.

I was born in Dobož, in the north of Bosnia-Herzegovina, the northern part of Republika Srpska. I'm a Bosnian Serb. There were four brothers and sisters in my family. One brother and one sister live in Sisak (Croatia), I have two more brothers

¹ The erased person's story is based on the interview held by Petra Špehar and Vesna Bočko.

in Croatia, one sister is in Canada, the older sister lives in Slovenia. I'm on good terms with all of them. Family ties and the maintenance of good relations, not only with the family and relatives but also with the wider environment, are very important. Why should we quarrel? Because of these lunatics?

I first came to Slovenia in 1980, to visit my sister who had been attending secondary school in Strunjan since 1975; she completed elementary school in Bosnia-Herzegovina. She took Slovenian citizenship. At that time, I used to tease her that on taking Slovenian citizenship she'd not have problems with anyone but me.

I came to Slovenia for the second time in 1987, for economic reasons – I was looking for a job. I'm a traffic technician. I had problems when looking for work, since nobody wanted to give me a job, because they said I'd work for two months only and then try to find something better. But I was not after a good job, I was looking for any job. My sister's husband got me a job with the poultry company Jata Zalog. I received my first salary on 20 April 1987. In 1992 my boss told me that I had to arrange my status. What status? What? You don't understand that you don't have status, because you have permanent residence here, it's logical. You work, you pay taxes, contributions, everything, and then they say you don't have status. You don't understand it because it's impossible. People at my company told me that I needed a visa, a work permit and a certificate of a clean criminal record. Without certificates there is no work permit, and without a work permit there is no job. I asked my workmates about arranging documents at the administrative unit. They told me that they punched personal documents there. I called my brother in Bosnia-Herzegovina and asked him to advise me how to get the certificate of a clean criminal record. He told me that I needed only the document proving that I had unregistered my address there. I thought to myself, "I came here and here is where I will stay!" I went to the administrative unit in Ljubljana together with my sister's husband. The attitude of the employees at the Mačkova Street office was unbearable. Those were unfriendly clerks sitting behind the plexiglass. There were fifty people crowded into this small space, and three hundred more waiting outside. Their attitude towards us, people in the line, was contemptuous. What can you do? You cover your ears with your hands and keep silent. I told a burly man with a "very malicious look in his eyes" that I was registered here and I wanted a document to prove that. Since my workmates had already warned me that they were punching documents, I showed this gentleman only my Yugoslav passport but left my ID card in my pocket. I gave him the red passport, and his evil eyes stared at me: "This is no longer valid!" He punched my passport. I then asked him, "Can I now get the certificate?" "Be off with you, it's the police that you can get!" was what I could hear as I was leaving. I found myself in the street with my punched passport. Where now? I couldn't leave the country without documents. To say that this feeling is horrible is way too mild!

Who will help you if you don't help yourself? I knew someone who travelled on business to Trieste where there was a Yugoslav embassy. This gentleman arranged for me a Yugoslav passport that was valid until 1995. It's interesting that the Yugoslav passport was valid in Italy although there was no Yugoslavia! I couldn't get another

passport, since there was a war raging in my country. To register residence in the RS, I needed a certificate of a clean criminal record from my home country. It was also required for children born in Slovenia whose parents hadn't taken Slovenian citizenship. How could someone who never was there get this certificate? How can I get it if I cannot cross the border knowing that nothing good awaits me on the other side? I come from the Serbian part; I knew that whatever certificate they might have issued would be in Cyrillic and the country of issue would be Republika Srpska. My brother from Bosnia furnished this certificate. I took the certificate to the administrative unit in Ljubljana, and they asked me if I were in my right mind, said that such a country didn't exist. It's true that it didn't exist, it wasn't recognized, but I couldn't get any other certificate. This was the original and the only true certificate. But there was a way out. Fortunately I knew a man in Ljubljana – a man with many stamps. He made fake documents in the Latin alphabet. It wasn't important where you came from, the man with many stamps faked for you any document you needed.

I went to the administrative unit in Moste to arrange a visa. A kind lady who worked there asked me why I didn't take Slovenian citizenship. "Why should I take it if I can work as a foreigner?" I replied. She said that it would have been easier for me, and that you could obtain citizenship for the price of one kilo of potatoes. This made me angry. "Madam, that's not true! If you wanted citizenship, you had to have permanent residence. And why should I take it? I have the right not to take it!" I fixed my papers, found a job and paid regularly for work permits.

When I lost my job and learnt from my employer that I had to arrange my status, I set to fix these bureaucratic issues. I also had encounters with the police. During the period that followed my recognition that I had become a man who did not exist, I lived mainly in dormitory worker units. In 1992 I lived in one such unit at Vojkova Street. It was better than having a private apartment. You took care of yourself, no obligations. There were no restrictions apart from the observation of house rules. Like in a residential block. You had a key to the main entrance and your room. There were two or three workers sharing a room; sometimes there were six or eight of them, but these rooms were huge and they had balconies. I don't remember any police supervision in this worker unit at Vojkova Street. But the story at Topniška Street in Bežigrad, where the workers had to move, was quite a different one. At least four times a week, thirty police officers would come, and they'd check residents' work permits and provoke them. They probably caught some of them and expelled them. I used to meet my mates in the corridor every day. Then suddenly, in the morning, when I went to the bathroom to wash up or do some other thing, or to the kitchen to make a meal, I didn't see them any more. They didn't leave voluntarily because they didn't have anywhere to go. In 1993, the policemen checked the identification of my workmate. Since he didn't have a temporary residence permit, they put him on the bus to Split. He was a Bosnian Serb, like me. The bus driver knew what fate was awaiting him if he took him to Bosnia-Herzegovina. The police officers stood guard until the bus left. When they started off towards Postojna, the bus driver immediately turned off Tivolska Street, stopped the bus and said, "Run away, I cannot have you on my conscience."

I don't blame police officers and administrators for their unfriendly and insulting attitude and the lack of respect towards me and other erased people. They got such instructions. Was it police officers who came to their workplace in the morning and said: "Are we going to fish for Bosnians today?" Of course not. There were police raids four times a week! They came to the rooms. They'd hit you in your head, I mean, not literally. If it were literally it would be okay.

I too had dealings with them several times. I didn't have problems because my documents were in order; once I paid a fine because my work permit expired. The police officers wanted to check my identification several times when I didn't have documents. Without your documents in order, nobody wants to employ you; without employment you can't get a work permit, and without a work permit you can't get a work visa. I was lucky because many times I came across reasonable people. When I explained my situation to them, they told me to arrange my papers as soon as possible. I also remember how the police stopped me at a bus station in Ljubljana, but it was after I had arranged all the papers. Since I had forgotten my passport at home, the law enforcement men came with me to my home where I showed them the document that testified to my existence.

You don't exist, you're here but you don't exist. The state knew that we didn't have status, but we ourselves didn't know it. But when it came to taxes, they took it off regularly. During the time I was erased I had to pay for health insurance, social contributions and so on. I also worked illegally – construction work; I found work, as is common today, under democracy – through acquaintances. In 1996 I met my current wife, and that same year we started a household. I was not burdened by the erasure, but my wife lived in fear. In 1997 our son was born. When registering paternity, a registrar came to the maternity ward and talked to my wife. She told her, "You can give any name and surname to your child." Fortunately, this was not meant seriously. But I know a family who had problems when their child was born. This child was born in 1991 in Ljubljana to parents who had been born in other republics of the former Yugoslavia. When she was born, the registrar told them to come up with some address in Bosnia, although the child was born in Slovenia. The girl was without citizenship for two years; today everybody in that family has citizenship.

Last year in October I was in Dobož, in Bosnia-Herzegovina. I visited my mother and brother. I've visited them several times since I put my life in order again. My contacts with them have increased since July 2000. Before that I hadn't left Slovenia for eight years. On 30 March 1992 I was probably one of the last persons who went to the Serbian territory via Bosanski šamac and came back.

I light a cigarette, lean back in my chair and think. At that time the problem was serious, but how could I know that it was a problem? I didn't do anything wrong, why were they persecuting me? And now, when I listen to others who really had it hard in that situation, I think to myself, what if I had it like them? But thank God, I didn't.

THE ERASED LANGUAGE

Brankica Petković

1. Introduction

“They should learn Slovene and adapt to the circumstances around here; among themselves, they can use their own language and cultivate their culture.” This was one of the six possible answers to the question: “How should non-Slovenes (coming from other republics) who have been living in Slovenia for a long time behave?” It was chosen by the majority of respondents – 60 percent. The year was 1992 and the survey “Slovenian Public Opinion.”

That they “should give up their culture and language and accept Slovenian culture and language,” was the opinion of 12.9 percent of respondents, while 8.9 percent of them thought that “they should have the opportunity to develop and be educated in their own language.” Other answers were chosen by an even smaller percentage of respondents (Toš 1999, 202–203).¹

If we go back to 1992 and try to imagine the atmosphere at the time of the erasure, we can conclude that a large part of the majority population expected immigrants from other republics of the former Yugoslavia to learn Slovene and accept Slovenian culture; i.e., they thought that this was a prerequisite for their living in Slovenia.

Later, over the long years of public debates during which the erased people fought legal and political battles for their rights, countered by opposing attempts at their disqualification, the language they spoke and their knowledge of Slovene played a significant role in legal procedures and political rhetoric.

¹ Other answers were: “After spending some period of time in Slovenia, they should return home” (chosen by 7.8 percent of respondents); “I don’t know, I’m undetermined” (8.1 percent) and “They should preserve their culture and language and live by themselves” (2.2 percent) (Toš 1999, 202–203).

In this chapter we will look into erased people's testimonies and their struggle for rights in the context of linguistic rights and competences. We will examine how knowledge of Slovene (or the lack of it) was pertinent to the erasure itself, to the rhetoric and practices of justifying and legitimizing the erasure, and to the erased people's struggle for rights and acknowledgement. We will also devote attention to the general situation in Slovenia for languages of other nations of the former Yugoslavia.

In discussing these issues, our point of departure will be Bourdieu's position on the value of language. According to him, a speaker's power stems from his/her position within the social structure, linguistic competence represents symbolic capital, and linguistic exchanges are a means of establishing relations of linguistic domination (Bourdieu 1992, 72).

2. The lack of knowledge of Slovene as a handicap

"My dears, first learn Slovene, not this gibberish!"

A message to Aleksandar Todorović,² the representative of The Civil Initiative of Erased Activists, in a comment on the text entitled "17 Erased Years" signed by "zz" and posted on 27 February, 2009 at Vest.si.

"Mrs. B. K.³ was born in 1971 in Kosovo and came to Slovenia. She obtained, upon her complaint and request for compensation – I don't know what for – a lot of money.⁴ [...] During the years she supposedly lived here, this lady did not even learn to speak Slovene, because she didn't find it important, because the Slovenes would see to it that she gets a translator to defend herself."

A part of the question addressed to Prime Minister Borut Pahor by MP Zmago Jelinčič of the Slovenian National Party on June 15, 2009, referring to the court proceedings involving an erased person.⁵

Criticism of erased people's poor knowledge of Slovene repeatedly crops up in discussions about the regulation of their status and rights. The interviews with the erased people conducted in 2007, 2008 and 2009 as part of the Peace Institute's research study "The Erased People of Slovenia – A Challenge for the Young Nation-State" reveal that many among them, but primarily first-generation immigrants, indeed do not have a good command of Slovene. Many of them

² Aleksandar Todorović joined the debate under his full name, while the other commentators, with the exception of Blaž Babič, used pseudonyms. There were 214 comments on this text. (<http://www.vest.si/2009/02/27/17-izbrisanih-let/>, 26. 7. 2009).

³ MP Zmago Jelinčič quoted the full name of the erased person.

⁴ In this part of the question, MP Zmago Jelinčič misleadingly presented the content of the ruling. The erased B.K. did not win or receive compensation in the proceedings to which he referred. The Court ruled that the action for compensation taken by B.K. was justified, but did not decide about the amount of compensation.

⁵ Source: http://www.siol.net/slovenija/novice/2009/06/informacijski_pooblascenec_sprozil_postopek_proti_jelin-cicu.aspx (21 July 2009).

speak a mixture⁶ of Slovene and their mother tongue – Serbian, Croatian, Bosnian or other.⁷

Why is this so? Why do many erased people lack a good command of Slovene?

Workers from other republics of the former Yugoslavia immigrated to Slovenia when the latter was still part of Yugoslavia. At the time of their immigration and until 1991, when Slovenia as a sovereign state adopted the new Constitution, Article 6 of the Constitution of the Socialist Republic of Slovenia (dating from 1974) provided that citizens of other socialist republics of Yugoslavia had “the same rights and obligations in Slovenia as the citizens of Slovenia.” Provisions relating to language were laid out in Article 212 of this Constitution. In accordance with this article, everyone had the right to “cultivate and express his culture and use his language and script;” the language of all bodies, organizations and individuals performing a “social function” in the Republic of Slovenia was Slovene, and everyone had “the right to use his language and script when realizing his rights and obligations and in procedures before state and other bodies and organizations that perform a social function. A body conducting such a procedure is obliged to supply the material and information on its work in his language and in the manner provided by law.”

The last paragraph of this Article stated that “the lack of knowledge of Slovene cannot be an obstacle hindering anyone’s defense, exercise of rights or justified interests.” Article 213 stated that “members of other Yugoslav nations and nationalities have, in accordance with the law, the right to education and schooling in their own language.”⁸

This arrangement remained unchanged when the Constitution was amended in 1989 and later, when certain provisions related to Slovenia’s inclusion in the Yugoslav federation were changed or revoked by subsequent amendments. The constitutional provision on language use was amended only by adding the stipulation that the federal bodies in the territory of the Socialist Republic of Slovenia were obliged to respect the constitutionally protected equality of all Yugoslav languages when dealing with members of various Yugoslav nations.⁹

In December 1990, during the period when Slovenia was moving towards its independence, an important assurance concerning the linguistic situation and linguistic rights of members of the former Yugoslav nations came from the

⁶ A mixture of languages or a hybrid language is a special linguistic, cultural and social phenomenon. It has recently received significant attention and singular approval from the Slovenian public especially after the success of Goran Vojnović’s book “Čefurji raus!” (Čefur, plural čefurji, is a derogatory term for non-Slovenes coming from the former Yugoslav republics). Hybrid languages (e.g. pan-English) are characteristic of many multilingual societies, particularly those where immigrants account for a large part of the population. For a short treatise on the situation in Germany, see <http://www.goethe.de/lhr/prj/mac/msp/en1398809.htm> (26 August 2009).

⁷ After the emergence of the new countries following the dissolution of Yugoslavia, Croato-Serbian or Serbo-Croatian also split into several national languages, i.e. Croatian, Serbian, Bosnian, and recently Montenegrin. For more on what happened to Serbo-Croatian or Croato-Serbian and whether it is possible to say that this language still exists, see Bugarski’s discussion *O starom jeziku i novim jezicima* (On the Old Language and New Languages) (Bugarski 2009, 121–127).

⁸ The Constitution of the Socialist Republic of Slovenia, Uradni list SR Slovenije, No. 6/1974.

⁹ Amendment XLVI, http://www.svz.gov.si/si/zakonodaja/osamosvojitveni_akti_republike_slovenije/ (20 August 2009).

