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## The Erased – recent developments

### Developments in 2009

Besides the difficult situation of certain segments of the Roma community in Slovenia, the issue of erased people is one of the most serious in the field of racism and ethnic discrimination. As ECRI already found out in its previous reports, the measure of deprivation of legal status in Slovenia affected thousands of people. In January 2009 the Ministry of Interior under the new minister of interior Katarina Kresal and a new state secretary Goran Klemenčič who decided that the erased issue will be one of their priorities of work, conducted an internal investigation on the numbers of the erased. According to their findings, the official number is 25.671 erased persons. They further found out that out of all erased, 1302 persons died, 10.943 has a regulated status (out of them 7.313 has citizenship of Slovenia), while 13.426 people are still without a regulated status. It is not clear how many of them are in Slovenia and how many are abroad, however, the assumption is that the majority of them are abroad (because they were deported, because they could not return, or because they left due to the consequences of the erasure). Since January 2009 when the investigation was completed, a few dozen erased people managed to get their status back, however, the number of those who are still without it remains around 13.000.

In its 2006 report ECRI expressed serious concerns about the lack of implementation of the April 2003 Constitutional Court ruling, the failure to issue all retroactive supplementary decisions on permanent residence rights, the lack of human rights discourse and the misrepresentations and generalizations of the erased.

Since then some of these problems were addressed and some remain. In general, the problem is not solved. Namely, in 2009 some steps were taken by the new centre-left government with a view to implement the Constitutional Court ruling No U-I-284/94 of 4 February 1999 and No U-I-246/02-28 of 3 April 2003 and prepare remedies. The first step was issuing **supplementary retroactive decisions** as required by point 8 of the 2003 Constitutional Court ruling. The decisions were issued to all those erased people who have already managed to regulate their status of permanent residents, and they covered the loophole in their legal status from 26. 2. 1992 until the moment of regulating their legal status. These decisions, however, have no real satisfactory meaning for the erased, as they do not bring any actual satisfaction or compensation for the victims. They cannot return the lost years of work, the absence of education caused by not being able to enroll in secondary schools and universities, or correct the damage in health.

## Developments in 2010

The second step of the Ministry was preparation of the law in order to implement the 2003 Constitutional Court ruling. On 8 March 2010 the National Assembly adopted amendments to the Act Regulating the Legal Status of Citizens of Other Successor States of SFRY in the Republic of Slovenia (published in Official Gazette RS, No. 50/2010, hereinafter: **the Legal Status Act**, Slovenian acronym: ZUSDDD). The act only entered into force on 24 July 2010 as the opposition parties filed a motion for *ex ante* referendum on the law. The National Assembly filed a request to the Constitutional Court to assess whether a referendum, if the amendments were rejected by the public vote, would cause unconstitutional consequences. On 16 June 2010 the Constitutional Court decided that such referendum would cause unconstitutional consequences and did not allow the referendum to take place (see ruling of the Constitutional Court no. 50/2010).

### The 2010 amendments concerning the legal status of the erased people

The aim of the adoption of the 2010 amendments to the Legal Status Act was to implement the decision of the 2003 Ruling of the Constitutional Court in the most minimal and restrictive way possible. Namely, the 2010 amendments maintain all the characteristics of the previous legislation, meaning that:

- the erased people have to file an application for permanent residence permit;
- they have to pay an administrative fee of 75 EUR;
- prove that they meet the conditions set by law (the burden of proof is entirely on them);
- provide costly official translation of all documents submitted to the competent body;
- attend a hearing, which is difficult, time-consuming and costly for persons living abroad;
- in case of absence from Slovenia they have to prove that they tried to return to Slovenia in the first ten years of their absence.

Namely, the main condition which is still in place for the erased people (and has been in place since 1999 when the Legal Status Act was first adopted) is that they have been *de facto* living in Slovenia since the erasure onwards. The 2010 amendments changed this condition to the extent that there are now exceptions in the case of which it is considered that the condition of *de facto* residence in Slovenia is also fulfilled. **The exceptions** as stated in the Article 1.č of ZUSDDD are as follows:

- if the absence from Slovenia lasted for one year;
- if the person left the Slovenia because of the consequences of the erasure from the register of permanent residents;
- if the person left Slovenia because it was sent to work, study or be medically treated by a public entity from the Republic of Slovenia, or, in case of a minor, if this was the case with his or her parents or guardians, or if the person was employed on a ship with a home port in the Republic of Slovenia during the period of assignment to work, study or medical treatment or work on a ship;

- if the person left Slovenia because he or she was unable to acquire residence permit for the Republic of Slovenia because of lack of fulfillment of criteria and a rejected or dismissed permit application or due to suspension of the procedure of permit acquisition;
- if the person was unable to return to the Republic of Slovenia because of war conflicts in other countries, the Republics of the former Yugoslavia or due to health reasons;
- if the person had been deported from the Republic of Slovenia, unless the person has been deported due to additional sentence of expulsion for a commitment of a criminal act;
- if the person's entry into the Republic of Slovenia has been rejected, except if the entry has been rejected because of a passed additional sentence of expulsion of an Alien, or due to reasons arising from the reasons of public order and public security.