Assembly of the Socialist Republic of Slovenia. Before the plebiscite on Slovenia's independence and sovereignty, the Assembly issued the "Proclamation to all citizens of the RS and all the voters in the RS," inviting them to take part in the plebiscite on December 23, 1990. In the accompanying Declaration of Good Intentions it stated, among other things, that the Slovenian state would ensure "to all members of other nations the right to multifarious cultural and linguistic development."¹⁰

This was followed by the adoption of the Citizenship of the Republic of Slovenia Act in June 1991. In accordance with this law, nationals of other Yugoslav republics who on December 23, 1990, the day of the plebiscite on independence and sovereignty, had permanent residence registered in Slovenia and actually lived there, could submit an application for Slovenian citizenship within six months of this law entering into force.¹¹ Knowledge of Slovene was not a prerequisite for obtaining citizenship.¹² By contrast, those who applied for Slovenian citizenship under the regular scheme (through naturalization) were required to possess the language skills "necessary for effective communication."¹³

The new Constitution of sovereign Slovenia, adopted in December 1991, laid down the new formal framework determining the linguistic situation of other nations of the former Yugoslavia living in Slovenia. Article 11 of the Constitution states that the official language in Slovenia is Slovene, along with Italian and Hungarian in the areas inhabited by the Italian and Hungarian minorities. Article 62 states that everyone "has the right to use his language and script in a manner provided by law in the exercise of his rights and duties and in procedures before state and other authorities performing a public function."

The Constitution of sovereign Slovenia no longer mentions members of other nations of the former Yugoslavia or their linguistic rights.

The reasons for the inferior knowledge of Slovene among first-generation immigrants from the former Yugoslavia lie not only in the formal constitutional and legal regulations that were in place while Slovenia was still part of the SFRY, but also in the living and working conditions of immigrant workers. Silva Mežnarić described these in the book entitled "Bosanci." A kuda idu Slovenci nedeljom? ("Bosnians." And Where Do The Slovenes Go On Sundays?), presenting the findings of a 1983 research study that examined the situation of workers from other

¹⁰ <http://www.slovenija2001.gov.si/pot/osamosvojitveni-dokumenti/dobri-nameni/> (20 August 2009).

¹¹ Article 40 of the Citizenship Act, http://www2.gov.si/zak/zak_vel.nsf/zakposop/1991-01-0008?OpenDocument (20 August 2009).

¹² In her article "Mi, etno-državljeni etno-demokracije" – Nastajanje slovenskega državljanstva ("We, the Ethno-Citizens of Ethno Democracy" – The Formation of Slovene Citizenship) published in *Časopis za kritiko znanosti*, Jelka Zorn wrote about the proposals put forward in the Slovenian Parliament at the time of debate about the Citizenship Act. One proposal was that before awarding citizenship to this category of permanent residents, their knowledge of Slovene should be checked. (Zorn 2007, 24). Borut Mekina, a journalist, published an article in *Mladina* (No. 9/2009) entitled "Vedeli so, kaj delajo" (They Knew What They Were Doing) in which he stated: "At the time when this law was being adopted, delegates even discussed the possibility of checking applicants' health condition and their knowledge of Slovene, or of tying the acquisition of citizenship to 5-year residence in Slovenia." See http://www.mladina.si/tednik/200809/clanek/slo-izbris_16_let-borut_mekina/ (20 August 2009).

¹³ Article 10 of the Citizenship Act, http://www2.gov.si/zak/zak_vel.nsf/zakposop/1991-01-0008?OpenDocument (20 August 2009).

republics of then Yugoslavia living in Slovenia. The author established, among other things, that the speech of immigrant workers, when not rendered in standard Slovene or Serbo-Croatian, represented a “gold mine for sociolinguists,” (Mežnarić 1986, 7) and that future researchers on migration in Slovenia should devote attention to this linguistic phenomenon.

Below is how one of the interviewees described his living situation at the time:

Yeah, it's a bit difficult to get quite used to it, because we are all alone in the flat, without, like, any potential cooperation from the outside... (Mežnarić 1986, 8) [...] there should be a bit more of a sort of cooperation, say, among local people and people from other republics, I don't know, connections could be better and we could visit each other, a bit more of cooperation in some way – but as it is, you come as if you fell out of the sky, fell from a plane, and as long as there's a need, you work, when there's no need, then when once ... when you don't work you have to travel home, from home to the apartment, from the apartment home, and to work, you have nothing else. (Mežnarić 1986, 11)

Another worker's answer indicated the linguistic situation of the time:

I can't speak Slovene, I say it straightforward, you know...

Yes, but you certainly understand.

Sure I understand, but ... The child understands too, but you see, it's another thing; he plays with the boys, he memorizes some Slovene if a Slovenian child is with them, but you rarely see Slovenian children playing with our, Bosnian children.

They mainly keep apart?

It's not that they keep apart, but they, you know – you and me, when we talk, it's normal that you'll seek a company of people you understand well, it's difficult for you too, because of the language, to use our language, and for me too it is difficult to use Slovene, I mean, it's not difficult ... I didn't try Slovene at all – in my company it's mostly our people, er, ... Bosnians, you cannot speak to them, you don't have such a company, understand Slovene, so that you ... For example, when I was with them I used to speak, I mean I spoke Slovene several times, but when you speak Slovene, the Slovenians usually speak Serbo-Croatian; if you speak Serbo-Croatian, then they speak Slovene. And you cannot cope with it, directly. And I don't blame... You always look for a company of people of your kind – you cannot, if you're a Slovenian, you cannot go to a Bosnian to look for, because again – you don't know us enough, and we don't know you enough, although we're together, isn't it so? If two Slovenians meet, acquaintances, they will say, “živio, kako si, kaj delaš” [Slovenian for “hi, how are you, what do you do”] and other such variants of their own. But with Bosnians it's “zdravo, zdravo, kako si, dobro, ja, ti” [Bosnian for “hi, how are you, fine, I, you”]. ... He has his own, I have my own, you know, everybody has his own system. [...] To them I cannot, I cannot talk to

them, you know, I can't explain to him what I have, although ... he cannot laugh at my joke, my joke is no longer interesting for him. (Mežnarić 1986, 104–105)

Once we know the living conditions of immigrant workers in Slovenia and the constitutional and legal framework that regulated the status of other Yugoslav languages in Slovenia before the country gained independence and at the time of erasure, we can begin to understand the reasons for the poor knowledge of Slovene among first-generation immigrants, many of whom were erased.

According to Gellner (1991), in modern industrial countries an individual can be fully included in society only if he/she goes through complex, formal training, learns the language of the dominant culture and acquires industrially relevant education of a required standard. Many members of the former Yugoslav nations living in Slovenia ("non-Slovenes"), particularly first-generation immigrants, never learnt the language of the dominant culture to an extent that would suffice for their inclusion and acceptance. This phenomenon is quite understandable, given that these people came to Slovenia as workers during the socialist era when Slovenia was still part of Yugoslavia. Their labor was included in Slovenian industry, but the system did not provide mechanisms for their complete inclusion in Slovenian society.

On the other hand, as Tomislav's testimony below shows, quite a number of younger people (second-generation immigrants) who *have acquired education of the required standard* in Slovenia and in Slovene, meaning that they mastered the language of the dominant culture, were erased. However, when struggling to achieve justice – the reinstatement of permanent resident status or acquisition of citizenship – they were treated as if they did not know the language, meaning that formal skills and knowledge of the dominant group's language could not protect them against social exclusion. Tomislav's account also reveals that linguistic competence became a very important factor in the actions they took after the erasure in an attempt to regain their rights and regulate their status. In some cases, administrative requirements were irrational and had the characteristics of administrative torture.

When I first submitted the application for citizenship on the basis of this [shows a document proving that he is not registered as a citizen of any other country], they rejected me, like, they didn't have anything to do with the SFRY. Apart from this document, they also required a certificate of my knowledge of Slovene – that I can use the Slovene language – that is, they insisted I had to prove my knowledge of Slovene before the Commission. I was with my lawyer at Beethovnova Street speaking to the administrative clerk M.¹⁴ when they rejected me. I sat down and put this document in front of her. I had not been one of the best students, my marks were threes, or fours, sometimes I had to take a make-up exam, but I tried hard in the last year so my marks were excellent, and I also got an excellent mark

¹⁴ The interviewee used the full name of the administrator; we use only initials.

in Slovene. It was the "Matura" [the final exam] in the commercial school. I brought my school report showing a mark of 5 in Slovene and I presented it to her. She still required the knowledge of Slovene. I spoke Slovene, like I now speak it to you. I knew history too. She said that I still had to take an exam in Slovene. Some who already had citizenship, those who were compliant and had applied "on time" – I put a question mark over "on time," I didn't apply on time because I considered it unnecessary – 70 or 80 percent of them did not know a word of Slovene, and they obtained citizenship anyway. But I – I was born here, I had knowledge, I had everything in writing, and I was still asked to take the exam. There is no logic there. I even showed her the document. "Look, Madam administrator, here it is all in writing, plus you can hear that I can converse in Slovene. This certificate here was issued in the Republic of Slovenia, but despite all I'm still willing to take the exam in Slovene on condition that you issue a document stating that this document, this certificate issued by the Republic of Slovenia, is not binding on you. In that case, I will take the exam once more." She again took my certificate to her boss and came back five minutes later or so. Then she said: "Mister, you don't need to take the exam in Slovene, I see that you can speak it." They took it into account after all. (Tomislav, 59)

The absence of mechanisms for the systematic integration of immigrant workers into Slovenian society at the time of their arrival and over the subsequent decades can be explained by the specific organization of the socialist federative Yugoslavia of the time. However, we should not forget that awareness of the necessity of such measures did exist. The interviews with immigrant workers presented in Silva Mežnarić's study dating from the mid-1980s as well as the author's analysis suggested the need for such mechanisms. Even at that time Mežnarić drew attention to the danger of reducing conflict between "the immigrants and the locals to the level of the symbolic," i.e., the level of language and culture, and emphasized that in reality these were "tensions created by unequal access to the basic sources of social power and control" (Mežnarić 1986, 206–207).

Even now, 18 years after Slovenia became a sovereign country, more than 90 percent of immigrants with temporary or permanent resident status in Slovenia come from the countries that were formed after the dissolution of Yugoslavia.¹⁵ What is meaningful, though, is that the law providing for systemic measures towards the integration of immigrants into society was adopted only in 2008. These measures include free courses in Slovene, Slovenian culture and

¹⁵ More than 90 percent of foreigners with permanent or temporary resident status in Slovenia come from the countries of the former Yugoslavia. This is supported by the data of the Ministry of the Interior for 2008 found in the material published on the web page of the Peace Institute's project PRIMTS, available at http://primts.mirovni-institut.si/images/pdf/project_briefs/project_brief_1_slovenia.pdf (7 November 2009). At the same time, the text entitled "Integracija v RS včeraj, danes, jutri" (Integration in the RS, Yesterday, Today, Tomorrow) by Jurij Zaletel, head of the sector for the integration of refugees at the Ministry of the Interior, clearly shows that this ratio has been the same for quite some time. Zaletel says that at the end of 2005, there were around 22,000 foreigners with permanent residence status in Slovenia. Of these, 97 percent were members of one of the nations of the former Yugoslavia. At the same time, there were around 27,000 foreigners with temporary resident status, of whom 97 percent were of former Yugoslav ethnic background. See www.mddsz.gov.si/...gov.../elmd06_om4_integracija_mnz.pdf (25 August 2009).

history. The law and the Decree on the Integration of Aliens¹⁶ were followed, in March of 2009, by the Rules on the Programs For the Integration of Aliens.¹⁷ The practical realization and the beginning of the implementation of systemic measures in this area were planned to begin in the second half of 2009.¹⁸

3. Knowledge of a mother tongue other than Slovene as a handicap

The story of the erased person called Tomislav who tried hard to achieve recognition of his school certificate proving his knowledge of Slovene has a sequel that is relevant to the issue of the status of speakers of former Yugoslav languages.

For them, the certificate I showed you before which was issued by the so-called Federal Republic of Yugoslavia and which proves that I'm not registered as a citizen of any other country, was non-binding although they required it. I had this hunch, and the lawyer also said the same, that something was wrong, that I was invited only for an informative interview, that the outcome had already been determined and that my application for citizenship would be refused. I myself could see that the invitation to come to the Ministry was just a formality, that it was part of the procedure, so my blood began to boil a bit. From that moment on, I spoke to the administrator in Serbo-Croatian. The lawyer told me that I'd never obtain citizenship if I spoke Serbo-Croatian in Slovenia. I asked him which law prohibited it; why shouldn't I use my mother tongue? Am I right or not? Can I use my mother tongue? Legally and formally I respect it, if I want to apply for a job, it's clear which language I must use, but in conversations the official language for me can be my mother tongue. At that time I suspected, and I also got the official reply, that my application for citizenship had been refused. (Tomislav, 59)

Similarly, the comment mentioned earlier by an anonymous reader (using the pseudonym "zz") who accused Aleksandar Todorović of speaking "gibberish" had a sequel which also indicates the need for reflection on the status of the former Yugoslav languages in Slovenia. Aleksandar Todorović's reply, this time in his mother tongue rather than Slovene, was as follows:

*ZZ, I take my hat off to you, and I wonder if there is any point in explaining to the wolves that it is not ethical to eat lamb.
You reminded me again of my long-time deliberation that whenever I speak to a policeman, or an employee at an administrative office, in a bank etc., I should require a translator. And if I'm not allowed to do it at the institution's*

¹⁶ See <http://www.uradni-list.si/1/objava.jsp?urlid=200865&stevilka=2821> (25 August 2009).

¹⁷ See <http://www.uradni-list.si/1/objava.jsp?urlid=200925&stevilka=1060> (25 August 2009).

¹⁸ Information on the beginning of the free courses in Slovene was obtained by phone on 28 August 2009, from an employee at the Department for the Integration of Foreigners of the Sector for Migrations and Integrations at the Ministry of the Interior.

expense, it would be a violation of European and Slovenian laws, as well as civilizational norms.

Your gibberish man. You truly motivated me to continue my work.

aca

(Comment under the text "17 Erased Years," posted on February 27, 2009 at Vest.si)

These two comments suggest that it is not quite clear whether and when peoples of the former Yugoslav nations may use their mother tongue in public. They also raise the question of why the speakers of these languages threaten to revert to their mother tongue or begin to use it when they feel rejected. All of this indicates that there is a unique conflict in Slovenia concerning the status and use of these languages.

Why is this so and how did it come about?

The issue of the languages of other nations of the former Yugoslavia vs. Slovene did not become contentious only after Slovenia became a sovereign country. That the conflict is older is indicated by responses to questions posed in the series of surveys entitled Slovenian Public Opinion conducted during the second half of the 1980s. For example, a question in the Slovenian Public Opinion 1986 survey, in the section entitled "National Relations," went as follows: "Some say that immigration from other republics poses a threat to Slovenes. Do you agree with this statement?" (if yes) What is it that is threatened?" Most respondents, 39 percent of them, replied that it was the Slovene language that was threatened (Toš 1997, 533).¹⁹ In the following year's survey, in the section now entitled "The Problems of the Slovenes and Relations Among Nations," the question was: "Do you think that the Slovene language is threatened, or that it is not threatened?" 65.6 percent of respondents thought that it was threatened, and 25.2 percent stated that it was not. In responding to the multiple choice question about the kinds of behavior that posed a threat to the Slovene language, 44.7 percent of respondents thought that the threat was coming from workers from other republics and autonomous regions of Yugoslavia who did not learn Slovene; an additional 27.6 percent of respondents thought that this seriously threatened the Slovene language (Toš 1997, 587–588).

Interviews with younger members of the nations of the former Yugoslavia (second-generation immigrants) offer an insight into the linguistic relations and the situation of the speakers of these languages. In these interviews they talked about their childhood, meaning the period of time preceding Slovenia's independence.²⁰

¹⁹ In the same survey, 33.8 percent of respondents thought that immigration of workers from the former Yugoslav republics was a threat to their employment opportunities; 23 percent thought that it threatened nationhood, and 20.4 percent that it threatened Slovenian customs (Toš 1997, 533).

²⁰ The interviews were conducted for the research project entitled "Diskriminacija na osnovi etnične pripadnosti z vidika Albancev, Bošnjakov, Črnogorcev, Hrvatov, Makedoncev in Srbov" (Discrimination On the Grounds of Ethnicity From the Perspective of Albanians, Bosniaks, Montenegrins, Croats, Macedonians and Serbs), conducted in 2005 and 2006 by Admir Baltić for the Peace Institute. The research was part of a larger project entitled "Ali poznate vaše pravice?" (Do You Know Your Rights?), financially supported by the Embassy of the Kingdom of the Netherlands and the Embassy of the United Kingdom of Great Britain and Northern Ireland in Slovenia.

Asked whether he felt free to speak Bosnian in school and in the street when he was a child (during the 1980s), an interviewee of Bosnian extraction replied:

Actually you could, but they would definitely give you a weird look if they heard you [speaking Bosnian].

Asked if he spoke Bosnian with his Bosnian school mates in school, he answered:

*No, actually not, not in elementary school. We mainly spoke Slovene and we used Bosnian only when we were telling a joke. But no.*²¹

Other interviewees in Admir Baltić's survey spoke about feeling ashamed when as children they used their mother tongue in public.

*In the past it was different, I was ashamed. I don't know, I thought it was unnecessary, why should I speak it if everybody looked at me.*²²

*At that time I didn't like it. I was a bit ashamed, if, for example, my mum started talking to me, I'd immediately tell her: no, speak Slovene.*²³ *I remember the kindergarten, my parents came to fetch me and sometimes, I don't know, my father came and started to talk in Bosnian, and then I'd say: Daddy, keep quiet, not here, here you have to speak Slovene. But as I said, it was when I was a child, before school.*²⁴

[If someone began to talk to me in Bosnian] well, yeah, I was ashamed, like, "what does he want." I replied but in a very low voice, what could I do. I didn't speak it when I was in secondary school either, not in the school, because nobody wanted to talk in Bosnian, there were only a few of us. For me it's not like, it's not like I'd, I don't know, thirty Slovenes and, I don't know, three Bosnians, it's not like I'd want to speak Bosnian. But I was not ashamed when I was in secondary school, if I said something in Bosnian, but in elementary school I was ashamed. You know, you had a vacation and you'd spent two months in Bosnia speaking only Bosnian, and when you came back to Slovenia, it just popped out, and then you felt so bad that you just wished the ground would swallow you up.

*Just because of one word, and you pray to God that nobody heard it, or someone heard and corrected you and it felt like a catastrophe.*²⁵

Some interviewees spoke about non-acceptance of these languages in today's Slovenia:

²¹ Statement by a 28-year-old Bosniak, E. K., in an interview held on 25 June 2005 as part of Admir Baltić's research.

²² Statement by a 20-year-old Bosniak, Z. B., in an interview held on 27 June 2005, *ibid.*

²³ Statement by a 28-year-old Croatian, J. A., in an interview held on 28 June 2005, *ibid.*

²⁴ Statement by a 23-year-old Bosniak, A. P., in an interview held on 30 June 2005, *ibid.*

²⁵ Statement by a 24-year-old Bosniak, E. V., in an interview held on 26 June 2005, *ibid.*

Now, for example, there is one such example at my workplace, one of my colleagues there is a Bosnian, they call him "Bosanc." He came to Slovenia during the war, completed his studies here, and now he's found this job and the two of us always speak Bosnian, and it's a bit, in some way it's quite a provocation for the Slovenes, because they are sensitive, definitely it is, but we still talk in Bosnian.²⁶

It really annoys me that they are annoyed when we speak Bosnian between ourselves, but when, for example, two Spanish people... or two I-don't-know-who talk in their own language, they don't mind it at all.²⁷

For example, I have a friend from Banja Luka and we talk, we used to talk, in Serbian, you know, in the bus. Now, I mean, if Englishmen talk in English, you know, or Germans, whoever, if they talk in their own language nobody minds it. So why should they mind if we talk in Serbian. First, we didn't swear, you know, we don't carry knives on us or anything like that, to rob, guns, whatever. Hm, and there was this situation when an older man began to say "raus," you know, in that sense, "čefurji out, go back," that was the situation when I experienced it directly.²⁸

As linguists explain, of all the nations of the former Yugoslavia, it was the Slovenes (and the Macedonians) who saw language as a vehicle of ethnic and national distinction (Bugarski 2002, 71), and it is societies that see language as the main sign of their collective identity that are more sensitive to language issues. Accordingly, language and language policy in Slovenia were always delicate issues. Roter emphasized that the role Slovene had in the building of Slovenian national identity was not the only source of this sensitivity. The attitude towards the language and the framework of language policy are also influenced by the wider context: i.e. the notion of a small nation (Roter 2003, 214). Roter further argues that this notion arises from the small population size and Slovenia's geographical location, which contributed to a feeling among Slovenes during various historical periods that the surrounding nations, representing a "significant Other," posed a threat to them (ibid., 215). According to Bugarski, after the Second World War the Slovene language prospered, but official policies failed to take into account the arrival of migrant workers from other parts of the former Yugoslavia who did not speak Slovene (Bugarski 1997, 25–26). Bugarski concludes that Slovene successfully survived the disintegration of Yugoslavia, indeed quite expectedly, adding that for speakers of Serbian, Croatian and other languages of the former Yugoslavia in Slovenia, their full exercise of protected individual rights is limited by the non-recognition of corresponding collective rights (Bugarski 2002, 126).

²⁶ Statement by a 28-year-old Bosniak, E. K., in an interview held on 25 June 2005, ibid.

²⁷ Statement by a 24-year-old Bosniak, E. V., in an interview held on 26 June 2005, ibid.

²⁸ Statement by a 28-year-old Serb, M. M., in an interview held on 1 July 2005, ibid.

3.1 Language policy in sovereign Slovenia

As already mentioned earlier, with the gaining of independence and the adoption of the new constitution, all provisions that pertained to other nations of the former Yugoslavia, including the provision on language, were left out of the new legal and formal framework.

Although many of these people (to be more precise, 171,132 persons)²⁹ acquired Slovenian citizenship on the grounds of permanent residence in Slovenia, and despite the commitment on the part of the Assembly of the RS stated in the Declaration of Good Intentions preceding the plebiscite that the Slovenian state would ensure “to all members of other nations the right to multifarious cultural and linguistic development,” the status and the situation of other languages of the former Yugoslavia remained unregulated. The language policy of the newly formed state simply did not take into account this language situation.

According to Bugarski, language policy is part of society’s general policy and the two are harmonized. It is implemented through measures whereby state institutions, social groups and individuals exert direct and indirect influence on the language situation in a specific society, on language resources and practices, and on the shaping of social awareness about these practices. To be viable, language policy must be based on linguistic reality, i.e. an actual linguistic situation (Bugarski 1997, 20). A linguistic situation is determined by the number, size, distribution and status of the languages in use with regard to ethnic groups using these languages and to other demographic, socio-political and cultural factors. Languages used in a specific society differ in the number of users, geographical and social distribution, standardization, communicational power, prestige, ethnic affiliation and the like. Accordingly, some languages become included in language policy, while others remain, or become marginalized and are accorded low formal status (*ibid.*, 10). This happened to the languages of the former Yugoslav nations after Slovenia gained independence. Given the non-recognition and absence of measures aimed at preserving the languages of other nations of the former Yugoslavia, it could be said that Slovenian language policy is not based on linguistic reality or on a concrete linguistic situation and that it is assimilationist in relation to these languages.

Language policy influences a wide range of human interests, and assimilationist language policies harm other legitimate interests and violate the principle of fairness (Kymlicka and Grin 2003, 11). Kymlicka and Grin emphasize that when one linguistic group struggles for the protection of its language, it is never just a struggle to protect its means of communication, but also to protect political rights, autonomous institutions, works of culture and cultural practices, and national identity. On the other hand, when a state tries to enforce a dominant language

²⁵ See the news on the web page of the Ministry of the Interior, which mentions this figure at <http://www.mnz.gov.si/si/splošno/cns/novica/period/1205162022///article/2055/5807/8060adac3e/> (26 August 2009).

upon minorities, it is never an enforcement of the language only, but also of political and cultural demands concerning the primacy of the state, the need for common rules and centralized institutions, the need to learn a new history and literature and the need to constitute new nation-state loyalties and identities. Therefore, language disputes are never just disputes over language (ibid.).

If we regard language policy as one of the mechanisms of national integration and take into account Močnik's thesis that "national identification occurs as an identification with the subject of national language competence" (Močnik 1998, 204), it is possible to conclude that peoples of the former Yugoslavia in Slovenia along with their languages are those non-integrated "remnants" which were excluded from the internal cultural and social division in the process of the construction of the Slovenian national identity and national state and remained outside the cultural borders (ibid., 208).

The 1991 census in Slovenia revealed that one of the former Yugoslav languages other than Slovene was the mother tongue of more than 160,000 people (i.e. 8.40 percent of the total population, or 8.59 percent of those who stated their mother tongue in the census). In 2002, this figure was 165,000 (8.44 percent of the total population, or 8.67 percent of those who stated their mother tongue in the census). In 1991, somewhat more than 41,000 residents of Slovenia did not state their mother tongue, and in 2002 this number rose to 52,000.

At this point, we should also mention the findings of the study on ethnic diversity in the City of Ljubljana, relating to the situation of the minority communities consisting of the nations of the former Yugoslavia, and municipal policy towards them. The authors established that Bosnian, Croatian, Serbian or Serbo-Croatian was the mother tongue of 20 percent of Ljubljana residents (Komac, Medvešek and Roter 2007, 61).

In the survey "ABMCMS in the RS" (Albanians, Bosniaks, Montenegrins, Croats, Macedonians and Serbs in the Republic of Slovenia), Kržišnik-Bukić presented historical figures showing the number of speakers of individual languages in the region of what is today Slovenia. They reveal that other nations of the former Yugoslavia have been present in this region throughout history. In the 1846 population census, or the "official survey" conducted in what was then the Austrian Empire, around 20,000 people stated that their mother tongue was Serbian, Croatian or Serbo-Croatian; in 1910, around 25,000 people of the total population stated that their mother tongue was Serbo-Croatian; in 1931, Serbo-Croatian or Albanian was the mother tongue of around 25,000 people; in 1953, approximately 30,000 respondents stated that their mother tongue was Serbo-Croatian, Macedonian or "Shqiptar," and in 1971, 75,000 stated that their mother tongue was Albanian, Croatian, Croato-Serbian, Serbo-Croatian, Serbian or Macedonian (Kržišnik-Bukić 2003, 20–21).

In recent years, the linguistic situation of the peoples of the former Yugoslavia in Slovenia has been discussed by a number of experts and opinion makers. As our recapitulation of these discussions below reveals, there is no

consensus among them when it comes to the question of whether the current constitutional and legal arrangement prevents the collectivities of former Yugoslav nations in Slovenia from publicly using their mother tongues.

According to some legal explanations, Article 61 of the Constitution of the Republic of Slovenia allows the use of the said languages within every area of social life, except in procedures before state bodies. To remind the readers, this article states that “[e]veryone has the right to freely express affiliation with his nation or national community, to foster and give expression to his culture, and to use his language and script.” Article 62 further provides that “[e]veryone has the right to use his language and script in a manner provided by law in the exercise of his rights and duties and in procedures before state and other authorities performing a public function.” Some legal experts argue that this is the right not only of individuals, but of collectivities as well (even if they are not recognized as a legal subject, because once they are recognized as such, their rights are defined nominally in legal documents). Krivic, for example, maintains that a single individual would find it difficult to exercise the right to use his/her language and cultivate his/her culture; however, if there are more such individuals in a country, it inevitably means that they can exercise this right fully only together, i.e. collectively (Krivic 2004).

Krivic’s article on this subject, entitled “What language are the Bosniaks in Slovenia allowed to speak?” (Krivic 2004), was a response to a reader’s letter signed by Miha Jazbinšek and published in the *Delo* daily (14 February 2004) under the title, “Mufti’s Greetings.” In this letter, Jazbinšek took exception to the banner seen in the RTV Slovenia’s broadcast of the Eid-ul-Fitr message delivered by the mufti of the Islamic Community in Slovenia. The banner reading “Islamska zajednica u Sloveniji” (Islamic Community in Slovenia written in Bosnian) could be seen behind the mufti. The author argued that there was “no legal basis for this public bilingualism on national television,” and that it was also disputable whether bilingualism within a specific community had “a legal basis.” In the polemic that followed, Krivic drew attention to the history of this bundle of constitutional provisions, calling to mind that at the time the Constitution was in the process of being drafted, the article stating that “the members of national minorities in the Republic of Slovenia have, in accordance with the law, the right to education in their own language” was “left out” of the final version. Had this provision been preserved, argued Krivic, it would have reduced the “chasm” between the constitutional status of “autochthonous” minorities versus all other ethnic groups in Slovenia. He quoted Danilo Türk and his advocacy of a well-intentioned interpretation of Article 61 of the Constitution in the spirit of ethnic equality (Türk 2001). However, not all legal experts concur with this opinion. Tone Jerovšek, for example, holds that the rights protected by Article 61 of the Constitution, i.e. freedom to express culture and use a language, refer to the language used “in everyday life” or “within various associations and civil society groups” (Jerovšek 2002). Krivic criticizes this restrictive interpretation and argues that Article 62 should be

interpreted as a continuation of Article 61. In his opinion, the provision in Article 62 refers to an exception, when free use of one's own language (protected by Article 61) is not allowed, i.e. in procedures before state and other authorities.

Debates on the recognition of minority status and the inclusion of the communities of other nations of the former Yugoslavia in the minority protection system in Slovenia also frequently touch on linguistic rights. Efforts towards systemic regulation of this issue are occasionally understood as a threat to the Slovenian national character, or as an unnecessary interference with individual decisions. For example, Stergar argues that, when discussing the situation of the peoples of the former Yugoslavia in Slovenia, the issue of Slovenianness and Slovenian national authenticity receives only cursory attention and is dealt with frivolously. To illustrate why he considered inappropriate the proposal that the rights of the former Yugoslav nations in Slovenia should be specially protected, Stergar referred to the use of Cyrillic script: "Some among us still remember the signs in Cyrillic at the Ljubljana railway station and texts in Cyrillic on postal seals; should we now expect to see a road sign in Cyrillic in Ljubljanske Fužine?"³⁰ (Stergar 2006, 50–51). Referring to the study on the situation of the former Yugoslav nations in Slovenia and proposals concerning the system of minority protection, Crnkovič writes that he sees no "sound reason for that, and even less the need," explaining that every individual in these communities should "freely decide for himself if he wants to be ghettoized or to socialize with Slovenes, learn Slovene, and adopt other habits," adding that "the assimilation or ghettoization of non-Slovenes is not my problem, and even less is it the responsibility of the Slovenian state. It is the choice of each individual" (Crnkovič 2005, 5).

In public debates, the languages of the former Yugoslavia in Slovenia, particularly Serbian, Croatian and Bosnian, are occasionally associated with criminal offences. One such example is the statement of the chairperson of the Šoštanj Local Community:

This time the victim was a vagabond. Will the next one be a disabled person, or an old man, or a child? People in Šoštanj are afraid of the children in Kajuh Park who do not speak Slovene.

Mladina listed this statement on 14 July 2003 among the "Statements of the Week;" the accompanying text read: "The President of the KS Šoštanj, Cvetka Tinauer, in Dnevnik, on the 'language of assailants.'" ³¹

Bugarski argues that linguistic disputes are in their essence social conflicts and that these do not occur because of what concrete languages are, but because of what they represent on the symbolic level. He therefore believes that there is no linguistic nationalism, only nationalism that falls back on language (Bugarski 1997, 81–82).

³⁰ Fužine is a part of Ljubljana largely associated with immigrants from other parts of the former Yugoslavia. Cyrillic script is used in Serbia.

³¹ Mladina, 14 July 2003, p. 11.