All of these exceptions seem comprehensive, however there are several **problems** with them. First, the person has to prove that he or she falls within one of the exceptions. What is considered as proof that one was deported or that his or her entry at the border was rejected, is unknown as people did not get any written decision on their deportation. If the person can only provide a statement that he or she was deported, and the competent body does not believe the person, the application for permanent residence permit might be rejected. Second, there are cases of the erased people who do not fall within any of the described exceptions. In such case, the erased person is not eligible for residence permit, even though he or she was unlawfully erased in the same way as others. Third, it is absurd and absolutely unacceptable that the people who have been unlawfully deprived of their legal status now have to prove various conditions in order to get these rights back. One of these conditions is also that they have to prove that they had a republican citizenship of one of the other republics of the former Yugoslavia. This is an insurmountable problem for those erased (especially Roma) who due to poor bookkeeping were not registered as republican citizen of any of the republics of former SFRJ. After the dissolution of the former Yugoslavia the latter group of people became stateless.

#### **The problem of the maximum 10 years of absence from Slovenia**

In addition, there is one more provision in the Article 1.č of ZUSDDD, which makes the procedure even more difficult for the erased. Namely, § 4 of the Article 1.č reads as follows:

“If the duration of absence, arising from the reasons stated in the previous paragraph, with the exception of the second indent, exceeded five years, it is deemed, that the condition of actual life in the Republic of Slovenia was fulfilled for a five year period, but for the following five year period it can only be fulfilled, if the actions of the person imply that he or she did attempt to return to the Republic of Slovenia and continue the actual life in the Republic of Slovenia.”

This means that a person who meets one of the exceptions stated above, has only managed to prove their *de facto* residence in Slovenia for the first five years of their absence. However, to meet the condition of *de facto* residence for the next five years, he or she also has to prove that they (unsuccessfully) tried to return. The question how this can be proven remains entirely unclear. Namely, it is almost impossible to prove acts such as that a person inquired at the embassy of Slovenia what his or her chances are to return. Further, if this provision of the law is taken literally, it means that it is only possible to justify the first ten (10) years of the absence. **This means that all**

**those erased people or applicants who have been absent for more than ten years will not meet the conditions set by the law.** This provision completely denies the aim of the law which should be to provide the opportunity for all the erased people to get their legal status in Slovenia back.

#### **Statistics on filed applications for permanent residence permit**

Taking this into account it is not surprising that from the day when the 2010 amendments to the Legal Status Act entered into force until the end of 2011, only 211 applications for permanent residence permit have been lodged. Out of these, 55 applications were approved, while in 80 cases applications have been denied, rejected, or the procedure has been terminated. This shows that even after the 2010 amendments to the Legal Status Act were adopted, the applications for permanent residence status of erased people are still being rejected, which is completely unacceptable. It shows that this general measure adopted by the state is a mockery. The number of rejected applications shows that the erased people who re-apply for their legal status, risk serious chances that they will be rejected, even though they have been deprived of their legal status unlawfully. It is unacceptable that the law requires the erased people to meet any such conditions, and that it is not acceptable that the erased people exclusively have to carry the burden of regularization of their legal status. It should be the Republic of Slovenia that should approach the victims of the measure of erasure and offer a legal status to them.

What is also problematic is the attitudes of the administrative bodies to the erased. Since the Peace Institute Staff is representing a number of the erased people in these procedures we have first-hand information on how this attitude looks like. The erased are still (after all the Constitutional Court rulings) seen as 'those who did not want to apply for citizenship', 'those who did not want to regulate their status' and 'those who only want high compensations from Slovenia'. This shows that misrepresentations of the erased are still prevalent and that the overall hateful approach to them is still highly present in the administrative bodies.

#### **ECHR case *Kurić and others vs. Slovenia***

On 13 July 2010, the **European Court of Human Rights** in the case *Kurić and other vs. Slovenia* found that because of the failure to implement the Constitutional Court Ruling, Slovenia violated the right to protection of private and family life and the right to effective remedy. The case is not final yet as the Government filed a request for referral to the Grand Chamber.