Linguists use the term “linguistic human rights” when discussing issues in this context. People deprived of their linguistic rights are sometimes denied other human rights too: for example, the right to fair political representation, fair trial, access to education, access to information, freedom of expression and preservation of their cultural heritage (Phillipson, Rannut and Skutnabb-Kangas 1995, 2). According to Fishman, the situation of many ethno-linguistic minorities is so precarious that a great effort is needed to stop the process of mother tongue replacement, i.e. assimilation (Fishman 1995, 54). An ethno-cultural group’s loss of language deprives several succeeding generations of socio-cultural integration, cohesiveness and a secure sense of identity, all of which leads to alienation (Fishman 1995, 60; Mikeš 2001, 17).

The lack of linguistic human rights makes minority languages invisible. Linguicism reflects ideologies, structures and practices used to legitimize, justify and reproduce an unequal division of power and resources (material and non material) among groups defined on the basis of language. Linguicism therefore contributes to the invisibility of minorities and their resources, particularly their languages and cultures, so these become non-resources that cannot be converted into positions of structural power in a society. By contrast, the dominant group’s resources, including language and culture, have a value and can be converted into positions of social power (Skutnabb-Kangas and Phillipson 1995, 105).

Studies on immigrant communities that were formed when workers from other countries moved to the industrial cities of western Europe at the time when the labor market was in the process of changing, because of which they are also called urban minorities, have revealed an asymmetry between the dominant population and immigrants in terms of access to power within the fields of the economy, politics and culture. Discriminatory practices and disqualification of minorities have also been observed, where “disqualification means that a migrant’s skills are unrecognized in the host country. If, for example, she speaks four African languages, that is usually not an asset in the British labor market” (Hylland Eriksen 2002, 132).

3.2 Criticism by international organizations

Criticism by international organizations concerning the minority protection system in Slovenia, which excludes the communities of the peoples of former Yugoslavia in Slovenia, became increasingly sharp at the turn of the millennium. As early as 1994, the Culture Committee of the Council of Europe drew attention to the unregulated status of these communities (Kržišnik-Bukić 2003, 292). Critical opinions were also expressed in the reports on the implementation of the Framework Convention For the Protection of National Minorities and the European Charter for Regional or Minority Languages, as well as the reports of the European Commission Against Racism and Intolerance. The

opinion of the Advisory Committee on the Framework Convention for the Protection of National Minorities in Slovenia, adopted on 12 September 2002, also included critical assessments and recommendations for the upgrade of the minority protection system by adding measures and solutions to protect the rights of the minority communities of the peoples of the former Yugoslavia and the Germans in Slovenia.

The most explicit appeal in this sense came from the Committee of Experts of the Council of Europe in their report on the implementation of the European Charter for Regional or Minority Languages in Slovenia, published on 20 June 2007. The Committee informed the Slovenian government that they had reviewed the situation of the German, Croatian, Serbian and Bosnian languages in Slovenia and obtained proof that these languages could be categorized as regional or minority languages in Slovenia (2007 Report, 6). It reminded the Slovenian government of its request in the 2004 Report to explain this issue in cooperation with the members of these communities, which the Slovenian government failed to do. Therefore, the Committee called on the government to adopt measures towards the recognition and encouragement of Croatian as a regional and minority language in Slovenia, and to explain in collaboration with the speakers of Serbian and Bosnian in Slovenia the traditional presence of these languages and consistently realize its obligations stated in the European Charter relating to these languages (2007 Report, 7). Similar requests were repeated in the latest report by the Committee of Experts of the Council of Europe published on 26 May 2010, which at the same time acknowledges the Slovenian authorities' recognition of traditional presence of the Serbian language in four villages in Bela Krajina. This new step taken by the Slovenian authorities resulted in a request to implement certain measures to protect the Serbian language as a regional or minority language in the four villages in Slovenia, and to cooperate with the Serbian language speakers in implementing these measures (2010 Report, 6–7).

3.3 Partial measures

In the absence of minority status and efforts towards achieving an integral model of minority protection for the communities of the peoples of the former Yugoslavia, Slovenia implements partial measures in the field of cultural and education policies that could be considered a contribution to the preservation of culture and language among these communities. In certain places, on the initiative of cultural associations, supplemental lectures (that were not part of school curricula) in Serbian, Macedonian and Albanian were organized in elementary schools or outside schools. Accordingly, for several years now, a course in Croatian has been available in certain elementary schools in Slovenia as an optional subject. Serbian and Macedonian were later accorded the same status and the syllabuses for all three languages confirmed by the school authorities, so it has been possible to include them in elementary school curricula as op-

tional subjects since the beginning of the school year 2008/2009³². This practice has its legal basis in Article 8 of the Elementary School Act, which states that training in other languages is tied to an international agreement. This law further states that “for the children of Slovenian citizens who live in the Republic of Slovenia and whose mother tongue is not Slovene, lectures in their mother tongue and culture are organized in accordance with the international agreement. Additional training in Slovene can also be organized.”

The Ministry of Culture provides finances for the funding of cultural activities of associations that bring together the members of the nations of the former Yugoslavia. The Department for the Cultural Activities of the Italian, Hungarian and the Roma Communities launched this practice as early as 1992, even though the funds at their disposal were only symbolic. This department was later renamed to include “immigrant” communities, as was the budget item in the Ministry of Culture’s annual reports referring to the funds provided for cultural activities of these associations. In 2009, the name of this section of the Ministry was the Sector for Minority Cultural Rights and Cultural Diversity Development. In 2006, the funding of these activities was part of the “cultural programs of special communities” along with funding for the cultural activities of disabled people (which, indeed, is in harmony with the wider conceptualization and explanation of the concept of diversity). The name of the expert committee dealing with the projects in this field still reflects the old naming, i.e. “cultural activities of special communities in the RS.”³³

Although the funds earmarked for cultural activities of the associations of the former Yugoslav nations in Slovenia have been increasing recently, there is still a large gap between the budget resources dedicated to these groups and those dedicated to the cultural activities of the recognized minority groups – the Italian and Hungarian minorities, as well as the Roma community.

A look at the resources set apart in 2008 by the Ministry of Culture to finance cultural activities of minority communities shows that, in 2008, the Italian minority received around 100 euros per member; the Hungarian minority received around 55 euros per member, and the Roma community 8 euros per member. The communities of nations of the former Yugoslavia and the German community received only around 1 euro per member.³⁴ If we add to this the funds provided by the Government Office for National Minorities to the Italian and Hungarian minorities and the Roma community, the difference between the funds intended for the cultural needs (including language preservation) of the recognized minorities and those intended for unrecognized minorities becomes even bigger.

³² There are 488 elementary schools in Slovenia. In 2008/2009, the course in Croatian was held in five schools, with 70 pupils enrolling in the classes. Although classes in Serbian and Macedonian were also available, not one group of pupils interested in attending these classes could be formed (Kržišnik-Bukić 2008, 141).

³³ See http://www.mk.gov.si/si/strokovne_komisije_sveti_in_skladi/strokovne_komisije/ (2 September 2009).

³⁴ Information on the amount of subsidies is available in the Report by the Ministry of Culture on the (co-)financing of cultural programs and projects in 2008, pp. 74–80. For a more detailed analysis of this data for 2006, see the author’s MA thesis “Javna govorica, družbeno izključevanje in stigmatizacija” (Public Speech, Social Exclusion and Stigmatization) (Petković 2009, 87–88).

3.4 Self-organization and efforts towards the recognition of minority status

The nations of the former Yugoslavia in Slovenia are organized into many associations and unions, including the Union of the Associations and Societies of the Nations of the Former Yugoslavia. In October 2003, the Coordination of the Unions of Associations, as this union was called in the past, submitted an application to the National Assembly of the RS for the recognition of minority status.³⁵ It was followed by similar initiatives and requests addressed to various state bodies and the public, but there was virtually no response.³⁶ The initiative that was presented in October 2003 was even ignored by the main daily newspaper, *Delo*.³⁷

Several comprehensive studies were published between 2003 and 2007 (e.g., Kržišnik-Bukić, Komac and Klopčič 2003; Komac et al. 2005, Komac et al. 2007) dealing with the situation and rights of the people of the former Yugoslavia in Slovenia. These provided the basis for future decisions concerning Slovenian minority and language policies and in a way put an end to the almost decade-long silence on the part of researchers and disinterest on the part of the state bodies that commission research studies. On the other hand, the absence of consensus among the researchers regarding the type of measures that should be adopted to recognize and protect the communities of nations of the former Yugoslavia is used as an excuse by government representatives when they want to justify the status quo in this area.³⁸

Notwithstanding the shifts made within the field of education and an increase in subsidies for cultural activities and research studies, these groups have not yet been granted minority status, nor has an integrated model of minority protection yet been established.³⁹ It has turned out that the issue of new minorities that emerged as a result of economic migration across the former common state and its subsequent dissolution, has been a challenge too great

³⁵ The request entitled "Public Initiative" was presented to the public by Dr. Ilija Dimitrievski, the Chairperson of the Coordination at the time, during the round table discussion held on 14 October 2003 in Ljubljana and organized by the Council of Europe to initiate a debate on the report of the European Commission Against Racism and Intolerance.

³⁶ Over the past few years, the contacts between the state and representatives of the nations of the former Yugoslavia has improved. In 2008 and 2009, they were invited for talks with the President of the Republic of Slovenia and other government members. Unfortunately, no progress regarding the systemic regulation of this issue followed in the wake of these talks. For more on the work of the Union, see <http://www.exyumak.si/>.

³⁷ The *Delo* journalist, Branko Soban, who was present at the round table discussion held on 14 October 2003 when the initiative was presented, sent the author of this text the article he wrote about this part of the discussion which, however, was not approved for publication by *Delo*'s editor.

³⁸ In an interview for the *Mladina* weekly on 30 June 2007, when referring to the critical views of the Council of Europe regarding respect for the provisions contained in the European Charter on Regional or Minority Languages, Stane Baluh, the Director of the government Office for National Minorities, stated that "experts are not unanimous regarding this issue."

³⁹ In 2008 and 2009 certain progress was made on the part of The Union of Cultural Associations of the Nations of the former SFRY towards concrete proposals and models regarding the regulation of their situation. In late 2008, they presented the President of the RS with an initiative for the establishment of a panel for constitutionally unrecognized ethnic minorities that should operate as a consulting body that would contribute to the solution of the essential issues concerning national minorities and the regulation of their legal status. In May 2009, the initiative for the adoption of the Resolution within the National Assembly concerning the legal regulation of the communities of the nations of the former Yugoslavia and for the establishment of a panel were also presented to the Prime Minister. The President of Slovenia supported the initiative for the establishment of a panel, while the Prime Minister remained uncommitted. As a result, the future moves of the government continue to be guesswork, and the status quo in this area remains in place.

for any government of sovereign Slovenia so far to tackle. The present extent and method of minority protection (of the Italian and Hungarian national minorities) in Slovenia rests on the basis established by the former common state, and it obviously enjoys a broad political and social consensus. However, any change in this field carries with it a major political risk and causes bitter public dispute. This has come to light several times over recent years, for example when a new normative framework and the model for the protection of the rights of the Roma community was in the process of being drafted, when attempts were made to regulate the situation of the erased people of Slovenia and to acquire a construction permit for a mosque in Slovenia. The absence of political consensus on these issues is also corroborated by the fact that both the regulation of erased people's status and the mosque construction triggered initiatives for a referendum (and a referendum on the erased people actually took place).

3.5 Maintaining the status quo

In the collection of documents dealing with Slovenia within the European context of minority protection, Žagar analyzes recent trends in the development of minority protection and mentions three possible scenarios pertaining to "new minorities:" the first anticipates maintenance of the status quo, the second is a bleak scenario anticipating the prevalence of xenophobia, and the third is an optimistic one, envisaging multi-culturalism and interculturalism (Žagar 2002, 81).

Given the circumstances in Slovenia, it is possible to say that the scenario for maintaining the status quo regarding the situation of the communities of nations of the former Yugoslavia in Slovenia has become firmly established. The dominant viewpoints, ideologies and practices contribute to the invisibility of these communities and their resources, particularly their cultures and languages. To borrow from Skutnabb-Kangas and Phillipson, for these communities their resources have been turning into non-resources. Although their knowledge of a mother tongue should be an asset and part of their credentials, in the present social circumstances and linguistic reality, this is almost a handicap and a source of stigma.

Since minority and language policies, which, as Bugarski says (1997, 20) are always in tune with the general policy of a society, do not include systematic solutions and measures for the protection and development of the languages of the former Yugoslavia, the consequences thus produced have some features of linguistic inequality, discrimination and linguistic nationalism.

Such a development of the social and linguistic situation can be explained by the fact that ever since it gained independence, Slovenia, i.e. its institutions and dominant social groups, focused attention on the policies and instruments that strengthened or affirmed the Slovenian nation. In this context, the situation, status and languages of the former Yugoslavia represented marginal issues, and ones

that carried a symbolic burden at that – connotations of the unpopular historical context. At the same time, the social status of these languages in Slovenia, particularly Croatian and Serbian, i.e. Croato-Serbian or Serbo-Croatian, conspicuously deteriorated during the 1990s. It was the time during which their home countries struggled with war and various social crises, so the members of these nations living in Slovenia lacked political and symbolic capital to assert special demands or resist language discrimination. Gradually, their voices and those of their supporters became louder, advocating the need for dialogue that would lead to a recognition of formal status and development of a system for the protection of their cultural and linguistic rights. Individuals within academic or research institutions, organizations for human rights as well as cultural associations of these nations have been actively campaigning since 2002. Recently, state and local institutions have also made steps towards affirmation of the cultures and languages of these nations in Slovenia, but they have several peculiar characteristics. First, they are taken in the context of assistance provided to immigrant communities that are in all respects treated separately from the communities of the recognized minorities in Slovenia. Second, the finances and other resources accorded to them are low,⁴⁰ precluding more ambitious cultural works or projects, or any significant affirmation. Third, the courses in the languages of the former Yugoslavia provided by certain elementary schools have been introduced haphazardly and only under pressure from cultural associations. As a result, and because of the social circumstances and status of these languages (which turns them into non-resources), only a small number of children are enrolled in these programs. Furthermore, state-funded research studies on these communities do not achieve the desired effects, and some are even publicly discredited or hidden from the eye of the public, while the lack of consensus on the part of researchers is taken as an excuse for the absence of protective measures.

Therefore, the inefficiency and failure of the initiatives for the protection and affirmation of the languages and culture of the nations of the former Yugoslavia can be explained with the help of the rhetorical strategy model employed by Cummins (1995) to describe the system for preventing similar initiatives in the US, those that threatened to undermine the established power relations and domination of a certain social group. Its components are as follows:

- Goal: Ensure that the economic and political relations of the dominant group are not threatened by deviant initiatives that might empower a minority group.

⁴⁰ It should be mentioned at this point that in 2008, substantial financial help was given to the Eastern Orthodox religious community in Slovenia but outside the framework of the financial help provided for secular cultural activities. It was the year of Slovenia's Presidency of the EU and the year of intercultural dialogue proclaimed by the EU. This generous financial support of 500,000 euros for the construction of a parish hall next to the Eastern Orthodox Church in Ljubljana was approved by government resolution adopted through an extraordinary procedure. The Slovenian PM of the time laid the foundation stone for its construction on 22 June 2008. However, in 2009 this transaction became disputable because the Court of Auditors assessed it as non-transparent and inconsistent with the provisions in the Public Finance Act. Given the extremely low financial help accorded to the cultural activities of Serbs and Macedonians living in Slovenia (the two former Yugoslav nations that belong to the Eastern Orthodox Church), and knowing that all of their initiatives for inclusion in the minority protection system fell on deaf ears, we could pose the following rhetorical question: How is it possible that such substantial financial help was approved via an extraordinary route to the Eastern Orthodox religious community?

- Method: Exert economic or political pressure to ensure that implementation of the deviant initiatives is destabilized and the outcome is negative. If there is a positive outcome despite this pressure, then either ignore, deny or distort it.
- Outcomes: The failure of the deviant initiative under these conditions will demonstrate that attempts at dominated group empowerment are ill-conceived and ill-considered. Dominant-group control can be reestablished under the pretense of equality and justice (Cummins 1995, 168).

4. Conclusion: Language as an instrument in the struggle of the erased people

We have presented the situation of the erased people in the light of the linguistic situation and language policy before and after Slovenia gained independence. We put it in the context of the situation and status of the languages of the former Yugoslavia in Slovenia.

We have established that, for erased people, lack of knowledge, or poor knowledge of the Slovene language, is a handicap. On the other hand, knowledge of one of the languages of the former Yugoslavia is also a handicap in present social and cultural circumstances. In this last part we will ask whether the erased people can use this situation as an incentive for political emancipation and political struggle.

The “rebellious” responses reproduced earlier in the text of the erased person called Tomislav and Aleksandar Todorović, the representative of the Civil Initiative of the Erased Activists, suggest that rejection and non-acceptance could inspire a drive for emancipation among the erased people.

An e-mail debate that developed in June 2004 between Dimitar Anakiev and Blagoje Miković also points in this direction.⁴¹ In this polemic about the methods and means used in the struggle for their rights, Anakiev accused the leaders of the erased people of a defensive stance and of restricting their struggle to legal procedures. Certain arguments presented by Anakiev and Miković are relevant to the question of whether language can be used as a tool in the erased people’s political struggle.

Below is an extract from Anakiev’s e-mail to Miković,⁴² originally written in Serbian, a copy of which was sent to several other recipients:

⁴¹ The author of this text was on the list of recipients of e-mails containing this debate. Selected parts are published with the authors’ consent. Dimitar Anakiev is a director and producer. Blagoje Miković is the author of the initiative addressed to the Constitutional Court of Slovenia for the assessment of the constitutionality of the two laws that led to erased people losing some of their rights in Slovenia.

⁴² The English translation is based on B. Petković’s translation into Slovene of the part of the correspondence published herein.

Why do people whose mother tongue is s/h [Serbian/Croatian] communicate among themselves in Slovene? It is absurd. It's not to say that I have something against Slovene, but it means that you yourself do not accept the protection of your rights. You show that you're willing to "be resigned to your fate," because in this case Slovene is the language of political pressure exerted by a state that does not recognize you. [...] Communicating (officially and unofficially) in another language is not only your right (indeed, one not recognized by anyone, just like some of your other rights), but also a sign of self-awareness and, indeed, awareness about RESISTANCE. I'm afraid that erased people are in such a poor state that even if the means of struggle were changed, no good, or satisfactory outcome would follow. How could you agree in this context to reject one of the most important means of struggle – language? [...] I speak here about your publicly articulated language, about the one used by politicians when speaking about politics; of course, you'll still use Slovene when buying bread. (14 July 2004, 21:06)

Miković's reply to Anakiev was as follows:

It is not my style of fighting. I try to prove to the local authorities, in the local language, what they already know but do not want to admit. [...] I don't want to raise tensions and put forward my language as proof of my harboring occupying ambitions or ambitions of Greater Serbia (expected reactions). I believe that I will not lose anything through the non-use of my mother tongue. The use of Slovene is logical in the territory of Slovenia, because peoples from various linguistic areas take part in the communication. If everyone insisted on his own, everyone would speak for himself only. Slovene is a language we share with the Slovenes. I look for elements that bring us closer to each other rather than separating us. That is the point. I expressed my protest concerning the language in the initiative for the amendment of ZDRS-Č⁴³ before the USRS.⁴⁴ (I will not allow my acquisition of Slovenian citizenship to be predicated on the knowledge of Slovene in accordance with MSVN.⁴⁵ I am a Serbian speaking autochthonous Slovene on the basis of uniform Yugoslav citizenship and my Slovenian personal number – EMŠO.⁴⁶) I buy bread on the spur of the moment (Slovenia is a tourist destination), I speak as it comes to me, and I don't write any better regardless of which language I use. I take caution not to insult someone and I don't burden ordinary people with language. (14. 7. 2004 23:16)

Anakiev's reply to Miković included the following explanation:

I was saying that the Slovene language is used politically and that the response must also be political use of language, because of the struggle for your rights. (15 July 2004, 00:15)

Later he added:

⁴³ The Act Amending the Citizenship of the Republic of Slovenia Act, adopted in 2002.

⁴⁴ The Constitutional Court of the Republic of Slovenia.

⁴⁵ The International Agreement on Succession Issues signed in 2001 and ratified by Slovenia in 2002.

⁴⁶ Unique personal identification number.

Respect ourselves and fight against Fascists! We have the right to do that. After all, it is to the benefit of this environment. For the benefit of Slovenia. It is necessary to fight for the rights of the Albanians, so that their words resonate along Knez Mihajlova Street [in Belgrade]. It is necessary to fight for Serbian, Croatian, Bosnian and other words to be heard in Ljubljana. Do not impose self-censorship. Silencing multiculturalism is not a good way. Mono-cultural formations that are anachronistic and anti-European should be dismantled. ... In my opinion, the erased people have a significant and autochthonous place, a historical place in this environment, and we must insist on it. We must prove it, primarily politically, because everything else is clear. We should not abolish ourselves. ... If that must happen, let them abolish us, those who erased us. (15 July 2004 12:16)

The discussion about the situation of the languages of erased people and other nations of the former Yugoslavia living in Slovenia has brought us to the point where it is necessary to take a look at the capacity for struggle of the erased people and other speakers of these languages in Slovenia and their awareness of linguistic rights. The exchange quoted above is more than five years old. In the meantime, the erased people, their associations and supporters promoted various forms of struggle for their rights, meaning forms that were not limited to legal procedures. A wider circle of empowered erased activists was formed in the process, and they regularly appear in public putting forward their demands and defending their viewpoints. This fact is a sign of the determination and firmness they acquired in the struggle for justice despite the obstacles some of them encountered because of their inferior knowledge of Slovene. Concurrent with the erased people's struggle, and being in a way marked by it, is the battle fought by various self-organized communities of the nations of the former Yugoslavia. However, since for a number of years now these battles have been fought on separate fronts, it is not realistic to expect that they will be joined in a unified struggle.

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An erased person's story

"IT WAS THE BOSNIANS WHO WERE ERASED, BUT DAMAGE WAS SUFFERED BY SLOVENIAN CHILDREN AS WELL"¹

I was born in Velika Kladuša, in Bosnia-Herzegovina, in 1958. That's where I completed elementary school and two years of a typing course. In 1978, when I was 18, I moved to Ljubljana. I didn't have anyone here, no uncles, no grandma, no friends or acquaintances. I had to find my way around on my own. I immediately went to work as an assembly line worker, and I worked and I was not interested in anything else but work. If I hadn't worked, I'd not have found my way around. I wanted to be independent, to have my job, my income, to earn my livelihood. I worked from six to six, my hands were calloused; I earned my wage honestly. Nobody can accuse me of coming to Slovenia at the expense of the Slovenes. I worked hard for every bite I ate. And today, too, I don't want to live at anybody's expense, not even at the expense of my adult children, nobody. As long as I can move about I'll earn.

My first job was in Semenarna, in the production unit. After three months in a temporary job, my boss told me to register a permanent residence in Ljubljana because they were going to give me a regular job. I went to my birth place, Velika Kladuša, to unregister. I registered my permanent address in Ljubljana.

Soon after that I met my husband, now my ex-husband; we aren't married any more. We first lived in a shack without heating. My husband got a civilian job with the military at that time. Three months later we were visited by some army officer who was on a committee that allocated apartments. When he saw how we lived with two small children, he intervened and in less than one month we got an apartment. At the time when Slovenia gained independence, in 1990, I filed for divorce. My husband and I were too different, we saw the world differently. I got custody of the children and the apartment, so he had to leave.

¹ The erased person's story is based on the interview held by Jelka Zorn.

In 1991, when they offered citizenship, I didn't apply. It was said that you could apply if you wanted, but it wasn't obligatory. This is what I thought at the time: I've lived here for so many years, I had permanent residence registered in Ljubljana, my children were citizens and Slovenes through their father, and I was part of that family, the mother of three children and I had a regular job. In my mind I connected this offer to take citizenship more with the fact that Slovenia was a small country and that, from the international perspective, it was better for a country to have more citizens than fewer. I didn't think that I was obliged to take citizenship. As a child I could see our Bosnian people going to work in France or Germany. They were foreigners there, but they had jobs or permanent residence – they lived like equal members. My father lives in Germany even today, but he doesn't have German citizenship. I couldn't know that I was going to lose my rights if I didn't take citizenship. And how many rights I lost! All the rights except the right to work – I was able to keep my job.

It truly didn't occur to me that the state could invalidate my legal resident status without any explanation, any notification. In 1993 I went to Mačkova Street to get a certificate concerning a shared household which I had to submit to the center for social work. The clerk asked for my personal document. When I gave her my ID card, she took it, punched it and instructed me to go to the office for foreigners. When I wanted to get the certificate and didn't get it, I knew that something was seriously wrong. But it wasn't clear to me what was wrong; they only told me: "You aren't here." "How come, if I'm here?!" I couldn't understand what had happened that I was suddenly left without permanent residence. Until then, I had obtained and extended all my documents in Ljubljana, but when the country became independent this stopped. My passport and driver's license, both issued in Ljubljana, had already expired by that time. Only then did I begin to realize that I no longer had legal status in this country.

It was very important that, after my divorce, I managed to obtain the right to remain in the apartment with my children. However, because of the erasure the purchase of the apartment became very complicated. Since I didn't have citizenship, I didn't have the right to purchase the apartment. I could purchase it and put it in the name of my children, who were citizens and were registered as the users of that apartment. Well, when I realized that it was a problem, I applied for citizenship in the summer of 1992. I couldn't purchase the apartment, not even on behalf of my children, for two reasons. Since I didn't have any valid document, I couldn't get a loan from the bank, although at that time I still had a permanent job. The other reason was that the Ministry of Defense, the new owner of the apartment, sued me for unpaid rent. However, this rent was not my debt, but my husband's, who was the previous leaseholder. I became the leaseholder in 1993 when I got the apartment and I paid the rent regularly. The court procedure lasted seven years; the Ministry lost the case, but in the meantime they attempted to evict me. This was in 1998, when they sent me a resolution stating that I had to move out. I immediately filed a complaint with the higher court. The higher court established that the debt was incurred during the previous period and that the debtor was my ex-husband. When it was resolved and when after thirteen years, that is, in 2003, I got

citizenship, only then could I go on with the purchase procedure. This procedure is still ongoing, I'm still a tenant and I still pay the rent.

I was lucky that I retained my job despite the erasure, and that it was a permanent job. My company never asked for a citizenship certificate. I lived illegally but I could work. In the company they knew that I was without status. The awkward thing was, that without a personal document, I couldn't withdraw my wages which were paid to my bank account. Until 1995 I didn't have problems because I withdrew money from ATMs. The problem emerged when the bank card had to be replaced, and, naturally, I had to submit a personal document. I gave my old ID card, but they didn't consider it a valid document. How could I get my wages? I told the people in my company that I had quarreled with the people in the bank, and from that time on I received my salary cash-in-hand. The problem was that the salary was very low; I still remember the sum: 35,000 tolar. But I had a three-room apartment and three children, and the expenses were almost 50,000. No wonder that I fell ill; the psychological pressure of living on the edge and without valid documents was too great. We didn't have enough money for food even, that's how modestly we lived. My youngest daughter at least didn't know what she didn't have, but the older one felt the shortage seriously. All the time she made comparisons with others – what they had and what she didn't have. And my boy, for example, when he was growing up, his feet grew so fast that before the end of three months his toes were poking through his sneakers. Where could I get that money to buy him new shoes every few months?! We both cried as we walked from one shop to another to find inexpensive sneakers for him. Delayed payment, in installments, was the only option for me.

The shortage affected the two older children too; they couldn't concentrate and learn like other children. The older daughter was really hurting because of this; she quarreled with everyone, she was angry with the teachers, she went totally berserk. Her marks were bad, she barely managed to complete elementary education, and she couldn't enroll anywhere after that. It was difficult for her; she wanted to be like her friends, her schoolmates but she couldn't. When she was in the eighth grade she reproached me, saying that I wasn't able to take care of her, that she didn't need me, and that it was my fault that she couldn't enroll anywhere. For example, she'd tell me that our neighbor was also a single mother but her children had everything they needed for school. But in addition to child benefits and her salary, she could also get social support, unlike me who didn't have permanent residence. I was blamed and regarded as guilty by the state, by my children, and by my relatives and neighbors.

Fortunately, my children were Slovenian citizens through their father, so they received child benefit. But as a single-parent family we couldn't get social aid, although we would have been entitled to it, given our modest income. My salary and child benefit did not suffice for normal living. However, the center for social work could not give me this benefit, or social assistance, because I didn't have the status of a foreigner with permanent residence. When I brought the shared-household document, one member of the household was missing, so there were fewer people to support. My salary was taken into account when they added up the total income of the household and divided it by the

number of persons. But it was not evident from the papers that I lived with my children, although everybody knew what the real situation was.

In 1997, my second partner moved in to live with us. He too was erased. He worked as a construction worker illegally. He had a little girl, his wife had died. We helped each other. We all lived together in our apartment. For some time everything was okay, and we had a baby. Since we were both erased, my youngest daughter didn't have status, and for many years had no father's name registered.

My health record is full of descriptions of health problems. The doctor advised several months of sick leave. But the commission rejected it, stating that nothing was wrong with me. Then I lost my job and registered with the Employment Service. In fact, they dismissed me because of frequent sick leaves, which I took mainly to take care of my child. The document said that I was dismissed because of the surplus of workforce, since this was supposedly better for me than if it said that I was dismissed because of frequent absences. They introduced a robot to perform my job, to arrange magnets, so they didn't need me any more. Since that time, when I got registered with the Employment Service, I haven't had a job. It was in 2003. At that time my condition was truly bad: the entire right side of my body was blocked, my leg, my hand, half of my face – everything was so stiff that I didn't feel anything. For several years I was in a catastrophic physical condition. I couldn't sit on the assembly line, I couldn't meet the standards; I simply wasn't as quick as you must be to perform such work, even before my daughter was born. All these horrible things affected my nerves. It's a wonder that they didn't take me to a madhouse, since I was so depressive, so impossible. The only fortunate thing amidst these misfortunes was that I had paid life insurance, so when I was dismissed I got quite a bit of money from the insurance company. I went to a chiropractor for treatment, to unblock me, and it helped a lot.

My acquaintances didn't know, and they didn't believe that I had such problems because of the erasure – the measure I didn't bring about myself and I didn't know how to explain initially. My father, with whom I had telephone contact, dressed me down several times, saying that I was stupid because I didn't have a Slovenian passport. He lives in Germany where he receives a disability pension. My father didn't provide any support, not even moral support. My brother used to say similar things: "But how come you don't have a passport? It's your fault, you could have arranged it. They offered citizenship but you didn't take it!" People don't understand that citizenship is something different from permanent residence, and that I could have lived normally even without citizenship had not I been erased. At home, my relationship with my children steadily deteriorated. In such a depressive state as I was in, I found friends and support among the Jehovah's Witnesses. They visited me at my home and we talked a lot about religion, God, Jesus, but not about the erasure. I studied their explanation of the Bible. Their company somehow calmed me down. They came to my place every week and I too went there for meetings. But during the three years of our socializing, I too was supposed to begin to disseminate the religion actively from door to door. This was the point where we couldn't come together. In addition to the Jehovah's Witnesses, I also had several neighbors, friends, who helped me several times and were really good to me. For example,

when it was the hardest on me, this neighbor invited me for lunch several times. We are still friends. She knew that my daughter was sick and she'd call me: "I made soup for your baby. Bring her!" So I took her and she gave me soup for my daughter. That was really a kind gesture and welcome help. Others, on the other hand, avoided me, precisely because they knew that I was in trouble.

In 2000, I applied for permanent residence in accordance with that law after they said on television that people without documents and permanent residence who had been living here at least from the plebiscite on should go to the Office for Foreigners. I responded to that invitation. I went to the office with my child, I told them who I was, where I lived. I filled out what they gave me, submitted it and got the receipt that I had submitted it. I waited for a year or more. When I finally got a permanent residence permit, I could apply for a Bosnian passport at the Bosnian embassy. They put my permanent residence permit into this passport. I got the ID card for foreigners in 2002 from the Office for Foreigners. I still have it at home. I was so glad, as if I had been born again, so happy and relieved I was.

While I was without documents I thought that one day it had to come to light. I was convinced that it was a mistake. But I didn't know that so many people had been erased; well, I didn't even know that I was erased. I thought there were some complications which involved me and perhaps some tens of others. My workmates talked about people who didn't have citizenship and had serious problems because of it. These were mainly people in mixed marriages: a Bosnian and a Slovene. However, in 1991 I didn't apply for citizenship so I thought it was better for me not to talk about my situation. Another reason why I didn't want to talk about it was that I didn't know what actually happened to me.

One day I heard on TV about the Association of the Erased Residents and some guy called Aleksandar Todorović. I saw him speaking on television and there was a telephone number. I quickly jotted it down. I was mulling over what to say, how to introduce myself and register with that association. I had no idea that there were so many erased people. Oh dear, when we started to talk, and Aca is such a candid person. I felt like I had wings. As if the stone fell from my heart. Pains literally began to peel off my body, I could feel life, health, the future, I could see the light at the end of the tunnel. Here, it came to light. Now it's common knowledge what actually happened and who was responsible. And it was not only me that was erased; it was not I who messed things up. I thanked God, I don't know how many times.



Lana Zdravković

THE STRUGGLE AGAINST THE DENIAL OF CITIZENSHIP AS A PARADIGM OF EMANCIPATORY POLITICS

I went to pre-elementary school and completed elementary school. I couldn't go on to secondary school. Then I went to the municipal office to get the papers ... There was a lady there at the counter, and she told me I didn't exist, that I was erased. [...] I asked, "What does it mean erased?" I didn't know ... So they told me, "Well, simply you're not in the computer." So I said, "How come if I was born here?" She said, "You're not there, someone erased you." Then I said, "Who erased me?" And she said, "We don't know." (Jana S., 30)

Only in 1995 was it crystal clear to me that I was erased. That's when they said, "You don't exist." I went to Mačkova Street [the municipal office] more than once, I thought that she made a mistake ... The one who works there, that she made a mistake ... Then I went to another, and still another, and still another, to see, perhaps it could be ... And someone once even told me, when I came there, "Madam, I can see you but you're not in the computer. You've been erased." "From where have I been erased?" I asked. "Well, from these ... from the database. You don't exist here, as if you were not alive." (Ismeta, 49)

Then they invalidated my ID card. Then they invalidated my ID card when I wanted to apply for child benefit. It was when I went to the municipal office and my ID card was still valid. But they invalidated it. Punched it. They said, "You've been erased." How could I be erased if my registered address had never changed and I didn't go anywhere? Then I didn't get child benefit, or social assistance, nothing. (Emina, 47)

What happens to a person whose valid identification document is taken away and invalidated by the representatives of the state in which he/she lives? What happens to the identity of a person whose identification document, which

co-creates his/her identity and proves it in socio-political, official and legal contexts, is destroyed in front of his/her eyes? What can such a person do, one who has been expelled from the official, legal and socio-political system of a country and has all of a sudden become just a “human being”?

Hannah Arendt described very well (cf. 2003) what happens when a person loses all national or citizen attributes and becomes only a “human being” (Agamben’s *homo sacer*).¹ This is what happened to the erased people of Slovenia. As their designation, “the erased,” illustrates, accurately and chillingly, these people simply do not exist in the reality of a certain community. In consequence, they are also erased from the universal field of human rights. As Arendt (ibid.) emphasized – and her understanding stems from her wider understanding of politics as a public sphere which emerges and is repeatedly re-established through various interpersonal relationships – such situations bring to light the fascinating fact that there is an abyss between universal human rights applying to everyone, as stated in the Universal Declaration on Human Rights whose subject *par excellence* should be people “as such,” and national or citizen rights arising from formal belonging to a specific nation-state. Human rights here appears as a paradoxical concept, since they do not apply universally but are always, and above all, predicated on belonging to a nation-state, or a “national substance.”

In such a constellation, people deprived of national or citizen attributes are deprived of human attributes and dehumanized in the extreme. As Arendt showed (ibid.), in the legal sphere it has always been held that sovereignty is most absolutely expressed in connection with various kinds and methods of dehumanization: migration, asylum, naturalization or expulsions. In such situations, people become “bare human beings” without other attributes; they become people “as such.” In this connection, Arendt drew attention to the problem and impossibility of realizing the concept of human rights if a person has no citizen status in some sovereign (nation) state, or has lost the support and protection of his/her government. The paradox manifests itself in the fact that a person loses all human rights the moment he/she becomes “just a human being:” the loss of citizen rights therefore entails a *de facto* loss of human rights. A refugee, a migrant or other person without citizenship who should be the subject of human rights *par excellence* – and these are the only rights to which such a person can refer at all – reveals the radical crisis within this concept.² Arendt also

¹ In Roman law, *homo sacer* was a man whom anyone could kill without guilt – a social outcast expelled from civil law. Giorgio Agamben (cf. 2004) developed a philosophical concept based on this notion, in which modern man in contemporary society is a *homo sacer*, an individual who is expelled from law. In his opinion, it is a paradox of modern society – thanks to laws, a society can recognize an individual as being a *homo sacer*, while on the other hand, it is these same laws – those which make exclusion possible – that ascribe identity to an individual. For Agamben, there are two aspects of life: one is natural life (Greek *zōē*) and the other is political life (Greek *bios*). The *homo sacer* effect is precisely the split between the natural and the political lives of man. Having only “bare life,” *homo sacer* is subjected to the sovereign’s will of a “state of exception,” and although he has natural, biological life, he has no political life or significance. This means that decisions about his own life and death are not in his hands but in the hands of the sovereign. Therefore, for Agamben, a necessary element in any emancipation process is the destruction of sovereignty.

² For a consideration of the erasure through the philosophy of Hannah Arendt, as a syndrome of “organized innocence,” or a symptom of “tribal, nationalistic and racist dehumanization within the framework of ‘demographic politics’ of nation-state,” cf. Jalušič 2003 and Jalušič 2007.

showed (cf. 2007) that in Nazi Germany, Jews were first systematically deprived of citizenship; only then did the planned expulsions and carefully organized mass extermination occur. For the Holocaust to be possible, Jews therefore had to be deprived of citizenship in the first place. Exactly the same mechanism was in place in the case of the erased people.³

At this point it is necessary to emphasize that the erased people were formally and legally stripped of permanent resident status, and this is what they themselves and their supporters always highlighted. Although for many years successive governments deluded the public by presenting the erased people as “cunning,” “disloyal” and “calculating” in their behavior, it is clear that their failure to obtain Slovenian citizenship (for whatever reason) should not have been the ground for depriving them of their (already acquired and formally regulated) permanent resident status. By erasing them from the register of residents, i.e. by completely dehumanizing them politically, the newly formed state was able to turn these people into the Other and treat them as aliens or an alien body.⁴ At the same time, the erasure triggered a complex reconsideration of the concepts of belonging, identity shaping and identification, and of the understanding of freedom, equality and emancipation. The erased people therefore became a paradigm of the new political subject in contemporary society and their struggle to achieve the reparation of injustices a paradigm of the struggle to regain the status of the living, which is the basis of the struggle for true equality and radical democracy. This battle, which has been, and still is taking place simultaneously on two levels – the legal and the political-activist, indeed intertwining over the years, depending on the situation and the period of time – is an emancipatory battle, and its protagonists are both the erased people themselves and their supporters and collaborators. Moreover, it encourages the manifold process of emancipation that inevitably includes collaboration, solidarity and mutuality. In line with the subject of this essay, I will focus on the political-activist battle, which raises the subject of radical equality, but not radical equality as a formal principle related to legal rights and duties, but as the reciprocity of power relations. The ancient Greeks termed this alternation of command and obedience, and this is what needs to be distinguished from one-sided and irreversible domination positions if the political sphere is to become realistic and sufficiently autonomous (cf. Balibar 2004b, 161).

Drawing on Étienne Balibar, I here introduce the concept of citizenship understood as a political-philosophical concept rather than as a formal legal status; in this context, citizenship is not a status that is determined once and forever and does not imply non-exclusive belonging. This type of citizenship is “active citizenship” (ibid., 71), which needs to be re-defined and re-established continuously and which enables all people to live on an equal basis with others in any political community. In this constellation, citizenship status is extracted from

³ For more on the similarities between the erasure and the Holocaust in another context, cf. Mekina 2007.

⁴ For more on the modes and methods of exclusion in the context of the historical formation of modern nation-states along with the necessary elements of nationalism, (neo)racism and (neo)colonialism, cf. Bajt in this publication.

the narrow formal-legal context in a specific country. It is understood as the active participation of every individual in political life, regardless of his/her national, ethnic, religious, or economic affiliation. It is hence invested with emancipatory potential. Demand for citizenship status is therefore something that contributes to the liberation and emancipation of each individual – especially non-citizens. To demand citizenship status, i.e. to be a citizen, in this sense means to become emancipated as an equal and equivalent member of a community. In considering the emancipatory potential of those whose rights are curbed, i.e. non-citizens, or “a part of those who have no part,” I draw on the ideas of Jacques Rancière (cf. Rancière 1999), using as the main conceptual framework the concept of emancipation as political subjectification. The deprived groups, in our concrete example the erased people of Slovenia, are protagonists of the struggle to broaden, liberate and democratize the traditional understanding of the notion of citizenship.

1. Citizenship in the making

The concept of citizenship as I understand and advocate it, “invariably proceeds from a rebellion that establishes ‘the right to have rights’ and ‘strategies of civility’” (Balibar 2004b, 153). The basic problem originating from the equation of the concepts of citizenship and nationality, or national belonging, concepts which a nation-state pointedly unites as the basis of its sovereignty, is reflected in the fact that not only national belonging (as a cultural category), but also citizenship (as an administrative category) appear as the essence of an individual. Depending on a banal fact such as the country of birth, this identification can enrich or destroy lives solely by reason of having the “right” or “wrong” ethnic nationality or citizenship declared in one’s passport. Such an equalization, as a consequence of the process of the “normalization and socialization of the anthropologic forms” (ibid., 80), has become the essence of the contemporary concept of citizenship in nation-states, which is exclusive, incomplete and discriminatory.⁵ The new paradigm of citizenship, which certainly transcends the empty, abstract requirement of cosmopolitanism, rests on a concrete demand that both “locals” and “newcomers” should have equal rights at the local, national and post-national levels and that a “foreigner” in a specific country should not be *a priori* excluded from social, economic and political rights. Therefore, I consider the erased people’s political struggle for recognition primarily as a struggle for citizenship, but certainly not for Slovenian citizenship or citizenship of any concrete country, but for citizenship in the sense put forward by Balibar. Their struggle, being the struggle of non-citizens, of “the part

⁵ For an in-depth analysis of the exclusion-based conception of citizenship as the basic postulate of a nation-state in connection with the incapacity of the concept of human rights, and for a consideration of the option of trans-national citizenship for which non-citizens, migrants, refugees and the erased people fight, cf. Zorn 2005. For the analysis of the erasure in the context of the emergence of Slovenian (ethno) citizenship, cf. Zorn 2003 and Zorn 2007.

of those who have no part,” evolved as an active and activist civic practice and as an act of collective emancipation.

Balibar’s requirement for the “redefinition and reformulation of the concept of citizenship” (ibid., 185) is clear: citizenship, i.e. citizen rights, cannot remain tied to official status (in the sense that a state and its legislation “award” specific rights and duties) but must necessarily transcend this framework. When this happens, citizenship becomes the citizens’ activity, more a practice and a process than a stable form. “It is always in the making” (ibid., 159). Thus, it cannot be solely status (legal or formal), but must be a practice or a collection of practices that links both poles, with the attitude towards oneself constituting one pole and the attitude towards others (collaboration, recognition, solidarity) forming the other. In this conception, access to citizenship is connected with access to rights, and through it, with dignity, while denial of citizenship is a denial of dignity and is an act of institutional racism (cf. ibid., 62, 143, 234). Therefore, the main requirement of Balibar’s political philosophy is the struggle to ensure that all people have access to this kind of citizenship. This kind of requirement is always manifested as a struggle that takes place in the name of the concept of radical democracy, which by far surpasses the simple topics of tolerance, i.e. “acceptance of the Foreign,” or “acceptance of the Other.” This ethic of “recognizing the Other,” or “the ethic of differences,” which is today the favored concept both in academic milieus and in realpolitik, is an extremely conflictual concept. In reality, the “Other” is accepted only if he/she is a “good Other,” if he/she does not differ much from “us,” or rather, if he/she is the same as us. That is to say, if he/she is not the Other at all. The ideology of “respect for differences” and “the ethics of human rights,” actually advocates a certain identity in which the Other can be other and different only if he/she is “suitably different,” “assimilated,” if he/she is willing to eradicate his/her differences. Therefore, in that case, this is the acceptance not of the Other, but of the Same (cf. Badiou 1996).⁶

By contrast, the citizen in Balibar’s sense of the word is a complete subject, meaning a subject who elevates itself and becomes liberated. Such a subject is neither an individual nor a group, and its position is not exclusively a public or a private one. Such a subject is understood at the same time as a constitutive element of a state and its revolutionary. Moreover, it is understood as a permanent revolutionary acting in the name of the radical politics of equality. It is what Balibar named the “constitution of citizenship” (2004b, 219), where citizenship and society are interconnected in a completely new context. The constitution of citizenship (which is Balibar’s translation of the Greek term *politeia*) or *droit de cité* is one of the key notions of Balibar’s political philosophy, which opens up the boundaries of citizenship and in which the ways of belonging arise from the evolution of citizenship rather than the other way round. This means that citizenship is a process, propelled by those who refer to the right to be citizens. Balibar

⁶ For the in-depth critique of the concept of “accepting the Other” in connection with the erasure, discussed in the context of Badiou’s philosophy, cf. Zdravković 2009.

also uses the term “the democratization of borders” (ibid., 132-140), which denotes a set of practices that democratize certain undemocratic circumstances of democracy. References to past generations to justify one’s presumably exclusive right to residence on a specific territory, i.e. use of the principle of “first settlers,” seems a primitive solution in contemporary times. This is because everyone, including autochthonous citizens, must conceptualize, at least symbolically, their acquired and inherited citizen identity and reconstruct it in the present time along with others with whom they share a specific piece of earth and regardless of where they fellow countrymen came from and how long they have lived there. This does not mean that past does not exist any more or that it is no longer useful, but that the past is not a heritage and does not give the right of the firstborn. It means that no country has first settlers (cf. ibid., 160).

In a situation in which man is adjusted to the requirements of citizen rights rather than the other way round, Balibar’s demand for the equation of generic humanism and citizenship appears as a demand for the true equation of human rights with citizen rights. The concept of human rights thus cannot be truly instituted unless the concepts of the rights of “a human and a citizen” are internally homogenized, which represents “a radical discursive leap which deconstructs and reconstructs politics” (Balibar 1991, 212). Human rights as such, in themselves, have no reality or value unless they are also political rights, meaning the unlimited right of everyone to citizenship. Balibar maintains that in order to be a citizen, one only needs to be a human being (without special characteristics). The struggle against the denial of citizenship is therefore the essence of emancipatory politics. This struggle can be illustrated by many actions that took place in the name of the erased people of Slovenia.

2. Public battles

The public, political battle for the rights of the erased people began only around ten years after the erasure took place. This indicates the perfidious secrecy of the measure and the complexity of this problem well concealed by the state. Although it was a systematic and cruel measure that affected many people, it remained almost completely hidden from the eyes of the broader public, and even of the erased people themselves, for as long as ten years. For a long time the erased individuals were not able to recognize themselves as the Erased – as a group of people who were systematically, deliberately and unlawfully stripped of their rights, nor to recognize that their situations were not unique or isolated cases, as the employees at the administrative units where their valid documents were invalidated often tried to persuade them.

I went to the administrative unit when I was told that I did not exist anywhere, that I was not registered anywhere. And then they drummed it into my head that I was the only such case in [gives the name of the place]. But in fact it was not so.

In fact there were I don't know how many of them. A lot, I met them later.
(Monika, 63)

In much the same way, the erased people were by no means responsible for what happened to them, since they were legal permanent residents in Slovenia and were not obliged to apply for citizenship.

But I don't need to obtain it. If I live here, have permanent residence here, have a wife, a house, a job, everything ... you cannot take this all away from me overnight ... As to that, that I don't agree, that I feel like a Yugoslav and if I don't agree, why do you ... let me have what I have. I have permanent residence permit, leave me with it. Give a man a chance to think it over a bit. Don't force me into it... (Aleksandar, 47)

Also, the new-born state of Slovenia issued no certificate or notification to explain to the erased people their new legal and formal status.

I told you, I didn't get any official document from the state of Slovenia. They could say, "Listen, we will erase you on this date, you'll lose your residence status, you'll lose ... You didn't apply for citizenship, or whatever..." In such a situation, I'd probably react, but since I didn't get it officially. [...] There was nothing at that time. And it was about citizenship, which is very important. (Tomislav, 59)

In a situation where practically no Slovenian or international institution was dealing integrally or publicly with this issue or alerted the public to this phenomenon, one of the most difficult steps for the erased people was to recognize the existence of the erasure and its implications, as Barbara Beznec established in a conversation with Aleksandar Todorović (cf. 2007). Apart from the Association of the Erased Residents of Slovenia (Društvo izbrisanih prebivalcev Slovenije - DIPS), established in 2002, and later the Civil Initiative of the Erased Activists (Civilna iniciativa izbrisanih aktivistov - CIIA), established in 2005, the first non-governmental organization that actively committed itself to the problem of the erasure was the Slovenian section of the Helsinki Monitor, headed by Neva Miklavčič Predan. In 2002, she initiated a legal action for the erasure against Igor Bavčar, the Minister of the Interior at the time of the erasure, Rado Bohinc, the Minister of the Interior at that time, and Marko Pogorevc, the Head of the General Police at that time. Before that, in 1994, the Council for the Protection of Human Rights and Basic Freedoms (the predecessor of the Human Rights Ombudsman), with Ljubo Bavcon as its chairman, had drawn attention to the erasure and notified the Slovenian prime minister at the time, Janez Drnovšek, about it.

However, the first to conspicuously draw attention to the erasure was an erased individual himself, Aleksandar Todorović, the founder and the first chairman of DIPS and later the founder and chairman of CIIA. In November 2001, he staged a ten-day hunger strike, first in the parking lot in front of the Ljubljana zoo and later moving to Poljanska Street in the centre of Ljubljana. As he later

explained, at that time he did not yet have a clear idea of what he wanted to achieve, but he felt that a radical step was needed.

To show that something bad was happening there, like that. And at that time I wrote, I decided to go on a hunger strike, and I wrote a letter to all churches, the Orthodox, the Catholic, to the President of the State, Human Rights Ombudsman, Neva Miklavčič, and so on. I wrote them that I was going to starve myself to death, like that. I told them when I'd start, and I started in front of the zoo, I don't know why in front of the zoo, I have no idea why there, I have no idea why right there, or no, it's not that I don't know, I had this crazy idea about becoming an ameba and that's how it all began. [...] In fact I didn't know what I wanted, I only knew that I wanted something (interview with Aleksandar Todorović on 6th July 2002, conducted by Sara Pistotnik).

From that time on, Todorović has been the driving force behind the group, constantly alerting the public to the erasure, and it was then that the erased people began to identify with his story. Most importantly, owing to his public engagement, they began to interconnect and organize themselves. The first report about the erasure shown on (national) television appeared in the broadcast *Studio City* on 14 January 2002, but the first broader public response was triggered by the press conference following the establishment of the Association of the Erased People of Slovenia in Ptuj on 26 February 2002, meaning exactly on the tenth anniversary of the erasure.

So I brought together ten people and established the association; incredibly, for me it was much harder then, I didn't have the Internet, or a computer, I did everything by hand, I didn't even have a typewriter. I wrote invitations for journalists by hand and, interestingly, they came to Ptuj, incredibly, journalists from all over Slovenia rushed to Ptuj, they all knew [...] Everybody knew, but they didn't know exactly. And we invented, actually, we didn't invent it, it's Debelak's term, actually Šter's, calling us the erased, I mean, it helped a lot (interview with Aleksandar Todorović on 6 July 2002, conducted by Sara Pistotnik).⁷

From that time on, each February DIPS has regularly marked every anniversary of the erasure by organizing an event called "The Week of the Erased." Their diverse actions and political engagement were helped, encouraged and supported, and still are, by various civil society associations, organizations and movements in Slovenia and abroad, among these Dostje!, Politični laboratorij, Aktivistična asociacija za izbrisane, Agregat, Škuc LL, AKC Metelkova, Klub Monokel, Teater Gromki, Karaula MIR, Forum za levico, Socialni center Rog, some non-governmental organizations such as Amnesty International, Slovenian Philanthropy, Peace Institute, Legal Information Center

⁷ For the naming in the context of the political subjectivization of the erased people, cf. Zorn 2003. "The new naming exposed the fact that this was a systematic violation of human rights rather than individual violations or mistakes" (ibid., 92).

of NGOs, as well as various individuals (activists, researchers, professors, artists, essayists, journalists and so on.)⁸

Many events were subsequently organized in Slovenia and abroad with the purpose of alerting the public to the erasure, among these round-table discussions, debates, public lectures for students, foreign embassies and the broader public, meetings with various domestic and foreign politicians, press conferences and public discussions; countless letters, statements and appeals were addressed to the domestic and foreign public and journalists, and many MPs posed questions in both the Slovenian and European Parliaments; documentary films have been made about the erasure; the erased people have appeared at various events at home and abroad, presenting their personal stories. At the same time, within their activist struggle for equality, the erased people often expressed solidarity with various anti-Fascist anti-racist peaceful protests in support of the rights of foreign workers, or “illegal immigrants” as they are popularly called, asylum seekers, same-sex oriented people, the Roma and all those whose rights and equality have been curbed in any way. The erased people’s political struggle was simultaneous and on a par with their legal struggle which, from the very beginning, has been led – and still is – by the legal expert and former judge of the Constitutional Court, Matevž Krivic. During 2005 and 2006 it was also supported by the Italian law office Lana Lagostena Bassi, with the Peace Institute and Legal and Information Center of NGO’s also joining during recent years. Although I am fully aware of the significance of their legal battle, in this essay I will concentrate on the political public actions that are more relevant to the subject discussed here. Also, I will not mention or discuss all of these actions, but will highlight only the most important ones and particularly those that were initiated, produced and executed by the erased people themselves – as a paradigm of their own resistance and emancipation.⁹ That the “political subjectivization of *the erased* (their awareness of what happened and the conviction that they must fight for their rights collectively)” greatly facilitated, or rather enabled research on the erasure, is also Jelka Zorn’s conclusion (cf. 2003, 89).

The first “Week of the Erased” was organized in February 2003. In June of the same year there followed a protest march of DIPS members entitled “From the Coast to Ljubljana,” by which they wanted, for the third time, to alert the state and the public to the fact that despite the 1993 and 2003 rulings of the Constitutional Court, clearly stating that the erasure was an unlawful act, the government was still delaying the resolution of this issue. In October 2003 there followed the action entitled “Združeno listje”¹⁰ – an action aimed at opening the

⁸ It is also important to emphasize here that the engagement of the erased people highlighted the dynamic and contradictory relation between civil society and the state, on the one hand, and on the other, between non-governmental organizations, which refer to non-conflictual postulates of *realpolitik* i.e. legal equality and the fight against discrimination, and the activist movement, which draws on philosophical and political postulates such as global equality and the opening of the borders of emancipation. For an analysis of the struggle of erased people within this analytical framework, cf. Kurnik 2007.

⁹ This overview of events is based on Pistotnik 2007. For a detailed chronology of events related to the erasure, cf. *ibid.*

¹⁰ The name of the action, “Združeno listje,” whose English translation would be “United leaves,” is a word play alluding to *Združena lista*/The United List.

stifling spaces of politics to dialogue and manifold options,” which was held on the premises of the United List of Social Democrats (Združena lista socialnih demokratov - ZLSD), later renamed the Social Democrats (Socialni demokrati - SD), in Ljubljana; the purpose was to draw attention to the part this political party played in the erasure and to delays in resolving the erasure problem. The next day they staged the event called “The Erasure Before the Parliament.” Participants in white uniforms lay on the road in front of the National Assembly building, writing out with their bodies an inscription approximately ten meters long, reading ERASURE; banners on both sides of the inscription announced, “Drive on, we don’t exist!”. In late 2003, as part of the public action “Arrest Warrant – Responsible for the Erasure,” there appeared many posters across Ljubljana showing the faces and names of the government officials responsible for the erasure.

The second “Week of the Erased” in 2004 was followed by an event called “The Day of Destroying the Exclusion Walls,” performed in front of the premises of the Slovenian Democratic Party (Slovenska demokratska stranka - SDS) in Ljubljana. It drew attention to the incendiary and exclusionary campaign that had been waged ever since the erasure by the political right-wing, with the Slovenian Democratic Party having the leading role, by promulgating untrue and quasi-patriotic information. The erased people also seized the opportunity to highlight their plight at the time when Slovenia joined the EU, pointing out that, with the accession, the erased people of Slovenia became the erased people of Europe. In late April, on the occasion of the solemn official ceremony in Nova Gorica marking Slovenia’s accession to the EU, they organized and implemented a protest event.

In February 2005 the third “Week of the Erased” was organized. To commemorate the 13th anniversary of the erasure and again draw attention to the government’s ignoring of the Constitutional Court rulings, eleven members of the DIPS board staged a protest hunger strike in the TR3 business office building in Ljubljana, where the representative office of the European Commission in Slovenia was also located at the time. They were visited by MPs from some of the left-wing parliamentary parties and the representative of the EC in Slovenia at that time, Erwan Fouere.

In April of the same year, the Civil Initiative of the Erased Activists (Civilna iniciativa izbrisanih aktivistov - CIIA) was founded in Koper, which carried on the political struggle.¹¹ In July, nine representatives of CIIA began a hunger strike at the Šentilj border crossing in support of the erased Ali Beriša and his family. They later moved to Ljubljana, first to AKC Metelkova mesto, the alternative culture

¹¹ The DIPS strategy was quite homogenous and from the point of view of the erased people quite simple. They demanded a consistent and immediate implementation of the 2003 ruling of the Constitutional Court, i.e. the formal recognition of injustices which, as a consequence, would enable the beginning of the establishment of responsibility for the erasure. However, different views concerning the methodology that should be used within the association and outside it to achieve this soon transpired. One approach implied a legal route, stressing the need to regulate the issue legally and formally, while the other propounded political activism, highlighting the need to keep the problem visible through various events, actions, provocations and confrontations. Aleksandar Todorović resigned as the DIPS chairman in June 2004, and was succeeded by Marko Perak, with the support of Matevž Krivic, who advocates the legal struggle. Aleksandar Todorović, on the other hand, established CIIA, which is committed to the political struggle.

centre, then to the UNICEF offices, to draw attention to 3000 erased children, and finally to the UNHCR office, to draw attention to the suspicion that data on the number of refugees from the former Yugoslavia had been faked and funds granted for their re-settlement and livelihood concealed. Namely, during the 1990s, some erased people were forced to register in Slovenia as refugees from war-torn regions, and the state obtained funds for these people from the UN; on the other hand, some erased people were deported and therefore became refugees against their own will.

In February 2006, on the occasion of the fourth “Week of the Erased,” CIIA organized a protest action entitled “Rebellion against political and legal violence.” The participants, protesting against the government’s non-respect for the Constitutional Court ruling, intended to enter the building of the National Assembly peacefully and remain there until the government began to implement the above-mentioned ruling. Their intention was to express disobedience towards the National Assembly given that the National Assembly, in an act of state disobedience, had refused for years to respect the ruling of the Constitutional Court. The police prevented them from entering the National Assembly building, so they expressed their protest by peaceful walking to and fro in front of the building and obstructing traffic. In October, the representatives of CIIA staged an invalidation of personal documents in front of the District Court in Ljubljana, as a reminder of what they themselves experienced after the erasure. The action was organized in support of Aleksandar Todorović, against whom the former Secretary of the Minister of the Interior, Andrej Šter, the former Secretary of the State at the Ministry of the Interior, Slavko Debelak, and the former Under-Secretary of the State at the Ministry of the Interior, Alenka Mesojeđec Pervinšek had brought an action in court for his allegedly branding them Fascists because of their role in the erasure, after speaking about the erasure in the TV broadcast “Trenja,” in 2003.

In November 2006, with the support of Italian and French non-governmental organizations, left-wing political parties, trade unions and other supporters from Slovenia, Italy and France, CIIA organized a comprehensive action called “The Caravan of the Erased: from Ljubljana to Brussels.” The aim was to express support for the complaint brought before the European Court for Human Rights by the Italian law office Studio Lana Lagostena Bassi in July 2006, in the name of eleven erased people, known as “Kurić and others vs. Slovenia,” and also to alert European MPs to the violation of human rights in the EU, since with the accession of Slovenia to the EU in May 2004, the erased people became an issue of the EU as well.

In February 2007, on the 15th anniversary of the erasure and as part of the fifth “Week of the Erased,” a theatre performance was staged in the Rog Social Center in Ljubljana, entitled “The Erased Ltd.” (“Izbrisani d.o.o.”), directed by Franci Slak, with actors being mainly the erased individuals themselves.

3. Emancipation as a process of shaping the political subject

What message did the erased people and their collaborators transmit through these diverse actions? Primarily that they understood perfectly that by being erased from the civic norm they were also erased from the human norm and had thus become “ordinary human beings” left without any other characteristic except that they were still human. In other words, their message is that the erasure stripped them of political life (*bios*) and that their biological life (*zōē*) was the only thing left to them. Even at the time when they did not know exactly what had happened to them, and precisely because of that, as Aleksandar Todorović emphasized, they were keenly aware of the necessity to take action and draw attention to themselves, i.e. to publicly expose themselves. Therefore, they primarily drew attention to their biological life by exploiting political and public action to alert the public that they still existed, that although they had been erased from the domain of political rights, they still existed as humans, as living beings and physical bodies. As pure bodies, they exposed and represented themselves in various demonstrations and public actions in various public spaces (but primarily in the street as the public space *par excellence*). What is very important, by entering the premises of the National Assembly, the Court, the ZLSD party, the TR3 office building or the European Parliament, they were liberating the privatized and bureaucratized spaces occupied by the political and social elite and with their actions they were opening and returning these spaces to the public.

On the other hand, given that they could use their bare bodies only, it was not accidental that their political struggle began with the hunger strike by Aleksandar Todorović, “the most widely recognized erased person,” and that over the following years they continued to stage protest hunger strikes and exhausting marches including the long “Brussels Caravan.” After all, their body, physical body was the only thing they were left with at a certain point in time, and it was the only instrument at all available to them for drawing attention to themselves. By engaging their own bodies, starving them and submitting to self-destruction, they illustratively demonstrated how “bare life” can become incompatible with the legal and political system of a nation-state and how people without a state, i.e. citizenship, can only be people without existence. In this way they exposed the radical discrepancy between a human being and a citizen, i.e. the radical cleavage of their identity which was a consequence of the general “identity fundamentalism” (Rancière 1999, 132) or general “identity panic” (Balibar 2004b, 182), which engulfed the “majority” population and led to “identity exclusion” (*ibid.*). The erased people thus established themselves as a political subject within the split separating the signifiers “the erased” (non-citizen) and “human being” (citizen), or, by being completely dehumanized as human being they became emancipated as political beings. Through many diverse collective actions, they also confirmed Balibar’s argument that the concept of human rights should be recognized as contradictory, one which always dwells on the extreme limits of demo-

cracy, meaning that it always refers to the postulates of democracy while at the same time problematizing its existence. They showed that the concept of human rights can never be a simple or one-directional warranty of legal equality, i.e. civil and citizen rights, however important this is, but it must necessarily broaden the meaning and value of human rights and if possible, re-invent these repeatedly as citizen rights, continually conceptualizing, proclaiming and exposing these (cf. Balibar, 1991). It is precisely this process of permanent broadening of the concept of human rights i.e., “the reinvention of rights” (ibid., 226) that represents something without which the concept of the politics of human rights is largely without meaning. This process invariably implies, whether we like it or not, an act of critical questioning of the existent social order, even when (or rather, primarily when) it is the democratic and legal order that is expected to guarantee freedom and equality. This act cannot but be rebellious, since it opposes the stability of the democratic constitution, while at the same time establishing it.

The concept of emancipation (as “the right to resist” inscribed in the juridical rules of contemporary nation-states, which is also an instance of its nullification) is understood as the implementation of true democracy, i.e. true citizenship status. The emancipation, which, however, does not occur by itself but must always be achieved through the struggle of various categories of people, gives rise to a specific universalism, contained in Balibar’s concept of “equal freedom” (2004b, 78). If people are free (and therefore must be treated as such by a political institution), it is so because they are equal, and if they are equal (and therefore must be recognized as such), it is so because they are free. When this maxim is part of political and social reality, its direct consequence is that exclusion from citizenship can no longer be interpreted and justified in any other way except by stating that it is an instance of exclusion from humankind or from the human norm. Therefore, an emancipation struggle is necessarily the struggle of those who are denied citizenship (cf. also Balibar 2004a and Rancière 1999, 97-101).

It is clear that the aim of “immigration control politics” or the “politics of immigration management” is not to end “illegal” employment and immigration, or workforce trafficking in order to meet the needs of employment, or unlawful situations that are the result of these. On the contrary, it is rather the reproduction of illegality that is at work there, which indirectly justifies the necessity of repressive measures. Illegality is first produced and then becomes the reason for the existence and implementation of security measures, creating in this way the “danger syndrome” that affects the entire country. This is one of the institutional driving forces behind the current production of neo-racism and apartheid, or the maintenance of the situation in which an immigrant always remains an immigrant – remains permanently the Other. Balibar’s point of departure (cf. 2004b, 82-84) is that a nation-state, with its legal rules and instruments and through the concept of citizenship as a substance of sovereignty, divides human identity into legal and universal aspects, into citizens and human beings. Such a concept turns citizenship of a country into a privilege, honor and excess of

rights. Those who are denied citizenship (foreign workers, asylum seekers, “illegal immigrants” and in our case the erased people) point precisely to this empty site where citizenship and nationality diverge.¹²

Balibar showed that this is a consequence of the colonial heritage: the colonial subject was understood as a “national by birth,” while those who are denied citizenship are not “nationals by birth,” and even when they are more or less integrated into society and partly included in the system of rights and duties deriving from the status of citizenship, they can never detach themselves from minority status. They may be accorded training and protection, which makes them similar to citizens, but only if they respect the provisions of a “contract” that they will never be able to negotiate for themselves (which is indicated by the regulation of the issues of naturalization or the right to residence). So today, as Balibar argues, we face the true process of “recolonization of social circumstances” (ibid., 82), which began in the 1980s as a consequence of the globalization of the economy and new inequalities on both the global and local (national) levels. Balibar does not hesitate to name this phenomenon European apartheid, or neo-racism. It is therefore the philosophical rehabilitation of a specific historical phenomenon (cf. ibid., 85 and also Bajt in this volume).

For this reason, the rebellion and struggle of non-citizens themselves and their demands for active political participation represent a live paradigm of emancipatory politics. This is clearly confirmed by the movement of the erased people, composed of the erased individuals themselves and their collaborators. They have contributed to the concept of active citizenship in such a way that, through the forms and content of their actions, they encourage activist solidarity, which despite understandable fluctuations between mobilization and hopelessness, enthusiasm and conflict, shows a surprising continuity in the long run. Their activity is therefore also valuable as an encouragement of civil disobedience which, along with the risks involved, is the key component of citizenship and helps its re-establishment at a time of crisis or when its principles are challenged.

4. A demand for true equality: emancipation as political subjectivization

This kind of emancipation is naturally aimed at true equality (cf. Rancière 1999 and 1991) among people, or individuals, who see each other as intelligent beings. “The philosophers’ paralogism is to assume a people like *man*. But this is a contradictory expression, an impossible being. There are only peoples of citizens, people who have given up their reason to the inegalitarian fiction (Rancière 1991, 90). Therefore, a social order that rejects the principle of

¹² For the “living on the border” phenomenon, i.e. the borders between man and citizen, borders that have been opening up for capital and goods but remain closed for people, and borders between equality and inequality on which post-neo-liberal society rests, cf. Zdravković 2006.

emancipation and insists on its provisions and laws which are expected to be blindly followed and not questioned cannot ensure true equality because it does not recognize individuals – residents of one's country – first as being human beings and only then citizens. Such a social order stands in radical opposition to every kind of emancipation, i.e. equality. States erroneously believe that true freedom and equality can be ensured only by laws and constitutions. True emancipation cannot be institutionalized, as Rancière emphasized. In much the same way, emancipation cannot be learnt from anyone; emancipation is not something that is requested or given, but it is taken, it is implemented and it is verified. It is an always on-going live process which is dependent on the degree of the emancipation of people rather than society, since people are real and society is a fiction, or "whoever forsakes the workings of the social machine has the opportunity to make the electrical energy of emancipation circulate" (ibid., 108). Therefore, emancipation implies "equal man in an unequal society" (ibid., 133), in contrast to the situation we have today, that is, "unequal man in an equal society" (ibid.).

The emancipation process is therefore a prerequisite for the emergence and maintenance of true politics. Politics does not exist and does not come to life only because poor people resist rich people. It is more appropriate to say that "politics exists when the natural order of domination is interrupted by the institution of a part of those who have no part. This institution is the whole of politics as a specific form of connection. It defines the common of the community as a political community, in other words, as divided, as based on a wrong that escapes the arithmetic of exchange and reparation. Beyond this set-up there is no politics. There is only the order of domination or the disorder of revolt" (Rancière 1999, 11-12). Therefore, the struggle between the poor and the rich is a struggle for recognition of a part of those who have no part; it is a struggle of politics and anti-politics, and consequently a struggle for the life of politics as such. Politics therefore exists "wherever the count of parts and parties of society is disturbed by the inscription of a part of those who have no part. It begins when the equality of anyone and everyone is inscribed in the liberty of people" (ibid., 123).

According to Rancière, politics emerges and appears in the reconfiguration of the distribution of the sensible, a regime which defines who is supposed to be seen or unseen in the common sphere and decides whether the sound coming from the mouths of the people should be understood as words or as noise. (ibid., 24). In Rancière's view, politics is a radical cut, provoked by some, strictly understood, impossible situation when those who are not expected to speak usurp the words (ibid.). The beginning of politics is therefore inevitably marked by words. Rancière studied a group of workers who lived in the 19th century (cf. 1989). In the night, instead of sleeping and resting to prepare their bodies for the next day's physical work, they sat together debating, reading, writing and intellectually developing themselves. In this way, they emancipated themselves

during the time not meant to be theirs; for them, nights were meant to be a period of rest and preparation for physical work, not intended for contemplation. Or, as Rancière argued, “Politics begins precisely when they who have ‘no time’ to do anything else other than their work take the time that they have not in order to make themselves visible as sharing in a communal world and prove that their mouths indeed emit shared language, instead of merely voicing pleasure or pain” (Rancière 2004b, 10).

In the same way, the erased people appropriated words. Defying any state and institutional logic – note that the state erased them and they were therefore not supposed to exist – they unexpectedly became visible and omnipresent instead of disappearing. They took to the streets. They drew attention to their bodies, physical presence and existence. They opened up public discourse. They were talked about, written about and discussed. They triggered public debate. Instead of being zero, of becoming an emptiness and negation, or ceasing to exist, as the state wanted them to do, they suddenly numbered 18,305, and then more than 20,000, and even much much more, if we count their supporters – they have become an innumerable mass. Like Rancière’s “part of those who have no part,” through their actions they usurped public space and public discourse that were not meant to be theirs. In this way, they first regained the status of human subject (*zōē*) and then that of political subject (*bios*). By de-identifying themselves as humans, they consolidated their human identity. By emphasizing that they were erased, they ceased to be erased people and, on the contrary, became visible.

In the beginning I didn't know what it was all about. ... I didn't know, but then I was happy. When I read the newspapers and see my photo and your photo I take it to the bars and show it around – look at it! When I saw that book about the erased people and when I saw my photo, I took it to the bar immediately ... “Look at it,” I said, “where the Activist is.” I’m not afraid of anybody, I’m even more happy when they see me on the street and say “the erased one.” (Aktivist, 45)

As Andrej Kurnik emphasized, in addition to the organized protagonism of the erased people, what is even more important to mention is the non-organized protagonism “in the form of individual and collective stance, that is, their pride” (2007, 125). An important component of erased people’s emancipation is collaboration with their supporters, who have stood by their side since the very beginning. This indicates that a specific group of people has been capable of submitting itself to emancipation in Rancière’s sense of the word. According to Rancière, emancipation is a process of political subjectivization *par excellence*, a process of formation of a person that is not a self but is the relation of a self to an other. In other words, “a process of subjectivization is a process of disidentification or declassification” (1995, 67). This process of political subjectivization as disidentification and declassification is a denial of every constitution of identity or identification. It is the enactment of equality, “by crossing of identities, re-

lying on a crossing of names: names that link the name of a group or class to the name of no group or no class, a being to a nonbeing or a not-yet-being" (ibid.). It is always an "impossible identification, an identification that cannot be embodied by he or she who utters it" (ibid.). At the same time, this is not to say that we stop being what we are, but we establish a certain distance from the signifiers that adhere to us or that are attributed to us. We develop an awareness that all identities are always transferable, changeable and ambiguous. That they are just a construct of a specific identification. Only then, when we have freed ourselves from all identity or identification restraints, can we become aware of the equality of anyone and everyone. A political subject, therefore, can only begin to exist within the split between two identities: the one we renounce and the one we symbolically appropriate. What is crucial is that neither of the two is completely "our" identity. As in the case of political subjectivization, emancipation is heterology – "the logic of the self as an other" (ibid., 65). This means that there is no simple statement of identity; every identification is at the same time a denial of an identity attributed to us by someone else, by the ruling order. The logic of subjectivization therefore invariably demands an impossible identification, since the process of equality is a process of differences and not of homogenization, as the logic of the sovereign, the consensus and the concept of human rights require. The process of equality means being together to the extent that we are in-between: between names, identities, identifications etc. Every identity primarily emerges because of the fear of others, which in reality is fear of the nothingness that finds its object in the body of the Other. And the polemical culture of emancipation, the heterologous acceptance of the Other through the process of subjectivization, is the method of civilizing this fear.

I have established that in Slovenia the mass political subjectivization has not happened, i.e. the emancipation of "the Slovenes" along with the erased people, with some exceptions. I wonder how this was possible.¹³ Social studies may offer quite a convincing explanation for this (state propaganda, organized delusion, institutionalized lies, or the dominant ideology), but viewed from the philosophical perspective, this fact is difficult to understand. And yet, political subjectivization as "disidentification, removal from the naturalness of place, the opening up of a subject space where anyone can be counted since it is a space where those of no account are accounted, where a connection is made between having a part and having no part" (Rancière 1999, 36) did happen in Slovenia by means of the many protests, actions and demonstrations realized with the help of many groups and individuals who collaborate with and support the erased people. These are people who de-identified themselves as "Slovenes" and identified with the erased people. Thus, they were, somewhere in between these two signifiers, to show that they disagreed with the dominant

¹³ "How was it possible?" "Can the mind understand that which the body has not experienced?" "Who is responsible?" These are the questions asked by Jelka Zorn in the context of the politics of exclusion during the constitution of Slovenian citizenship (cf. Zorn 2003).

logic of “their” state, the state of Slovenia. The slogan “You have the power, we have the erased people” which has accompanied this struggle for years, demonstrates the capacity of a certain group of people to de-identify as Slovenes and identify with the erased people. In much the same way, the erased people were forced to de-identify as human beings so that they could again become human beings through struggle for the status of “citizenship in the making.” In this way, they together initiated the process of political subjectivization which “redefines the field of experience that gave to each their identity with their lot” (ibid., 40). They constituted themselves as those who suffered injustice and in the name of that injustice.

According to Rancière, a political subject always constitutes itself as the subject of injustice; an injustice suffered is a prerequisite for the constitution of a political subject. In the case of the erased people, this fundamental injustice was the erasure, depriving them of fundamental rights or the right to residence (or, in Balibar’s sense, of citizenship). But as Rancière argues, such a political subject which is necessarily established through the image of an injustice, does not identify with its suffering and is not a victim. It ceases to be a victim at the precise moment it recognizes itself as a victim, the moment it recognizes that it has suffered injustice and becomes determined to do something about it. As a result, the “justice” that is demanded is not an illusionary attribute of an ideal subject, but is the argument of some injustice (ibid., 107). In the name of such an injustice, the erased people constituted themselves as a political subject, as Rancière’s “part of those who have no part;” they emancipated themselves. They became emancipated along with their supporters, collaborators and domestic and international activists, who put the erasure into a broader social context. Through this process of polemics, interactive and solidarity action, both sides gained emancipatory potential, which was reflected as the joint demand for global radical equality. In this way, they succeeded jointly in achieving one of Rancière’s most important demands, i.e., the creation of a political space which also engages their opponents, their haters, even though they do not want to be included and although they fight against them.

This kind of joint action of activists which encourages the “part of those who have no part” to take concrete action (to emancipate themselves), and of which they are part themselves (becoming emancipated themselves in this way), is a valuable activity on the micro level that carries with it the potential to become a global action and liberate society from the fear of the political, public action, which everyone still fears, and justifiably: politicians as political technologists, academics as “objective” scientists, impotent (petty) bourgeois and, naturally, believers and theologians, i.e. the Church, not to mention society as a whole, which is based precisely on anti-politics. This kind of action, which primarily represents a radical demand for social and intellectual non-conformism, does not fight “against exclusion” on behalf of those who are excluded, but on the contrary, encourages their own emancipation. What is involved is not “enabling ac-

cess” for those who do not have access. If this were the case, they would certainly never obtain access. By contrast, this struggle is about creating a situation in which “we need to enable everyone to enter anywhere” (Rancière 2004a, 51). For this reason, articulated public political action which promotes political subjectivization of “the part of those who do not have a part” i.e. “a count of the uncounted” (Rancière 1999, 116) (public appearances, polemics, debates, lectures, demonstrations, open letters, billboard campaigns, performances) is a paradigm of the life of emancipatory politics. Being aware of the fact that “politics doesn’t always happen – it actually happens very little or rarely” (ibid., 17), I cherish the hope that these micro-engagements will trigger broader opening up of the non-state public-political space of solidarity and justice and a space for “the presupposition of the equality of anyone and everyone, or the paradoxical effectiveness of the sheer contingency of any order” (ibid.).

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